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Presidential Documents

Title 3—

The President

Executive Order 12778 of October 23, 1991

Civil Justice Reform

WHEREAS, the tremendous growth in civil litigation has burdened the American court system and has imposed high costs on American individuals, small businesses, industry, professionals, and government at all levels;

WHEREAS, several current litigation practices add to these burdens and costs by prolonging the resolution of disputes, thus delaying just compensation and encouraging wasteful litigation;

WHEREAS, the harmful consequences of these litigation practices may be ameliorated by encouraging voluntary dispute resolution, limitations on unnecessary discovery, judicious use of expert testimony, prudent use of sanctions, improved use of litigation resources, and, where appropriate, modified fee arrangements;

WHEREAS, the United States sets an example for private litigation by adhering to higher standards than those required by the rules of procedure in the conduct of Government litigation in Federal court, and can continue to do so without impairing the effectiveness of its litigation efforts;

WHEREAS, improving the quality of legislation and regulation to eliminate ambiguities in drafting would reduce uncertainty and unnecessary litigation; and,

WHEREAS, improving the quality of administrative adjudications would reduce the time and resources expended during the administrative process.

NOW, THEREFORE, I, GEORGE BUSH, by the authority vested in me as President by the Constitution and the laws of the United States of America, including chapter 31 of title 28, United States Code, and section 301 of title 3, United States Code, and in order to facilitate the just and efficient resolution of civil claims involving the United States Government, to encourage the filing of only meritorious civil claims, to improve legislative and regulatory drafting to reduce needless litigation, to promote fair and prompt adjudication before administrative tribunals, and to provide a model for similar reforms of litigation practices in the private sector and in various states, hereby order as follows:

Section 1. *Guidelines to Promote Just and Efficient Government Civil Litigation.* To promote the just and efficient resolution of civil claims, those Federal agencies and litigation counsel that conduct or otherwise participate in civil litigation on behalf of the United States Government in Federal court shall respect and adhere to the following guidelines during the conduct of such litigation:

(a) *Pre-filing Notice of a Complaint.* No litigation counsel shall file a complaint initiating civil litigation without first making a reasonable effort to notify all disputants about the nature of the dispute and to attempt to achieve a settlement, or confirming that the referring agency that previously handled the dispute has made a reasonable effort to notify the disputants and to achieve a settlement or has used its conciliation processes.

(b) *Settlement Conferences.* As soon as practicable after ascertaining the nature of a dispute in litigation, and throughout the litigation, litigation counsel shall evaluate settlement possibilities and make reasonable efforts to settle the litigation. Such efforts shall include offering to participate in a settlement conference or moving the court for a conference pursuant to Rule 16 of the

Federal Rules of Civil Procedure in an attempt to resolve the dispute without additional civil litigation.

(c) *Alternative Methods of Resolving the Dispute in Litigation.* Litigation counsel shall make reasonable attempts to resolve a dispute expeditiously and properly before proceeding to trial.

(1) Whenever feasible, claims should be resolved through informal discussions, negotiations, and settlements rather than through utilization of any formal or structured Alternative Dispute Resolution (ADR) process or court proceeding. At the same time, litigation counsel should be trained in dispute resolution techniques and skills that can contribute to the prompt, fair, and efficient resolution of claims. Where such benefits may be derived, and after consultation with the agency referring the matter, litigation counsel should suggest the use of an appropriate ADR technique to the private parties.

(2) It is appropriate to use ADR techniques or processes to resolve claims of or against the United States or its agencies, after litigation counsel determines that the use of a particular technique is warranted in the context of a particular claim or claims, and that such use will materially contribute to the prompt, fair, and efficient resolution of the claims.

(3) Litigation counsel shall neither seek nor agree to the use of binding arbitration or any other equivalent ADR technique. A technique is equivalent to binding arbitration if an agency is bound, without exercise of that agency's discretion, to implement the determination arising from the ADR technique. The requirements of this paragraph shall be interpreted in a manner consistent with section 4(b) of the Administrative Dispute Resolution Act, Public Law 101-552, 104 Stat. 2736 (1990). Practice under Tax Court Rule 124 shall be exempt from this provision.

(d) *Discovery.* To the extent practicable, litigation counsel shall make every reasonable effort to streamline and expedite discovery in cases under counsel's supervision and control.

(1) *Disclosure of Core Information.* In those cases where discovery will be sought, litigation counsel shall, to the extent practicable, make reasonable efforts to agree with other parties mutually to exchange a disclosure statement containing core information relevant to the dispute and to stipulate to an order memorializing such agreement. For purposes of this subsection, "core information" means the names and addresses of people having information that is relevant to the proffered claims and defenses, and the location of documents most relevant to the case. This guideline to disclose core information shall not apply in cases while a dispositive motion is pending.

(2) *Review of Proposed Document Requests.* Each agency within the executive branch shall establish a coordinated procedure for the conduct and review of document discovery undertaken in litigation directly by that agency when that agency is litigation counsel. The procedure shall include, but is not necessarily limited to, review by a senior lawyer prior to service or filing of the request in litigation to determine that the request is not cumulative or duplicative, unreasonable, oppressive, unduly burdensome or expensive, taking into account the requirements of the litigation, the amount in controversy, the importance of the issues at stake in the litigation, and whether the documents can be obtained from some other source that is more convenient, less burdensome, or less expensive.

(3) *Discovery Motions.* Before petitioning a court to resolve a discovery motion or petitioning a court to impose sanctions for discovery abuses, litigation counsel shall attempt to resolve the dispute with opposing counsel. If litigation counsel makes a discovery motion concerning the dispute, he or she shall represent in that motion that any attempt at resolution was unsuccessful or impracticable under the circumstances.

(e) *Expert Witnesses.* Litigation counsel shall make every reasonable effort to present only reliable expert testimony before a court.

(1) *Widely accepted theories.* Litigation counsel shall refrain from presenting expert testimony from experts who base their conclusions on explanatory theories that are not widely accepted. For purposes of this subsection, a theory is widely accepted if it is propounded by at least a substantial minority of the experts in the relevant field.

(2) *Expertise in the field.* Litigation counsel shall present expert testimony only from those experts whose knowledge, background, research, or other expertise lies in the particular field about which they are testifying.

(3) *Expert disclosure.* Litigation counsel shall offer to engage in mutual disclosure of expert witness information for those experts that a party expects to call as expert witnesses at trial, provided, and to the extent, that the other parties agree to make comparable disclosures of any expert witnesses they expect to call at trial.

(4) *Ban on contingency fees.* The amount of compensation paid to an expert witness shall not be linked to a successful outcome in the litigation.

(f) *Sanctions.* Litigation counsel shall take steps to seek sanctions against opposing counsel and opposing parties where appropriate.

(1) Litigation counsel shall evaluate filings made by opposing parties and, where appropriate, shall petition the court to impose sanctions against those responsible for abusive practices.

(2) Prior to filing a motion for sanctions, litigation counsel shall submit the motion for review to the sanctions officer, or his or her designee, within the litigation counsel's agency. Such officer or designee shall be a senior supervising attorney within the agency, and shall be licensed to practice law before a State court, courts of the District of Columbia, or courts of any territory or Commonwealth of the United States. The sanctions officer or designee shall also review motions for sanctions that are filed against litigation counsel, the United States, its agencies, or its officers.

(g) *Improved Use of Litigation Resources.* Litigation counsel shall employ efficient case management techniques and shall make reasonable efforts to expedite civil litigation in cases under that counsel's supervision and control. This includes but is not limited to:

(1) making reasonable efforts to negotiate with other parties about, and stipulate to, facts that are not in dispute;

(2) reviewing and revising pleadings and other filings to ensure that they are accurate and that they reflect a narrowing of issues, if any, that has resulted from discovery;

(3) requesting early trial dates where practicable; and,

(4) moving for summary judgment in every case where the movant would be likely to prevail, or where the motion is likely to narrow the issues to be tried.

(h) *Fees and Expenses.* To the extent permissible by law, in civil litigation involving disputes over Federal contracts pursuant to 41 U.S.C. 601 *et seq.*, or in any civil litigation initiated by the United States, litigation counsel shall offer to enter into a two-way fee shifting agreement with opposing parties to the dispute, whereby the losing party would pay the prevailing party's fees and costs, subject to reasonable terms and limitations. The Attorney General shall review the legal authority for entering into such agreements.

Sec. 2. *Principles to Enact Legislation and Promulgate Regulations Which Do Not Unduly Burden the Federal Court System.*

(a) *General Duty to Review Legislation and Regulations.* Within current budgetary constraints and existing executive branch coordination mechanisms and procedures established in OMB Circular A–19 (legislation) and Executive Order No. 12291 (regulation), each agency that is promulgating new regulations, reviewing existing regulations, developing legislative proposals concern-

ing regulations, and developing new legislation shall adhere to the following requirements:

(1) The agency's proposed legislation and regulations shall be reviewed by the agency to eliminate drafting errors and needless ambiguity.

(2) The agency's proposed legislation and regulations shall be written to minimize needless litigation.

(3) The agency's proposed legislation and regulations shall provide a clear and certain legal standard for affected conduct rather than a general standard, and shall promote simplification and burden reduction.

(b) *Specific Issues for Review.* In conducting the reviews required by subsection (a), each agency formulating proposed legislation and regulations shall make every reasonable effort to ensure:

(1) that the legislation—

(A) Specifies whether all causes of action arising under the law are subject to statutes of limitations;

(B) Specifies in clear language the preemptive effect, if any, to be given to the law;

(C) Specifies in clear language the effect on existing Federal law, if any, including all provisions repealed or modified;

(D) Provides a clear and certain legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction;

(E) Specifies whether private arbitration and other forms of private dispute resolution are appropriate under enforcement and relief provisions, subject to constitutional requirements;

(F) Specifies whether the provisions of the law are constitutionally severable, if appropriate;

(G) Specifies in clear language the retroactive effect, if any, to be given to the law;

(H) Specifies in clear language the applicable burdens of proof;

(I) Specifies in clear language whether it grants private parties a right to sue and, if so, the relief available and the conditions and terms for any authorized award of attorney's fees, if any;

(J) Specifies whether State courts have jurisdiction under the law and, if so, whether and under what conditions an action would be removable to Federal court;

(K) Specifies whether administrative proceedings are to be required before parties may file suit in court and, if so, describes those proceedings and requires the exhaustion of administrative remedies;

(L) Sets forth the standards governing the assertion of personal jurisdiction, if any;

(M) Defines key statutory terms, either explicitly or by reference to other statutes that explicitly define those terms;

(N) Specifies whether the legislation applies to the Federal Government or its agencies;

(O) Specifies whether the legislation applies to States, territories, the District of Columbia, and the Commonwealths of Puerto Rico and of the Northern Mariana Islands; and,

(P) Addresses other important issues affecting clarity and general draftsmanship of legislation set forth by the Attorney General, with the concurrence of the Director of the Office of Management and Budget and after

consultation with affected agencies, that are determined to be in accordance with the purposes of this order.

(2) that the regulation—

(A) Specifies in clear language the preemptive effect, if any, to be given to the regulation;

(B) Specifies in clear language the effect on existing Federal law or regulation, if any, including all provisions repealed or modified;

(C) Provides a clear and certain legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction;

(D) Specifies in clear language the retroactive effect, if any, to be given to the regulation;

(E) Specifies whether administrative proceedings are to be required before parties may file suit in court and, if so, describes those proceedings and requires the exhaustion of administrative remedies;

(F) Defines key terms, either explicitly or by reference to other regulations or statutes that explicitly define those items;

(G) Addresses other important issues affecting clarity and general draftsmanship of regulations set forth by the Attorney General, with the concurrence of the Director of the Office of Management and Budget and after consultation with affected agencies, that are determined to be in accordance with the purposes of this order.

(c) *Certification of Compliance for Agency Legislation or Regulations.* When transmitting such draft legislation or regulation to the Office of Management and Budget ("OMB"), the agency must certify that (i) it has reviewed such draft legislation or regulation in light of this section, and (ii) either the draft legislation or regulation meets the applicable standards provided in subsections (a) and (b) of this section, or it is unreasonable to require the particular piece of draft legislation or regulation to meet one or more of those standards. Where the standards are not met, the agency certification must include an explanation of the reasons for the departure from the standards. Recommendations and cost-benefit analyses under subsection (d) of this section shall be included in the agency certification required by this subsection.

(d) *One-Way Fee Provisions.* Each agency shall review, and shall perform a cost-benefit analysis on, all provisions of any legislation or regulation that the agency proposes which provide for an award for attorney's fees in favor of only one class of parties, including those statutes which require the Government to pay a prevailing private party's attorney's fees. The agency shall recommend against enactment of the fee shifting provisions of such legislation if the costs significantly outweigh the benefits, or if the legislation does not define the fees and costs covered by the statute or detail when an award of fees and costs would be appropriate. Such agency recommendations shall be presented to OMB through the Circular A–19 legislative coordination and clearance process and included in the agency certification required under subsection (c) of this section.

Sec. 3. *Principles to Promote Just and Efficient Administrative Adjudications.* In order to promote just and efficient resolution of disputes, an agency that adjudicates administrative claims shall, to the extent reasonable and practicable, and when not in conflict with other sections of this order, implement the recommendations of the Administrative Conference of the United States, entitled "Case Management as a Tool for Improving Agency Adjudication," as contained in 1 C.F.R. 305.86–7 (1991).

Sec. 4. *Coordination by the Department of Justice.*

(a) The Attorney General shall coordinate efforts by Federal agencies to implement sections 1 and 3 of this order.

(b) To implement the principles and purposes announced by this order, the Attorney General is authorized to issue guidelines implementing sections 1 and 3 of this order for the Department of Justice. Such guidelines shall serve as models for internal guidelines which may be issued by other agencies pursuant to this order.

Sec. 5. *Definitions.* For purposes of this order:

(a) The term "agency" shall be defined as that term is defined in section 451 of title 28, United States Code, except that it shall exclude all departments and establishments in the legislative or judicial branches of the United States.

(b) The term "litigation counsel" shall be defined as the trial counsel or the office in which such trial counsel is employed, such as the United States Attorney's Office for the district in which the litigation is pending or a litigating division of the Department of Justice. Special Assistant United States Attorneys are included within this definition. Those agencies authorized by law to represent themselves in court without assistance from the Department of Justice are also included in this definition, as are private counsel hired by any Federal agency to conduct litigation on behalf of the agency or the United States.

Sec. 6. *No Private Rights Created.* This order is intended only to improve the internal management of the executive branch in resolving disputes, conducting litigation in a reasonable and just manner, and reviewing legislation and regulations. This order shall not be construed as creating any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its agencies, its officers, or any other person. This order shall not be construed to create any right to judicial review involving the compliance or noncompliance of the United States, its agencies, its officers, or any other person with this order. Nothing in this order shall be construed to obligate the United States to accept a particular settlement or resolution of a dispute, to alter its standards for accepting settlements, to forego seeking a consent decree or other relief, or to alter any existing delegation of settlement or litigating authority.

Sec. 7. *Scope.*

(a) *No Applicability to Criminal Matters or Proceedings in Foreign Courts.* This order is applicable to civil matters only. It is not intended to affect criminal matters, including enforcement of criminal fines or judgments of forfeiture. This order does not apply to litigation brought by or against the United States in foreign courts or tribunals.

(b) *Application of Notice Provision.* Notice pursuant to subsection (a) of section 1 is not required (i) in any action to seize or forfeit assets subject to forfeiture or in any action to seize property; (ii) in any bankruptcy, insolvency, conservatorship, receivership, or liquidation proceeding; (iii) when the assets that are the subject of the action or that would satisfy the judgment are subject to flight, dissipation, or destruction; (iv) when the defendant is subject to flight; (v) when, as determined by litigation counsel, exigent circumstances make providing such notice impracticable or such notice would otherwise defeat the purpose of the litigation, such as in actions seeking temporary restraining orders or preliminary injunctive relief; or (vi) in those limited classes of cases where the Attorney General determines that providing such notice would defeat the purpose of the litigation.

(c) *Application of Alternative Dispute Resolution and Core Disclosure Provisions.* Subsections (c) and (d)(1) of section 1 of this order shall not apply (i) to any action to seize or forfeit assets subject to forfeiture, or (ii) to any debt collection case (including any action for civil penalties or taxes) involving an amount in controversy less than $100,000.

(d) *Additional Guidance as to Scope.* The Attorney General shall have the authority to issue further guidance as to the scope of this order, except section 2, consistent with the purposes of this order.

Sec. 8. *Conflicts with Other Rules.* Nothing in this order shall be construed to require litigation counsel or any agency to act in a manner contrary to the Federal Rules of Civil Procedure, Tax Court Rules of Practice and Procedure, State or Federal law, other applicable rules of practice or procedure, or court order.

Sec. 9. *Privileged Information.* Nothing in this order shall compel or authorize the disclosure of privileged information, sensitive law enforcement information, information affecting national security, or information the disclosure of which is prohibited by law.

Sec. 10. *Effective Date.* This order shall become effective 90 days after the date of signature. This order shall not apply to litigation commenced prior to the effective date.

THE WHITE HOUSE,
October 23, 1991.

[FR Doc. 91-25898
Filed 10-23-91; 2:13 pm]
Billing code 3195-01-M

Editorial note: For the President's remarks on civil justice reform, see issue no. 43 of the *Weekly Compilation of Presidential Documents.*

Presidential Documents

Presidential Determination No. 92–3 of October 16, 1991

Determination Under Subsections 402(a) and 409(a) of the Trade Act of 1974—Emigration Policies of the Czech and Slovak Federal Republic

Memorandum for the Secretary of State

Pursuant to the authority vested in me by subsections 402(a) and 409(a) of the Trade Act of 1974 (19 U.S.C. 2432(a) and 2439(a)) ("the Act"), I determine that the Czech and Slovak Federal Republic is not in violation of paragraph (1), (2), or (3) of subsection 402(a) of the Act, or paragraph (1), (2), or (3) of subsection 409(a) of the Act.

You are authorized and directed to publish this determination in the **Federal Register.**

George Bush

THE WHITE HOUSE,
Washington, October 16, 1991.

[FR Doc. 91–25869
Filed 10–23–91; 12:03 pm]
Billing code 3195–01–M

Rules and Regulations

Federal Register
Vol. 56, No. 207
Friday, October 25, 1991

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

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Parts 1712 and 1739

Pre- and Post-Loan Policies and Procedures for Guaranteed Electric and Telephone Loans; Correction

AGENCY: Rural Electrification Administration, USDA.

ACTION: Interim rule; correction.

SUMMARY: The Rural Electrification Administration (REA) is correcting minor typographical errors of an interim final rule which was published August 27, 1991 (56 FR 42460). The interim final rule codifies pre- and post-loan policies and procedures for guaranteed electric and telephone loans at 7 CFR parts 1712, 1719, 1739, and 1746. These loans are authorized under section 314 of the Rural Electrification Act (RE Act) (7 U.S.C. 901 *et seq.*).

Additionally, a proposed rule was published on August 27, 1991 (56 FR 42496), which would establish pre- and post-loan requirements specific to guaranteed loans under section 306 of the RE Act (7 U.S.C. 901 *et seq.*). A correction to this proposal appears elsewhere in this issue.

EFFECTIVE DATE: August 27, 1991.

FOR FURTHER INFORMATION CONTACT: Frank W. Bennett, Deputy Assistant Administrator—Electric, U.S. Department of Agriculture, Rural Electrification Administration, room 4048–S, 14th Street and Independence Avenue SW. Washington, DC 20250–1500. Telephone: (202) 382–9547.

SUPPLEMENTARY INFORMATION: REA published an interim final rule on August 27, 1991 (56 FR 42460) which contains a number of minor typographical errors. Consequently this interim rule correction is being published to correct these errors. This correction does not affect the effective date or the comment period closing date of the interim final rule.

PART 1712—PRE-LOAN POLICIES AND PROCEDURES FOR GUARANTEED ELECTRIC LOANS

1. The authority citation for part 1712 continues to read as follows:

Authority: 7 U.S.C. 901 et seq.; Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72.

2. On page 42470, column 2, the introductory text to section XI of appendix A to part 1712 is corrected to read as follows:

Appendix A to Part 1712—Lender's Agreement

* * * * *

XI. *Liquidation.* If the Lender concludes that liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with REA. If REA concurs in the Lender's conclusion or at any time concludes independently that liquidation is necessary, it will promptly notify the Lender and the matter will be handled as follows:

* * * * *

3. On page 42471, column 2, section XI, the first sentence of paragraph J of appendix A to part 1712 is corrected to read as follows:

Appendix A to Part 1712—Lender's Agreement

* * * * *

J. *Foreclosure.* The parties owning the guaranteed portion and unguaranteed portions of the loan will join to institute foreclosure action or, in lieu of foreclosure, to take a deed of conveyance to such parties. * * *

* * * * *

PART 1739—PRE-LOAN POLICIES AND PROCEDURES FOR GUARANTEED TELEPHONE LOANS

4. The authority citation for part 1739 continues to read as follows:

Authority: 7 U.S.C. 901 et seq.; 7 U.S.C. 1921 et seq.

5. On page 42483, column 2, § 1739.71(c), in line two, the word "approved" is corrected to read "approve".

6. On page 42486, column 1, the introductory text to section XI of appendix A to part 1739 is corrected to read as follows:

Appendix A to Part 1739—Lender's Agreement

* * * * *

XI. *Liquidation.* If the Lender concludes that liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with REA. If REA concurs in the Lender's conclusion or at any time concludes independently that liquidation is necessary, it will promptly notify the Lender and the matter will be handled as follows:

* * * * *

7. On page 42487, column 1, section XI, the first sentence of paragraph J of appendix A to part 1739 is corrected to read as follows:

Appendix A to Part 1739—Lender's Agreement

* * * * *

J. *Foreclosure.* The parties owning the guaranteed portion and unguaranteed portions of the loan will join to institute foreclosure action or, in lieu of foreclosure, to take a deed of conveyance to such parties. * * *

* * * * *

Dated: October 11, 1991.

Gary C. Byrne,
Administrator.

[FR Doc. 91–25296 Filed 10–24–91; 8:45 am]
BILLING CODE 3410–15–M

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 922, 931 and 932

[No. 91–509]

Eligibility and Financial Disclosure Requirements for Directors of the Federal Home Loan Banks; and Responsibilities and Conduct for the Board of Directors of the Federal Housing Finance Board

AGENCY: Federal Housing Finance Board.

ACTION: Final rules.

SUMMARY: The Federal Housing Finance Board ("Finance Board") is amending parts 931 and 932 of its interim rules governing the eligibility, financial

disclosure and conflict of interest requirements for directors of the Federal Home Loan Banks ("FHLBanks"). The Finance Board also is adopting final regulations under part 922 implementing eligibility, financial disclosure and conflict of interest requirements for the appointive members of the Board of Directors of the Finance Board.

The final regulations revise the current eligibility, conflict of interest and financial disclosure requirements established pursuant to the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (Pub. L. No. 101-73, 103 Stat. 183, August 9, 1989 ("FIRREA")) for appointive and elective directors of the FHLBanks. The final regulations also implement the eligibility and conflict of interest requirements for the appointive members of the Board of Directors of the Finance Board, which were established by FIRREA. They apply to the Finance Board appointive directors financial interest prohibitions and financial disclosure requirements that are similar in many respects to those applicable to appointive directors of the FHLBanks. The final regulations are intended to ensure that the FHLBank directors and Finance Board appointive directors carry out their official responsibilities without conflicts of interest, or the appearance of conflicts of interest, that could affect adversely their ability to perform their duties, or the credibility or operations of the Finance Board or FHLBanks.

EFFECTIVE DATE: November 25, 1991.

FOR FURTHER INFORMATION CONTACT: Sharon B. Like, Attorney/Advisor, Office of the General Counsel, (202) 408-2930, or Amy R. Maxwell, Director, Operations Division, District Bank Directorate, (202) 408-2882, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. STATUTORY AND REGULATORY BACKGROUND

FIRREA amended the Federal Home Loan Bank Act of 1932 ("Act") by establishing, in section 2A(a) of the Act, the Finance Board as the successor agency to the former Federal Home Loan Bank Board ("Bank Board") for the supervision and regulation of the twelve FHLBanks. 12 U.S.C. 1422a(a). Section 2A(b)(1) of the Act vests the management of the Finance Board in a Board of Directors consisting of the Secretary of Housing and Urban Development, and four directors appointed by the President, by and with the advice and consent of the Senate. 12 U.S.C. 1422a(b)(1). Section 2A(b)(2) sets forth eligibility requirements for appointment of the Finance Board directors, and limitations on conflicts of interest for such directors. 12 U.S.C. 1422a(b)(2). In addition, FIRREA amended section 7 of the Act, 12 U.S.C. 1427, by substantially changing the eligibility requirements for appointive and elective FHLBank directors.

In order to comply with FIRREA's new requirements for FHLBank directors, on January 16, 1990, the Finance Board amended the former Bank Board's director eligibility rules under 12 CFR parts 931 and 932 by issuing interim rules, effective January 5, 1990 (55 FR 1393), and requested public comment thereon. On August 6, 1991, the Finance Board published new proposed regulations for public comment (56 FR 37303). The proposed regulations modified the interim rules in accordance with comments received, as well as to reflect the experience and concerns of the Finance Board during the interim period. The proposed regulations also included new regulations under part 922 to implement the eligibility and conflict of interest provisions of FIRREA, and establish financial disclosure requirements, for the appointive members of the Board of Directors of the Finance Board. These provisions paralleled in many respects the definitions and requirements of parts 931 and 932 for appointive and elective FHLBank directors.

II. COMMENTS RECEIVED IN RESPONSE TO ISSUANCE OF PROPOSED RULES

The Finance Board received six comment letters in response to its issuance of the proposed regulations. Comments were submitted by five FHLBanks, and one financial trade association. The commenters generally expressed overall support for the proposed regulations. For example, one commenter stated that "(a)s a general matter, we believe that the proposed rules effectively ensure that (FHLBank) directors carry out their official responsibilities without conflicts of interest." Another commenter noted that "(o)verall, it is the (board's) view that the proposal represents a reasonable approach, implementing the eligibility criteria imposed by statute, and establishing workable parameters for financial interests and financial relationships between (FHLBank) directors and System members. In particular, the (b)oard would like to applaud the marked improvement in the area of disclosure requirements." In addition, one commenter stated that it "supports the need for establishing strong eligibility standards for both elective and appointive directors."

The comment letters also raised questions and suggested revisions or clarifications with respect to specific language in the proposed rules that generally was perceived to be ambiguous, inconsistent, unreasonable, too burdensome or overly broad.

These comments are discussed in more detail below in the Analysis of Final Rules section.

III. ANALYSIS OF FINAL RULES

A. Appointive Director Eligibility—Section 932.18—Amendments to Parts 931 and 932

1. Qualifications—Section 932.18(a)

The proposed rules changed the heading of the interim rules from "General" to "Qualifications" in order to more accurately reflect the substance of this paragraph. In addition, paragraph (a)(3) of the interim rules was revised to include the requirement that the director comply with all requirements of the Act, in addition to the requirement under the interim rules of compliance with regulations and policies of the Finance Board and the FHLBank. These changes are adopted in the final rules.

2. Prohibited Service, Financial Interests and Financial Relationships—Section 932.18(b)

The proposed rules added the terms "Prohibited service" and "financial relationships" to the heading of the interim rules to reflect that this paragraph, as revised, covers not only prohibited financial interests, but also prohibited service and financial relationships. The paragraph also was divided into four separate subsections for each of the various prohibitions, discussed in (a)-(d) below. These changes are adopted in the final rules.

(a) Prohibited Service—Section 932.18(b)(1) and (2)

Section 7(a) of the Act prohibits an appointive director from serving, during his or her term of office, as "an officer of any Federal Home Loan Bank or a director or officer of any member of a Bank." 12 U.S.C. 1427(a). Section 932.18(b) of the interim rules implemented this provision by providing that no appointive director may "serve as an officer of any Bank or a director or officer of any member of such Bank, * * * non-diversified holding company, subsidiary or affiliate, thereof * * *".

The Finance Board has received inquiries from the FHLBanks as to whether this provision prohibits service only at a member of the FHLBank, on whose board the director serves, or at a member of any FHLBank. In addition,

questions have arisen as to the scope of the prohibition with respect to holding companies, subsidiaries and affiliates. Interim § 932.18(b) was intended to implement section 7(a) of the Act by prohibiting such service only at a member of the FHLBank the director serves, and at a subsidiary or non-diversified holding company of such member, or an affiliate of that holding company. Section 932.18(b)(2) of the proposed rules clarified this intent by prohibiting such service at "any member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) of the Bank on whose board the director serves." Section 932.18(b)(2) of the final rules adopts this revised language.

(b) Prohibited Financial Interest—Section 932.18(b)(2)

Section 7(a) of the Act provides that an appointive director may not, during such director's term of office, "hold shares, or any other financial interest in, any member of a Bank." 12 U.S.C. 1427(a). Section 932.18(b) of the interim rules implemented this provision by providing that no appointive director may, during such director's term of office, "serve as an officer of any Bank or a director or officer of any member of such Bank, or hold shares, or any other financial interest in any member of such Bank, non-diversified holding company, subsidiary or affiliate, thereof * * *."

As above, questions have been raised as to whether the prohibition on financial interests applies only to such interests in members of the FHLBank the director serves, or to members of any FHLBank, and the scope of its application to holding companies, subsidiaries and affiliates. As with the prohibition on service, § 932.18(b)(2) of the proposed rules clarified that the prohibition applies to financial interests in "any member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) of the Bank on whose board the director serves." Interim § 932.18(c) on prohibited transactions was deleted as redundant with the language in interim § 932.18(b), as well as with new § 932.18(b)(2). All of the above changes are adopted in the final rules.

The proposed rules also revised the definition of "financial interest" in interim § 931.20 in several ways. First, the financial interest and financial relationship definitions were divided into two separate sections (931.20 and 931.30, respectively). This change is adopted in the final rules.

Second, the proposed rules expanded the definition of financial interest to include direct or indirect control of equity and debt interests, and not simply ownership of such interests as in the interim rules. This change was made because ownership too narrowly defines the types of financial interests over which a director may have influence. Section 931.20 of the final rules adopts this revised definition of financial interest. In addition, the proposed rules revised the definition of "control" in interim § 931.18 because, as pointed out by one commenter on the interim rules, the meaning of the phrase "otherwise hold the power to control" was unclear. Under the revised definition, which is adopted in § 931.18 of the final rules, "control" means "to own, control, or hold with the power to vote, or hold proxies representing, ten (10) percent or more of the voting shares or rights of a company." This definition more closely resembles the definitions of "control" in the Federal Reserve Board's ("FRB") Regulation O, and the Office of Thrift Supervision's ("OTS") savings and loan holding company regulations. See 12 CFR 215.2(b), 583.7, respectively.

Third, the proposed rules revised the definition of financial interest to include financial interests of the director's "immediate family members," thereby allowing deletion of separate interim § 932.18(e)(1) which attributed to the director financial interests of his or her "spouse, child, or other dependents." Section 931.20 of the final rules adopts this change.

One commenter on the interim rules noted that if the intent of the attribution provision was to include only financial interests of minor children who are a director's dependents, the section was overbroad in failing to distinguish such financial interests from those of adult children no longer the director's legal responsibility and no longer claimed as dependents under other applicable laws. The proposed rules took this comment into account in defining the new term "immediate family member" to mean the director's spouse, the director's minor children, and any other individual related by blood, marriage or adoption residing in the director's household. The addition of related individuals residing in the director's household was intended to bring within the definition of "financial interest" those financial interests over which a director may have influence but which were not covered by the interim rules. No comments were received on this proposed definition of "immediate family member."

The proposed definition unintentionally excluded other dependents of a director not residing in the director's household. Financial interests and financial relationships of such dependents should be attributed to the director, as they are under the interim rules. Section 931.32 of the final rules corrects this oversight by defining an "immediate family member" as "[a]ny spouse, minor child, or dependent of a person, or any other individual related by blood, marriage or adoption residing in the person's household." (emphasis added). The director's spouse, minor children and dependents need not live in the director's household, but other persons related by blood, marriage or adoption who are not dependents (such as emancipated adult children of the director) must reside in the director's household, in order to be considered "immediate family members."

Finally, the proposed rules expanded the definition of "financial interest" of a director in § 931.20 to include financial interests of the director's "related interests," and the "related interests" of the director's immediate family members. A "related interest" was defined in proposed new § 931.40 as a company controlled by the director. Interim § 932.18(e)(2), which attributed to the director financial interests of companies in which the director has only an ownership interest, was therefore deleted. All of these changes are adopted in the final rules.

One commenter on the proposed rules recommended that the rules permit an appointive director's immediate family members who are employed by a member to purchase or accept stock via the member's employee stock option or similar programs. The director would be required to recuse himself or herself from any decisions directly or substantially impacting on the member in question. The final rules do not adopt this suggested exception to the financial interest prohibition. Permitting such stock ownership would open the door to other exceptions for ownership of financial interests by immediate family members (and by attribution, the directors), thereby potentially undermining the financial interest prohibition in section 7(a) of the Act, 12 U.S.C. 1427(a), with respect to those directors who have immediate family members employed by a member.

(c) Prohibited Financial Relationships—Section 932.18(b)(3)

The proposed rules added a new § 932.18(b)(3) which restated, and elaborated on, interim § 932.18(d) in the form of prohibitory instead of permissive language. Interim § 932.18(d) was deleted and the disclosure requirements in paragraph (d)(2) were moved to new § 932.18(f)(3). These changes are adopted in the final rules.

Proposed § 932.18(b)(3) prohibited an appointive director from having a financial relationship with a member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) of the FHLBank the director serves that generally is not, to the director's knowledge, transacted in the ordinary course of business of the member (or such subsidiary, holding company or affiliate) and on substantially the same terms as those prevailing at the time for comparable transactions with other persons. Section 932.18(b)(3) of the final rules adopts this provision. The knowledge requirement is intended to ensure that directors are not deemed ineligible to serve as FHLBank directors if they did not know that the transaction in which they engaged with a member was not carried out in the ordinary course of business or on substantially similar terms.

One commenter requested that the rules clarify how a director ascertains whether loan terms are preferential under § 932.18(b)(3). The commenter also questioned whether, under the rules, a director has an affirmative obligation to certify the absence of preferential treatment and is precluded from engaging in arms' length negotiations with a member on loan terms. The language on terms and creditworthiness in § 932.18(b)(3) tracks in most respects similar language in the FRB's Regulation O, which also does not further define these terms in the regulation. See 12 CFR 215.4(a). The Finance Board has determined that it is more appropriate to handle any questions on what is preferential on a case-by-case basis as specific matters are raised.

One commenter on the proposed rules interpreted § 932.18(b)(3) as prohibiting directors who are lawyers or other professionals from having financial relationships with members because such relationships (*e.g.*, rendering title opinions) are not "in the ordinary course of [the banking and thrift] business of the member." The commenter urged revision of the language so as not to discourage such qualified professionals from serving on the boards of the FHLBanks. The Finance Board regards the hiring by members of attorneys and other professionals generally as financial relationships in the ordinary course of business of the member for purposes of this prohibition. Accordingly, such financial relationships are not prohibited by § 932.18(b)(3), and the language of this section need not be revised.

The proposed rules continued to define "financial relationship" as in interim § 931.20 to mean: (a) Any type of deposit or savings account; (b) any other contractual right to the payment of money, whether contingent or fixed, in the previous calendar year or the current calendar year; and (c) any type of loan or extension of credit. As stated earlier, the definition of "financial relationship" was moved from interim § 931.20 to new § 931.30. As with the amended definition of "financial interest," this definition also was revised to include financial relationships of the director's immediate family members and related interests, and of the immediate family members' related interests, as well as those of the director. Thus, as discussed under the definition of "financial interest," interim § 932.18(e)(1) and (2) dealing with attribution of financial relationships to the director was deleted. All of the above changes are adopted in the final rules. Thus, § 931.20 of the final rules brings within the definition of "financial relationship" those financial relationships over which a director may have influence but which were not covered by the interim rules.

(d) Prohibited Service as Result of Past Due or Loss Loans—Section 932.18(b)(4)

New § 932.18(b)(4) of the proposed rules provided that, in the Finance Board's discretion, no person may serve as an appointive director if such person (i) has any loan or extension of credit from any insured depository institution (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) that is more than 30 days past due, or (ii) has or has ever had any loan or extension of credit that caused a loss to any insured depository institution (or such subsidiary, holding company or affiliate), or to federal deposit insurance funds, the Federal Savings and Loan Insurance Corporation ("FSLIC"), or the Resolution Trust Corporation ("RTC"), within the past three years. Section 932.18(b)(4) is deemed necessary by the Finance Board to enable it to monitor appointive directors and director candidates for instances of poor financial judgment or creditworthiness (or the appearance of such) which, in the judgment of the Finance Board, could affect adversely the ability of the person to perform his or her duties as a FHLBank director or the credibility or operations of the FHLBank the director serves. The provision is adopted in the final rules, with the exception that the 30-day overdue period is changed to 90 days, for the reasons discussed below.

One commenter on this proposed section recommended that the overdue period for purposes of determining ineligibility to continue serving be extended from 30 days to 90 days, because 90 days is a "more accurate barometer of a distressed credit." The commenter also suggested that the Finance Board consider in its determinations of ineligibility whether an underlying dispute over the indebtedness exists between the director and the lending institution. The Finance Board agrees that 90 days is probably a more reliable measure of a truly distressed credit, and has adopted this suggested change in the final rules. In addition, the Finance Board agrees that the existence of an underlying dispute over the indebtedness may be relevant in determining whether a director has an overdue or loss loan, and can be considered by the Finance Board in determining the director's continued eligibility to serve under this section. (See also discussion in A.6.(c) *infra*.)

A "loss" was defined in proposed new § 931.38 as (i) an obligation as to which there is a continuing legal claim that is owed that is 12 months or more delinquent as to principal or interest, or (ii) an obligation to pay an outstanding, unsatisfied, final judgment based on any legal theory. See 12 CFR 1606.2(g) (RTC's independent contractor ethics regulations). An "insured depository institution" was defined in proposed new § 931.34 by reference to 12 U.S.C. 1422(12), which defines it generally as an insured depository institution as defined in 12 U.S.C. 1813, and an insured credit union as defined in 12 U.S.C. 1752. These definitions are adopted in the final rules.

One commenter on the proposed rules stated that an inconsistency appears to exist between this requirement that current overdue loans may be a cause of ineligibility in the Finance Board's discretion, and the requirement in § 932.18(f)(3)(iv) that overdue loans of the director within the past three years must be disclosed. These provisions are not inconsistent. The Finance Board intends to apply a more lenient standard (current overdue loans) to determinations of ineligibility for appointive and elective directors. While it is important that all loans overdue more than 90 days in the past three years be disclosed to the Finance Board, only loans that are presently more than 90 days overdue will give rise to potential ineligibility.

3. Permitted Financial Interests—Mutual Funds—Section 932.18(c)

The proposed rules amended the heading by adding the words "Permitted financial interests" to indicate that

certain ownership interests in mutual funds that invest in FHLBank members are permitted financial interests. This section was moved from interim § 932.18(f) to new § 932.18(c), as the provision on permitted financial interests more logically follows directly after the provision on prohibited financial interests. These changes are adopted in the final rules.

The word "solely" was inserted in the proposed rules to clarify that the director's indirect interest in financial interests of members may arise only through ownership of shares in mutual funds. The language also was revised to authorize ownership of shares in "one or more diversified" mutual funds "that have invested in the member," as discussed in the FIRREA Conference Report. See H.R. Conf. Rep. No. 101-222, 101st Cong., 1st Sess. (1989) at 425. These changes are adopted in the final rules.

In response to a comment letter on the interim rules, the Finance Board added a definition of diversified mutual fund in the proposed rules by reference to the definitions of such company as set forth in section 5(a) and (b)(1) of the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-5(a), (b)(1). In addition, the proposed rules revised this section to provide that an appointive director may have interests in mutual funds that have invested in a member of the FHLBank the director serves, provided the director does not contribute to investment decisions of the funds. Directors thus would not be prohibited from contributing to investment decisions of other mutual funds that have not invested in members within the district of the FHLBank the director serves. No comments were received on these proposed revisions. Section 932.18(c) of the final rules adopts these changes.

4. Prohibited Acceptance of Things of Monetary Value—Section 932.18(d)

New § 932.18(d) of the proposed rules prohibited appointive directors from soliciting or knowingly accepting, directly or indirectly, any gift, gratuity, favor, honorarium, entertainment or any other thing of monetary value, from a member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) of the FHLBank the director serves, or from a person who (i) has or seeks contractual, business or other financial relationships with the FHLBank System; (ii) has interests that may be substantially affected by the performance of the director's duties; or (iii) is an officer, director, controlling shareholder, employee or agent of any member (or such subsidiary, holding company or affiliate), of a trade organization comprised of members (or such subsidiaries, holding companies or affiliates), or of a company that is a controlling shareholder of a member (or such subsidiary, holding company or affiliate). Exceptions to the prohibition were provided if the director generally is motivated by obvious family or personal relationships, or the things of monetary value are of "nominal value." The prohibition is intended to ensure that the director's performance of his or her duties as FHLBank director is not improperly influenced, or that there is no appearance of improper influence, as a result of such activities. Section 932.18(d) of the final rules adopts this provision with revisions as discussed below.

(a) Definition of "Nominal Value"

One commenter suggested that the term "nominal value" be defined as $100 or less, in order to aid the directors in determining their compliance with the prohibition. The final rules do not include a definition of "nominal value." Policy guidance on application of the term will be derived from the Office of Government Ethics' definition of nominal value to be contained in forthcoming final standard of conduct rules for federal government employees.

(b) Political Contributions Accepted by Directors

One commenter questioned whether FHLBank directors holding political office, such as state legislators, would be prohibited under the proposed rules from accepting political contributions from members and trade organizations comprised of members. The commenter noted that it "seems ironical" that a state legislator who accepts such contributions in the political arena and votes on matters affecting the FHLBank System is then prohibited from serving at the same time as a FHLBank director.

Section 932.18(d) does in fact prohibit acceptance by FHLBank directors of such political contributions from members of the FHLBank served, and persons and trade organizations as identified in this section. Otherwise, perceived or actual conflicts of interest could result where a director/legislator takes actions as a FHLBank director that are or could be influenced by the desire for political contributions from a particular member. A member also could attempt to influence the director/legislator in his or her role as a FHLBank director on FHLBank matters by disguising prohibited gifts as permissible political contributions. Accordingly, § 932.18(d) of the final rules does not provide an exception for the acceptance by directors of political contributions.

(c) Exception for Permitted Financial Interests and Financial Relationships

One commenter noted that the proposed rules unintentionally prohibited appointive directors from receiving compensation (*i.e.*, things of monetary value) from third parties for work performed in their ordinary course of business or employment, whereas elective directors may accept compensation from members they represent. The commenter suggested that a similar exception apply to appointive directors. Although not raised in the comment letter, proposed § 932.18(d) also unintentionally conflicted with other provisions of part 932 to the extent it prohibited appointive directors from having certain financial interests and financial relationships not otherwise prohibited under part 932. (The same is true of proposed §§ 932.21(c) and 922.5 for elective and Finance Board appointive directors.) To alleviate the unintended conflicting interpretations, § 932.18(d)(2) of the final rules is revised by adding new paragraph (d)(2)(v) which provides an exception to the prohibition for financial interests and financial relationships not otherwise prohibited under part 932 of the rules. (The same exception also is made applicable to elective and Finance Board appointive directors in §§ 932.21(c) and 922.5, respectively, of the final rules. See discussion in D.3. and G.5. *infra*.)

(d) Limitation on Scope of Prohibition

One commenter recommended that the prohibition on receiving gifts, etc. from persons seeking contractual, or other business or financial relationships with the FHLBank System be limited to such relationships with the FHLBank on whose board the appointive director serves, as opposed to any FHLBank or an member of the FHLBank System. The comment is a reasonable one, as directors are unlikely to receive gifts, etc. from persons having or seeking financial relationships with other FHLBanks not served by the directors. In addition, the directors' actions as FHLBank director are not likely to be unduly influenced by the receipt of gifts, etc. from such persons. The commenter's suggestion is incorporated in § 932.18(d)(1)(i) of the final rules by referencing only the FHLBank on whose board the director serves. The scope of the prohibition also is limited by revising the references to "member" in paragraph (d)(1)(iii) to mean "a member

of the FHLBank on whose board the director serves." Although not discussed in the comment letter, this suggested scope limitation also should apply to elective directors as well as appointive directors, and is so incorporated in the final rules. (See discussion in D.3. *infra*.)

(e) Treatment of "Trade Organization Comprised of Members"

One commenter questioned how many members (*i.e.*, one, 51 percent, 100 percent) must belong to a trade organization for it to be covered by the rules. The rules seek to prohibit the receipt of gifts, etc. from organizations engaged in FHLBank System-related services that would be likely to be interested in influencing the director's performance of his or her duties as a FHLBank director. Thus, rather than define a trade organization by the number of member institutions it comprises, it makes more sense to define it according to the types of services it provides. Section 932.18(d)(1)(iii) of the final rules revises the term to mean a trade organization comprised of members that represent financial services, credit needs, housing or financial consumer protections. This revision will ensure that directors may accept gifts, etc. from organizations that are not involved in activities generally related to the directors' duties as FHLBank directors.

One commenter also noted that the proposed rules did not prohibit the acceptance of gifts, etc. directly from the trade organization itself. The rules do in fact prohibit acceptance of gifts, etc. directly from a trade organization to the extent it is a "person" ("person" is defined to include a company) that has or seeks to obtain contractual or other business or financial relationships with the FHLBank served, or has interests that may be substantially affected by the performance or nonperformance of the director's official duties. In addition, officers or directors of trade organizations are representatives of their organizations. Thus, the receipt by a director of a gift from an officer or director of a trade organization is the equivalent of accepting the gift from the trade organization itself. Accordingly, no change in the final rules is necessary.

5. Effect of Ineligibility—Section 932.18(e)

Interim § 932.18(g) became revised § 932.18(e) under the proposed rules. This change is adopted in the final rules. No substantial revisions were made to this paragraph.

6. Certification and Reporting—Section 932.18(f)

(a) Certification of Eligibility—Section 932.18(f)(1)

Interim § 932.18(h)(1) required each appointive director to certify in writing to the Finance Board by January 15 of each year that he or she continues to meet all applicable eligibility qualifications. This section was revised in several ways. First, the revised section appeared in proposed § 932.18(f)(1). Second, the new section implemented Finance Board practice by requiring appointive director candidates to certify their eligibility prior to appointment. Third, the new provision moved up the certification deadline from January 15 to November 15 in order to give the Finance Board time to evaluate candidate finalists for selection as appointive directors at its December Board meeting. Candidates and appointive directors also were required to certify their eligibility on new Forms A-1 and A-2, respectively. These changes are adopted in the final rules.

(b) Reporting of Ineligibilities—Section 932.18(f)(2)

Interim § 932.18(h)(2) provided that if an appointive director knows or suspects that he or she is ineligible, the director must report the factual basis for the ineligibility, with specificity, to the Finance Board in writing within 30 days of the event that caused or may have caused the ineligibility, and the specific actions the director will take to remedy the ineligibility. Proposed new § 932.18(f)(2) clarified that the director must report ineligibilities "at any time" the director knows or suspects that he or she is ineligible. Appointive directors were required to report the ineligibilities on new Form A-2. In addition, the requirement in the interim section that the director disclose proposed remedies was deleted because proposed remedies are only required to be reported when an appointive director seeks an opportunity to cure. Those reporting provisions were set forth in a separate section on opportunity to cure (interim § 932.18(i) and proposed new § 932.18(g)). These changes are adopted in the final rules.

As discussed above, appointive directors are required to report known or suspected ineligibilities to the Finance Board. One commenter on the interim rules suggested that the reports also be provided to the affected FHLBank in order to apprise the FHLBank of any potential vacancies on its board. It is important that the reports be provided to the Finance Board in order that it may determine, pursuant to the rules, whether the directors satisfy the eligibility qualifications to serve as FHLBank directors. The Finance Board would of course promptly notify a FHLBank of any impending vacancies on the FHLBank's board. It should be noted that there is nothing in the rules that would prohibit the directors from providing their reports to the FHLBanks as well as the Finance Board.

One commenter on the proposed rules recommended that the event triggering the required disclosure of an ineligibility be changed from the event causing the ineligibility, to the date of the director's discovery of the ineligibility. This would allow for situations where a director does not know, for example, that an immediate family member has acquired a prohibited financial interest in a member, and therefore is unaware that the 30-day reporting period has started running.

Section 932.18(f)(2) of the final rules requires appointive directors to report ineligibilities within 30 days of: (i) the date of the causal event, (ii) the date the director knew or should have known of the ineligibility, or (iii) the effective date of the final rules, whichever is later. The addition of a "should have known" standard will ensure that the director takes some responsibility for monitoring his or her financial interests to determine continued compliance with the statutory and regulatory requirements. (The same revision is made in §§ 932.21(g)(2) and 922.6(b) of the final rules for elective and Finance Board directors, respectively.)

(c) Reporting of Certain Financial Relationships—Section 932.18(f)(3)

Under interim § 932.18(d)(2), each appointive director was required to report on Finance Board disclosure forms:

(i) Any type of deposit or savings account in a member of the FHLBank the director serves exceeding the limits of federal deposit insurance;

(ii) Any contractual rights with a member of the FHLBank the director serves exceeding a minimum threshold of either $10,000 or 5 percent of the director's total income; and

(iii) Any loans or extensions of credit by a member of the FHLBank the director serves to such director exceeding $50,000, except such loans or extensions of credit for the purpose of purchasing or financing the director's principal residence.

In addition, the Finance Board has required appointive (and elective) directors to report on the disclosure forms any loan from a member of the FHLBank the director serves to the

director or a business with which the director is affiliated that is or has ever been more than 30 days past due or that caused a loss to the member. The terms "loss" and "income" were not defined in the interim rules or in the Finance Board disclosure forms.

Under interim § 932.18(h)(3)(i)–(iii), the disclosures also were required to be made by appointive directors prior to the initial appointment, and annually thereafter by January 15 of each year. The proposed rules moved the disclosure provisions of interim § 932.18(d)(2) to new § 932.18(f)(3) (and interim paragraph (h)(3)(i)–(iii) was deleted as redundant and inconsistent). These changes are adopted in the final rules. In addition, interim § 932.18(d)(2) was revised as follows:

(1) *Procedural Requirements—Disclosure Deadline*—Under the proposed rules, the disclosure deadline was changed from January 15 to November 15, as with the certification deadline, in order to give the Finance Board time to evaluate candidate finalists for selection as appointive directors at its December Board meeting. This change is adopted in the final rules.

Frequency of Disclosure. Under the proposed rules, appointive directors were required to make the disclosures of financial relationships "at any other time they arise," and not just by November 15 of each year as under the interim rules. The Finance Board received one comment letter on the proposed rules which urged that the frequency of reporting be reduced to a quarterly requirement, on the basis that the requirement could be quite significant for directors engaging in large numbers of financial relationships with members, and would be greater than the current disclosure burden. The commenter also noted that the proposed disclosure requirement could strain available Finance Board staff resources. The Finance Board believes that at this time, the current annual reporting requirement in the interim rules is sufficient to enable the Finance Board to adequately monitor directors' financial relationships, while at the same time minimizing their reporting burden and the processing burden on Finance Board staff. Accordingly, as in the interim rules, the final rules require disclosures of financial relationships on only an annual basis, by November 15 of each year.

New Forms A–1 and A–2. Under the proposed rules, candidates and appointive directors were required to disclose the financial relationships on new Forms A–1 and A–2, respectively. This requirement is adopted in the final rules.

(2) *Substantive Requirements—Expanded Disclosure Requirement.* The proposed rules broadened the disclosure requirements because, as discussed earlier under the definition of "financial relationship" (see discussion in A.2.(c) *supra*), the rules expanded the definition of "financial relationship" to include financial relationships of the director's immediate family members and related interests, and the immediate family members' related interests. In addition, the proposed rules required the director to disclose such financial relationships not only with a member of the FHLBank the director serves, but also with any subsidiary or non-diversified holding company of the member or affiliate of such holding company. These revisions are adopted in the final rules.

Disclosure of Company Financial Relationships. The proposed rules included a new requirement not in the interim rules that required directors to disclose such financial relationships with a member for any company at which they serve as a director, partner or executive officer. The requirement was intended to ensure that the Finance Board would have notice of any significant dealings between the director's company and a member (*e.g.*, company contracts pursuant to which the director receives a percentage financial interest) that could raise conflict of interest issues for the director at the FHLBank. Proposed § 931.28 defined an "executive officer" as a person who participates or has authority to participate (other than in the capacity of a director) in major policymaking functions of the company. See FRB's Regulation O, 12 CFR 215.2(d).

Two commenters noted that this disclosure requirement was overly broad, would impose a substantial or unnecessary burden on FHLBank directors, and may not be justified by the value of the information received by the Finance Board. For example, appointive directors who are partners in large law or accounting firms would be required to report contracts exceeding the minimum threshold of these firms with members of the FHLBank they serve. Elective directors, many of whom serve on the boards of numerous companies, also would be required to investigate whether their companies have such financial relationships with members of the FHLBank they serve. One commenter recommended that if not deleted, at a minimum the rule should exempt: (i) transactions between a member and such companies served by the director that are affiliates of the member (*e.g.*, mortgage company subsidiaries); and (ii) normal business transactions between such companies served by the director that are members, and other members (*e.g.*, loan consortiums between members). The commenter also suggested that directors should be required to report such financial relationships only of companies in which they have financial interests, as opposed to companies they serve as director, partner or executive officer.

The proposed disclosure requirement for financial relationships of companies the director serves as director, partner or executive officer is not adopted in the final rules. The definition of "executive officer" in proposed § 931.28 therefore also is omitted from the final rules. The Finance Board agrees with the commenters that the proposed requirement could impose a substantial burden on FHLBank directors, both appointive and elective, that does not at this time appear justified by the value of the information received by the Finance Board. In addition, the types of people who would be most likely to have financial relationships covered by this requirement are those who may be among the most qualified to serve on the boards of the FHLBanks. The rules should not discourage such persons from serving as a result of a reporting requirement that may be of limited value.

Disclosure of Contractual Rights. With respect to the required disclosure of contractual rights exceeding $10,000 or 5 percent of the director's total income, whichever is less, "income" was defined in proposed § 931.34 to mean the director's adjusted gross income as reported on his or her most recent federal income tax return. This definition is adopted in the final rules.

One commenter on the interim rules noted that the interim Preamble states that for purposes of reporting contractual rights, the interim rules consider the aggregate of contractual rights which the director has with all members of the FHLBank. The commenter noted, however, that interim § 932.18(d)(2)(ii) does not appear to provide for aggregation of contractual rights, but rather requires disclosure of certain contractual rights with "a" member of such FHLBank. As the commenter correctly noted, the rules do not require aggregation of contractual rights with all members. Accordingly, for purposes of determining whether to make disclosures under this provision of the final rules, the director should determine whether he or she has contractual rights with a member of the FHLBank served that exceed either $10,000 or 5 percent of total income, whichever is less, on an annual basis.

Another commenter on the interim rules questioned the meaning of "contingent or fixed" contracts. The commenter also recommended that only contractual rights in the current, not the previous, calendar year be required to be disclosed, because disclosure is required annually in other subsections of the rules. The Finance Board has determined that contractual rights in the previous calendar year should be required to be disclosed, as they are for federal government employees on the Standard Form 278. Such disclosures will alert the Finance Board to any recent dealings by the directors with members (and related affiliates) that could raise conflict of interest issues for the director at the FHLBank.

One commenter on the proposed rules noted that where the director is an attorney, the requirement that the director disclose his or her contracts exceeding the minimum threshold with a member could cause the director to violate the attorney-client privilege protecting the confidentiality of the member's contractual relationships with the director. The disclosure requirement thus could discourage attorneys from serving on the boards of the FHLBanks. The commenter suggested that the Finance Board balance the need for the protection of the attorney-client privilege with the Finance Board's need to be informed of such contractual relationships.

The Finance Board has weighed the need for receiving this information against the importance of the attorney-client privilege, and has determined that disclosure should be paramount. The director can always seek a waiver of the privilege from the client, or resign his or her voluntary position on the board if the waiver is not obtained. It is also noted that the disclosure requirement is comparable to reporting requirements for federal employees, such as Presidential appointees.

Disclosure of Past Due and Loss Loans. Under the proposed rules, the director was required to disclose any loan or extension of credit from any insured depository institution (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) that (i) is or has ever been, within the past three years, more than 30 days past due, or (ii) the director knows caused a loss to such institution (or such subsidiary, holding company or affiliate), or to federal deposit insurance funds, the FSLIC, or the RTC, within the past three years. This provision is adopted in the final rules, with the exception that the 30-day overdue period is changed to 90 days, for the reasons discussed below. The definition of "loss" in § 931.38 is the same as that for § 932.18(b)(4). (See discussion in A.2.(d) *supra.*) Again, the purpose of such disclosures is to enable the Finance Board to monitor directors and director candidates for instances of poor financial judgment or creditworthiness (or the appearance of such) that, in the judgment of the Finance Board, could affect adversely the ability of the person to perform his or her duties as a FHLBank director or the credibility or operations of the FHLBanks.

Although not specifically discussed in its letter, the commenter seeking the extension of the overdue period from 30 days to 90 days for purposes of determining director ineligibility (see discussion in A.2.(d) *supra*) presumably also seeks a 90-day overdue period for loan disclosure purposes. As discussed earlier, 90 days is probably a more accurate measure of a truly distressed credit. Accordingly, the final rules revise the overdue period from 30 days to 90 days for loan disclosure purposes.

One commenter on the proposed rules stated that directors should be required to disclose loss loans, and be declared ineligible if they have had such loans, only if there is a causal connection between the directors' conduct and the loss suffered by the institution. The director should not be penalized if the loss was due to actions taken by the member and not the director. Section 931.38 defines a "loss" as an obligation as to which there is a continuing legal claim owed that is 12 months or more delinquent as to principal or interest, or an obligation to pay an outstanding, unsatisfied, final judgment based on any legal theory. This definition clearly incorporates the director's causal conduct suggested by the commenter. Accordingly, no change in the language of the rules is necessary.

Another commenter on the proposed rules noted that while the rule appears to require disclosure of loss loans received by a director, his or her immediate family members, or related interests, it could be read to cover loans made by a company the director serves as director, partner or executive officer for which the director was not the recipient. The commenter suggested amending the language to limit coverage to loans causing a loss that are received by the director, his or her immediate family members, or related interests, and by any company in which the director has a financial interest.

Section 932.18(f)(3) refers to "financial relationships * * * of such director," including loss loans, and therefore does not cover loss loans for which the director is not the recipient. In addition, as discussed above, the disclosure requirement for certain financial relationships of a company the director serves as a director, partner or executive officer is not adopted in the final rules.

One commenter on the proposed rules also recommended that the term "loss" should be defined by adopting a "substantial" standard such as applied in RTC's independent contractor regulations, or some lower threshold amount, such as $1,000. The RTC's regulations provide generally that a contractor is ineligible to contract with the RTC if the contractor caused a "substantial loss" to federal deposit insurance funds. 12 CFR 1606.5(a)(4). A "substantial loss" is defined as a loss of more than $50,000, *id.* at 1606.2(t), which reflects the fact that many of the contractors it seeks to hire are in the real estate business and have experienced losses on business loans. The commenter mistakenly believed that RTC's definition was $5,000.

The definition of "loss" in the Finance Board's rules in essence creates a substantiality threshold by defining a "loss" generally as a legal obligation that is 12 months or more delinquent as to principal or interest, or an obligation to pay an outstanding, unsatisfied, final judgment. The requirement to disclose only known losses also mitigates to some extent any burden associated with this provision. In addition, it is noted that any loss, no matter how *de minimus,* is a reflection of the director's poor financial judgment or creditworthiness (or appearance of such), which could affect adversely the ability of such person to perform his or her duties as a FHLBank director or the credibility or operations of the FHLBanks. Accordingly, the definition of "loss" is not revised in the final rules.

Failure to Make Certifications and Disclosures. The last paragraph of proposed § 932.18(f) stated that in addition to the failure to make any certifications required under paragraph (f), the failure to make any disclosures required under paragraph (f) shall render the director candidate or appointive director ineligible to serve as a FHLBank director. The proposed rules moved this provision from interim § 932.18(h)(3)(ii) to the end of revised § 932.18(f), as it should apply to the failure to make any of the required disclosures and certifications, and not simply to the disclosures required under interim paragraph (h)(3)(ii). These changes are adopted in the final rules.

7. Opportunity to Cure—Section 932.18(g)

Interim § 932.18(i) provided appointive directors with an opportunity to cure ineligibilities arising because of changes in law, FHLBank membership, marital status, inheritance or gift, which occur subsequent to appointment. Appointive directors with such an ineligibility could retain their offices if they reported the ineligibilities and the proposed remedies within 30 days of the event causing the ineligibility, or the effective date of the interim rules, whichever was later, and remedied the ineligibility within up to 90 days (as determined by the Finance Board) of the causal event, or the effective date of the interim rules, whichever was later.

Proposed new § 932.18(g) provided appointive directors with an opportunity to cure ineligibilities arising from any cause, on the basis that the opportunity to cure under the interim rules was too limited in scope. However, the new section also provided that it is within the Finance Board's discretion whether or not to allow the appointive director the opportunity to cure. These changes are adopted in the final rules.

As under § 932.18(f)(2) of the final rules for the reporting of ineligibilities, an appointive director seeking an opportunity to cure is required under § 932.18(g) of the final rules to report the ineligibility and proposed remedy to the Finance Board within 30 days of: (i) the date of the event that caused or may have caused the ineligibility, (ii) the date the director knew or should have known of the ineligibility, or (iii) the effective date of this section, whichever is later. In addition, the director must remedy the ineligibility within a reasonable period of time set by the Finance Board, not to exceed 90 days from: (i) the date of the event that caused or may have caused the ineligibility, (ii) the date the director knew or should have known of the ineligibility, or (iii) the effective date of this section, whichever is later.

B. Community Interest Director Eligibility—Section 932.19—Amendments to Parts 931 and 932

No comment letters on the community interest director provisions of the proposed rules were received by the Finance Board. The proposed rules revised the heading by adding the word "eligibility" in order to clarify that this section sets forth the eligibility qualifications for community interest directors. This change is adopted in the final rules.

1. Definition of "Community Interest Director" and "Consumer or Community Organization"—Sections 931.15 and 931.17

Section 7(a) of the Act provides that at least two of the appointive directors on each FHLBank's board shall be "representatives chosen from organizations with more than a 2-year history of representing consumer or community interests on banking services, credit needs, housing, or financial consumer protections." 12 U.S.C. 1427(a). Interim § 931.15 defined a "community interest director" generally as an appointive director who is a member in good standing of a consumer or community organization that has more than a two-year history of representing one of the four designated consumer or community interests, and who has "experience and commitment to consumer and community interests." A "consumer or community organization" was defined in interim § 931.17 generally as an organization which "for a period of at least two years has advocated, represented, promoted or been actively involved in the protection, improvement or expansion of consumer or community interests" in any one of the four designated consumer or community interest areas.

The proposed rules revised these definitions in several ways. First, the requisite elements for being a community interest director were set out in separate paragraphs (a)–(e) of § 931.15 for greater clarity. These changes are adopted in the final rules. Second, the definition in § 931.15 was revised to permit a "director, officer, employee or member in good standing of a consumer or community organization" to serve as a community interest director. The Finance Board believes that the requirement in the interim rules that a community interest director be a "member in good standing" of the organization could restrict too narrowly the number of available community interest director candidates who may serve. The revised definition is adopted in the final rules.

Third, the proposed rules revised the definition in § 931.15 to provide that the community interest director must come from a consumer or community organization "operating within the district of the Bank the director will be serving." This requirement was intended to ensure that the director has familiarity with the district and its problems and concerns. In addition, the proposed rules revised § 931.17 to provide that where the director works for a local chapter or similar entity of a national consumer or community organization, the local chapter or entity itself must have represented one of the four designated consumer or community interests for a period of more than two years. These changes in §§ 931.15 and 931.17 are adopted in the final rules.

Fourth, the proposed rules revised § 931.15 to provide that the community interest director must "possess more than two (2) years of recent experience" representing one of the four designated consumer or community interests, in order to ensure that the director has the necessary personal expertise to adequately represent consumer or community interests on the FHLBank's board. This requirement is adopted in the final rules.

Finally, the proposed rules revised § 931.15 to require that the director be "actively involved" in representing one of the four designated consumer or community interests "at the time of his or her appointment as a community interest director," because past experience or simple affiliation with an organization is not enough to show current experience and commitment. One commenter on the interim rules pointed out that the interim rules' Preamble states that a community interest director must come from the organization's membership, "so long as the director is actively involved in one of the organization's qualifying interests." Interim § 931.15, however, did not appear to require that the director be actively involved, but merely stated that the director must be a "member in good standing" of the organization. The final rules adopt the requirement that the director be actively involved in representing one of the four designated consumer or community interests at the time of his or her appointment.

In addition, the proposed rules shortened and simplified the definition of "consumer or community organization" in interim § 931.17 to mean: "(A)ny organization (or local chapter or similar entity thereof in the case of a national organization) which for a period of more than two (2) years has represented consumer or community interests in banking services, credit needs, housing or financial consumer protections." This change is adopted in the final rules.

2. Appointment and Selection

The heading in interim § 932.19(a) was changed from "Requirements" to "Appointment" to more accurately reflect the substance of this paragraph. In addition, the first sentence in interim paragraph (a) was deleted as moot. These changes are adopted in the final rules.

The proposed rules moved interim § 932.19(c) on the "Selection process" to paragraph (b), as it relates to the appointment process and therefore should follow directly paragraph (a) dealing with appointments. This change is adopted in the final rules.

3. Ineligibility

Interim § 932.19(b) on "Effect of ineligibility" became paragraph (c) in the proposed rules. The heading was changed to "Ineligibility," because the provision states when ineligibility arises, not the effect of such ineligibility. In addition, the proposed rules set forth the various causes of ineligibility in separate paragraphs (c) (1)–(2) for greater clarity. These changes are adopted in the final rules.

Interim § 932.19(b) provided that a community interest director becomes ineligible to serve if: (i) The director ceases his or her personal involvement, or ceases to be affiliated with a consumer or community organization, or (ii) the organization from which the director was chosen (a) changes its principal purpose to something other than one of the four designated consumer or community interests, or (b) ceases to operate, is dissolved, or declared insolvent. One comment letter on the interim rules noted that this "principal purpose" requirement appeared to be inconsistent with statements in the interim rules' Preamble suggesting that an organization qualifies if it is actively involved in any one of the four designated consumer or community interests, even if the organization has some other principal purpose. The principal purpose requirement also was inconsistent with the definition of "consumer or commmunity organization" in interim and proposed § 931.17, which did not require that the organization's principal purpose be the representation of such consumer or community interests. Accordingly, the proposed rules deleted the principal purpose requirement as a cause of ineligibility for community interest directors. This change is adopted in the final rules.

Proposed § 932.19(c) revised the ineligibility provision by providing that a community interest director becomes ineligible if the director: (i) Ceases to meet the definition of "community interest director" (*i.e.*, fails to satisfy any of the requirements for appointive director under section 7(a) of the Act and part 932, or is no longer a director, officer, employee or member in good standing of a consumer or community organization); or (ii) the organization the director serves ceases to represent one of the four designated consumer or community interests, or ceases to operate, is dissolved or declared insolvent. This ineligibility provision is adopted in the final rules.

In addition, it is noted that a director should not become ineligible if the consumer or community organization from which the director was chosen ceases to operate, as long as the director continues an affiliation with some other qualifying consumer or community organization. As discussed earlier under § 932.18(g) (see discussion in A.7. *supra*), appointive directors (including community interest directors) have, in the Finance Board's discretion, an opportunity to cure ineligibilities arising from any source. Thus, if a community interest director ceases to be a director, officer, employee or member in good standing of a consumer or community organization, or the organization the director serves ceases to operate, the director has the opportunity, in the Finance Board's discretion, to cure the ineligibility by becoming a director, officer, employee or member in good standing of another qualifying consumer or community organization.

C. Minimum Number of Elective Directorships—Section 932.20—Amendment to Part 932

The proposed rules revised interim § 932.20 to reflect the language of section 7(c) of the Act by adding the December 31, 1960 date where appropriate. These changes are adopted in the final rules.

D. Elective Director Eligibility—Section 932.21—Amendments to Parts 931 and 932

1. Qualifications—Section 932.21(a)

As under § 932.18(a) for appointive directors, the heading was changed from "General" under the interim rules to "Qualifications" under the proposed rules to more accurately reflect the substance of this paragraph. In addition, the proposed rules revised paragraph (a)(4) of the interim rules to include the requirement that the director comply with all requirements of the Act, in addition to the requirement under the interim rules of compliance with regulations and policies of the Finance Board and the FHLBank. These changes are adopted in the final rules.

2. Prohibited Service as Result of Past Due or Loss Loans —Section 932.21(b)

This provision, which was new in the proposed rules, is identical to § 932.18(b)(4) for appointive directors as revised in the final rules. Section 932.21(b) of the final rules provides that no person may, in the Finance Board's discretion, serve as an elective director if such person (i) has any loan or extension of credit from any insured depository institution (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) that is more than 90 days past due, or (ii) has or has ever had any loan or extension of credit that caused a loss to any insured depository institution (or such subsidiary, holding company or affiliate), or to federal deposit insurance funds, the FSLIC, or the RTC, within the past three years. As discussed in A.2.(d) *supra* for appointive directors, the 30-day overdue period of the proposed rules was changed to 90 days in the final rules. The term "loss" in § 931.38 of the final rules is defined the same as for appointive directors. Again, this provision is deemed necessary by the Finance Board to enable it to monitor elective directors and director nominees for instances of poor financial judgment or creditworthiness (or the appearance of such) which, in the judgment of the Finance Board, could affect adversely the ability of the person to perform his or her duties as a FHLBank director or the credibility or operations of the FHLBanks. However, as discussed in A.2.(d) *supra* for appointive directors, in determining under this section whether an elective director is eligible to continue serving, the Finance Board may consider the existence of any underlying dispute over the indebtedness.

3. Prohibited Acceptance of Things of Monetary Value—Section 932.21(c)

This provision, which was new in the proposed rules, is identical to § 932.18(d) in the final rules for appointive directors. As discussed in A.4. *supra* for appointive directors, the term "nominal value" is not defined in the final rules. Policy guidance on application of the term will be derived from the Office of Government Ethics' definition of nominal value to be contained in forthcoming final standard of conduct rules for federal government employees. As also discussed in A.4 *supra*, this section prohibits acceptance by FHLBank directors of political contributions from members of the FHLBank served, and persons and trade organizations as identified in the rules. The exception in § 932.21(c) of the proposed rules for acceptance of things of monetary value from members the elective directors represent is deleted. Instead, this exception is covered by the new exception added in § 932.18(d)(2)(v) of the final rules, which is also applicable to elective directors, for financial interests and financial

relationships not otherwise prohibited under part 932. In addition, as discussed in A.4. *supra*, the prohibition on receiving gifts, etc. from persons seeking contractual or other business or financial relationships with the FHLBank System is limited to such relationships with the FHLBank on whose board the elective director serves. The scope of the prohibition also is limited by qualifying that references to a member mean a member of the FHLBank on whose board the elective director serves. The final rules also revise the definition of a trade organization comprised of members to mean such organizations that represent financial services, credit needs, housing or financial consumer protections.

4. Minimum Capital Requirements—Section 932.21(d)

Section 7(b) of the Act provides that "[n]o person who is an officer or director of a member that fails to meet any applicable capital requirement is eligible to hold the office of * * * Bank director." 12 U.S.C. 1427(b). Section 932.21(b) of the interim rules implemented this provision by prohibiting such service during the calendar year in which the member represented fails to meet applicable minimum regulatory capital requirements, regardless of any exemption or exception granted by the appropriate regulatory agency. Pursuant to this provision, the Finance Board has in practice prohibited persons from serving as elective directors of a FHLBank if the undercapitalized member represented is located within that FHLBank's district.

One commenter on the interim rules supported the exemption provision in § 932.21(b)(1) on the basis that directors and officers from institutions failing their capital requirements would have to direct their attention to restoring their institution's capital position, and could not devote their full attention to running the FHLBank. The commenter noted that FHLBank directors representing sound institutions would be more likely to make objective decisions about FHLBank management, "rather than being swayed by whether some decision might affect their particular FHLBank." The commenter also agreed that an elective director should not be eligible for reelection as a FHLBank director during the calendar year in which the institution failed its capital requirements because time is needed to allow full recovery of the institution. This commenter reiterated its support for the restriction on directors and officers of undercapitalized institutions serving as FHLBank directors in its comment letter on the proposed rules.

Interim § 932.21(b) was moved to new § 932.21(d) in the proposed rules, and revised as follows. The provision clarified Finance Board practice that the capital requirements apply only to members the director serves that are located within the FHLBank's district, by the addition in paragraph (d)(1) of the phrase "any member of the Bank on whose board the person serves." Interim paragraphs (b)(1) and (2) were consolidated into new paragraph (d)(1), and the language was simplified, for greater clarity. These changes are adopted in the final rules.

Proposed paragraph (d)(2) was revised in light of the changes made in revised paragraph (d)(1). The phrase in parentheses was inserted to clarify that the granting by the appropriate regulatory agency of exceptions or exemptions to the capital requirements will not suffice for purposes of satisfying the capital requirements in succeeding years either. "Appropriate regulatory agency" was defined in proposed new § 931.26 to mean the appropriate federal banking agency as defined in section 2[3] of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1813(q)), or other appropriate regulatory agency for institutions not governed by such section. The changes described above are adopted in the final rules.

5. Ineligible Director-elect—Section 932.21(e)

Interim § 932.21(c) on ineligible directors-elect became § 932.21(e) under the proposed rules. No substantive changes were made to this paragraph in the proposed or final rules.

6. Effect of Ineligibility—Section 932.21(f)

Interim § 932.21(d) on the effect of ineligibility became § 932.21(f) under the proposed rules. Section 7(f)(3) of the Act provides that "[i]f any elective Bank director shall cease to have any qualification set forth in this section, the office held by such person shall immediately become vacant, and such person shall not continue to act as a Bank director." 12 U.S.C. 1427(f)(3). By contrast, if an appointive director ceases to satisfy the requisite eligibility qualifications, "the office held by such person shall immediately become vacant, but such person may continue to act as a Bank director until his or her successor assumes the vacated office or the term of such office expires, whichever occurs first." 12 U.S.C. 1427(f)(2).

Section 932.21(d)(1) of the interim rules implemented section 7(f)(3) of the Act in virtually identical form. However, interim § 932.21(d)(2) provided that "[a]ny vote by an elective director during a period when such director has ceased to have the qualifications set forth in section 7(a) [sic] of the Act or this part shall not be deemed to render void or invalid any action taken by the board of directors during such period." One commenter on the interim rules supported the provision requiring immediate vacancy, noting that it would be better to have a vacant seat on the FHLBank's board, rather than permit a director from an undercapitalized institution to continue serving, and that the absence of one director on a board of 14 members would not cause undue delay or disruption.

The proposed rules deleted interim paragraph (d)(2) in order to be consistent with the requirement of section 7(f)(3) of the Act that an elective director not continue to serve as a FHLBank director if he or she fails to satisfy the eligibility qualifications. While acknowledging that deletion of this section may appear justified by the language of section 7(f)(3), one commenter on the proposed rules recommended reinsertion of this section anyway, because otherwise all board actions would have to be reviewed to determine their validity if an elective director becomes ineligible.

The final rules adopt the change made in the proposed rules with respect to paragraph (d)(2). The statutory language for elective directors does not allow the same flexibility provided in section 7(f)(2) of the Act for appointive directors, who may continue serving upon ineligibility until a successor assumes the office. However, where the question of elective director eligibility is unclear and is before the Finance Board for determination, the director will not be deemed ineligible until the date the Finance Board renders its decision on the matter, not on the date the ineligibility arose, or the date the director knew or should have known of the ineligibility. This will avoid the problem of having to re-examine every board action taken before the Finance Board's decision on the issue.

On the other hand, where the elective director's ineligibility is clear and unquestioned (*e.g.*, the director moved out of the FHLBank district), any actions taken by the board subsequent to the date the ineligibility arose, the date the director knew or should have known of the ineligibility, or the effective date of this section, whichever is later, would have to be re-examined to determine if the requisite number of votes existed to take the board action.

7. Certification and Reporting—Section 932.21(g)

New § 932.21(g) of the proposed rules replaced § 932.21(e) of the interim rules. This change is adopted in the final rules.

(a) Certification of Eligibility—Section 932.21(g)(1)

The revisions to the certification requirements for appointive directors in § 932.18(f)(1) of the proposed and final rules also apply for elective directors in § 932.21(g)(1) of the final rules, except that director nominees and elective directors are required to certify their eligibility by December 1 instead of January 15 of each year on new Forms E–1 and E–2, respectively.

(b) Reporting of Ineligibilities—Section 932.21(g)(2)

Interim § 932.21(e)(2) required elective directors to report immediately to the Finance Board in writing any known or suspected ineligibilities. Proposed § 932.21(g)(2) required elective directors to report such ineligibilities on Form E–2 within 30 days of the event that caused or may have caused the ineligibility, the same time period afforded to appointive directors. The final rules adopt this change, except that as with appointive directors, the elective directors must report ineligibilities within 30 days of: (i) the date of the event that caused or may have caused the ineligibility, (ii) the date the director knew or should have known of the ineligibility, or (iii) the effective date of this section, whichever is later. In addition, as with appointive directors, the final rules adopt the clarification in the proposed rules that the elective director must report such ineligibilities "at any time" the director knows or suspects that he or she is ineligible.

(c) Reporting of Certain Financial Relationships—Section 932.21(g)(3)

The interim rules did not require elective directors to disclose any financial relationships as required for appointive directors. However, the Finance Board has in practice required elective directors to report on disclosure forms any loan from a member of the FHLBank the director serves to the director or a business with which the director is affiliated that is or has ever been more than 30 days past due or that caused a loss to the member.

New § 932.21(g)(3) of the proposed rules set forth the same reporting procedures and disclosure requirements for elective directors as were required for appointive directors, including the disclosure of certain past due and known loss loans. Director nominees and elective directors were required to report such financial relationships by December 1 of each year, and at any other time they arose, on new Forms E–1 and E–2, respectively. The final rules adopt these reporting procedures and disclosure requirements as revised for appointive directors. These revisions include the requirement to disclose such financial relationships on an annual basis by December 1 of each year, instead of as they arise, and to disclose loans that are past due more than 90 days rather than 30 days as in the proposed rules. In addition, as with appointive directors, the final rules do not adopt the proposed disclosure requirement for certain financial relationships of companies the directors serve as director, partner or executive officer. The expanded disclosures required of appointive directors because of the modification in the definiton of "financial relationship" (see discussion in A.6.(c) *supra*) also apply to the elective directors.

The proposed rules also added a sentence providing that, as with appointive directors, the failure to make any certifications or disclosures required under § 932.21(g) shall render the director nominee or elective director ineligible to serve as a FHLBank director. This sentence is included in the final rules.

E. Vacancies in Directorships—Section 932.22—Amendments to Part 932

1. Appointive Director Vacancy

The proposed rules revised the language in § 932.22(a) by adding the phrase "for the unexpired term" in order to more accurately reflect the statutory language in section 7(f)(2) of the Act, 12 U.S.C. 1427(f)(2). This revision is adopted in the final rules.

2. Elective Director Vacancy

The same revision made for appointive director vacancies in paragraph (a) also was made for elective director vacancies in proposed § 932.22(b). The language also was revised to reflect the language of section 7(f)(3) of the Act, 12 U.S.C. 1427(f)(3), by adding that the vacancy shall be filled by a majority vote of the remaining directors, "regardless of whether such remaining Bank directors constitute a quorum of the Bank's board of directors." The proposed rules also revised paragraph (b) to indicate that the Finance Board shall declare elected such person selected by the remaining FHLBank directors only if the person satisfies all applicable eligibility qualifications. In addition, the section was revised for greater clarity by adding: "in which case the vacancy may be filled by an eligible director from another state in the Bank's district." All of these changes are adopted in the final rules.

F. Certification and Disclosure Forms—Section 932.23—Amendment to Part 932

New § 932.23 of the proposed rules identified the new Finance Board certification and disclosure forms required to be completed and submitted to the Finance Board by appointive director candidates, appointive directors, elective director nominees and elective directors. This section is adopted in the final rules.

G. Finance Board Appointive Directors—New Part 922

1. Definitions—Section 922.1

Proposed § 922.1 provided that the definitions contained in §§ 931.14, 931.16, 931.18, 931.19, 931.20, 931.21, 931.22, 931.23, 931.25, 931.28, 931.30, 931.32, 931.34, 931.36, 931.38, and 931.40 of this chapter also apply where such terms are used in part 922. This section is adopted in the final rules, except that the definition in § 931.28 for "executive officer" is not incorporated because of the removal of the provision in § 922.6(c) requiring the Finance Board appointive directors to disclose certain financial relationships of companies they serve as director, partner or executive officer. (See discussion in G.6.(c) *infra*.)

2. Qualifications—Section 922.2

Section 2A(b) of the Act provides that the management of the Finance Board shall be vested in a Board of Directors consisting of the Secretary of Housing and Urban Development, and four citizens of the United States appointed by the President, by and with the advice and consent of the Senate. 12 U.S.C. 1422a(b)(1). Accordingly, proposed § 922.2(a) provided that each Finance Board appointive director shall be a citizen of the United States. In addition, as with appointive and elective directors, § 922.2(b) provided that each Finance Board appointive director shall comply with all requirements of the Act, and the regulations and policies of the Finance Board presently in effect or to be established by the Finance Board. These provisions are adopted in the final rules.

3. Prohibited Service, Financial Interests and Financial Relationships-Section 922.3

(a) Prohibited Service—Section 922.3(a)

Section 2A(b)(2)(C)(i) of the Act provides that no Finance Board directo. may "serve as a director or officer of

any * * * Bank or any member of any Bank." 12 U.S.C. 1422a(b)(2)(C)(i). Proposed § 922.3(a) implemented this provision by providing that no Finance Board appointive director may serve as a director or officer of any FHLBank or any member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company). However, in contrast to the prohibition that applies to FHLBank appointive directors, the prohibition with respect to serving as officers or directors of members applied to service at any member of any FHLBank, as opposed to a member of only the FHLBank the appointive director serves. This provision is adopted in the final rules.

(b) Prohibited Financial Interests—Section 922.3(b)

Section 2A(b)(2)(C)(ii) of the Act provides that no Finance Board director may "* * * hold shares of, or any other financial interest in, any member of any such Bank." 12 U.S.C. 1422a(b)(2)(C)(ii). Proposed § 922.3(b) implemented this provision by providing that, as with FHLBank appointive directors, a Finance Board appointive director may not have a financial interest in any member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company). However, the prohibition applied to financial interests in any member of any FHLBank, as opposed to a member of only the FHLBank the appointive director serves. This provision is adopted in the final rules.

The definition in the proposed rules of a "financial interest" of a Finance Board appointive director was the same as the definition of the term for FHLBank directors (see discussion in A.2.(b) *supra*). This definition is adopted in the final rules.

(c) Prohibited Financial Relationships—Section 922.3(c)

As with FHLBank appointive directors, proposed § 922.3(c) prohibited a Finance Board appointive director from having a financial relationship with a member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) that generally is not, to the director's knowledge, transacted in the ordinary course of business of the member and on substantially the same terms as those prevailing at the time for comparable transactions with other persons. However, the prohibition applied to such financial relationships with any member of any FHLBank, as opposed to a member of only the FHLBank the appointive director serves. This provision is adopted in the final rules.

The definition in the proposed rules of a "financial relationship" of a Finance Board appointive director was the same as the definition of the term for FHLBank directors (see discussion in A.2.(c) *supra*). This definition is adopted in the final rules.

4. Permitted Financial Interests—Mutual Funds—Section 922.4

Proposed § 922.4 provided that, as with FHLBank appointive directors, a Finance Board appointive director may have an interest in securities or other financial interests of any member of any FHLBank that arises solely through ownership of shares or other investment units of one or more diversified mutual funds (as defined in section 5(a) and (b)(1) of the Investment Company Act of 1940, as amended, 15 U.S.C. 80a–5(a), (b)(1)) that have invested in the member. However, proposed § 932.18(c) prohibited FHLBank appointive directors from contributing to investment decisions of funds that have invested in members of the FHLBank the director serves. Proposed § 922.4 prohibited Finance Board appointive directors from contributing to investment decisions of funds that have invested in any member of any FHLBank. Proposed § 922.4 is adopted in the final rules.

5. Prohibited Acceptance of Things of Monetary Value—Section 922.5.

The prohibition on soliciting or accepting things of monetary value proposed in § 932.18(d) for FHLBank appointive directors also applied to Finance Board appointive directors in proposed § 922.5. This prohibition is adopted in the final rules, along with the clarifications and revisions adopted in the final appointive director prohibition (see discussion in A.4. *supra*). However, the references in § 932.18(d)(1) to a member shall mean any member of any FHLBank, as opposed to a member of only the FHLBank the appointive director serves. In addition, the reference in § 932.18(d)(1)(i) to the FHLBank shall mean any FHLBank, and the reference in § 932.18(d)(2)(v) to this part shall mean this part 922. This prohibition is similar to the provision in federal regulations that prohibits the Finance Board directors generally from accepting things of monetary value from any person who: (1) seeks contractual or other business or financial relationships with the agency; (2) has interests affected by the director's duties; or (3) conducts operations or activities regulated by the agency. See 5 CFR 735.202. However, § 922.5 is more specifically tailored to prohibiting such conduct *vis a vis* the FHLBank System as opposed to just the agency itself.

As with FHLBank appointive and elective directors, the prohibition is intended to ensure that the Finance Board appointive director's performance of his or her duties as Finance Board director is not improperly influenced, or that there is no appearance of improper influence, as a result of such activities.

6. Certification and Reporting—Section 922.6.

The proposed rules established new certification and disclosure requirements for Finance Board appointive directors that are similar in nature to those required for FHLBank appointive and elective directors in part 932. These requirements are adopted in the final rules as discussed below.

(a) Certification of Compliance—Section 922.6(a)

Proposed § 922.6(a) required that upon appointment, and annually thereafter by November 15 of each year, each Finance Board appointive director shall certify to the Finance Board on Form FB–1 that he or she meets all applicable requirements for his or her appointment set forth in section 2A(b)(1)(B) and (2)(C) of the Act and part 922. This provision is adopted in the final rules.

(b) Reporting of Noncompliance—Section 922.6(b)

Proposed § 922.6(b) provided that if a Finance Board appointive director knows or suspects at any time that he or she does not meet any of the requirements for his or her appointment set forth in section 2A(b)(1)(B) and (2)(C) of the Act or part 922, the director must report the specific factual bases for the known or suspected noncompliance to the Finance Board on Form FB–1 within 30 days of the event that caused or may have caused his or her noncompliance. The final rules adopt the same change made for appointive and elective directors in the final rules, requiring the Finance Board appointive directors to report noncompliance within 30 days of: (i) the date of the event that caused or may have caused the noncompliance, (ii) the date the director knew or should have known of the noncompliance, or (iii) the effective date of this section, whichever is later.

(c) Reporting of Certain Financial Relationships—Section 922.6(c)

Proposed § 922.6(c) provided that upon appointment, and annually thereafter by November 15 of each year, and at any other time they arise, each Finance Board appointive director must

disclose to the Finance Board on Form FB–1 the same types of financial relationships with a member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) that are required to be disclosed by FHLBank appointive directors under proposed § 932.18(f)(3). However, the Finance Board appointive directors were required to disclose such financial relationships with any member of any FHLBank, as opposed to a member of only the FHLBank the appointive director serves. The final rules adopt this reporting requirement, along with the revised 90-day past due loan requirement, except that as with appointive directors, the Finance Board appointive directors will only be required to report such financial relationships on an annual basis, by November 15 of each year, rather than as they arise.

Under the proposed rules, Finance Board appointive directors also were required, as were FHLBank appointive and elective directors, to disclose certain financial relationships of any company the Finance Board director serves as a director, partner or executive officer. As with appointive and elective directors, this proposed requirement for Finance Board appointive directors is not adopted in the final rules.

7. Certification and Disclosure Form—Section 922.7

Proposed § 922.7 identified the certification and disclosure form required to be completed and submitted to the Finance Board by the Finance Board appointive directors. The final rules adopt this provision.

IV. REGULATORY FLEXIBILITY ACT

For the reasons set forth in the **SUPPLEMENTARY INFORMATION**, the undersigned hereby certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that these final rules will not have a significant economic impact on a substantial number of small entities.

V. PAPERWORK REDUCTION ACT

The information collection requirements contained in these final rules have been submitted to the Office of Management and Budget ("OMB") for review under section 3504(h) of the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35. The Finance Board will publish a document in the **Federal Register** announcing OMB's approval of the information collection requirements.

List of Subjects

12 CFR Part 922

Conflict of interests.

12 CFR Part 931

Federal home loan banks.

12 CFR Part 932

Conflict of interests, Federal home loan banks, Reporting and recordkeeping requirements.

Accordingly, title 12, chapter IX of the Code of Federal Regulations is amended as follows:

SUBCHAPTER A—GENERAL

Part 922 is amended by revising the part heading and by adding text to read as follows:

PART 922—BOARD OF DIRECTORS AND EMPLOYEE RESPONSIBILITIES AND CONDUCT

Subpart A—Board of Directors Responsibilities and Conduct

Sec.
922.1 Definitions.
922.2 Qualifications.
922.3 Prohibited service, financial interests and financial relationships.
922.4 Permitted financial interests—mutual funds.
922.5 Prohibited acceptance of things of monetary value.
922.6 Certification and reporting.
922.7 Certification and disclosure forms.

Authority: 12 U.S.C. 1422a, 1422b.

Subpart A—Board of Directors Responsibilities and Conduct

§ 922.1 Definitions.

The definitions contained in §§ 931.14, 931.16, 931.18, 931.19, 931.20, 931.21, 931.22, 931.23, 931.25, 931.30, 931.32, 931.34, 931.36, 931.38, and 931.40 of this chapter also shall apply where such terms are used in this part.

§ 922.2 Qualifications.

Each Board director appointed pursuant to section 2A(b)(1)(B) of the Act shall:

(a) Be a citizen of the United States; and

(b) Comply with all requirements of the Act, and the regulations and policies of the Board presently in effect or to be established by the Board.

§ 922.3 Prohibited service, financial interests and financial relationships.

(a) No Board director appointed pursuant to section 2A(b)(1)(B) of the Act shall serve as a director or officer of any Bank, or any member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) of any Bank.

(b) The financial interest provisions set forth in § 932.18(b)(2) of this chapter also shall apply to Board directors appointed pursuant to section 2A(b)(1)(B) of the Act during their term of office, except that the reference to any member shall mean any member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) of any Bank.

(c) The financial relationship provisions set forth in § 932.18(b)(3) of this chapter also shall apply to Board directors appointed pursuant to section 2A(b)(1)(B) of the Act during their term of office, except that all references to a member shall mean any member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) of any Bank.

§ 922.4 Permitted financial interests—mutual funds.

A Board director appointed pursuant to section 2A(b)(1)(B) of the Act may have an interest in securities or other financial interests of any member of any Bank that arises solely through ownership of shares or other investment units of one or more diversified mutual funds (as defined in section 5(a) and (b)(1) of the Investment Company Act of 1940, as amended, 15 U.S.C. 80a–5(a), (b)(1)) that have invested in the member, provided the director does not contribute to investment decisions of the fund.

§ 922.5 Prohibited acceptance of things of monetary value.

The provisions on soliciting or accepting things of monetary value set forth in § 932.18(d) of this chapter also shall apply to Board directors appointed pursuant to section 2A(b)(1)(B) of the Act during their term of office, except that:

(a) The references in § 932.18(d)(1) of this chapter to a member shall mean any member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) of any Bank;

(b) The reference in § 932.18(d)(1)(i) of this chapter to the Bank shall mean any Bank; and

(c) The reference in § 932.18(d)(2)(v) of this chapter to this part shall mean this part 922.

§ 922.6 Certification and reporting.

(a) Upon appointment, and annually thereafter by November 15 of each year, each Board director shall certify in writing to the Board's designated agency ethics official on Form FB–1 that he or she meets all applicable requirements for his or her appointment set forth in

section 2A(b) (1)(B) and (2)(C) of the Act and this part.

(b) If a Board appointive director knows or suspects at any time that he or she does not meet any of the requirements for his or her appointment set forth in section 2A(b) (1)(B) and (2)(C) of the Act or this part, the director shall report the specific factual basis for the known or suspected noncompliance in writing to the Board's designated agency ethics official on Form FB–1 within thirty (30) days of: The date of the event that caused or may have caused his or her noncompliance, the date the director, knew or should have known of the noncompliance, or November 25, 1991, whichever is later.

(c) Upon appointment, and annually thereafter by November 15 of each year, each Board director shall fully disclose in writing to the Board's designated agency ethics official on Form FB–1 any financial relationships set forth in § 932.18(f)(3) of this chapter of such director, except that all references to a member shall mean any member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) of any Bank.

§ 922.7 Certification and disclosure forms.

The following form(s) shall be completed and submitted to the Board's designated agency ethics official pursuant to the requirements of § 922.6 of this part:

Form FB–1—Finance Board Appointive Directors—Personal Certification and Disclosure Form (Required by § 922.6 of this part)

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 931—DEFINITIONS

1. The authority citation for part 931 is revised to read as follows:

Authority: Secs. 2A, 2B, as added by sec. 702, 103 Stat. 413, 414 (12 U.S.C. 1422a, 1422b); sec. 7, as amended by secs. 707, 710(b)(4), 103 Stat. 417, 418 (12 U.S.C. 1427).

2. Section 931.14 is revised to read as follows:

§ 931.14 Affiliate.

Any person or company which controls, is controlled by, or is under common control with, a member, including any holding company, any subsidiary, or any service corporation of a member.

3. Section 931.15 is revised to read as follows:

§ 931.15 Community interest director.

A director who:

(a) Is appointed by the Board;

(b) Is subject to all of the requirements of appointive directors as set forth in section 7(a) of the Act and part 932 of this chapter;

(c) Is a director, officer, employee or member in good standing of a consumer or community organization operating within the district of the Bank the director will be serving;

(d) Possesses more than two (2) years of recent experience representing consumer and community interests in banking services, credit needs, housing or financial consumer protections; and

(e) Is actively involved in representing consumer or community interests in banking services, credit needs, housing or financial consumer protections at the time of his or her appointment as a community interest director.

4. Section 931.16 is revised to read as follows:

§ 931.16 Company.

Any corporation, partnership, trust (business or otherwise), joint-stock company, joint venture, pool syndicate, sole proprietorship, unincorporated organization, or similar organization, or any other form of business entity not specifically listed in this section.

5. Section 931.17 is revised to read as follows:

§ 931.17 Consumer or community organization.

Any organization (or local chapter or similar entity thereof in the case of a national organization) which for a period of more than two (2) years has represented consumer or community interests in banking services, credit needs, housing or financial consumer protections.

6. Section 931.18 is revised to read as follows:

§ 931.18 Control.

To own, control, or hold with the power to vote, or hold proxies representing, ten (10) percent or more of the voting shares or rights of a company.

7. Section 931.19 is revised to read as follows:

§ 931.19 Diversified holding company.

A holding company whose member subsidiary and related activities, as specified in 12 U.S.C. 1467a(c)(2), represented on either an actual or *pro forma* basis less than fifty (50) percent of both its consolidated net worth and its consolidated net earnings at the close of its preceding fiscal year. For purposes of the foregoing, consolidated net worth and consolidated net earnings shall be determined in accordance with generally accepted accounting principles.

8. Section 931.20 is revised to read as follows:

§ 931.20 Financial interest.

A financial interest of a director or director candidate means the ownership or control, directly or indirectly, by the director or director candidate, his or her immediate family members and related interests, and the immediate family members' related interests, of:

(a) Any shares of common or preferred capital stock;

(b) Any other equity security;

(c) Any debt security or obligation (except deposit or savings accounts), including subordinated debt.

9. Section 931.21 is revised to read as follows:

§ 931.21 Holding company.

Any company that directly or indirectly controls a member, but does not include:

(a) Any company by virtue of its direct or indirect ownership or control of voting stock of a member or a holding company acquired in connection with the underwriting of securities if such stock is held only for such period of time (not exceeding 120 days unless extended by the appropriate regulatory agency) as will permit the sale thereof on a reasonable basis; or

(b) Any trust (other than a pension, profit-sharing, stockholders', voting or business trust) which directly or indirectly controls a member if such trust by its terms must terminate within twenty-five (25) years or not later than twenty-one (21) years and ten (10) months after the death of individuals living on the effective date of the trust, and:

(1) Was in existence and was directly or indirectly in control of a member on June 26, 1967; or

(2) Is a testamentary trust.

10. Section 931.23 is revised to read as follows:

§ 931.23 Person.

An individual or a company.

11. Section 931.26 is added to read as follows:

§ 931.26 Appropriate regulatory agency.

The appropriate federal banking agency as defined in section 2[3] of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1813(q)), or other appropriate regulatory agency for institutions not governed by such section.

12. Section 931.30 is added to read as follows:

§ 931.30 Financial relationship.

A financial relationship of a director, director candidate or director nominee means any of the following relationships or activities of the director, director candidate or director nominee, his or her immediate family members and related interests, and the immediate family members' related interests:

(a) Any type of deposit or savings account;

(b) Any other contractual right to the payment of money, whether contingent or fixed, in the previous calendar year or the current calendar year;

(c) Any type of loan or extension of credit.

13. Section 931.32 is added to read as follows:

§ 931.32 Immediate family member.

Any spouse, minor child, or dependent of a person, or any other individual related by blood, marriage or adoption residing in the person's household.

14. Section 931.34 is added to read as follows:

§ 931.34 Income.

The director's adjusted gross income as reported on his or her most recent federal income tax return.

15. Section 931.36 is added to read as follows:

§ 931.36 Insured depository institution.

An insured depository institution as defined in 12 U.S.C. 1422(12).

16. Section 931.38 is added to read as follows:

§ 931.38 Loss.

(a) An obligation as to which there is a continuing legal claim that is owed that is twelve (12) months or more delinquent as to principal or interest; or

(b) An obligation to pay an outstanding, unsatisfied, final judgment based on any legal theory.

17. Section 931.40 is added to read as follows:

§ 931.40 Related interest.

A company that is controlled by a person.

PART 932—ORGANIZATION OF THE BANKS

1. The authority citation for part 932 is revised to read as follows:

Authority: Secs. 2A, 2B, as added by sec. 702, 103 Stat. 413, 414 (12 U.S.C. 1422a, 1422b); secs. 6–7, 47 Stat. 727, 730, as amended by secs. 707, 710(b)(4), 103 Stat. 417, 418 (12 U.S.C. 1426–1427); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 207, 62 Stat. 692, as added by sec. 1a, 76 Stat. 1123, as amended (18 U.S.C. 207); sec. 602, 92 Stat. 2115, as amended (42 U.S.C. 8101, *et seq.*).

2. Section 932.18 is revised to read as follows:

§ 932.18 Appointive director eligibility.

(a) *Qualifications.* Each appointive director shall:

(1) Be a citizen of the United States;

(2) Be a bona fide resident of the district served by the Bank for which he of she is a director; and

(3) Comply with all requirements of the Act, and the regulations and policies of the Board and of the Bank presently in effect or to be established by the Board or the Bank's board of directors.

(b) *Prohibited service, financial interests and financial relationships.* (1) No director who is appointed pursuant to section 7(a) of the Act may, during such director's term of office, serve as an officer of any Bank.

(2) No director who is appointed pursuant to section 7(a) of the Act may, during such director's term of office, serve as a director or an officer of, or have a financial interest in, any member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) of the Bank on whose board the director serves, except as provided in paragraph (c) of this section.

(3) No director who is appointed pursuant to section 7(a) of the Act may, during such director's term of office, have a financial relationship with a member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) of the Bank on whose board the director serves, that:

(i) Is not, to the director's knowledge, transacted in the ordinary course of business of the member (or such subsidiary, holding company or affiliate) and on substantially the same terms, including fees, interest rates and collateral, where applicable, as those prevailing at the time for comparable transactions by the member (or such subsidiary, holding company or affiliate) with other persons; and

(ii) In the case of a loan or extension of credit by a member (or such subsidiary, holding company or affiliate), does not, to the director's knowledge, involve more than the normal risk of repayment or contain other unusual terms and conditions that increase the risk of loss to the member (or such subsidiary, holding company or affiliate).

(4) No director who is appointed pursuant to section 7(a) of the Act may, during such director's term of office, in the Board's discretion, serve as an appointive director if such director:

(i) Has any loan or extension of credit from any insured depository institution (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) that is more than ninety (90) days past due; or

(ii) Has or has ever had any loan or extension of credit that caused a loss to any insured depository institution (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company), or to federal deposit insurance funds, the Federal Savings and Loan Insurance Corporation ("FSLIC"), or the Resolution Trust Corporation ("RTC"), within the past three (3) years.

(c) *Permitted financial interests—mutual funds.* An appointive director may have an interest in securities or other financial interests of a member of any Bank that arises solely through ownership of shares or other investment units of one or more diversified mutual funds (as defined in section 5 (a) and (b)(1) of the Investment Company Act of 1940, as amended, 15 U.S.C. 80a–5(a), (b)(1)) that have invested in the member, except that where the member is within the district of the Bank on whose board the director serves, the director may not contribute to investment decisions of the fund.

(d) *Prohibited acceptance of things of monetary value.* (1) Except as provided in paragraph (d)(2) of this section, no director who is appointed pursuant to section 7(a) of the Act may, during such director's term of office, solicit or knowingly accept, directly or indirectly, any gift, gratuity, favor, honorarium, entertainment or any other thing of monetary value, from a member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) of the Bank on whose board the director serves, or from a person who:

(i) Has, or is seeking to obtain, contractual or other business or financial relationships with the Bank on whose board the director serves;

(ii) Has interests that may be substantially affected by the performance or non-performance of the director's official duties; or

(iii) Is an officer, director, controlling shareholder, employee, or agent of a member (or such subsidiary, holding company or affiliate) of the Bank on whose board the director serves, of a company that is a controlling shareholder of a member (or such subsidiary, holding company or affiliate) of the Bank on whose board the director serves, or of a trade organization comprised of members (or such subsidiaries, holding companies or affiliates) that represents financial

services, credit needs, housing or financial consumer protections.

(2) Paragraph (d)(1) of this section shall not apply provided:

(i) The acceptance of such things of monetary value is motivated by obvious family or personal relationships rather than the business of the persons concerned;

(ii) The things of monetary value accepted are unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, seasonal gifts of nominal value or other similar things of nominal value;

(iii) The things of monetary value accepted are food and accompanying entertainment of nominal value accepted on infrequent occasions in the ordinary course of a conference, meeting or other working session where such things are incidental to the activity performed;

(iv) The things of monetary value accepted are non-cash honoraria of nominal value where the gifts are intended as tokens of appreciation for the director's willingness to speak before the group; or

(v) The things of monetary value accepted are financial interests or financial relationships not otherwise prohibited under this part.

(e) *Effect of ineligibility.* (1) If an appointive director shall cease to have any of the qualifications set forth in section 7(a) of the Act or this part, such directorship shall become vacant subject to the cure option in paragraph (g) of this section, but such person may continue to serve as an appointive director until his or her successor assumes the vacated office or the term of such office expires, whichever occurs first.

(2) Any vote by an appointive director during a period when such director has ceased to have any of the qualifications set forth in section 7(a) of the Act or this part shall not be deemed to render void or invalid any action taken by the board of directors during such period.

(f) *Certification and reporting.* (1) Prior to the initial appointment each director candidate for appointive director shall certify, and annually thereafter by November 15 of each year each appointive director shall certify, in writing to the Board on Form A–1 or A–2, as applicable, that he or she meets all applicable eligibility qualifications for his or her appointment set forth in section 7(a) of the Act and this part.

(2) If an appointive director knows or suspects at any time that he or she is ineligible, the director shall report the factual basis for the known or suspected ineligibility, with specificity, in writing to the Board on Form A–2 within thirty (30) days of: the date of the event that caused or may have caused his or her ineligibility, the date the director knew or should have known of the ineligibility, or November 25, 1991, whichever is later.

(3) Prior to the initial appointment each director candidate for appointive director shall fully disclose, and annually thereafter by November 15 of each year each appointive director shall fully disclose, in writing to the Board on Form A–1 or A–2, as applicable, the following financial relationships, as defined in § 931.30 of this chapter, of such director candidate or appointive director:

(i) Any type of deposit or savings account in a member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) of the Bank on whose board the director candidate or appointive director serves in excess of the limits of federal deposit insurance;

(ii) Any contractual right with a member (or such subsidiary, holding company or affiliate) of the Bank on whose board the director candidate or appointive director serves in excess of either $10,000 or 5 percent of the director candidate's or appointive director's total income, whichever is less, on an annual basis;

(iii) Any loan or extension of credit by a member (or such subsidiary, holding company or affiliate) of the Bank on whose board the director candidate or appointive director serves in excess of $50,000, except a loan or extension of credit for the purpose of purchasing or financing the director candidate's or appointive director's principal residence;

(iv) Any loan or extension of credit from any insured depository institution (or such subsidiary, holding company or affiliate) that:

(A) Is or has ever been, within the past three (3) years, more than ninety (90) days past due; or

(B) The director knows caused a loss to such institution (or such subsidiary, holding company or affiliate), or to federal deposit insurance funds, the FSLIC, or the RTC, within the past three (3) years.

(4) Failure to make any certifications or disclosures required under this paragraph (f) shall render the director candidate or appointive director ineligible under this part.

(g) *Opportunity to cure.* If an appointive director ceases for any reason occurring subsequent to appointment to satisfy the requisite eligibility qualifications set forth in section 7(a) of the Act or this part, the Board may, in its discretion, give such director a reasonable opportunity to eliminate the cause of the ineligibility provided:

(1) Such director reports the ineligibility, pursuant to paragraph (f)(2) of this section, and the proposed method of remedying the cause of ineligibility, with specificity, within thirty (30) days of: the date of the event that caused the ineligibility, the date the director knew or should have known of the ineligibility, or November 25, 1991, whichever is later; and

(2) Such director remedies the cause of the ineligibility within a reasonable period of time set by the Board, not to exceed ninety (90) days from: the date of the event that caused or may have caused the ineligibility, the date the director knew or should have known of the ineligibility, or November 25, 1991, whichever is later.

3. Section 932.19 is revised to read as follows:

§ 932.19 Community interest director eligibility.

(a) *Appointment.* At least two (2) of the appointive directors for each Bank shall be community interest directors.

(b) *Selection process.* Each Bank shall forward to the Board a list of qualified candidates compiled after active solicitation of nominations from qualified consumer or community organizations within its district. The Board may on its own also solicit nominations of qualified candidates. Final selection shall be in the sole discretion of the Board.

(c) *Ineligibility.* A community interest director shall cease to have the qualifications to be a community interest director if such director:

(1) Ceases to meet the definition of "community interest director" as set forth in § 931.15 of this chapter; or

(2) The organization which the community interest director serves:

(i) Ceases to represent consumer or community interests in banking services, credit needs, housing or financial consumer protections; or

(ii) Ceases to operate, is dissolved, or is declared insolvent.

4. Section 932.20 is amended by revising the introductory text and the column headings in the table to read as follows:

§ 932.20 Minimum number of elective directorships.

Under section 7(c) of the Act, the number of elective directorships allocated to members located in each state cannot be less than the number of directorships that were filled by the members from that state on December

31, 1960. The following list sets forth the number of elective directorships that were filled by members from each state on December 31, 1960:

Federal home loan bank—State	No. of elective directorships on December 31, 1960
* * * * *	

5. Section 932.21 is revised to read as follows:

§ 932.21 Elective director eligibility.

(a) *Qualifications.* Each elective director shall:

(1) Be a citizen of the United States;

(2) Be a bona fide resident of the district served by the Bank for which he or she is a director;

(3) Be an officer or a director of a member whose principal place of business is in the state the elective director represents; and

(4) Comply with all requirements of the Act, and regulations and policies of the Board and of the Bank presently in effect or to be established by the Board or the Bank's board of directors.

(b) *Prohibited service.* No director who is elected pursuant to section 7 of the Act may, during such director's term of office, in the Board's discretion, serve as an elective director if such director:

(1) Has any loan or extension of credit from any insured depository institution (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) that is more than ninety (90) days past due; or

(2) Has or has ever had any loan or extension of credit that caused a loss to any insured depository institution (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company), or to federal deposit insurance funds, the FSLIC, or the RTC, within the past three (3) years.

(c) *Prohibited acceptance of things of monetary value.* The provisions on soliciting or accepting things of monetary value set forth in § 932.18(d) of this part also shall apply to elective directors during their term of office.

(d) *Minimum capital requirements.* (1) No person who is an officer or a director of any member of the Bank on whose board the person serves that fails to meet any applicable minimum regulatory capital requirements of the member's appropriate regulatory agency, is eligible to hold the office of Bank elective director during the calendar year in which the failure occurred, regardless of any exemption or exception to such capital requirements granted by the appropriate regulatory agency.

(2) A director who is ineligible pursuant to paragraph (d)(1) of this section is once again eligible for election in the succeeding calendar year, provided the member(s) that he or she serves as an officer or director meet(s) the applicable minimum regulatory capital requirements (which are not satisfied by the granting of any exemption or exception to such capital requirements by the appropriate regulatory agency), during each phase of the election process for the succeeding calendar year.

(e) *Ineligible director-elect.* A person declared elected pursuant to § 932.14(d) of this part will not be eligible to take office or serve as a director if, as of the date such person would otherwise assume the directorship, he or she does not meet the eligibility requirements set forth in section 7 of the Act or this part.

(f) *Effect of ineligibility.* If an elective director shall cease to have any of the qualifications set forth in section 7 of the Act or this part, such directorship shall immediately become vacant and such person shall not continue to serve as a Bank director.

(g) *Certification and reporting.* (1) Prior to each election each director nominee for elective director shall certify, and annually thereafter by December 1 of each year each elective director shall certify, in writing to the Board on Form E–1 or E–2, as applicable, that he or she meets all applicable eligibility qualifications for his or her election set forth in section 7 of the Act and this part.

(2) If an elective director knows or suspects at any time that he or she is ineligible, the director shall report the factual basis for the known or suspected ineligibility, with specificity, in writing to the Board on Form E–2 within thirty (30) days of: the date of the event that caused or may have caused his or her ineligibility, the date the director knew or should have known of the ineligibility, or November 25, 1991, whichever is later.

(3) Prior to each election each director nominee for elective director shall fully disclose, and annually thereafter by December 1 of each year each elective director shall fully disclose, in writing to the Board on Form E–1 or E–2, as applicable, any financial relationships, as defined in § 931.30 of this chapter, set forth in § 932.18(f)(3) of this part of such director nominee or elective director.

(4) Failure to make any certifications or disclosures required under this paragraph (g) shall render the director nominee or elective director ineligible under this part.

6. Section 932.22 is revised to read as follows:

§ 932.22 Vacancies in directorships.

(a) *Appointive director vacancy.* A vacancy in an appointive directorship shall be filled for the unexpired term through appointment by the Board as soon as practicable.

(b) *Elective director vacancy.* A vacancy in an elective directorship shall be filled for the unexpired term by an affirmative vote of a majority of the remaining Bank directors as soon as practicable, regardless of whether such remaining Bank directors constitute a quorum of the Bank's board of directors. The Board shall declare elected such person selected by the Bank directors only if the person satisfies all applicable eligibility qualifications to serve as an elective director set forth in section 7 of the Act and this part. Such vacancy shall be filled with a director from the state of the vacated director, unless there are no eligible candidates from such state, in which case the vacancy shall be filled by an eligible director from another state in the Bank's district.

7. Section 932.23 is added to read as follows:

§ 932.23 Certification and disclosure forms.

The following forms shall be completed and submitted to the Board pursuant to the requirements of §§ 932.18 (f) and (g) and 932.21(g) of this part:

Form A–1—Appointive Director Candidates—Personal Certification and Disclosure Form (Required by §§ 932.18(f) (1) and (3) of this part)

Form A–2—Appointive Directors—Personal Certification and Disclosure Form (Required by §§ 932.18(f) (1) through (3) and (g) of this part)

Form E–1—Elective Director Nominees—Personal Certification and Disclosure Form (Required by §§ 932.21(g) (1) and (3) of this part)

Form E–2—Elective Directors—Personal Certification and Disclosure Form (Required by §§ 932.21(g) (1) through (3) of this part)

Dated: October 18, 1991.

By the Federal Housing Finance Board.

J. Stephen Britt,

Executive Director.

[FR Doc. 91–25688 Filed 10–24–91; 8:45 am]

BILLING CODE 6725-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-105-AD; Amendment 39-8064; AD 91-22-04]

Airworthiness Directives; Boeing Model 707/720, Model 727-100C, and Model 727-200F Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 707/720 series airplanes, Model 727-100C, and Model 727-200F series airplanes, which requires the use of certain special operating procedures for the main cargo door, and the inspection, necessary repair, and eventual replacement of the main cargo door latch cams, latch cam bellcranks, and pressure relief door hinge fittings. This amendment is prompted by reports of worn latch cams and worn pressure relief door hinge fittings, and a report of a main cargo door that opened in flight. This condition, if not corrected, could result in an improperly latched and locked cargo door; an erroneous door locked indication; the opening of the door during flight; and subsequent rapid decompression of the airplane.

DATES: Effective November 29, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 29, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Pliny C. Brestel, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2783. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain Boeing Model 707/720 and Model 727 series airplanes, which requires the use of certain special operating procedures for the main cargo door, and the inspection, necessary repair, and eventual replacement of the main cargo door latch cams, latch cam bellcranks, and pressure relief door hinge fittings, was published in the Federal Register on June 10, 1991 (56 FR 26622).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supported the proposed rule.

Two commenters stated that they disagreed with the requirement to replace the latch cams, latch cam bellcranks, and the pressure relief door hinge fittings with the re-designed parts because wear occurs at a slow rate and repetitive inspections and proper maintenance would ensure adequate safety. Another commenter stated that modification of the mechanism should not be mandatory unless airworthiness, inspectability, and in-service findings were considered in determining the mandatory modification. These commenters recommended that repetitive inspections be mandatory, and that the replacement with the re-designed parts be an optional terminating action for the repetitive inspections. The FAA does not agree with the commenter's requests. The FAA considers that modification is required because, the problem it corrects could result in a rapid decompression of the airplane if it goes undetected. Cargo doors have opened in flight after a long service history without a previous incident, and, on one occasion, resulted in an explosive decompression.

One commenter requested that certain changes be made to the rule to clarify the terminating action. Specifically, this commenter requested that proposed paragraph (c) be revised to state that the replacement of parts, and the performance of the operation, control, and door warning system tests in accordance with this paragraph, constitute terminating action for the requirements of paragraphs (a) and (b) of the AD. The commenter also requested that a paragraph be added stating that the accomplishment of section III, part II, of Boeing Service Bulletin 3477, dated July 26, 1990 (for Model 707/720 series airplanes), or Boeing Service Bulletin 727-52-0142, dated July 26, 1990 (for Model 727 series airplanes), constitutes terminating action for the requirements of this AD. The FAA concurs. Since both actions are the same, the final rule has been changed by adding a new paragraph (e) to clarify terminating action.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the rule.

There are approximately 260 Model 707/720 series airplanes, and approximately 169 Model 727 series airplanes of the affected design in the worldwide fleet. It is estimated that 48 Model 707/720 airplanes and 144 Model 727 airplanes of U.S. registry will be affected by this AD. It will take approximately 1 manhour to accomplish the inspection and 34 manhours per airplane to accomplish the required terminating actions, and the average labor cost will be $55 per manhour. Required parts are estimated at $12,264 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,724,288.

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.

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 final evaluation has been prepared for this action and 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

91-22-04. Boeing: Amendment 39-8064. Docket No. 91-NM-105-AD.

Applicability: Model 707/720 series airplanes with a main cargo door, listed in Boeing Service Bulletin 3477, dated July 26, 1990; and Models 727-100C and 727-200F series airplanes, listed in Boeing Service Bulletin 727-52-0142, dated July 26, 1990; certificated in any category.

Compliance: Required as indicated, unless previously accomplished, or unless the main cargo door has been deactivated in accordance with Boeing Service Bulletin 3311, dated May 26, 1978 (for Model 707/720 series airplanes), or Boeing Service Bulletin 727-29-0053, dated July 8, 1977 (for Model 727 series airplanes).

To prevent inadvertent opening of the main cargo door, accomplish the following:

(a) Within the next 30 days after the effective date of this AD, change the operating procedures for the main cargo door to include the following requirements, and thereafter comply with those revised procedures until the inspection required by paragraph (b) of this AD has been accomplished: Prior to takeoff following each operation of the door, conduct a visual verification, through the external viewports, to ensure proper engagement of the latching cams to ensure that the door is fully latched closed. This information must be relayed to and acknowledged by the flight crew.

(1) The procedures required by this paragraph must be accomplished by a qualified and trained mechanic or flight officer, and the training program must be approved by the FAA Principal Maintenance Inspector (PMI).

(2) Documentation of compliance with these procedures is required and the method of documentation must be approved by the FAA PMI.

(b) Within the next 18 months after the effective date of this AD, perform a visual inspection for wear of the mating surfaces of the pressure relief door hinge fittings and latch cams of the main cargo door, in accordance with section III, part I, of the Boeing Service Bulletin 3477, dated July 26, 1990 (for Model 707/720 series airplanes), or Boeing Service Bulletin 727-52-0142, dated July 26, 1990 (for Model 727 series airplanes).

(1) If wear exceeds the limits specified in the applicable service bulletin: Prior to further flight, replace worn parts, as follows. Do not intermix original configuration parts with modified parts in the same door.

(i) Replace worn parts with modified parts in accordance with section III, part II, of the applicable service bulletin; or

(ii) Replace worn parts with airworthy parts of the original configuration in accordance with FAA-approved procedures.

(2) The inspection and replacement of parts, if necessary, in accordance with this paragraph constitutes terminating action for the special operating procedures required by paragraph (a) of this AD.

(c) Within 36 months after the effective date of this AD, accomplish the following in accordance with section III, part II, of Boeing Service Bulletin 3477, dated July 26, 1990 (for Model 707/720 series airplanes), or Boeing Service Bulletin 727-52-0142, dated July 26, 1990 (for Model 727 series airplanes).

(1) Replace the latch cams,

(2) Replace the latch cam bellcranks,

(3) Replace the pressure relief door hinge fittings, and

(4) Perform the operation, control, and door warning system tests.

(d) For airplanes on which the main cargo door has been deactivated:

(1) Prior to reactivating the main cargo door, accomplish the inspection required by paragraph (b) of this AD.

(2) Within the next 18 months after reactivation, or within 36 months after the effective date of this AD, whichever is later, accomplish the requirements of paragraph (c) of this AD.

(e) The accomplishment of section III, part II, of Boeing Service Bulletin 3477, dated July 26, 1990 (for Model 707/720 series airplanes), or Boeing Service Bulletin 727-52-0142, dated July 26, 1990 (for Model 727 series airplanes), as applicable, constitutes terminating action for the requirements of this AD.

(f) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

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

(h) The inspection and repair requirements shall be done in accordance with Boeing Service Bulletin 3477, dated July 26, 1990, or Boeing Service Bulletin 727-52-0142, dated July 26, 1990, as applicable. 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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment (39-8064 , AD 91-22-04) becomes effective November 29, 1991.

Issued in Renton, Washington, on October 7, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-25714 Filed 10-24-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-80-AD; Amendment 39-8060, AD 91-21-13]

Airworthiness Directives; Boeing Model 737-300, -400, and -500 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes two existing airworthiness directives (AD), one of which is applicable to Boeing Model 737-300 series airplanes and the other to Boeing Model 737-400 series airplanes, which currently require repetitive inspections for chafing between the Number 2 engine throttle cable and the adjacent right wing front spar bracket. These conditions, if not corrected, could result in throttle cable separation and subsequent loss of engine throttle control. This amendment requires modifications to the engine's throttle control cables. In addition, this amendment includes the Boeing Model 737-500 series airplanes in the applicability. This amendment is prompted by the manufacturer's development of a modification which eliminates the cable's accelerated wear condition, subject of the existing AD's, and a condition referred to as "engine throttle cable ratcheting" which exists on each engine.

DATES: Effective November 29, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 29, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Bray, Seattle Aircraft Certification Office, Propulsion Branch, ANM-140S; telephone (206) 227-2681.

Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 89-13-05, Amendment 39-6240 (54 FR 26021, June 21, 1989) applicable to Boeing Model 737-300 series airplanes; and AD 89-23-05, Amendment 39-6367 (54 FR 43046, October 20, 1989), applicable to Boeing Model 737-400 series airplanes, to require modification to the engine throttle control cable systems, was published in the Federal Register on May 7, 1991 (56 FR 21103).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The Air Line Pilots Association (ALPA) commented that it supports the proposed airworthiness directive.

One operator commented that the wear and ratcheting feedback problems were reportedly confined to the Number 2 engine throttle cable installation. If the ratcheting feedback is confirmed to be only in the Number 2 throttle lever, as reported in Boeing Service Letter 737-SL-76-10, dated April 5, 1991, this commenter requested that the amendment should be revised to address only the Number 2 engine installation. The FAA agrees that the Boeing service letter is limited to the Number 2 engine throttle cable system and does not address the ratcheting condition that also exists on the Number 1 engine throttle cable system. However, Boeing Service Bulletin 737-76-1023, referenced in this AD, addresses both engine throttle cable systems and indicates that the ratcheting feedback condition exists on both systems. Therefore, the FAA does not concur that this rule should be limited only to the Number 2 engine installation, since the unsafe condition addressed may occur with regard to either the Number 1 or Number 2 system.

In addition, this operator commented that the economic paragraph in the preamble to the proposed rule is in conflict with the manpower estimate described in Boeing Service Bulletin 737-76-1023. The FAA concurs. After further review of more current service information, the economic analysis paragraph, below, has been revised to reflect a more accurate cost estimate.

Several commenters indicated that the proposed 18-month compliance time would possibly cause unscheduled out-of-service time. Therefore, they requested that the compliance time be lengthened from 18 months to 24, 36, or 48 months. In addition, one of the commenters requested that the compliance time for this rule be consistent with AD 91-05-08, Amendment 39-6906 (56 FR 6796, February 20, 1991), which requires replacement of any carbon steel engine control cables found in the wing leading edge. After reviewing parts availability and average utilization rates for U.S. operators, the FAA has determined that the compliance time may be extended to 36 months without compromising safety. The repetitive inspections required by this AD will ensure an acceptable level of safety in the interim. The final rule has been revised accordingly.

One operator commented that, according to its reliability data, the problem of engine throttle cable wear has indeed been confirmed and limited to the T2B cable located in the right wing of Model 737-300 airplanes only. No wear has ever been noted in Number 1 engine control cables, thus making the replacement of T1A and T1B cables of questionable value. This operator recommended that the proposed AD exclude the Number 1 engine cable system. The FAA concurs, in part. The FAA has determined that the cable wear problem is limited to the T2B cable; however, as discussed previously, the cable ratcheting condition exists on both the Number 1 and Number 2 engine throttle control cable systems. Therefore, the FAA has determined that mandatory modifications to both engine throttle control cable systems is necessary.

One operator recommended that the T1A and T1B cables be replaced on an attrition basis, thus eliminating the requirement to replace the T1A and T1B cables at the same time as the T2A and T2B cables, which would reduce the required elapsed time for the modification by a third. In addition, the operator stated that the ratcheting condition which affects the T1A and T2A cables should be limited to Model 737 airplanes with line numbers 1865 and above; these airplanes incorporate a new cable support bracket configuration contributory to the ratcheting condition. Furthermore, the operator indicated that Boeing Flight Operating Technical Bulletin 737-300/-400/-500-4, dated September 7, 1990, states that this ratcheting is not a safety of flight item. As noted in the response to a previous comment, the FAA concurs that all data to date indicate that the cable wear problem is limited to the T2A and T2B cable system. However, as noted in the preamble to the proposed rule, during the research and development phase of the cable modification to correct the chafing problem, the manufacturer uncovered an operational deficiency in the CFM56-3 series engine throttle control cable systems, as installed on Model 737's, in which the cables transmit "ratcheting feedback" to the flight compartment isle stand thrust levers during flight at certain flap positions. This is independent of the design change at line position 1865. In addition, anything that may distract the flightcrew from their primary responsibilities during the high workload phase of flight, such as approach or landing, unduly jeopardizes safe flight and landing; the FAA considers that motion of the thrust levers is distracting to the crew and is a safety of flight item. Therefore, the FAA does not concur with the commenter's recommendation to replace the T1A and T1B cables on an attrition basis.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 1,069 Model 737-300, -400, and -500 series airplanes of the affected design in the worldwide fleet. It is estimated that 418 airplanes of U.S. registry will be affected by this AD, that it will take approximately 52 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. Modification parts are estimated to cost $2,900 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,407,680.

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.

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 final evaluation has been prepared for this action and 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendments 39–6240 and 39–6367, and by adding the following new airworthiness directive:

91–21–13. Boeing: Amendment 39–8060. Docket 91–NM–80–AD. Supersedes AD's 89–13–05 and 89–23–05.

Applicability: Model 737–300, –400, and –500 series airplanes, listed in Boeing Service Bulletin 737–76–1023, dated February 14, 1991, certified in any category.

Compliance: Required as indicated, unless previously accomplished.

To minimize the potential for cable separation due to the Number 2 engine throttle cable chafing against the right wing front spar bracket, and to prevent Number 1 and Number 2 engine throttle control cable ratcheting feedback, accomplish the following:

A. For Model 737–300 series airplanes: Prior to the accumulation of 300 flight hours after July 24, 1989 (the effective date of Amendment 39–6240), unless previously accomplished within the previous 700 flight hours, and thereafter at intervals not to exceed 1,000 flight hours, gain access to the fuel shutoff cable pulley bracket near the right wing front spar station 124 and inspect the number two engine throttle cable for wear. Replace the cable, before further flight, if cable wear exceeds acceptable wear limits specified in Section 20–20–31 of the Model 737 Maintenance Manual.

B. For Model 737–400 series airplanes: Prior to the accumulation of 300 flight hours after November 27, 1989 (the effective date of Amendment 39–6367), unless previously accomplished within the previous 700 flight hours, and thereafter at intervals not to exceed 1,000 flight hours, gain access to the fuel shutoff cable pulley bracket near the right wing front spar station 124 and inspect the number two engine throttle cable for wear. Replace the cable, before further flight, if cable wear exceeds acceptable wear limits specified in Section 20–20–31 of the Model 737 Maintenance Manual.

C. For all airplanes: Within 36 months after the effective date of this AD, modify the engine throttle control cable system in accordance with Boeing Service Bulletin 737–76–1023, dated February 14, 1991. This modification constitutes terminating action for the repetitive inspections required by paragraphs A. and B. of this AD.

D. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

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

F. The inspections and modifications shall be done in accordance with Boeing Service Bulletin 737–76–1023, dated February 14, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment supersedes Amendment 39–6240, AD 89–13–05; and Amendment 39–6367, AD 89–23–05.

This amendment (39–8060, AD 91–21–13) becomes effective November 29, 1991.

Issued in Renton, Washington, on September 27, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–25713 Filed 10–24–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–55–AD; Amendment 39–8065; AD 91–22–05]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which requires replacement of the overhead stowage compartment door and counterbalance, rework and adjustment of compartment; installation of new wiring provisions; and operational checks of associated equipment for certain stowage compartments located near entry doors, or the de-activation of those compartments. This amendment is prompted by reports of several injuries resulting from overhead stowage compartment doors freefalling or swinging open faster than expected after unlatching because the doors were only partially restrained. This condition, if not corrected, could result in inadvertent or unrestrained opening of overhead stowage compartment doors, which could result in injury to passengers or flight attendants.

DATES: Effective November 29, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 29, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124.

This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Pliny Brestel, Seattle Aircraft Certification Office, Airframe Branch, ANM–120S; telephone (206) 227–2783. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 747 series airplanes, which requires replacement of the overhead stowage compartment door and counterbalance, rework and adjustment of compartment, installation of new wiring provisions; and operational checks of associated equipment, for certain stowage compartments located near entry doors, was published in the **Federal Register** on April 24, 1991 (56 FR 18783).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The Air Transport Association (ATA) of America, on behalf of several of its members, requested that the proposed rule be revised to require that stowage bins that are in use be modified only by the installation of snubbers, not new latches, and stowage bins that are not in use need not be modified. The FAA

concurs in part. For those bins that are used for the stowage of any item, the FAA has determined that replacement of the counterbalance system with snubbers is required. For those bins that are used for the stowage of life rafts or miscellaneous heavy items, the FAA has determined that installation of the snubbers as well as the new latches is required because certain currently-installed latches are understrength. For those bins that are not in use, the FAA has determined that, in lieu of the modification, an acceptable level of safety will be provided if (1) an inspection is conducted of the existing latch assemblies, and repair, if necessary, is accomplished; (2) a placard indicating "NO STOWAGE" is installed; and (3) the bins are disabled to prevent them from opening. The final rule has been changed to add these optional procedures.

Several commenters stated that the life rafts have been removed from most of the bins on their airplanes and that those bins now are used to stow lighter miscellaneous items; in view of this, the commenters requested that mandatory modification action be restricted to only those stowage bins containing life rafts. The FAA concurs that for some operators' unique circumstances, such a restriction may be warranted; however, for other operators, although their bins may be utilized only for the stowage of lighter miscellaneous items, the latch installation may be understrength. Because such variances may exist, the FAA considers it more appropriate to review each operator's situation on a case-by-case basis. In this regard, an operator may apply for an alternative method of compliance in accordance with paragraph (c) of the final rule.

Several operators stated that the modification using the manufacturer's recommended new latch is too expensive to install. One operator implied that the new latch is not as reliable as the original design. Those operators prefer an alternative method of compliance to meet the intended requirements. The FAA concurs that an alternative method of compliance could be appropriate; operators may apply for such alternative methods in accordance with paragraph (c) of the final rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the rule.

The format of the final rule has been restructured to be consistent with the standard **Federal Register** style.

There are approximately 614 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 174 airplanes of U.S. registry will be affected by this AD. In considering a "worst case scenario," that is, if operators elected to replace the bin door and counterbalance assembly on every affected airplane, it will take approximately 117 manhours per airplane to accomplish these actions, at an average labor cost of $55 per manhour; required parts are estimated at $159,540 per airplane. Based on these figures, and in this scenario, the total cost impact of the AD on U.S. operators is estimated to be $28,879,650.

However, this AD offers operators several optional actions which, if accomplished, would substantially reduce the estimated cost impact of the AD. For example, an operator may elect to deactivate the bin and, under the alternative methods of compliance provision of the AD, develop its own customized modification of the latches that would not require replacement of the bin door; in this case, the costs associated with the number of work hours and parts required may be considerably lower than those associated with replacement of the bin door as specified in the AD. As another option, an operator could elect to restrict the weight and contents of the bin and install only the snubbers, thereby limiting the cost of parts to only that of the snubbers. As yet another option, an operator could elect merely to disable the bin to prevent its opening and install a placard indicating "NO STOWAGE." In this case the only costs would be those associated with obtaining and installing the placard; placards may be manufactured locally and the cost is expected to be negligible.

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.

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 final evaluation has been prepared for this action and 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

91–22–05. Boeing: Amendment 39–8065. Docket No. 91–NM–55–AD.

Applicability: Model 747 series airplanes, line numbers 001 through 708, except Model 747–400 and freighters, certificated in any category.

Compliance: Required within 36 months after the effective date of this AD, unless previously accomplished.

To prevent injury to passengers and flight attendants, accomplish the following:

(a) For airplanes listed in Boeing Service Bulletin 747–25–2734, Revision 1, dated May 25, 1989:

(1) For those stowage bins used for stowage, accomplish the following in accordance with Section III of Boeing Service Bulletin 747–25–2734, dated November 3, 1988, or Revision 1, dated May 25, 1989:

(i) Replace the overhead stowage compartment doors and counterbalance assemblies;

(ii) Rework and adjust compartments;

(iii) Install new wiring provisions; and

(iv) Perform operational checks of associated equipment.

(2) For those bins that are not used for stowage of any item, in lieu of the procedures required by paragraph (a)(1) of this AD, operators may accomplish the following:

(i) Conduct a visual inspection of the existing latches for wear of the latching handle locking grooves and ensure full travel of the latch pins. If wear or other discrepancies are indicated, repair in accordance with FAA-approved procedures.

(ii) Install a placard indicating "NO STOWAGE;" and

(iii) Disable the bin to prevent its opening, in a manner approved by the FAA Principal Maintenance Inspector.

(b) For airplanes not listed in Boeing Service Bulletin 747-25-2734, Revision 1, dated May 25, 1989:

(1) For those stowage bins used for stowage, accomplish the following in a manner similar to that described in the service bulletin and approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate:

(i) Replace the overhead stowage compartment doors and counterbalance assemblies;

(ii) Rework and adjust compartments;

(iii) Install new wiring provisions; and

(iv) Perform operational checks of associated equipment.

(2) For those bins that are not used for stowage of any item, in lieu of the procedures required by paragraph (b)(1) of this AD, operators may accomplish the following:

(i) Conduct a visual inspection of the existing latches for wear of the latching handle locking grooves and ensure full travel of the latch pins. If wear or other discrepancies are indicated, repair, in accordance with FAA-approved procedures.

(ii) Install a placard indicating "NO STOWAGE;" and

(iii) Disable the bin to prevent its opening, in a manner approved by the FAA Principal Maintenance Inspector.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle ACO, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI) who may concur or comment and then sent it to the Manager, Seattle ACO.

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

(e) The requirements for replacement, rework and adjustment, inspections, and operational checks shall be done in accordance with Boeing Service Bulletin 747-25-2734, dated November 3, 1988; or in accordance with Boeing Service Bulletin 747-25-2734, Revision 1, dated May 25, 1989, which includes the following list of effective pages:

Page No.	Revision level	Date
1-2, 4, 7, 9-13, 17-27, 76-77.	1	May 25, 1989.
3, 5-6, 8, 14-16, 28-75, 78-83.	(Original)	November 3, 1988.

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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment (39-8065, AD 91-22-05) becomes effective November 29, 1991.

Issued in Renton, Washington, on October 7, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-25715 Filed 10-24-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-76-AD; Amdt. 39-8057; AD 91-21-10]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which requires installation of modified leading edge slat offset gearbox "No-Back" brakes. Additionally, repetitive inspections of the leading edge slat drive system are required in the interim for airplanes on which the existing No-Back brakes have not been reworked to limit the amount of grease used in the offset gearbox. This amendment is prompted by ground inspection reports of slat No-Back brakes not functioning properly due to oil contamination, and two incident reports of asymmetric leading edge slats resulting from a torque tube disconnect. A leading edge slat torque tube disconnection, combined with a latent failure of the No-Back brake(s), if not corrected, could result in uncommanded asymmetric movement of the leading edge slats, which could degrade lateral flight control and/or cause structural damage to the slat.

DATES: Effective November 29, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 29, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124.

This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the **Federal Register**, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy J. Dulin, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; telephone (206) 227-2675. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain Boeing Model 767 series airplanes, which requires installation of modified leading edge slat offset gearbox No-Back brakes and, for airplanes on which the existing No-Back brakes have not been reworked to limit the amount of grease, an interim repetitive leading edge slat drive system inspection; was published in the **Federal Register** on May 8, 1991 (56 FR 21343).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supported the AD as proposed.

The manufacturer and another commenter requested that the proposed rule be revised to require compliance with Revision 3 of Boeing Alert Service Bulletin 767-27A0095 in lieu of Revision 2 of that service bulletin, as was specified in the Notice of Proposed Rulemaking (NPRM). The FAA concurs. Subsequent to the issuance of the NPRM, the FAA reviewed and approved Revision 3 of the service bulletin, dated May 23, 1991. Revision 3 of the service bulletin includes revised part numbers for terminating action, the correct pre-soak oil specification, revised kit content and availability, and revised manhour labor estimates for the offset gearbox modification. The FAA has determined that Revision 3 of the service bulletin provides the correct instructions necessary to ensure the proper function of the No-Back brake. The final rule has been revised to reference Revision 3 as the appropriate source for service information.

The manufacturer requested that the economic analysis paragraph in the preamble to the final rule specify 384 manhours as the labor estimate for the required offset gearbox modifications, in lieu of the 392 manhour labor estimate specified in the preamble to the NPRM. This request for a manhour reduction was based on the manufacturer's evaluations of its customer service group and the airlines' maintenance operations. The FAA concurs. The FAA has determined that 384 manhours is a

more accurate estimate of the labor time required to accomplish the offset gearbox modification. The economic analysis paragraph, below, has been revised accordingly.

Several commenters requested that the proposed compliance times be extended by at least six months for all required terminating actions. These commenters stated that the proposed compliance periods may not take into account all the time needed for shipping, receiving, and distributing the required kits. These commenters noted that the manufacturer will be allocating 19 shipsets of modified offset gearboxes into a "seed unit pool" which will be shared by a total of 53 different operators in three separate groups, and that this method of sharing parts could easily cause some operators to miss their accomplishment targets. The FAA does not concur. The FAA has determined that the compliance times, as proposed, represent the maximum time allowable for the affected airplanes to continue to operate prior to the required installation of modified offset gearbox No-Back brakes without compromising safety. The FAA not only considered parts availability, labor time, and logistics when establishing the compliance times, but worked with the manufacturer as well to establish realistic compliance times.

Several commenters requested that the proposed compliance time for the interim drive system inspection be extended. These commenters did not agree with the interim drive system inspection compliance time, because there have been no reported drive system problems from or since the initial drive system inspection required by AD 90-09-51, Amendment 39-6659 (55 FR 29003, July 17, 1990). The FAA does not concur. The interim drive system inspection compliance time was established to ensure the mechanical integrity of the drive system on airplanes which have the greatest exposure to latent No-Back brake failure.

The format of the final rule has been restructured to be consistent with the standard **Federal Register** style.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of this AD.

There are approximately 364 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 131 airplanes of U.S. registry will be affected by this AD, that it will take approximately 384 manhours per airplane to accomplish the required No-Back brake modifications, and that the average labor cost will be $55 per manhour. The required parts will be provided by the manufacturer at no charge to the operator. It is estimated that 120 of the 131 U.S. registered airplanes will require a leading edge slat drive system inspection prior to installation of the modified No-Back brakes, that it will take approximately 72 manhours to accomplish the required inspection, and that the average labor cost will be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,241,920.

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.

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 final evaluation has been prepared for this action and 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

91-21-10. Boeing: Amendment 39-8057. Docket No. 91-NM-76-AD.

Applicability: Model 767 series airplanes, Groups 1, 2, and 3, as listed in Boeing Alert Service Bulletin 767-27A0095, Revision 3, dated May 23, 1991; certificated in any category.

Compliance: Required as indicated, unless previously accomplished. To prevent uncommanded asymmetric movement of the leading edge slats due to failure of the No-Back brake combined with disconnect of the torque tube, accomplish the following:

(a) For Group 1 and 2 airplanes with leading edge slat offset gearbox No-Back brakes that have not been reworked prior to the effective date of this AD to limit the amount of grease used in the offset gearbox, in accordance with the Accomplishment Instructions, Part V, Offset Gearbox Inspection and Interim Rework, of Boeing Alert Service Bulletin 767-27A0095, Revision 1, dated February 22, 1990; Revision 2, dated January 31, 1991; or Revision 3, dated May 23, 1991:

(1) Within 2,000 flight hours after the effective date of this AD and thereafter at intervals not to exceed 3,000 flight hours, conduct a torque tube and overtravel stop inspection of the inboard and outboard leading edge slat drive system in accordance with the Accomplishment Instructions, Part I, of Boeing Alert Service Bulletin 767-27A0095, Revision 3, dated May 23, 1991. Repair or replace failed parts at the time specified in, and in accordance with, the instructions provided in, Parts I, II, III, IV, VI, and VII of that service bulletin, as applicable.

(2) Within 18 months after the effective date of, this AD, replace all inboard and outboard leading edge slat offset gearboxes with modified offset gearboxes in accordance with the Accomplishment Instructions, Part VII, of Boeing Alert Service Bulletin 767-27A0095, Revision 3, dated May 23, 1991. Accomplishment of this modification constitutes terminating action for the requirements of paragraph (a)(1) of this AD.

(b) For all Group 3 airplanes and for those Group 1 and 2 airplanes on which the leading edge slat offset gearbox No-Back brakes have been reworked prior to the effective date of this AD to limit the amount of grease used in the offset gearbox, in accordance with the Accomplishment Instructions, Part V, Offset Gearbox Inspection and Interim Rework, of Boeing Alert Service Bulletin 767-27A0095, Revision 1, dated February 22, 1990; Revision 2, dated January 31, 1991; or Revision 3, dated May 23, 1991: Within 24 months after the effective date of this AD, replace all inboard and outboard leading edge slat offset gearboxes with modified offset gearboxes in accordance with the Accomplishment Instructions, Part VII, of Boeing Alert Service Bulletin 767-27A0095, Revision 3, dated May 23, 1991.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may

be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

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

(e) The modification and inspection requirements shall be done in accordance with Boeing Alert Service Bulletin 767-27A0095, Revision 3, dated May 23, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment (39-8057, AD 91-21-10) becomes effective November 29, 1991.

Issued in Renton, Washington, on September 27, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-25712 Filed 10-24-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-ANE-02, Amendment No. 39-8035, AD 91-20-01]

Airworthiness Directives; General Electric Company (GE) CF6-45/-05 and CF6-80A Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain GE CF6-45/-05 and CF6-80A series turbofan engines, which requires ultrasonic and eddy current inspections of the high pressure compressor rotor (HPCR) stages 3-9 spool-shaft for cracks. This amendment is prompted by cracks found in HPCR stages 3-9 spools. This condition, if not corrected, could result in an uncontained engine failure.

DATES: Effective November 25, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of November 25, 1991.

ADDRESSES: The applicable service information may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, room 132, 111 Merchant Street, Cincinnati, Ohio 45246, or may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Karen Grant, 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) 273-7096.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (FAR) to include a new airworthiness directive, applicable to certain GE CF6-45/-05 and CF6-80A series turbofan engines, which requires ultrasonic and eddy current inspection of the HPCR stage 3-9 spools for cracks, was published in the **Federal Register** on February 26, 1991 (56 FR 7820).

Interested persons have been afforded an opportunity to participate in the making of this amendment. One comment was received, and the commenter expressed no objection to the adoption of the proposed rule.

Since issuance of the proposed rule, GE has revised GE CF6-50 Service Bulletin (SB) 72-1000, and CF6-80A SB 72-583. These revisions include updates of the HPCR stage 3-9 spools serial numbers (S/N) identified in Table 2 of CF6-50 SB 72-1000 and Table 1 of CF6-80A SB 72-583. Also, Paragraph 2F, of SB 72-583, was reworded for clarity. Therefore, since these SB revisions do not alter the proposed actions, this AD will include reference to CF6-50 SB 72-1000, Revision 1, dated March 28, 1991, and CF6-80A SB 72-583, Revision 3, dated July 24, 1991, for the accomplishment of the engine HPCR stage 3-9 spools inspections.

After review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described above. These changes will neither increase the economic burden on any operator nor increase the scope of the rule.

The economic analysis paragraph that is discussed below, has been revised to reflect the increase in the specified hourly labor rate from $40 an hour, as was cited in the preamble of the notice of proposed rulemaking (NPRM), to $55 an hour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD action to account an increase in various costs in the aviation industry.

There are approximately 203 GE CF6-45/-05 and CF6-80A series engines of the affected design installed on aircraft of U.S. registry which would be affected by this AD. It is estimated that it would take approximately 85 manhours per engine to accomplish the required actions and that the average labor cost would be $55 per manhour. Also, it is estimated that a material cost of $400 per engine would be incurred at each inspection. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,030,225.

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.

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 the 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 final 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, 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):

91-20-01—General Electric Company: Amendment 39-8035, Docket No. 91-ANE-02.

Applicability: General Electric Company (GE) CF6-45/-50 and CF6-80A series

turbofan engines installed on but not limited to, Airbus A300 and A310, Boeing 747 and 767, and McDonnell Douglas DC-10-15 and DC-10-30 aircraft.

Compliance: Required as indicated, unless previously accomplished.

To prevent uncontained engine failure, accomplish the following:

(a) At the next engine shop visit after the effective date of this AD but no later than 3,500 cycles in service after the effective date of this AD, ultrasonic and eddy current inspect affected high pressure compressor rotor (HPCR) stage 3-9 spools according to the following:

(1) Inspect CF6-45/-50 HPCR stage 3-9 spools, Part Numbers (P/N) 9136M89G02, 9136M89G03, 9136M89G06, 9136M89G08, 9253M85G01, 9253M85G02, 9273M14G01, and 9331M29G01, having a part serial number (S/N) listed in Table 2 of GE CF6-50 Service Bulletin (SB) 72-1000, Revision 1, dated March 28, 1991, in accordance with the Accomplishment Instructions in GE CF6-50 SB 72-1000, Revision 1, dated March 28, 1991.

(2) Inspect CF6-80A HPCR stage 3-9 spools, P/N 9136M89G10, having a part S/N listed in Table 1 of GE CF6-80A SB 72-583, Revision 3, dated July 24, 1991, in accordance with the Accomplishment Instructions in GE CF6-80A SB 72-583, Revision 3, dated July 24, 1991.

(3) Remove from service prior to further flight HPCR stage 3-9 spools which meet or exceed the reject criteria established in Sections 2.C and 2.D of GE CF6-50 SB 72-1000, Revision 1, dated March 28, 1991, or CF6-80A SB 72-583, Revision 3, dated July 24, 1991, as appropriate.

(4) For the purpose of this AD, an engine shop visit is defined as the induction of the engine into a shop for maintenance involving the separation of any major module.

(b) Inspections of CF6-45/-50 HPCR stages 3-9 spools referenced in paragraph (a)(1) of this AD, which have been performed in accordance with the Accomplishment Instructions of any revision level of GE CF6-50 SB 72-888 or GE CF6-50 SB 72-1000, prior to the effective date of this AD, fulfills the requirements of paragraph (a)(1) of this AD.

(c) Inspections of CF6-80A HPCR stages 3-9 spools referenced in paragraph (a)(2) of this AD, which have been performed in accordance with the Accomplishment Instructions of any revision level of GE CF6-80A SB 72-500 or CF6-80A SB 72-583 prior to the effective date of this AD, fulfills the requirements of paragraph (a)(2) of this AD.

(d) 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.

(e) 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, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803-5299.

(f) The inspections shall be done in accordance with the following GE documents:

Document	Page No.	Issue/ revision	Date
GE CF6-50	3	Original	12/14/90
SB 72-1000.	1, 2, 4-25	Revision 1	3/28/90
Total Pages: 25			
GE CF6-80A.	3, 6, 7, 8, 9, 11-21	Original	12/20/90
SB 72-583	10	Revision 1	3/18/91
	2, 4		
	1, 5		
	Revision 2		
	Revision 3		
	7/15/91		
	7/24/91		
Total Pages: 21			

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 General Electric Aircraft Engines, CF6 Distribution Clerk, Room 132, 111 Merchant Street, Cincinnati, Ohio 45246. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, Room 311, 12 New England Executive Park, Burlington, Massachusetts, or at the Office of the Federal Register, 1100 L Street, NW, room 8401, Washington, DC.

This amendment (39-8035, AD 91-20-01) becomes effective November 25, 1991.

Issued in Burlington, Massachusetts, on September 18, 1991.

Mark. C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 91-25716 Filed 10-24-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-ANE-04; Amendment 39-8036, AD 91-20-02]

Airworthiness Directives; General Electric Company (GE) CF6-80C2 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to GE CF6-80C2 series turbofan engines, which requires initial and repetitive inspections to detect fuel manifold leaks. The amendment also requires the replacement of affected fuel manifold systems with an improved manifold design. This amendment is prompted by a reported failure of a fuel manifold weld joint. This condition, if not corrected, could result in an engine fire.

DATES: Effective November 25, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 25, 1991.

ADDRESSES: The applicable service information may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, room 132, 111 Merchant Street, Cincinnati, Ohio 45246. This information 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: Karen Grant, Engine Certification Branch, Engine & Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803-5299; telephone (617) 273-7096.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (FAR) to include a new airworthiness directive, applicable to certain GE CF6-80C2 series turbofan engines, which requires initial and repetitive inspections to detect fuel manifold leaks, and replacement of affected fuel manifolds with an improved manifold design, was published in the **Federal Register** on February 20, 1991 (56 FR 6820).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

One commenter requested that the inspection of the engine drain mast be changed from every day of operation to every other day of operation.

The FAA does not concur with the commenter. Adequate substantiating data has not been submitted to show an equivalent level of safety. Thus, the inspection interval will not be extended.

The same commenter also requested that the requirement to inspect the fuel supply manifold at every scheduled core cowl opening after the initial inspection be eliminated in favor of a repetitive inspection within 500 hours. This change is also reflected in Revision 1 to GE Service Bulletin (SB) 73-115 which was issued after the proposal.

The FAA concurs with the commenter. The intent is to reinspect the fuel supply manifold within 500 hour intervals. Thus, paragraph (a)(2) has been rewritten to incorporate the commenter's suggestion. In addition, the AD will include reference to GE CF6-80C2 series SB 73-115, Revision 1, dated

February 5, 1991, for the accomplishment of the fuel manifold inspection. However, the requirement that the initial fuel supply manifold inspection be conducted at the next scheduled core cowl opening after the effective date of the AD remains. The intent of the AD is to initially inspect the fuel supply manifold at the earliest regularly scheduled and required maintenance check. Thus, the initial inspection requirement allows operators to schedule the accomplishment of the initial inspection at the same time as other periodically required maintenance.

The other commenter requested that the fuel manifold inspection interval be increased from 500 hours time-in-service (TIS) to 600 hours TIS.

The FAA does not concur with the commenter. No substantiating data has been submitted to show an equivalent level of safety for using the proposed inspection interval. Thus, the inspection interval will not be increased.

Since issuance of the proposal, GE has revised SB 73-114, Revision 1, dated December 6, 1990, which was referenced in the proposed rule. This revision reflects rewording for clarity. Therefore, since this SB revision does not alter the proposed actions, the AD will include reference to GE CF6-80C2 series SB 73-114, Revision 2, dated February 4, 1991, for the accomplishment of the fuel manifold replacement.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The economic analysis paragraph that is discussed below, has been revised to reflect an increase in the specified hourly labor rate from $40 an hour, as was cited in the preamble of the notice of proposed rulemaking (NPRM), to $55 an hour. Also, the cost of required parts has increased from $12,000 to an estimated $12,750 per engine because of a price increase for the part. Therefore, it is necessary to increase amounts used in calculating the cost impact associated with AD action to account for these increased costs.

There are approximately 128 GE CF6-80C2 series turbofan engines of the affected design installed on aircraft of U.S. registry which would be affected by this AD. It is estimated that it would take approximately 1 manhour per engine for each inspection, that each engine would require 8 inspections, and that the average labor cost would be $55 per manhour. Also, it is estimated that it would cost $12,750.00 per engine to replace affected fuel manifold systems. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,688,320.

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.

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 final 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, 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):

91-20-02—*General Electric Company:* Amendment 39-8036, Docket Number 91-ANE-04.

Applicability: General Electric Company (GE) CF6-80C2 series turbofan engines, installed on, but not limited to, Airbus A300 and A310, Boeing 747 and 767, and McDonnell Douglas MD-11 aircraft.

Compliance: Required as indicated, unless previously accomplished.

To prevent engine fire, accomplish the following:

(a) Visually inspect left-hand fuel manifolds, Part Numbers (P/N) 1303M31G06, 1303M31G07, and 1303M31G08, and right-hand fuel manifolds, P/N 1303M32G06, 1303M32G07, and 1303M32G08, in accordance with the Accomplishment Instructions contained in GE CF6-80C2 Service Bulletin (SB) 73-115, Revision 1, dated February 5, 1991, as follows:

(1) Inspect the engine drain mast for fuel leakage every day of operation, after the effective date of this AD.

(2) Inspect the circumferential fuel supply manifold at the next scheduled core cowl opening, after the effective date of this AD, and thereafter, reinspect at intervals not to exceed 500 hours time-in-service since last inspection.

(3) Remove from service prior to further flight, fuel manifolds that exhibit leakage, and replace with serviceable parts.

(b) Replace left-hand fuel manifolds, P/N 1303M31G06, 1303M31G07, and 1303M31G08, with left-hand fuel manifold, P/N 130M31G10, and replace right-hand fuel manifolds, P/N 1303M32G06, 1303M32G07, and 1303M32G08, with right-hand fuel manifold, P/N 1303M32G10, in accordance with the Accomplishment Instructions of GE SB 73-114, Revision 2, dated February 4, 1991, at next engine removal, after the effective date of this AD, but no later than June 30, 1993.

(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, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803-5299.

(e) The inspection shall be done in accordance with the following General Electric documents:

Document No.	Page No.	Issue/ revision	Date
GE CF6-80C2	3 and 4	Original	12/4/90
SB 73-114	2	Revision 1.	12/6/90
	1, 5-31	Revision 2.	2/4/91
Total Pages: 31			
GE CF6-80C2	2-7	Original	12/5/90
SB 73-115	1	Revision 1.	2/5/91
Total Pages: 7			

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 General Electric Aircraft Engines, CF6 Distribution Clerk, Room 132, 111 Merchant Street, Cincinnati, Ohio 45246. 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 becomes effective November 25, 1991.

Issued in Burlington, Massachusetts, on September 18, 1991.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 91-25717 Filed 10-24-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-74-AD; Amendment 39-8050; AD 91-21-03]

Airworthiness Directives; McDonnell Douglas Model DC-9 Series Airplanes Modified in Accordance With Heath Tecna Aerospace Company Supplemental Type Certificates (STC) SA1429NM, SA2130NM, SA2153NM, SA2621NM, or SA4744NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-9 series airplanes, which requires visual inspection of the electrical wiring along the left and right overhead stowage compartment rail assemblies in the vicinity of each electrical bonding strap for evidence of arcing, burning, or chafing, and repair, if necessary; and modification of the electrical bonding strap installation of the left and right overhead stowage compartment rail assemblies. This amendment is prompted by reports of burned wire bundles caused by short circuits resulting from chafed wiring. This condition, if not corrected, could result in fire and smoke in the passenger cabin.

DATES: Effective November 29, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 29, 1991.

ADDRESSES: The applicable service information may be obtained from Heath Tecna Aerospace Company, 19819 84th Avenue South, Kent, Washington 98032. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street SW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen S. Oshiro, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; telephone (206) 227-2793. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain McDonnell Douglas Model DC-9 series airplanes, which requires visual inspection of electrical wiring, and modification of the electrical bonding strap installation along the left and right stowage compartment rail assemblies, was published in the **Federal Register** on April 24, 1991 (56 FR 18787).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The Air Transport Association (ATA), on behalf of one of its member operators, commented that approximately 168 manhours per airplane would be needed to perform the inspections and modifications rather than 62 manhours as estimated by the FAA, and that the required work would add an excessive amount of "unscheduled down time" to a "C" check. One ATA member operator proposed that the compliance time be increased from the proposed 18 months to 36 months to allow accomplishment of the inspections and modifications furing a "D" check. The FAA does not concur with this request. The commentor's suggested twofold increase in compliance time would expose the fleet to the potentially unsafe condition for an unacceptably long period of time. Furthermore, a review of FAA AD 90-09-04, Amendment 39-09-04 (55 FR 15222, May 23, 1990), which was issued to correct the same wire bundle chafing condition on McDonnell Douglas Model DC-9 airplanes delivered with the ESCI interior as original equipment, revealed that the 18-month compliance time is adequate to accomplish the required actions.

This ATA member operator also requested that inspection and modification of the bonding strap installations be limited to certain specific locations instead of the entire airplane, since not all of the bonding straps are in the vicinity of wire bundles. This comment was based on an inspection performed by the operator on three of its aircraft. The FAA does not concur with this request. Differences in the wire bundle installations can exist among the airplanes of an operator's fleet; a limited inspection program based on the inspection of only a few sample airplanes could result in the unsafe condition going undetected on airplanes that have different wire bundle installation configurations.

All other commentors responding to the Notice of Proposed Rulemaking expressed no objections to the proposal.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The format of the final rule has been restructued to be consistent with the standard **Federal Register** style.

There are approximately 220 McDonnell Douglas Model DC-9 series airplanes of the affected design in the worldwide fleet. It is estimated that 106 airplanes of U.S. registry will be affected by this AD, that it will take approximately 62 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. The cost for required parts is expected to be negligible. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $361,460.

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.

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 final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obatined from the Rules Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator.

the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

91–21–03. McDonnell Douglas: Amendment 39–8050. Docket No. 91–NM–74–AD.

Applicability: Model DC–9 series airplanes, listed in Heath Tecna Service Bulletin ESCI–25–A1, dated April 30, 1990, certificated in any category.

Compliance: Required within 18 months after the effective date of this AD, unless previously accomplished.

To prevent the occurrence of fire and smoke in the passenger cabin, accomplish the following:

(a) Visually inspect the electrical wiring along the left and right overhead stowage compartment rail assemblies in the vicinity of each electrical bonding strap for evidence of arcing, burning, or chafing. If damage is found, prior to further flight, repair in accordance with McDonnell Douglas DC–9 Maintenance Manual, Chapters 20–50–01 and 20–50–02.

(b) Modify the electrical bonding strap installation of the left and right overhead stowage compartment rail assemblies in accordance with Heath Tecna Aerospace Co. Alert Service Bulletin ESCI–25–A1, dated April 30, 1990.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

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

(e) The modification requirements of this rule shall be done in accordance with Heath Tecna Aerospace Company Alert Service Bulletin ESCI–25–A1, dated April 30, 1990. 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 Heath Tecna Aerospace Company, 19819 84th Avenue South, Kent, Washington 98032. Copies may be inspected at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment (39–8050, AD 91–21–03) becomes effective November 29, 1991.

Issued in Renton, Washington, on September 24, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–25718 Filed 10–24–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8371]

RIN 1545–A076

Requirements of a DISC

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations that relate to Domestic International Sales Corporations ("DISCs"). These regulations remove the requirements that a DISC have "paid-in" capital and that a DISC maintain a bank account. The United States Tax Court held these requirements invalid in *Durbin Paper Stock Company, Incorporated* v. *Commissioner*, 80 T.C. 252 (1983) ("*Durbin Paper*"). The regulations are being amended to reflect this holding.

EFFECTIVE DATE: These regulations are effective for taxable years ending after December 31, 1971.

FOR FURTHER INFORMATION CONTACT: Thomas L. Ralph of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:INTL: Br6 (INTL–106–90) (202–377–9059, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 992 of the Internal Revenue Code of 1986. These amendments conform the regulations to the holdings of Durbin Paper by removing the "paid-in" capital and bank account requirements for DISCs. These amendments are being issued as final regulations without prior notice and public procedure because they simply remove requirements formerly placed upon taxpayers.

Explanation of Provisions

The regulations presently impose two requirements on a corporation to qualify as a DISC that were held invalid in Durbin Paper. Section 1.992–1(a)(6) requires a corporation to maintain a bank account, while § 1.992–1(i) imposes a time limit within which a corporation must satisfy the requirement. Section 1.992–1(d) requires a corporation to have "paid-in" capital. These amendments conform the regulations to the holdings in Durbin Paper.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f)(3) of the Internal Revenue Code, these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Thomas L. Ralph of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing the regulations.

List of Subjects in 26 CFR 1.991–1 through 1.997–1

Exports, Income taxes, Reporting and recordkeeping requirements, United States investments abroad.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAX REGULATIONS; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

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

Authority: Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805 * * *

Par. 2. Section 1.992–1 is amended by moving and reserving paragraph (a)(6), by revising paragraph (d)(1) to read as follows, and by removing paragraph (i).

§ 1.992–1 Requirements of a DISC

* * * * *

(d) *Capitalization requirement*—(1) *In general.* To qualify as a DISC for a taxable year, a corporation must have, on each day of that taxable year, only one class of stock. The par value (or, in the case of stock without par value, the stated value) of the corporation's outstanding stock must be on each day of the taxable year at least $2,500. In the case of a corporation which elects to be treated as a DISC for its first taxable year, the requirements of this paragraph (d)(1) are satisfied if the corporation has no more than one class of stock at any time during the year and if the par value (or, in the case of stock without par value, the stated value) of the corporation's outstanding stock is at least $2,500 on the last day of the period within which the election must be made and on each succeeding day of the year. For purposes of this paragraph (d)(1), the stated value of shares is the aggregate amount of the consideration paid for such shares which is not allotted to paid in surplus, or other surplus. The law of the State of incorporation of the DISC determines what consideration may be used to capitalize the DISC. A corporation will not be a qualified DISC unless at least $2,500 of valid consideration was used for this purpose. If a corporation has a realized or unrealized loss during a taxable year which results in the impairment of all or part of the capital required under this paragraph (d)(1), that impairment does not result in disqualification under this paragraph (d)(1), provided that the corporation does not take any legal or formal action under State law to reduce capital for that year below the amount required under this paragraph (d)(1).

* * * * *

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved: August 19, 1991.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 91-25669 Filed 10-24-91; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[Attorney General Order No. 1540-91]

Delegation of Attorney General Authority Under 10 U.S.C. 374(b)(2)(E)

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order will amend § 0.55 of part 0 of title 28 of the Code of Federal Regulations to delegate to the Assistant Attorney General, Criminal Division, the Attorney General's authority under 10 U.S.C. 374(b)(2)(E) to approve the use of military equipment by Department of Defense personnel to provide transportation and base of operations support in connection with civilian law enforcement operations. This delegation is intended to enhance the efficiency and consistency of the approval process.

EFFECTIVE DATE: October 11, 1991.

FOR FURTHER INFORMATION CONTACT: Robert S. Mueller, III, Assistant Attorney General, Criminal Division, U.S. Department of Justice, Washington, DC 20530, Telephone: (202) 514-2601.

SUPPLEMENTARY INFORMATION: Subject to joint approval by the Secretary of Defense, the Attorney General, and the Secretary of State in the case of a law enforcement operation outside the land area of the United States, section 374(b)(2)(E) of title 10 of the United States Code authorizes Department of Defense personnel to operate military equipment to provide transportation and base of operations support for civilian law enforcement operations. This order delegates to the Assistant Attorney General, Criminal Division the Attorney General's authority to approve such operations under 10 U.S.C. 374(b)(2)(E).

This order is a matter of internal Department management. In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. 5 U.S.C. 605(b). This rule is not a major rule within the meaning of section 1(b) of Executive Order No. 12291, nor does it have Federalism implications warranting the preparation of a Federalism Assessment in accordance with section 6 of Executive Order No. 12612.

List of Subjects in 28 CFR Part 0

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

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

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

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515-519.

2. Section 0.55 is amended by adding paragraph (u) to read as follows:

§ 0.55 General functions.

* * * * *

(u) Exercise of the authority vested in the Attorney General under 10 U.S.C. 374(b)(2)(E) to approve the use of military equipment by Department of Defense personnel to provide transportation and base of operations support in connection with a civilian law enforcement operation.

Dated: October 11, 1991.

William P. Barr,

Acting Attorney General.

[FR Doc. 91-25628 Filed 10-24-91; 8:45 am]

BILLING CODE 4410-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 61

[CC Docket No. 90-132, FCC No. 91-251]

Competition in the Interstate Interexchange Marketplace

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Report and Order adopts certain of the proposals set forth in the Notice of Proposed Rulemaking, CC Docket No. 90-132, 55 FR 18007 (1990). The order finds that most of AT&T's outbound business services are subject to substantial competition and adopts further streamlined regulation for these services. It also adopts a contract carriage policy which allows interexchange carriers to negotiate service agreements that address customers' specific needs. Finally, the document adopts certain modifications to FCC rules governing AT&T's provision of customer premises equipment and enhanced services. The effect of this order will be to benefit consumers by unleashing competitive forces in market segments where such forces are strongest.

EFFECTIVE DATE: November 25, 1991.

FOR FURTHER INFORMATION CONTACT: Gary Phillips, (202) 632-4047 or Andy Lachance, (202) 632-4047, Policy and Program Planning Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION: On April 13, 1990, we released a Notice of Proposed Rulemaking to examine the state of competition in the interstate interexchange market and adapt our regulatory policies, as appropriate, to reflect this competition. We now adopt some of the proposals in the Notice and modify part 61 of our rules accordingly. Specifically, we further streamline our

tariff regulation of certain of AT&T's business services, and we authorize interexchange carriers (IXCs) to offer services pursuant to individually negotiated customer contracts that are generally available to other similarly situated customers. We also amend certain regulations governing AT&T's provision of customer premises equipment (CPE) and enhanced services, but retain the current CPE bundling and network disclosure rules.

In this decision, we affirm our tentative conclusion that the growth of competition in the business services segment of the long-distance marketplace warrants regulatory changes. While we recognize that the long-distance marketplace is not perfectly competitive, we conclude that competition for most business services is sufficiently effective to permit the changes adopted herein.

Assessment of Competition for Business Services

The Notice tentatively concluded that the long-distance marketplace is increasingly competitive and that competition for most business services, in particular, is especially vigorous.

With minor exceptions, we now conclude that the business services market is substantially competitive. We base this conclusion in part on our finding that the business services marketplace is characterized by substantial demand and supply elasticities that limit AT&T's ability to exercise market power in this market segment. We also rely on AT&T's pricing of business services under price cap regulation and unrefuted evidence that AT&T's market share is substantially lower in business services than it is in other markets. In reaching these conclusions, we are cognizant that AT&T is still by far the largest IXC and that it may have certain advantages in the marketplace by virtue of this fact. Nevertheless, such advantages do not negate the significant forces that are driving competition in this market segment.

We, first, affirm our tentative conclusion that business customers are to a large degree demand-elastic and will switch carriers in order to obtain price savings and desired features. Large user comments in this proceeding provide compelling evidence of the elasticity of their demand. Thus, large users state that before procuring telecommunications services, they routinely request proposals from carriers other than AT&T and accord full consideration to these proposals. They state, moreover, that they consider the offerings of several of AT&T's competitors to be equivalent in quality to those of AT&T. The record also supports our tentative conclusion that large users tend to be more sophisticated and knowledgeable purchasers of telecommunications services than other customers.

We, second, affirm our tentative conclusion that supply elasticities in the interstate interexchange marketplace are high because of the apparent excess supply capacity of existing competitors in the marketplace. AT&T's analysis of traffic volumes and peak traffic levels appears to demonstrate that MCI and Sprint could immediately absorb as much as fifteen percent of AT&T's business day traffic without any expansion of their existing capacity. Moreover, the record shows that in three to six months time MCI and Sprint could begin adding new capacity to their networks, reducing their need to overflow any traffic onto AT&T's network and substantially increasing their own present and future capabilities. These studies, together, show that AT&T's competitors have sufficient capacity available immediately and in the short-term to limit AT&T's ability to charge supra competitive prices.

AT&T's pricing of business services since the implementation of price cap regulation lends additional support to our conclusion about the competitive of business services. After 638 tariff filings in the Business Services Basket (Basket 3), AT&T has yet to exceed the price cap ceiling for that Basket. Moreover, all but one of AT&T's Basket 3 filings have been below the applicable upper service rate band.

We also note that AT&T's market share, both in terms of revenues and minutes of use, appears to be significantly lower for business services than for other services. Unrefuted evidence indicates that AT&T's market share—in revenues and in minutes—of business services outside of Baskets 1 and 2 is in the range of about fifty percent. In addition, AT&T provides data indicating that its share of lower volume Basket 3 service revenues approximates 55 percent.

Some parties, citing a study commissioned by CompTel, argue that AT&T enjoys switched access cost advantages over other IXCs—particularly, smaller or "third tier" IXCs—that make it difficult for these carriers to compete effectively with AT&T. They argue that this alleged access cost advantage will increase significantly if the Commission does not require LECs to continue "equal charge per unit of traffic" pricing of transport services when that MFJ requirement expires.

We find that the CompTel study may yield misleading results for two reasons. First, CompTel's study addresses only transport costs. While transport costs represent about twenty percent of an IXC's total costs (and forty percent of its switched access costs), CompTel's study does not consider other types of access and non-access costs, including those disproportionately borne by AT&T. Second, CompTel's methodology may tend to overstate third-tier IXC transport costs. In addition, CompTel's study of switched and special access costs does not consider non-access-related costs.

CompTel and others not only claim that AT&T has access cost advantages now, but also assert that implementation of the current part 69 transport rules in lieu of equal charge per unit of traffic pricing would shift in the relative access costs of AT&T and most of AT&T's competitors, thus enhancing AT&T's market power. In the Transport proceeding, we require LECs to maintain the current transport rate structure pending further study of transport pricing. Therefore, the expiration of the MFJ requirement will not have any impact upon the competitiveness of interstate interexchange services.

Some parties argue that AT&T enjoys market power by virtue of its size and superior resources, financial strength, and technical capabilities. An incumbent firm in virtually any market will have certain advantages. Such advantages do not, however, mean that these markets are not competitive. We find that any advantages that AT&T may have by reason of its size and resources do not preclude the effective functioning of the business services market.

Some parties allege that competition is less vigorous in rural areas than elsewhere. These arguments ignore the fact that AT&T's tariffs will remain subject to our geographic rate averaging requirements. Moreover, contrary to the arguments of some parties, it does not appear that AT&T's Tariff 12s have undermined geographic rate averaging.

We conclude that the private line marketplace is, in general, substantially competitive, except in the case of analog private lines. Private line services are used primarily by large businesses that tend to be highly demand elastic and that are the focal point of intense competition in the marketplace. On the other hand, the analog private line market is shrinking, as customers migrate to more efficient, high-quality, multiuse digital services. We therefore

believe that AT&T's analog private line services are less subject to competitive constraints than other business services.

Further Streamlining of Business Services

The Notice tentatively concluded that current tariff filing requirements for AT&T's business services appear to impose undue costs without countervailing benefits. In light of these considerations, the Notice proposed maximum streamlined regulation for AT&T's Basket 3 services and for AT&T services not subject to price cap regulation.

We now find that further streamlining of our regulation of most of AT&T's Basket 3 services and most of its services outside of price cap regulation would be in the public interest. Specifically, we find that the public interest would be served by further streamlining of: (1) All of AT&T's Basket 3 services, other than analog private line services; and (2) all services outside of price cap regulation, including Tariff 12 services, but excepting special construction services relating to nonstreamlined services and promotional offerings for nonstreamlined services. In addition, we conclude that we should make the effectiveness of streamlining of Tariff 12 services contingent upon a favorable finding with respect to the lawfulness of Tariff 12s in the remand investigation ordered by the United States Court of Appeals for the District of Columbia Circuit.

Given the competitiveness of the business services market, advance scrutiny of most AT&T business service tariffs no longer appears necessary to protect the public interest. Unlawful tariffs should be rare, and in those few instances in which they may occur, remedial action can be taken after the tariffs become effective. Moreover, current tariff filing requirements for most business services also impose both direct and indirect costs on users.

Nevertheless, rather than forgo all advance review of these streamlined tariffs, we believe that, at least initially under this new regulatory regime, limited advance review of AT&T's streamlined tariffs is appropriate. We will allow AT&T to file its business service tariffs subject to further streamlining on fourteen days notice. In light of the competitiveness of business services, such tariffs shall be presumed lawful for purposes of advance tariff review. Accordingly, AT&T need not file cost support with these tariffs, and price cap ceilings, bands, and rate floors will no longer apply. Interested parties may file petitions against these tariffs pursuant to the timetables prescribed in our existing rules. This advance review will provide us with an opportunity to identify and suspend and/or reject tariffs where necessary before they go into effect. We will reject any tariffs that we find on their face conflict with a statute or an agency regulation or order. In addition, we retain authority to institute at any time on our own motion investigations of AT&T tariffs after they become effective and to declare tariffs unlawful, if necessary. We will also adjudicate in the complaint process claims of unlawful actions by AT&T.

We find, however, that further streamlining of our regulation of AT&T's analog private line services would not be in the public interest. We therefore retain price cap regulation for AT&T's analog private line services.

The Notice tentatively concluded that we have ample legal authority to implement maximum streamlined regulation. We noted that section 203(b)(2) of the Act grants us authority "for good cause shown" to "modify" the notice period for tariff filings "either in particular instances or by general order applicable to special circumstances of conditions. We conclude: that further streamlining of our regulation of AT&T's business services, as outlined above, is authorized under section 203(b)(2) of the Act.

Contract Carriage for Business Services

The Notice proposed two mechanisms for allowing individually negotiated offerings—a contract carriage proposal and a private carriage proposal. We now adopt, with certain modifications, the contract carriage proposal. Specifically, we permit IXCs to offer services pursuant to individually negotiated contracts. AT&T may offer contract rates only for services subject to further streamlined regulation. In addition, at least fourteen days prior to the effective date of its contracts, AT&T must file with the Chief, Common Carrier Bureau, a tariff, based on the terms of the contract containing all information required under section 203 of the Act. All contracts must be made generally available to similarly situated customers under substantially similar circumstances so as to comply with the nondiscrimination provisions of the Act.

We conclude that permitting AT&T to offer contract rates for services subject to further streamlining is in the public interest. In particular, we find that allowing AT&T greater freedom to enter into contracts with customers for these business services will benefit consumers without increasing the risk of anticompetitive or other undesirable behavior by AT&T.

We require AT&T to file, fourteen days prior to the effective date of each of its customer contracts, a tariff summarizing that contract and containing the following information: (1) The term of the contract, including any renewal options; (2) a brief description of each of the services provided under the contract; (3) minimum volume commitments for each service; (4) the contract price for each service or services at the volume levels committed to by the customers; (5) a general description of any volume discounts built into the contract rate structure; and (6) a general description of other classifications, practices, and regulations affecting the contract rate. We find that the provision of this information will satisfy the requirements of section 203(a) of the Act, while avoiding disclosure of customer proprietary information or information that might increase the risk of tacit collusion in the marketplace.

We find that we have ample authority under the Communications Act to adopt a contract-based rates policy. We conclude that this policy is consistent with section 203 of the Act. We also conclude that the contract carriage approach we are authorizing is consistent with the nondiscrimination provisions of the Act.

In the event a complaint is filed alleging that contract rates are discriminatory, the complainant, as is always the case under section 208 of the Act, bears the burden of proof. Accordingly, success in such a proceeding would require the complaining party to make an initial *prima facie* case of unreasonable discrimination. In order to establish such a case, the complainant must show that: (1) A customer seeks substantially the same service arrangement under the same terms and conditions that were made available to another customer; and, (2) the carrier refused to make service available to that customer on those terms. Alternatively, the complainant may show that the contract is, by its terms, not generally available to other similarly situated customers. If a complainant establishes this *prima facie* case, the burden would then shift to the carrier to show that the discrimination was reasonable.

Regulatory Treatment of Other Services

We find that the lack of 800 number portability is an impediment to full competition in 800 services. Although it appears that this factor materially affects only a minority of 800 service subscribers, we are concerned that it may be a significant enough factor for a

sufficient number of customers to have an overall impact on competition in 800 services.

Consistent with this finding, we decline to extend further streamlined regulation to AT&T's 800 services at this time. We instead retain price cap regulation of these services until the general availability of 800 number portability.

800 bundling presents more difficult issues. Because some customers may, as a practical matter, be unable to change their 800 number without incurring substantial costs, we are not convinced that AT&T currently lacks the ability to leverage market power in 800 or inbound services with respect to these customers through the inclusion of 800 and inbound services in contracts and Tariff 12s. Therefore, until 800 numbers are portable, we preclude AT&T from including in contracts and new Tariff 12 options any 800 or inbound service.

While we prohibit AT&T, until 800 numbers are portable, from entering into new contracts or Tariff 12 options that include 800 service or an inbound component, we do not believe the public interest would, on balance, best be served by invalidating Tariff 12 options already on file with the Commission at the time this Order was adopted merely because they include inbound service. Existing Tariff 12 customers may experience undue hardship if they have to reconfigure their networks to remove the 800 component. Therefore, we permit AT&T to offer inbound service in Tariff 12 options that were filed prior to the time this order was adopted.

The Notice tentatively concluded that recent developments appear to have lessened barriers to effective competition in the provision of operator services. We find that while significant barriers to operator services competition have clearly eroded, it is not clear from the record the extent to which other barriers may yet remain. As a result, firm conclusions about the nature and extent of operator services competition are premature at this time. We also find that there is not enough evidence in the record at this time on which to draw definitive conclusions about the competitiveness of IMTS.

Based upon our finding that there are unresolved issues and insufficient information in the record about the competitiveness of Basket 1 operator services and IMTS, we decline to adopt regulatory changes for these services at this time. Moreover, although it appears that residential and small business services are becoming increasingly competitive, we believe that we should proceed with particular caution with respect to these services. We therefore retain price cap regulation for Basket 1 residential and small business services as well.

Rules Governing AT&T's Provision of CPE and Enhanced Services

The Notice also proposed certain changes in our rules governing AT&T's provision of CPE and enhanced services. In particular, we proposed to modify some of the nonstructural safeguards and comparably efficient interconnection (CEI) requirements established in the AT&T Structural Relief Order and the Computer III Inquiry. We also sought comment on whether changes should be made in our policies precluding carriers from bundling CPE with network services or in our network disclosure requirements applicable to AT&T.

We now affirm our tentative conclusions in the Notice and eliminate the nondiscrimination reporting requirements for services subject to further streamlined regulation as well the audit requirement. We have found that there is effective competition among IXCs in most business services. In light of this finding, current audit and nondiscrimination reporting requirements no longer appear to be necessary.

We now eliminate the CEI requirements for enhanced services that rely exclusively on basic services subject to further streamlined regulation. Given the demonstrated competitiveness of AT&T's business services, the CEI requirements are no longer necessary to ensure that AT&T provides nondiscriminatory access to these services. Moreover, both the CEI filing requirement and the CEI parameters impose costs on consumers.

We find that the current bundling restrictions and network disclosure rules should be retained. We find that the risk of an adverse effect upon competition or reduced consumer choice resulting from changes in these rules currently outweighs the potential benefits that the suggested changes offer.

Regulatory Flexibility Act

1. In the Notice, we asserted that the proposals contained in this rulemaking proceeding apply to AT&T; therefore, we certified that the Regulatory Flexibility Act of 1980 (RFA) was inapplicable to this proceeding due to the lack of a significant economic impact on a substantial number of small business entities, as defined by section 601(3) of the RFA. Nevertheless, several parties argue that the Commission has violated the RFA by failing to perform an initial regulatory flexibility analysis. They assert that the RFA requires a detailed flexibility analysis since the proposed rule will "impact", "burden" or "affect" a significant number of small business entities. We find that the commenters have misconstrued the RFA and relevant case authority. Section 605(b) of the RFA permits an agency to forego either an initial or final regulatory flexibility analysis "if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small business entities." In addition, the United States Court of Appeals for the District of Columbia Circuit has held that an agency's obligation to prepare a flexibility analysis is limited to situations in which small business entities are directly subject to the proposed rule. Therefore, we conclude that since the rule changes only apply to AT&T, the RFA requirements are inapplicable to this proceeding.

2. The Secretary shall send a copy of this Order, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 605(b) of the RFA. Public Law No. 96–354, 94 Stat. 1167, 5 U.S.C. 601 *et seq.* (1981).

Ordering Clauses

1. Accordingly, *it is ordered,* That pursuant to authority contained in sections 1, 4, 201–205 and 208 of the Communications Act of 1934, as amended, 47 U.S.C. sections 151, 154, 201–205, and 208, part 61 of the Commission's Rules, 47 CFR part 61 Is Amended as set forth below.

2. *It is Further Ordered,* That the policies, rules and requirements set forth herein Are Adopted.

3. *It is Further Ordered,* That the Chief, Common Carrier Bureau is delegated authority to act upon matters pertaining to implementation of the policies, rules and requirements set forth herein.

4. *It is Further Ordered,* That the Department of Justice's request that the Commission accept its September 28, 1990 reply comments under this docket is Granted.

5. *It is Further Ordered,* That the provisions in this Report and Order will be effective 30 days after **Federal Register** publication.

List of Subjects in 47 CFR Part 61

Communications common carriers, Regulation common carrier.

Rule Changes

Title 47 of the Code of Federal Regulations, part 61, is amended as follows:

1. The authority citation for part 61 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply sec. 203, 48 Stat. 1070; 47 U.S.C. 203.

2. Section 61.3 is amended by redesignating paragraphs (m), (n), (o), (p), (q), (r), (s), (t), (u), (v), (w), (x), (y), (z), (aa), (bb), (cc), (dd), (ee), (ff), (gg), (hh), (ii), and (jj) as paragraphs (n), (o), (p), (q), (r), (s), (t), (u), (v), (w), (x), (y), (z), (aa), (bb), (cc), (dd), (ee), (ff), (gg), (hh), (ii), (jj), and (kk), and adding new paragraph (m) to read as follows:

§ 61.3 Definitions.

* * * * *

(m) *Contract-based tariff.* A tariff based on a service contract entered into between an interexchange carrier subject to § 61.42 (a) through (c) or a nondominant carrier and a customer.

* * * * *

3. Section 61.33 is amended by redesignating paragraph (f) as paragraph (f)(1) and adding paragraph (f)(2) above the note to read as follows:

§ 61.33 Letters of Transmittal.

* * * * *

(f) (1) * * *

(2) For contract-based tariffs defined in § 61.3(m), a separate letter of transmittal must accompany each tariff filed. The transmittals must be numbered in a series separate from transmittals for non-contract tariff filing. Numbers must appear on the face of the transmittal and be in the form of "CTT No. _____", using CTT as an abbreviation for contract-based tariff transmittals. Contract-based tariffs must also be numbered in a series separate from non-contract-based tariffs. Numbers must be in the form of "CT No. _____", using CT as an abbreviation for contract-based tariffs. Each contract-based tariff must be assigned a separate number. Transmittals and tariffs subject to this paragraph shall be filed beginning with the number "1" and shall be numbered consecutively.

* * * * *

4. Section 61.38(a) is amended by revising the last sentence to read as follows:

§ 61.38 Supporting information to be submitted with letters of transmittal.

(a) * * * This section (other than the preceding sentence of this paragraph) shall not apply to tariff filings proposing rates for services identified in § 61.42 (a), (b), (d), (e), and (g), promotional offerings that relate to services subject to price cap regulation, or to tariff filings, other than promotional filings, filed on 14 days notice pursuant to § 61.58(c)(6).

* * * * *

§ 61.41 [Amended]

5. Sections 61.41(c) introductory text and (d) introductory text are amended by revising references to "§ 61.3(v)" to read "§ 61.3(w)".

6. Section 61.42(b)(3) and (c) are revised to read as follows:

§ 61.42 Price cap baskets and service categories.

* * * * *

(b) * * *

(3) The business services basket shall contain analog private line offerings, including analog voice grade private line and terrestrial television transmission service.

(c) Dominant interexchange carriers subject to price cap regulations shall exclude the following offerings from their price cap baskets:

(1) Special construction services relating to services in § 61.42 (b)(1), (b)(2), and (b)(3);

(2) All other special construction services;

(3) American Telephone and Telegraph Company Tariff F.C.C. No. 11 services;

(4) American Telephone and Telegraph Company Tariff F.C.C. No. 12 services;

(5) American Telephone and Telegraph Company Tariff F.C.C. No. 16 services;

(6) Services subject to below-the-line accounting;

(7) International private line and record carrier services;

(8) Contract-based tariffs;

(9) Services removed from price cap regulation pursuant to the Report and Order in Docket No. 90–132;

(10) Promotional offerings for services in § 61.42 (b)(1), (b)(2) and (b)(3);

(11) All other promotional offerings;

(12) Custom tariff services; and

(13) Such other services as the Commission may specify.

* * * * *

§ 61.47 [Amended]

7. Section 61.47(h) is amended by revising the reference to "§ 61.3(v)" to read "§ 61.3(w)".

8. Section 61.48 is amended by redesignating paragraph (b) as (b)(1) and adding new paragraph (b)(2) to read as follows:

§ 61.48 Transition rules for price cap formula calculations.

* * * * *

(b) (1) * * *

(2) The PCI and API for offerings under § 61.42(b)(3) shall be assigned a value equal to 100, corresponding to rates in effect as of August 1, 1991. Dominant interexchange carriers subject to price cap regulation shall file new business basket index levels with the first business basket tariff transmittal that is filed subsequent to the effective date of this rule.

* * * * *

9. Section 61.55 is added to read as follows:

§ 61.55 Contract-based tariffs.

(a) Scope. This section shall apply to offerings as defined in § 61.3(m).

(b) Composition of contract-based tariffs shall comply with § 61.54(b) through (i).

(c) Contract-based tariffs shall include the following:

(1) The term of the contract, including any renewal options;

(2) A brief description of each of the services provided under the contract;

(3) Minimum volume commitments for each service;

(4) The contract price for each service or services at the volume levels committed to by the customers;

(5) A general description of any volume discounts built into the contract rate structure; and

(6) A general description of other classifications, practices and regulations affecting the contract rate.

(d) Contract-based tariffs of an interexchange carrier subject to price cap regulation shall not include services included in §§ 61.42(b), 61.42 (c)(1), (c)(4), and 61.42(c)(10).

10. Section 61.58 is amended by redesignating paragraph (c)(6) as paragraph (c)(7), adding new paragraph (c)(6) and revising newly redesignated paragraph (c)(7) to read as follows:

§ 61.58 Notice requirements.

* * * * *

(c) * * *

(6) Tariff filings involving services included in § 61.42(c), except for services included in § 61.42 (c)(1), (c)(4), and (c)(10), must be made on at least 14 days notice.

(7) The required notice for services included in § 61.42 (c)(1), (c)(4), and (c)(10), tariff filings involving services included in § 61.42(f), or tariff filings involving changes in tariff regulations, other than tariff regulations for services described in paragraph (c)(6), shall be that required in connection with such filings by dominant carriers that are not subject to price cap regulation.

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-25594 Filed 10-24-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 240

[FRA Docket No. RSOR-9, Notice 7]

RIN 2130-AA51

Qualifications for Locomotive Engineers

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of open meetings.

SUMMARY: On June 19, 1991, FRA issued a final rule establishing minimum qualifications for locomotive engineers (56 FR 28228). The rule became effective on September 17, 1991 and requires railroads to have a process for evaluating prospective operators of locomotives and determining that they are competent before permitting them to operate a locomotive or train. Beginning in 1992 railroads will have to adhere to formal, FRA-approved, procedures by which they (1) will make a series of four determinations about a person's competency; (2) will conduct training programs for locomotive engineers; and (3) will employ standard methods for identifying qualified locomotive engineers and monitoring their performance. To assist interested parties in understanding the rule and these procedures, FRA will hold two public meetings to discuss compliance with this rule.

DATES: The public meetings will be held beginning at 10 a.m. on: (1) Friday, November 22, 1991 in Newark, New Jersey; and

(2) Saturday, November 23, 1991 in Boston, Massachusetts.

ADDRESSES: (1) The public meeting in Newark, New Jersey will be held at the Hilton Gateway Hotel, located on at I Gateway Plaza (adjacent to Penn Station Newark), Newark, New Jersey.

(2) The public meeting in Boston, Massachusetts will be held at the Transportation Systems Center, located at 55 Broadway, Cambridge, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Mark H. McKeon, Regional Director for Safety, FRA, Boston, Massachusetts (telephone: 617-494-2321); or Lawrence I. Wagner, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street SW., Washington, DC 20590 (Telephone: 202-366-0443); or Thomas A. Murphy, Office of Safety Enforcement, Office of Safety, FRA, 400 Seventh Street SW., Washington, DC 20590 (Telephone: 202-366-0499).

SUPPLEMENTARY INFORMATION: On June 19, 1991, FRA issued a final rule establishing minimum qualifications for locomotive engineers (56 FR 28228). The rule became effective on September 17, 1991 and requires railroads to have a process for evaluating prospective operators of locomotives and determining that they are competent before permitting them to operate a locomotive or train. Individuals deemed qualified will then be issued qualification certificates by the evaluating railroad and only certified engineers will be authorized to operate trains. Conversion to the certification program commences with identification of individuals authorized to operate locomotives when the rule becomes effective. Such individuals will then be issued initial certification no later than December 31, 1991. This interim presumption of qualification, so called "grandfathering" of engineers, will then be replaced over time by formal evaluations of each engineer that employ procedures which comply with this rule.

FRA will hold two public meetings to explain this regulation and to explore matters involving compliance with its provisions. The public meetings are open to all interested parties and will begin at 10 a.m. each day. The first meeting will be held on Friday, November 22, 1991 in the Hilton Gateway Plaza Hotel, which is located at 1 Gateway Plaza, Newark, New Jersey. The second meeting will be held on Saturday, November 23, 1991 in the Transportation Systems Center Auditorium, which is located at 55 Broadway, Cambridge, Massachusetts.

Issued in Washington, DC, on October 11, 1991.

S. Mark Lindsey,

Chief Counsel.

[FR Doc. 91-25740 Filed 10-24-91; 8:45 am]

BILLING CODE 4910-06-M

Proposed Rules

Federal Register
Vol. 56, No. 207
Friday, October 25, 1991

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

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1739

Pre- and Post-Loan Policies and Procedures for Guaranteed Electric and Telephone Loans; Correction

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule; correction.

SUMMARY: The Rural Electrification Administration (REA) is correcting a minor error of a proposed rule to amend 7 CFR part 1739 that was published on August 27, 1991 (56 FR 42496). The proposal would establish pre- and post-loan requirements specific to guaranteed loans under section 306 of the Rural Electrification Act (RE Act) (7 U.S.C. 901 *et seq.*). Additionally an interim final rule was published on August 27, 1991 (56 FR 42460) which codified pre- and post-loan policies and procedures for guaranteed electric and telephone loans at 7 CFR parts 1712, 1719, 1739 and 1746. The loans are authorized under section 314 of the RE Act (7 U.S.C. 901 *et seq.*). An interim final rule correction is published elsewhere in this issue.

FOR FURTHER INFORMATION CONTACT: Frank W. Bennett, Deputy Assistant Administrator—Electric, U.S. Department of Agriculture, Rural Electrification Administration, room 4048–S, 14th Street and Independence Avenue SW., Washington, DC 20250–1500. Telephone: (202) 382–9547.

SUPPLEMENTARY INFORMATION: REA published a proposed rule on August 27, 1991 (56 FR 42496) which omits information in § 1739.154, Eligible Lender. Since this information is relevant to guarantees of loans from the Federal Financing Bank, it is being published for clarity and consistency. This correction does not affect the comment period announced for the proposed rule.

PART 1739—PRE-LOAN POLICIES AND PROCEDURES FOR GUARANTEED TELEPHONE LOANS

1. The authority citation for part 1739 continues to read as follows:

Authority: 7 U.S.C. 901 et seq.; 7 U.S.C. 1921 *et seq.*

2. On page 42499, column 3, § 1739.154 is corrected to read as follows:

§ 1739.154 Eligible lenders.

If an applicant is eligible for a loan guarantee under section 306 of the RE Act and requests that the loan be made by the FFB instead of a private lender, the FFB is required to make the loan, subject to the availability of authorized funds. This subpart covers only guarantees of loans made by the FFB. Guarantees of loans from private lenders under section 306 of the RE Act are covered in subpart C of this part.

Dated: October 11, 1991.

Gary C. Byrne,

Administrator.

[FR Doc. 91–25297 Filed 10–24–91; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR–91–17]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 24, 1991.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Petition Docket No. 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267.3132.

FOR FURTHER INFORMATION CONTACT: Angela M. Washington, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–5571.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on October 17, 1991.

Pamela Trebbe,

Acting Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Rulemaking

Docket No.: 26574.

Petitioner: Tim Creene.

Regulations Affected: 14 CFR part 91, subpart E.

Description of Petition: Petitioner would amend the Federal Aviation Regulations (FAR) to allow the owner of an older Part 91 aircraft of simple design to restore and perform maintenance on an aircraft that is thereafter inspected by an airworthiness and powerplant inspector or an airworthiness inspector, as appropriate.

Petitioner's Reason for the Request: The petitioner believes that the current regulations are too restrictive in that they require maintenance to be directly supervised by airworthiness inspectors.

Docket No.: 26631.

Petitioner: Beech Aircraft Corporation.

Regulations Affected: 14 CFR 25.562(b).

Description of Petition: Petitioner would amend the regulations to clarify the definition of "normal upright position" in regard to dynamic testing of seats.

Petitioner's Reason for the Request: The petitioner feels that interpretation of the word "normal" has resulted in some confusion as to what is required of the test condition.

Docket No.: 26625.

Petitioner: Beech Aircraft Corporation.

Regulations Affected: 14 CFR 25.562(b)(2).

Description of Petition: The petitioner proposes to amend the seat test requirements to allow lesser seat track misalignment during dynamic seat testing with narrower seat track spacing.

Petitioner's reason for the request: The petitioner questions the amount of deformation required for seats with narrow track spacing and believes that this proposed amendment would be in the public interest as it would reduce the initial cost of the more complex seat needed to meet the floor warpage requirement. It would also save the operating cost associated with the added weight for the more complex seat design.

Docket No.: 26642.

Petitioners: Marvin Borodkin, S. Jon Trachta, and Stephen Parkman.

Regulations Affected: 14 CFR 13.19.

This notice publishes for public comment a verbatim summary of the petition as provided by the petitioners.

Subject: Amendment of FAR § 13.19 (14 CFR 13.19).

To: Rules Docket (AGC-10), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

From Petitioners: Marvin Borodkin, S. Jon Trachta, and Stephen Parkman, all of Tucson, Arizona.

Prepared by: Lawrence B. Smith, Attorney at Law, 3938 E. Grant Rd., #191, Tucson, AZ 85712; Tel: 602/326-0238, Fax: 602/326-8230.

Authority: Administrative Procedure Act, 5 U.S.C. 553(e), 14 CFR 11.25.

Purpose: To amend FAR § 13.19 to include an explicit statement that the Administrator claims and exercises authority to suspend or revoke airmen and operator certificates as an alternative and/or concurrent penalty to that of a civil money fine for the violation of safety rules.

Comment: FAA officials interpret § 609 of the Federal Aviation Act of 1958, as amended, 49 U.S.C. 1429(a), to authorize the Administrator to suspend or revoke certificates strictly as punishment for safety violations when no issue of qualification is involved. FAR § 13.19 purports to interpret the authority granted by section 609, yet says nothing of violations or penalties; common sense dictates that it should, so that airmen are warned that their licenses are at risk for such behavior.

Nothing in the amendment adds to or changes any FAA enforcement policy.

[FR Doc. 91-25729 Filed 10-24-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-CE-72-AD]

Airworthiness Directives; British Aerospace (BAe) Beagle B121 Pup Series 1, 2, and 3 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would supersede AD 83-07-01, which currently requires an inspection of each wing spar web in the area of the root rib for cracks, repair if cracks are found, and the incorporation of a repair scheme on certain BAe Beagle B121 Pup series 1, 2, and 3 airplanes. Cracking has been reported in the root rib area of wing spar webs on affected airplanes that have accumulated 2,000 hours time-in-service (TIS). The proposed action would reduce the compliance time of AD 83-07-01 from 2,000 hours TIS to 1,300 hours TIS. The actions specified in this proposed AD are intended to prevent failure of each wing spar, which could result in loss of control of the airplane.

DATES: Comments must be received on or before December 2, 1991.

ADDRESSES: BAe Pup Mandatory Service Bulletin No. B121/79, Revision 1, dated February 15, 1991, and Repair Scheme and Drawing No. BE.03.10169, that are discussed in this AD may be obtained from British Aerospace Limited, Manager Product Support, Commercial Aircraft Airlines Division, Prestwick Airport, Ayrshire, KA9 2RW Scotland; Telephone (44-292) 79888; Facsimile (44-292) 79703; or British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC, 20041; Telephone (703) 435-9100; Facsimile (703) 435-2628. This information may also be examined at the Rules Docket at the address below. Send comments on this AD in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 91-CE-72-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Stoer, Program Officer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B-1000 Brussels, Belgium; Telephone (322) 513.38.30 ext. 2710; Facsimile (322) 230.68.99; or Mr. John P. Dow, Sr., Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 601 E. 12th Street, Kansas City, Missouri 64106; Telephone (816) 426-6932; Facsimile (816) 426-2169. British Aerospace, Commercial Aircraft Ltd., Airlines Division, Prestwick Airport, Ayrshire, KA9 2RW, Scotland.

SUPPLEMENTARY INFORMATION:

Comments Invited

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 regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-CE-72-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace (BAe) Beagle B121 Pup series 1, 2, and 3 airplanes. The CAA reports that cracking has occurred in the root rib area of a wing spar web on affected

airplanes that have accumulated 2,000 hours time-in-service (TIS).

Airworthiness Directive (AD) 83-07-01, Amendment 39-4598 (48 FR 13400, March 31, 1983) currently requires an inspection of each wing spar web upon the accumulation of 2,000 hours TIS in the area of the root rib for cracks, repair if cracks are found, and the incorporation of a repair scheme on BAe Beagle B121 Pup series 1, 2, and 3 airplanes in accordance with the instructions in BAe Pup Mandatory Service Bulletin (SB) No. B.121/79, dated March 9, 1979.

The manufacturer has issued BAe Pup Mandatory SB No. B.121/79, Revision 1, dated February 15, 1991, which specifies the same inspection and repair scheme as the original issue, but specifies a reduction in the compliance time from 2,000 hours TIS to 1,300 hours TIS. The CAA classified this service bulletin as mandatory in order to assure the airworthiness of these airplanes in the United Kingdom. These airplanes are manufactured in the United Kingdom and are type certificated for operation in the United States. Pursuant to a bilateral airworthiness agreement, the CAA airworthiness authority has kept the FAA totally informed of the above situation.

The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States. Since this condition could exist or develop in other BAe Beagle B121 Pup series 1, 2, and 3 airplanes of the same type design, the proposed AD would require an inspection of each wing spar web in the area of the root rib for cracks upon the accumulation of 1,300 hours TIS and repair if cracks are found in accordance with the compliance time BAe Pup Mandatory SB No. B121/79, Revision 1, dated February 15, 1991, and the incorporation of Repair Scheme No. BE.03.10169 in accordance with Drawing No. BE.20.10313. The proposed AD would supersede AD 83-07-01, Amendment 39-4598.

It is estimated that 3 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 10 hours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $18 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,704. The above cost analysis is the same as AD 83-07-01, which would be superseded by this proposed action. This proposed action would only reduce the compliance time from 2,000 hours TIS to 1,300 hours TIS and would pose no additional cost impact on U.S. operators than that presently required by AD 83-07-01.

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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 83-07-01, Amendment 39-4598 (48 FR 13400, March 31, 1983) and adding the following new AD:

British Aerospace (BAe): Docket No. 91-CE-72-AD. Applicability: Beagle B121 Pup series 1, 2, and 3 (all serial numbers) airplanes without Modification No. BE.214 incorporated on both mainplanes, certificated in any category.

Note 1: Modification No. BE.214 is a replacement of the wing/fuselage joint plate that is equivalent to the requirements of this AD action.

Compliance: Required upon the accumulation of 1,300 hours time-in-service (TIS) or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished.

Note 2: The requirements of this AD may have been accomplished in accordance with superseded AD 83-07-01, Amendment 39-4598.

To prevent failure of each wing spar, which could result in loss of control of the airplane, accomplish the following:

(a) Inspect each wing spar web in the area immediately outboard of the root rib by accomplishing paragraphs 3.2.2 through 3.2.4 of paragraph 3. ACTION in BAe Pup Mandatory Service Bulletin (SB) B121/79, Revision 1, dated February 15, 1991.

(1) If found cracked, prior to further flight, obtain an FAA-approved repair scheme from the manufacturer through the Brussels Aircraft Certification Office at the address specified in paragraph (d) of this AD, incorporate this repair scheme, and return the airplane to service.

(2) If cracks are not found, prior to further flight, modify each wing spar web by incorporating Repair Scheme BE.03.10169 in accordance with Drawing No. BE.20.10313, accomplish paragraphs 3.2.6 and 3.2.7 of paragraph 3. ACTION in BAe Pup Mandatory Service Bulletin (SB) B121/79, Revision 1, dated February 15, 1991, and return the airplane to service.

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

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

(d) All persons affected by this directive may obtain copies of the documents referred to herein upon request to British Aerospace, Limited, Manager Product Support, Commercial Aircraft Airlines Division, Prestwick Airport, Ayrshire, KA9 2RW Scotland; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

This amendment supersedes AD 83-07-01, Amendment 39-4598.

Issued in Kansas City, Missouri, on September 20, 1991.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-25728 Filed 10-24-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 169

[Docket No. 91P-0149]

Mayonnaise; Proposed Amendment of the Standard of Identity

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the standard of identity for mayonnaise by deleting the term "mayonnaise dressing" as an alternative common or usual name for the standardized food. The proposal will simplify the labeling requirements and make the term "mayonnaise dressing" available for use as part of the common or usual name of new products that resemble mayonnaise organoleptically but that do not comply with the standard of identity (e.g., that contain less vegetable oil than required by the standard). The term "mayonnaise dressing" could then be used in conjunction with a descriptive statement of how the new product differs from the standardized food. This action is based on an industry petition and will promote honesty and fair dealing in the interest of consumers.

DATES: Written comments by December 24,1991. The agency proposes that any final rule that may be issued based upon this proposal become effective 60 days following the publication of the final rule.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0106.

SUPPLEMENTARY INFORMATION:

I. The Proposal

The Association for Dressings and Sauces (ADS), 5775 Peachtree-Dunwoody Rd., Atlanta, GA 30342, in a petition dated April 9, 1991, has requested that FDA amend the U.S. standard of identity for mayonnaise (21 CFR 169.140) by deleting the term "mayonnaise dressing" from paragraph (a) and deleting "or 'Mayonnaise dressing' " from paragraph (e). ADS is a national trade association of manufacturers of condiment dressings and sauces, including mayonnaise and related products.

In support of this amendment, ADS maintained that the term "mayonnaise" has a history of consumer use with regard to the standardized food, whereas "mayonnaise dressing" does not. ADS also cited the need for uniformity in the naming of alternative "mayonnaise-type" products. According to the petitioner, alternative mayonnaise-type products include new products that resemble mayonnaise organoleptically and function as substitutes for mayonnaise but that do not comply with the standard, e.g., products that contain less vegetable oil, and therefore less fat, than required by the standard. The petitioner stated that consumers recognize the differences between mayonnaise and the alternative products, and that the nomenclature historically used by industry for these products has accurately described their contents. The petitioner contended that deleting the term "mayonnaise dressing" from the standard of identity for mayonnaise would eliminate any question of the availability of the term for use in naming nonstandardized foods.

FDA believes that the petitioner has presented reasonable grounds for deleting the term "mayonnaise dressing" from the standard of identity for mayonnaise. Revising the standard of identity for mayonnaise to recognize "mayonnaise" as the sole common or usual name for the standardized food will promote honesty and fair dealing in the interest of consumers because it will simplify labeling and therefore aid consumer recognition of the standardized food. The agency believes that deleting the term "mayonnaise dressing" from the standard of identity for mayonnaise will also eliminate the potential for conflict and confusion regarding the availability of this term for use in creating names for nonstandardized mayonnaise-type products.

FDA advises that the general principles set forth in 21 CFR 102.5 apply to the naming of nonstandardized foods. In the absence of a common or usual name for a substitute, nonstandardized food, the food may be labeled with an appropriately descriptive term (21 CFR 101.3). Such name shall be consistent with regulations set forth in 21 CFR parts 101, 102, and 105. The agency also notes that, pursuant to section 403(r) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(r)), which was added to the statute by the Nutrition Labeling and Education Act of 1990, FDA is developing regulations that define terms, sometimes called "descriptors," that define the level of a nutrient in a food (e.g., "reduced fat"). The agency is also developing regulations that define the circumstances in which such terms may be used as part of the common or usual name of a food.

Therefore, the agency is proposing to revise § 169.140 by: (1) Deleting the term "mayonnaise dressing" from paragraph (a); and (2) deleting "or 'Mayonnaise dressing' " from paragraph (e).

The agency proposes that any final rule that may be issued based on this proposal become effective 60 days following the publication of the final rule. The final rule would apply to affected products initially introduced or initially delivered for introduction into interstate commerce on or after the effective date.

II. Economic Impact

FDA has examined the economic implications of the proposed rule pertaining to 21 CFR part 169 requirements as required by Executive Order 12291 and the Regulatory Flexibility Act. Executive Order 12291 compels agencies to use cost-benefit analysis as a component of decisionmaking. The Regulatory Flexibility Act requires regulatory relief for small businesses where feasible. Because no marginal costs are expected to be incurred to comply with this proposed regulation, the agency finds that this proposed rule is not a major rule as defined by Executive Order 12291. In accordance with the Regulatory Flexibility Act (Pub. L. 96-354), FDA has also determined that this proposed rule will not have a significant adverse impact on a substantial number of small businesses.

FDA is proposing to delete the provision for the use of the term "mayonnaise dressing" from the standard of identity for mayonnaise. This term is currently not used by manufacturers of mayonnaise products. The proposal will eliminate confusion regarding the availability of the term for use in naming nonstandardized foods, clarifying labeling issues for all manufacturers of mayonnaise and mayonnaise substitutes. In the future, this term may be used for naming nonstandardized products which will compete with standardized mayonnaise. Because no labels are required to be changed nor any reformulation likely to take place, this regulation has zero costs associated with it. Rather than addressing a market failure, this action remedies an existing public regulation problem.

Options considered include no action, that would mean manufacturers of nonstandardized mayonnaise-type products would not have the name available to them. The other option would be to revoke the mayonnaise standard. However, ADS and their membership have repeatedly endorsed continuation of the mayonnaise standard because it identifies important characteristics of the standardized food.

The benefits of this regulation are to provide manufacturers with a uniform means for naming alternative mayonnaise products and to aid consumer recognition of these products. Because these foods will be easier to market, it is expected that this regulation will accelerate development of alternate foods that may be useful in meeting dietary recommendations (e.g., reduced fat and reduced cholesterol foods).

If FDA adopts this proposal, the final rule would apply to affected products introduced or initially delivered for introduction into interstate commerce on or after the effective date. As firms will not be required to change existing labels, FDA finds that there are no marginal costs of this regulation. This action is also expected to facilitate international trade by providing expanded markets for low cholesterol and low fat foods which are appropriately named.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(b)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Comments

Interested persons may, on or before December 24, 1991, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 169

Food grades and standards, Oils and fats, Spices and flavorings.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, it is proposed that 21 CFR part 169 be amended as follows:

PART 169—FOOD DRESSINGS AND FLAVORINGS

1. The authority citation for 21 CFR part 169 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

2. Section 169.140 is amended by revising paragraphs (a) and (e) to read as follows:

§ 169.140 Mayonnaise.

(a) *Description.* Mayonnaise is the emulsified semi-solid food prepared from vegetable oil(s), one or both of the acidifying ingredients specified in paragraph (b) of this section, and one or more of the egg yolk-containing ingredients specified in paragraph (c) of this section. One or more of the ingredients specified in paragraph (d) of this section may also be used. The vegetable oil(s) used may contain an optional crystallization inhibitor as specified in paragraph (d)(7) of this section. All the ingredients from which the food is fabricated shall be safe and suitable. Mayonnaise contains not less than 65 percent by weight of vegetable oil. Mayonnaise may be mixed and packed in an atmosphere in which air is replaced in whole or in part by carbon dioxide or nitrogen.

* * * * *

(e) *Nomenclature.* The name of the food is "Mayonnaise".

* * * * *

Dated: October 4, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-25731 Filed 10-24-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Ch. I

Improving Government Regulations; Semiannual Agenda of Regulations; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Semianual agenda of regulations: correction.

SUMMARY: This document corrects the table of contents for the Internal Revenue Service semiannual agenda of regulations, which was published in the Federal Register on Monday, October 21, 1991. A heading and several entries in the table of contents were inadvertently omitted.

FOR FURTHER INFORMATION CONTACT: Robert Boyer, (202) 377-9231 (not a toll-free number).

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate)

In proposed rule document 91-21602 beginning on page 53803 in the issue of Monday, October 21, 1991, make the following correction:

On page 53815, in the table of contents, the heading Internal Revenue Service—Completed Actions was omitted after sequence number 3343, and sequence numbers 3344–3364 were also omitted. The table of contents for the Internal Revenue Service—Completed Actions is reprinted below in its entirety.

INTERNAL REVENUE SERVICE—COMPLETED ACTIONS

Sequence number	Title	Regulation identifier number
3344	26 USC 0056(g) Adjusted Current Earnings	1545-AN24
3345	26 USC 0061 To Clarify That the Income Consequences of the Discharge of Indebtedness Are the Same for Both Recourse and Nonrecourse Indebtedness.	1545-AO80
3346	26 USC 0062(c) Section 702 of the Family Support Act of 1988	1545-AP29
3347	26 USC 0148 Arbitrage Restrictions on Tax-Exempt Bonds	1545-AP49
3348	26 USC 0163 Prohibition on Foreign Targeting Obligations Backed by United States Government Securities	1545-AM19
3349	26 USC 0167 Normalization Requirements for Public Utility Property: Inconsistent Procedures and Adjustments	1545-AM60
3350	26 USC 0267(a)(3) Deductions of Amounts Owed to Related Foreign Persons Under Sections 267(a)(3) and 163(e)(3).	1545-AN84
3351	26 USC 0382 Computation of Section 382 Limitation	1545-AK87
3352	26 USC 0383 Special Limitations on Certain Credit and Loss Carryovers	1545-AK26
3353	26 USC 0401(k) Cash or Deferred Arrangements (Tax Reform Act of 1986)	1545-AI79
3354	26 USC 0404 Income Tax—Employee Stock Ownership Plan Loan Payments	1545-AD77
3355	26 USC 0409 Income Tax—Requirements for Tax Credit Employee Stock Ownership Plans, Employee Plan Credit, and Defined Contribution Plan Voting Rights.	1545-AD82
3356	26 USC 0414(q) Definition of Highly Compensated Employee	1545-AO50
3357	26 USC 0469 Limitations on Passive Activity Losses and Credits—Miscellaneous	1545-AO02
3358	26 USC 0469(l)(4) Passive Activity Loss and Credit Limitations—Technical Amendments	1545-AO61
3359	26 USC 0601 Amendment and Restatement of the Conference and Practice Requirements Contained in the Statement of Procedural Rules.	1545-AP25
3360	26 USC 0613A Income Tax—Supplementary Rules on Limitations on Percentage Depletion for Oil & Gas	1545-AB73
3361	26 USC 0613A Transfers by Individuals to Corporation Under Section 613A(c)(10)	1545-AB74
3362	26 USC 0752 Partner's Share of Partnership Liabilities	1545-AH26
3363	26 USC 0846 Temporary Income Tax Regulations—Discounting of Unpaid Losses of Property and Casualty Insurance Companies.	1545-AI96
3364	26 USC 0861 California Franchise Tax and Section 1.861-8 Allocation	1545-AM08
3365	26 USC 0905 Suspension of Requirement to File a Receipt for Foreign Taxes Paid on a Return for Foreign Taxes Accrued.	1545-AM43
3366	26 USC 0907 Amendment of Regulations Under Section 907 of the Internal Revenue Code of 1954 to Conform Them to Section 211 of the Tax Equity and Fiscal Responsibility Act of 1982.	1545-AE34
3367	26 USC 0932(b) Regulations Under Section 932(b)	1545-AM89
3368	26 USC 1031 Regulations Relating to Inapplicability of Section 1031 to Exchanges of Partnership Interests and the Limitation on Deferred Exchanges.	1545-AH43
3369	26 USC 1031 Additional Rules for Exchanges of Personal Property and for Exchanges of Multiple Properties	1545-AN38
3370	26 USC 1286 Income Tax—Treatment of Stripped Bonds and Stripped Coupon	1545-AH75
3371	26 USC 1446 Withholding Tax on Payments from Partnerships to Foreign Partners	1545-AL30
3372	26 USC 1502 Income Tax—Credit & Deductions etc., for Consolidated Returns	1545-AC48
3373	26 USC 3121 Amendment of the Employment Tax Regulations Under Code Section 3121 to Conform to Section 321 of the Social Security Amendments of 1983.	1545-AF91
3374	26 USC 3121 Membership in Retirement System—State and Local Government Employees	1545-AP62
3375	26 USC 4081 Fuel Floor Stocks Tax	1545-AP22
3376	26 USC 4682 ODC Special Rule 4682	1545-AP83
3377	26 USC 6012(a) Return Filing Requirements for Insurance Companies	1545-AN23
3378	26 USC 6038A Information with Respect to Certain Foreign-Owned Corporations	1545-AO09
3379	26 USC 6103 Disclosure of Return Information to the Bureau of the Census	1545-AO81
3380	26 USC 6302 Acceleration of Deposit Requirements	1545-AO86
3381	26 USC 6326 Administrative Appeal of the Erroneous Filing of Notice of Tax Lien	1545-AN07
3382	26 USC 6659 Procedure & Administration—Addition to Tax in the Case of Valuation Overstatements and Understatements, and Increase in the Negligence Penalty.	1545-AD39
3383	26 USC 6721 Uniform Penalties for Failures to Comply with Certain Information Reporting Requirements	1545-AO95
3384	26 USC 6723 Penalty for Failure to Include Correct Information on Information Returns and Payee Statements	1545-AJ29
3385	26 USC 7609 Procedure and Administration—Suspension of Statutes of Limitations in Absence of Third-Party Recordkeeper Response to Summons.	1545-AK72
3386	26 USC 7805 Excise Tax Relating to Gain or Other Income Realized by Any Person on Receipt of Greenmail	1545-AN41
3387	26 USC 7805 Technical Amendments to Section 602.101(c)	1545-AO88
3388	26 USC 7805 Statement of Procedural Rules	1545-AP05
3389	26 USC 9037 Financing of Presidential Election Campaigns	1545-AP21
3390	26 USC 9100 Extension of Time for Making Certain Elections	1545-AO85

[FR Doc. 91-25905 Filed 10-24-91 8:45 am]

BILLING CODE 1505-01-D

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 5

[Notice No. 730]

Standards of Identity for Distilled Spirits

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

ACTION: Notice of proposed rulemaking.

SUMMARY: ATF is proposing to amend the regulations in 27 CFR part 5, by lowering the minimum bottling proof for flavored brandy, flavored gin, flavored rum, flavored vodka, and flavored whisky from 70° proof (35% alcohol by volume) to 60° proof (30% alcohol by volume). The proposal is being made pursuant to a petition received from Delta Consultants, Inc. The reasons in favor of the proposal are discussed below under "Supplementary Information."

DATES: Written comments must be received on or before December 24, 1991.

ADDRESSES: Send written comments to: Chief, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221. [Attn: Notice No. 730.]

FOR FURTHER INFORMATION CONTACT: Daniel J. Hiland, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–566–7531).

SUPPLEMENTARY INFORMATION:

Background

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e) authorizes the Bureau to prescribe regulations relating to the packaging, marking, branding, labeling, and size and fill of containers as will prohibit deception of the consumer with respect to such products or the quantity thereof. In addition, section 105(e) provides the Bureau with authority to promulgate regulations which will provide the consumer with adequate information as to the identity and quality of the products, and the alcoholic content thereof. Regulations which implement the provisions of section 105(e), as they relate to distilled spirits, are set forth in title 27, Code of Federal Regulations (CFR), part 5.

Following the enactment of the FAA Act in 1935, implementing regulations were issued. As originally written, these regulations provided for various classes and types of distilled spirits, but did not include a separate class and type for flavored brandy, flavored gin, flavored rum, flavored vodka, and flavored whisky.

In 1936, cordial manufacturers who were producing their products with the use of brandy and true fruit flavors requested the Federal Alcohol Administration to permit such products to be designated as, for example, "apricot brandy." On September 19, 1936, in a letter from the Federal Alcohol Administration, to all bottlers of distilled spirits, the Administrator advised that the provisions of section 34 (a) of Regulations 5 provided that the words "cordial" or "liqueur" did not have to be stated upon a label to indicate the class of distilled spirits, which were in fact cordials, unless the Administrator found that, without a designation of the class, the type designation was one which did not clearly indicate to the consumer that the product was a cordial or liqueur. The Administrator informed the cordial manufacturers that, pursuant to the regulation, they could designate their products as, for example, "apricot flavored brandy" "orange flavored whisky" or "lemon flavored rum." It was the view of the Administration that the labeling of these products in the manner indicated would not lead to any consumer deception.

Pursuant to the above ruling, cordial manufacturers requested information as to whether permission to label their product as, for example, "apricot flavored brandy", was conditioned upon the presence in the product of any minimum quantity of whisky, brandy, rum, or gin. In connection with these inquiries, the Administration noted that the regulations governing the labeling of whisky, brandy, rum, and gin specified 80° proof as the minimum proof for these

products. The Administration felt that a consumer purchasing a product labeled as "orange flavored gin" would expect to receive a product of practically the same proof as the product would have without the addition of the flavoring and sweetening material. The Administrator therefore ruled that no product could be designated as, for example, "orange flavored gin" unless the proof of such product, as indicated on the label, was 70° proof or more. If such products were produced at less than 70° proof, they would be required to be designated as for example, "orange liqueur." (Letter of Federal Alcohol Administrator to all bottlers of distilled spirits, dated October 7, 1936).

In April of 1968, the Alcohol and Tobacco Tax Division of the Internal Revenue Service revisited this issue during public hearings held to consider several amendments to the regulations covering the labeling and advertising of distilled spirits in 27 CFR part 5. One of the proposals discussed at these hearings was the codification into regulations of the Administration's existing position with respect to the labeling of flavored brandy, flavored gin, flavored rum, flavored vodka, and flavored whisky. It was also proposed that the use of wine in these distilled spirits be limited to 2½ percent by volume of the finished product. The reason for these proposals was that these products had achieved such consumer acceptance that a standard of identity was needed to maintain product identity and integrity.

Following these hearings, the Department of the Treasury issued Treasury Decision 6973. (See 33 F.R.188, 9/26/68). This decision established a regulatory standard of identity for these products. This amendment to 27 CFR part 5 became effective on July 1, 1969. The standard of identity for flavored brandy, flavored gin, flavored rum, flavored vodka, and flavored whisky is now established in 27 CFR § 5.22(i), as Class 9 distilled spirits, which reflects the above-mentioned amendment as it was initially proposed and adopted. Section 5.22(i) states:

> Flavored brandy, flavored gin, flavored rum, flavored vodka, and flavored whisky are brandy, gin, rum, vodka, and whisky, respectively to which have been added natural flavoring materials, with or without the addition of sugar, and bottled at not less than 70° proof. The name of the predominant flavor shall appear as a part of the designation. If the finished product contains more than 2½percent by volume of wine, the kinds and percentages by volume of wine must be stated as a part of the designation, except that a flavored brandy may contain an additional 12½ percent by volume of wine without label disclosure, if the additional wine is derived from the particular fruit corresponding to the labeled flavor of the product.

Petition

The petition received from Delta Consultants, Inc., makes several points in support of their proposal to lower the minimum bottling proof for these flavored products from 70° proof (35% alcohol by volume) to 60° proof (30% alcohol by volume).

The petitioner maintains that its proposal is consistent with domestic and international trends towards beverages with less alcohol content; will not result in any consumer deception; is in accord with consumer perceptions of flavored distilled spirits products; will provide consumers with a greater range of alcohol content; and will result in a minimal reduction of revenue.

The petitioner asserts that, over the years, consumers have perceived flavored brandy, flavored gin, flavored rum, flavored vodka, and flavored whisky as similar to the class of distilled spirits identified as cordial or liqueur products. In that regard, the petitioner states that the lowering of the minimum bottling proof for these flavored distilled spirits to 60° proof will more accurately reflect the relationship between these class 9 distilled spirits, and cordials and liqueurs in the minds of consumers.

ATF Analysis

ATF has reviewed the history of this issue and finds that the original reason for establishing a bottling proof of 70° for flavored brandy, flavored gin, flavored rum, flavored vodka, and flavored whisky was consumer protection. It was felt that consumers purchasing products which were designated as "orange flavored gin" "apricot flavored brandy", "lemon flavored whiskey" and "peach flavored rum", would expect to receive products of substantially the same proof as gin, brandy, whiskey, and rum, which must be bottled at no less than 80° proof.

After careful consideration of the arguments made by the petitioner and the history of this issue, ATF believes that these flavored distilled spirits products are very closely associated with cordials and liqueurs. Indeed, the relationship between these products has been regulated since the inception of the FAA Act. However, while cordial and liqueur products generally have no minimum bottling proof, certain types of liqueurs, for example rye liqueur, bourbon liqueur, rum liqueur, gin liqueur, and brandy liqueur must be bottled at not less than 60° proof. ATF believes that maintaining a 60° proof minimum bottling requirement will allow for a closer and more consistent identification of the above-mentioned flavored distilled spirits with cordials and liqueur products while at the same time preventing consumer deception that could result from having no minimum proof requirements for flavored brandy, flavored gin, flavored rum, flavored whisky, and flavored vodka. The Bureau has therefore decided to issue this notice of proposed rulemaking to amend the standard of identity for these products.

Executive Order 12291

It has been determined that this document is not a major regulation as defined in E.O. 12291, and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required because the proposal, if promulgated as a final rule, is not expected (1) to have significant secondary or incidental effects on a substantial number of small entities, or (2) to impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice because no requirement to collect information is proposed.

Public Participation—Written Comments

ATF requests comments from all interested persons concerning the amendment proposed by this notice. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot

be given except as to comments received on or before the closing date. ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting the comment is not exempt from disclosure. Any interested person who desires an opportunity to comment orally at a public hearing on the proposed amendment to the regulation should submit his or her request, in writing, to the Director within the 60 day comment period. The Director, however, reserves the right to determine, in light of all circumstances, if a public hearing is necessary.

Drafting Information

The principal author of this document is Daniel J. Hiland, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

Disclosure

Copies of this notice and the written comments will be available for public inspection during normal business hours at: ATF Public Reading Room, Disclosure Branch, Room 6300, 650 Massachusetts Avenue, NW. Washington, DC 20226.

List of Subjects in 27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Liquors, Packaging and containers.

Authority and Issuance

27 CFR part 5 is proposed to be amended as follows:

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

Paragraph 1. The authority citation for 27 CFR part 5 continues to read as follows:

Authority: 27 U.S.C. 205.

Paragraph 2. Section 5.22 is amended by revising paragraph (i) to read as follows:

§ 5.22 The standards of identity.

* * * * *

(i) Class 9; flavored brandy, flavored gin, flavored rum, flavored vodka, and flavored whisky. "Flavored brandy," "flavored gin," "flavored rum," "flavored vodka," and "flavored whisky," are brandy, gin, rum, vodka, and whisky, respectively to which have been added natural flavoring materials, with or without the addition of sugar, and bottled at not less than 60° proof. The name of the predominant flavor shall appear as a part of the designation. If the finished product contains more than 2½ percent by volume of wine, the kinds and percentages by volume of wine must be stated as a part of the designation, except that a flavored brandy may contain an additional 12½ percent by volume of wine, without label disclosure, if the additional wine is derived from the particular fruit corresponding to the labeled flavor of the product.

* * * * *

Signed: September 9, 1991.

Stephen E. Higgins,

Director.

Approved: October 4, 1991.

John P. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 91-25655 Filed 10-24-91; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

New Mexico Permanent Regulatory Program

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

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of revisions pertaining to a previously proposed amendment to the New Mexico permanent regulatory program (hereinafter, the "New Mexico program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions pertain to the rules governing the hydrologic balance as it relates to water quality standards and effluent limitations for surface and underground mining activities. The proposed amendment is intended to revise the New Mexico program to be consistent with the corresponding Federal regulations.

This notice sets forth the times and locations that the New Mexico program and proposed amendment to that program are available for public inspection, and the reopened comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received by 4 p.m., m.s.t., November 12, 1991.

ADDRESSES: Written comments should be mailed or hand delivered to Robert H. Hagen at the address listed below.

Copies of the New Mexico program, the proposed amendment, the revisions, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue SW., Suite 310, Albuquerque, NM 87102; Telephone: (505) 766-1486

New Mexico Energy & Minerals Department, Mining and Minerals Division, 2040 South Pacheco Street, Santa Fe, NM 87505; Telephone: (505) 827-5970.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, telephone (505) 766-1486.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and conditions of approval of the New Mexico program can be found in the December 31, 1980, **Federal Register** (45 FR 86459). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.15, 931.16, and 931.30.

II. Proposed Amendment

By letter dated July 9, 1991 (Administrative Record No. NM-642), New Mexico submitted a proposed amendment to its program pursuant to SMCRA. New Mexico submitted the proposed amendment to satisfy a required program amendment at 30 CFR 931.16(b). The provisions of the Coal Surface Mining Commission (CSMC) rules that New Mexico proposes to amend are CSMC Rules 80-1-20-42(a)(4)(ii) and (a)(8), which concern hydrologic balance as it relates to water quality standards and effluent limitations for surface and underground mining activities.

OSM published a notice in the August 2, 1991, **Federal Register** (56 FR 37051) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (Administrative Record No. NM-647). The public comment period closed

September 3, 1991. During its review of the amendment, OSM identified some concerns relating to the proposed rule changes at CSMC Rules 80-1-20-42(a)(4)(ii) and (a)(8). OSM notified New Mexico of the concerns by letter dated September 20, 1991 (Administrative Record No. NM-655). New Mexico responded by submitting, in a letter dated October 3, 1991, a revised amendment (Administrative Record No. NM-659).

III. Public Comment Procedures

OSM is reopening the comment period on the proposed New Mexico amendment to provide the public additional opportunity to reconsider the adequacy of the amendment in light of the revisions submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the New Mexico program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 16, 1991.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 91-25736 Filed 10-24-91; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 165

Recoupment of Nonrecurring Costs on Sales of U.S. Products and Technology

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule provides for a proposed change in DoD's guidance to all Heads of DoD Components on the recoupment of nonrecurring costs when products or technology developed with appropriated funds are sold commercially or through the Foreign Military Sales program. The proposed change reduces the scope of products where recoupment charges would be required. Recoupment charges will be made only on articles that are Major Defense Equipment, Major Items, or derivatives of Major Defense Equipment and Major Items. In addition, a recoupment charge will be assessed on foreign manufacturers of defense articles developed by the DoD. A Major Defense Equipment is any item of significant military equipment on the United States Munitions List having a nonrecurring RDT&E cost of more than $50 million or a total production cost of more than $200 million. The definition of Major Defense Equipment is defined in the Arms Export Control Act. A Major Item is any item, other than a Major Defense Equipment, having a nonrecurring RDT&E cost of more than $50 million or a total production cost of more than $200 million. A derivative item is any item derived from a Major Defense Equipment or Major Item where there is commonality equal to, or more than 50 percent of a Major Defense Equipment or Major Item.

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

ADDRESSES: Forward comments to the Office of the DoD Comptroller, Attn: Director for Accounting Policy, The Pentagon, room 3A882, Washington, DC 20301-1100.

FOR FURTHER INFORMATION CONTACT: Ms. Kay O'Brien, 703-697-3135.

SUPPLEMENTARY INFORMATION: The DoD contractual language to implement the nonrecurring cost recoupment policies are incorporated into acquisition regulations, which are also published in the **Federal Register** for public comment. The term, "acquisition regulation," refers to the Defense Acquisition Regulation, the Federal Acquisition Regulation (FAR) and the DoD FAR Supplement. The proposed change to the DoD recoupment policy is to be incorporated into the DoD FAR Supplement and is being published in the **Federal Register** 48 CFR parts 234, 235, 252, and 271 for public comment simultaneously with this proposed rule.

Executive Order 12291

The Department of Defense has determined that this proposed rule is not a major rule, because it is not likely to result in an annual effect on the economy of $100 million or more; nor does it impose a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; nor does it have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act Information

The proposed rule does not impose any new or additional information collection requirements and 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 they make only a small number of commercial sales of defense articles or technology to foreign or domestic customers and the scope of products that the DoD will recoup on is limited to major equipment. Comments are invited from small business and other interested parties. Comments from small entities will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately.

Paperwork Reduction Act Information

The proposed rule contains no new information collection requirements requiring the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 32 CFR Part 165

Armed Forces, Commercial Sales, Foreign Military Sales, Foreign trade.

Accordingly, title 32 of the Code of Federal Regulations, chapter I, subchapter E, is proposed to be amended by adding a new part 165, to read as follows:

PART 165—RECOUPMENT OF NONRECURRING COSTS ON SALES OF U.S. PRODUCTS AND TECHNOLOGY

Sec.
165.1 Purpose.
165.2 Applicability and scope.
165.3 Definitions.
165.4 Policy.
165.5 Responsibilities.
165.6 Procedures.
165.7 Waivers (including reductions).
165.8 Information requirements.
165.9 Effective date.

Appendix A to Part 165—Format for Recoupment of Nonrecurring Costs on Sales of Major Defense Equipment and Major Items

Appendix B to Part 165—Format for Recoupment of Nonrecurring Costs on Sales of U.S.G. Products and Technology (DSAA(Q)1112 Report Format)

Authority: 31 U.S.C. 9701; Pub. L. 90-629.

§ 165.1 Purpose.

This part establishes policy to conform with Public Law 90-629, "Arms

Export Control Act," October 22, 1968, as amended, Council on International Economic Policy Decision Memorandum No. 23, "R&D Recoupment," August 2, 1974 and title 31, United States Code, section 9701 for calculating and assessing nonrecurring cost (NC) recoupment charges on sales of DoD-developed items and technology to non-U.S. Government (USG) customers, assigns responsibilities, and prescribes procedures to implement established policies.

§ 165.2 Applicability and scope.

(a) This part applies to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies (hereafter referred to collectively as "DoD Components").

(b) Its provisions shall be applied contractually to DoD contractors and recipients of DoD technical data packages (TDPs) who sell defense articles or technology developed with DoD appropriations or funds (and in special cases, customer funds) or use such technology to manufacture items sold commercially to a foreign government, international organization, foreign commercial firm, domestic organization, or private party.

(c) Its provisions do not apply to sales of excess property when accountability has been transferred to property disposal activities and the property is sold in open competition to the highest bidder.

§ 165.3 Definitions.

(a) *Cost Pool.* Represents the total cost to be distributed across the specific number of units. The nonrecurring research, development, test, and evaluation (RDT&E), cost pool comprises the costs described in paragraph (l) of this section. The nonrecurring production cost pool comprises costs described in paragraph (k) of this section.

(b) *Derivative Item.* Any item derived from a Major Defense Equipment or Major Item where there is commonality equal to, or more than 50 percent of the MDE or MI.

(c) *Direct Commercial Sale.* A commercial sale to a customer by a defense contractor of products, technology, materiel, services, and development or production techniques that originally were developed, improved, or produced using DoD appropriations or funds

(d) *Domestic Organization.* Any U.S. non-government organization or private commercial firm.

(e) *Foreign Military Sale (FMS).* A sale by the U.S. Government of defense articles or defense services to a foreign government or international organization under authority of the Arms Export Control Act.

(f) *Government Sale.* A sale of articles or services, or both, to non-USG customers by any DoD Component under appropriate statutes.

(g) *Major Defense Equipment (MDE).* Any item of significant military equipment on the United States Munitions List having a nonrecurring RDT&E cost of more than $50 million or a total production cost of more than $200 million. The determination of whether an item meets the MDE dollar threshold for RDT&E shall be based on DoD obligations recorded to the date the equipment is offered for sale. Production costs shall include costs incurred for the Department of Defense, FMS, and known direct commercial sales production. For the FMS program, the sales offer date shall be the date a Letter of Offer and Acceptance (LOA) is signed by a U.S. official and released to the FMS customer; for direct commercial sales, the sales offer date shall be the date of contract signature.

(h) *Major Item (MI).* Any item, other than an MDE, having a nonrecurring RDT&E cost of more than $50 million or a total production cost of more than $200 million. The determination of whether an item meets the MI dollar threshold for RDT&E shall be based on DoD obligations recorded to the date the equipment is offered for sale. Production costs shall include costs incurred for the Department of Defense, FMS, and known direct commercial sales production. For the FMS program, the sales offer date shall be the date a Letter of Offer and Acceptance (LOA) is signed by a U.S. official and released to the FMS customer; for direct commercial sales, the sales offer date shall be the date of contract signature.

(i) *Model.* A basic alpha-numeric designation within a weapon system series, such as a ship hull series, an equipment or system series, an airframe series, or a vehicle series. For example, the F5A and the F5F are different models within the same F-5 system series.

(j) *Non-U.S. Contractor.* A contractor or subcontractor organized or existing under the laws of a country other than the United States, its territories, or possessions.

(k) *Nonrecurring Production Costs.* Those one-time costs incurred in support of previous production of the model specified and those costs specifically incurred in support of the total projected production run. These NCs include DoD expenditures for preproduction engineering; rate and special tooling; special test equipment; production engineering; product improvement; destructive testing; and pilot model production, testing, and evaluation. This includes costs of any engineering change proposals initiated before the date of calculations of the NC recoupment charge. Nonrecurring production costs do not include DoD expenditures for machine tools, capital equipment, or facilities for which contractor rental payments are made in accordance with the DoD FAR Supplement.

(l) *Nonrecurring Research, Development, Test, and Evaluation (RDT&E) Costs.* Those costs funded by an RDT&E appropriation to develop or improve the product or technology under consideration either through contract or in-house effort. This includes costs of any engineering change proposal initiated before the date of calculation of the NC recoupment charges as well as projections of such costs, to the extent additional effort applicable to the sale model or technology is necessary or planned. It does not include costs funded by either procurement or operation and maintenance (O&M) appropriations.

(m) *Pro Rata Recovery of Nonrecurring Costs (NC).* Equal distribution (proration) of a pool of nonrecurring costs to a specific number of units that benefit from the investment so that a DoD Component will collect from a customer a fair (pro rata) share of the investment in the product being sold. The production quantity base used to determine the prorata calculation of MDE and MI excludes quantities of subcomponents that are sold separately from the MDE and MI.

(n) *Significant Change in NC Recoupment Charge.* A significant change occurs when:

(1) A new calculation shows a change of 30 percent of the current system NC charge.

(2) The NC unit charge increases or decreases by $50,000 or more or

(3) Where the potential for a $5 million change in recoupment exists. If neither of the significant change criteria identified in paragraph (n)(1) or (2) of this section occurs, the total collections are to be estimated based on the projected sales quantities. When potential collections will increase or decrease by $5 million, a significant change occurs.

(o) "Special" RDT&E and Nonrecurring Production Costs. Costs incurred at the request of, or for the benefit of, a foreign customer to develop a special feature or unique requirement.

These costs must be paid by the customer as they are incurred.

(p) *Technical Data Package.* The most prominent category of technical data is described as a technical data package (TDP). The TDP normally includes technical design and manufacturing information sufficient to enable the construction or manufacture of a defense item or component modification, or to enable the performance of certain maintenance or production processes. It may include blueprints, drawings, plans, or instructions that can be used or adapted for use in the design, production, manufacture, or maintenance of the defense items or technology.

(q) *Technology.* Information of any kind that can be used or adapted for use in the design, production, manufacture, utilization, or reconstruction of articles or materiel. The data may take a tangible form, such as a scale model, prototype, blueprint, or an operating manual, or may take an intangible form, such as technical advice.

§ 165.4 Policy.

An NC recoupment charge shall be paid for non-USG purchases of certain items developed with USG funds, unless an NC recoupment charge exemption is available as provided in § 165.6(d) of this part or a waiver has been approved by the DoD official designated in § 165.7 of this part. Such charges will be based on the value of the DoD nonrecurring investment in a major defense equipment (MDE), major item (MI), derivative item, and/or any item manufactured by a non-US contractor with technical data developed with U.S. Government funds.

§ 165.5 Responsibilities.

(a) The Under Secretary of Defense for Acquisition (USD(A)) shall monitor and exercise control over NC cost recoupment aspects of domestic commercial sales of DoD-developed items and technology and shall take appropriate action to revise the DoD FAR Supplement to agree with this part.

(b) The Under Secretary of Defense for Policy (USD(P)) shall monitor the application of this part and exercise control over foreign sales of DoD-developed items and technology.

(c) The Comptroller of the Department of Defense (C, DoD) shall provide necessary financial management guidance and ensure publication of a listing of DoD-developed items or technology to which NC recoupment charges are applicable.

(d) The Director, Defense Security Assistance Agency (DSAA), shall serve as the DoD focal point for review and approval of NC recoupment charges and NC recoupment charge waiver requests received from foreign countries and international organizations for FMS or direct commercial sales. Notification of approved NC recoupment charges shall be provided to the Defense Finance and Accounting Service.

(e) The Heads of Military Departments and Defense Agencies shall:

(1) Determine the DoD nonrecurring investment in DoD-developed items or technology and perform required pro rata calculations in accordance with financial management guidance from the C, DoD.

(2) Validate and provide recommended charges to DSAA in the format illustrated at appendix A to this part. Supporting documentation will be retained until the item has been eliminated from the NC recoupment charge listing.

(3) Determine the degree of commonality of a derivative item with an MDE or MI and provide recommended charges to DSAA. Commonality may be determined either on the basis of the ratio of common parts or on some other commonly acceptable basis for allocation of costs between the derivative item and MDE or MI, that is, engineering analysis or technical analysis, as appropriate.

(4) Review approved NC recoupment charges on a biennial basis to determine if there has been a change in factors or assumptions used to compute an NC recoupment charge and if there is a significant change in an NC recoupment charge, provide a recommended change to DSAA.

(5) Insert prescribed Department of Defense Federal Acquisition Regulation (DFAR) Supplement clauses in contracts.

(6) Enforce the application of the aforementioned clauses.

(7) Collect charges on FMS sales in accordance with DoD 7290.3-M,[1] "Foreign Military Sales Financial Management Manual," on other Government sales in accordance with DoD 7220.9-M,[2] "DoD Accounting Manual," Chapter 26 "Reimbursements"; and on direct commercial sales by defense contractors or manufacture by non-U.S. contractors, within 30 days following delivery of each item from the contractor's facility or purchaser's acceptance (whichever comes first). For direct commercial sales, this is the due date for determining the amount of interest due on a late payment of the NC recoupment charge.

(8) Deposit collections to accounts prescribed by the C, DoD.

(9) Submit quarterly reports of anticipated and actual NC recoupment charge collections to the DSAA. The report shall be forwarded to the DSAA Comptroller within 45 days following the close of each fiscal quarter, with a copy furnished to the Defense Finance and Accounting Service. The report format is at appendix B to this part.

(10) Ensure that components are not purchased separately for ultimate assembly as an end item in an attempt to circumvent this part.

(11) Request guidance from the Defense Security Assistance Agency, within 90 days, if an issue concerning a recoupment charge cannot be resolved.

(f) The Director, Defense Contract Audit Agency (DCAA), shall ensure that any evaluation of a contractor accounting system includes an analysis of the internal controls established to ensure compliance with the requirement to pay NC recoupment charges. If DCAA audit work on a bid proposal, claim for incurred costs, etc., discloses contractor noncompliance with the requirement to pay an NC recoupment charge, an audit report shall be issued promptly to the cognizant DoD contracting officer, with a copy of the report submitted to the C, DoD and the cognizant DoD Component.

§ 165.6 Procedures.

(a) The NC recoupment charge to be reimbursed for non-USG purchases shall be a pro-rata recovery of nonrecurring costs for any MDE or MI. Such charges shall be based on a cost pool as defined in section 165.3. For a system that includes more than one component, a "building block" approach (that is the sum of NC recoupment charges for individual components) shall be used to determine the NC recoupment charge for the sale of the entire system. NC recoupment charges apply to components only when included as a subcomponent of MDE, MI and derivative items.

(b) NC charges for derivative items shall be assessed based on the extent of commonality with an MDE or MI. For example, if the commercial item is 90 percent common with the MDE or MI, then only 90 percent of the established NC recoupment charge for the MDE or MI shall be assessed.

(c) For MDE, MI, and derivative items, purchasers of the applicable DoD technical data package shall pay the established NC recoupment charge

[1] Forward written requests to Defense Institute for Security Assistance Management, Attn: DISAM-DRP, Wright-Patterson Air Force Base, Ohio 45433.

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

when the MDE, MI or derivative is manufactured overseas for non-USG purchases pursuant to an FMS case or other government-to-government agreement. Purchasers of the applicable DoD technical data package shall also pay a recoupment charge, equal to 5 percent of an item's current price, on any other item developed with DoD funding and manufactured for non-USG purchasers pursuant to an FMS case or other government-to-government agreement. The DoD funding applies only to research development, testing and evaluation and only when the value of the DoD investment has been or is expected to be $2 million or more.

(d) An NC recoupment charge shall not apply when a waiver has been approved by the DoD official designated in § 165.7 of this part or when sales are financed with U.S. Government funds made available on a nonrepayable basis. Approved revised NC recoupment charges shall not be applied retroactively to accepted Foreign Military Sales (FMS) agreements or to direct commercial sales that were entered into before the date of approval of the revised NC recoupment charge. If a direct commercial sale was not notified in accordance with the Department of Defense Federal Acquisition Regulation (DFAR) Supplement clause, an NC charge shall be retroactively applied to such sale.

(e) When defense items are sold by the Department of Defense at a reduced price due to age or condition, the NC recoupment charge shall be reduced by the same percentage reduction.

(f) If records necessary to enable an NC calculation have been lost or destroyed and there is reasonable assurance that the item is an MDE or MI, the NC charge shall be based on 5 percent of the most recent USG contract price. The DoD Component (Assistant Secretary or a designee) shall certify that the records have been lost or destroyed.

(g) The full amount of "special" RDT&E and nonrecurring production costs incurred for the benefit of particular customers shall be paid by those customers. However, when a subsequent purchaser requests the same specialized features that resulted from the added "special" RDT&E and nonrecurring production costs, a pro rata share of these costs may be paid by the subsequent purchaser and transferred to the original customer provided those special nonrecurring costs exceed $50 million. The pro rata share may be a unit charge determined by the DoD Component as a result of distribution of the total costs divided by the total production. Such reimbursements shall not be collected after 10 years have elapsed since acceptance of DD Form 1513, "U.S. DoD Offer and Acceptance," by the original customer, unless otherwise authorized by DSAA. The USG shall not be charged any NC recoupment charge if it adopts the features for its own use or provides equipment containing such features under a U.S. Grant Aid or similar program.

(h) For coproduction, codevelopment and cooperative development, or cooperative production DoD agreements, the policy set forth in this part generally shall determine the allocation basis for recouping from the third party purchasers the investment costs of the participants. Such DoD agreements shall provide for the application of the policies in this part to sales to third parties by any of the parties to the agreement and for the distribution of recoupments and technology charges among the parties to the agreement.

(i) The seller of the product or technology to any customer other than the U.S. Government is responsible for payment of the recoupment charge to the DoD. To avoid double payment of a recoupment charge, the seller may request the Defense Security Assistance Agency to deduct from the recoupment charge a charge paid by another contractor.

§ 165.7 Waivers (including reductions).

(a) The Arms Export Control Act requires the recoupment of a proportionate amount of nonrecurring costs of MDE from FMS customers but authorizes consideration of reductions or waivers for particular sales which, if made, significantly advance USG interests in North Atlantic Treaty Organization standardization or standardization with the Armed Forces of Japan, Australia, or New Zealand in furtherance of the mutual defense treaties between the United States and those countries. Waiver for direct commercial sales to foreign purchasers and for sales of MI under FMS shall be based upon the same considerations.

(b) Requests for waivers of NC recoupment charges for eligible countries for sales of DoD-developed items under the FMS program or on direct commercial sales to foreign governments and international organizations shall be submitted to the Director, DSAA.

(1) Requests should originate with the foreign government and shall provide information regarding the extent of standardization to be derived as a result of the waiver and other benefits that would accrue to the USG as a result of the sale. The request shall contain a summary statement of the facts regarding the program, benefits expected and justification therefore, and any calculations necessary to quantify the waiver and the benefits to the USG.

(2) Blanket waiver requests shall not be submitted nor considered. The term "blanket waiver" refers to an NC recoupment charge waiver that is not related to a particular sale; for example, waivers for all sales to a country or all sales of a weapon system.

(3) A waiver request shall not be approved for a sale that was accepted without an NC recoupment charge waiver, unless the acceptance was conditional upon consideration of the waiver request. A waiver shall not be granted in connection with a direct commercial sale if such a waiver could not have been granted legally in connection with a sale made under the FMS program. Any waiver approved for a direct commercial sale shall be contingent upon the benefit of the waiver being passed on to the customer by the contractor.

(c) A DoD Component or defense contractor (vice president or higher) may request waivers of NC recoupment charges for domestic sales of DoD-developed items. Contractor requests shall be to the USD(A). To the extent possible, the request shall provide information regarding the dollar value of the waiver, benefit to be derived by the Department of Defense, the names of foreign and domestic competitors, impact on the USG balance of payments, demonstrable rights of the manufacturer or purchaser, and any other justification for the waiver. Blanket waiver requests for domestic sales are discouraged, but may be granted in extraordinary circumstances.

(d) Requests for waivers shall be processed expeditiously, and a decision normally made by the approving authority to either approve or disapprove the request within 60 days after receipt. A waiver in whole or in part of the recoupment charge or a denial of the request shall be provided in writing to the appropriate DoD Component.

(e) The decision on any waiver requires the concurrence of the Director, DSAA; the C, DoD; and the USD(A). If an issue concerning the waiver request cannot be resolved, the normal waiver approval authority shall prepare an action memorandum on the waiver request to the Deputy Secretary of Defense for final determination.

(f) The Director, DSAA, is the waiver approval authority and will state in writing any approvals granted for

waivers associated with FMS and direct commercial sales to foreign purchasers. The USD(A) is the waiver approval authority and will state in writing any approvals granted for waivers involving sales of DoD-developed items and technology to domestic organizations. These authorities shall not be redelegated. A notification of each approved waiver will be forwarded to the concerned DoD Components by the approving authority.

§ 165.8 Information requirements.

The record keeping and reporting requirements prescribed in this part are assigned Reports Control Symbol DSAA(Q)1112.

§ 165.9 Effective date.

This part is proposed to be effective (30 days from publication date) and is proposed to be applicable to NC recoupment charges approved after the date of this part. A previously approved NC recoupment charge is proposed to be subject to the provisions of the DoD Directive 2140.2 [3] in effect when the rate was approved.

BILLING CODE 3810-01-M

[3] See footnote 2 to § 165.4(e)(7)

Appendix A to part 165-FORMAT FOR RECOUPMENT OF NONRECURRING COSTS ON SALES OF MAJOR DEFENSE EQUIPMENT AND MAJOR ITEMS

DATE PREPARED	DOD COMPONENT
AS OF DATE	NAME AND TELEPHONE NUMBER OF CONTRACT POINT

SECTION A

(a)	(b)			(c)					(d)			(e)
WEAPON SYSTEM OR COMPONENT	NONRECURRING COSTS ($ THOUSANDS)			PRODUCTION QUANTITY					RECOMMENDED PRO RATA UNIT CHARGE			PREVIOUS UNIT CHARGE
	RDT&E	PRODUCTION	TOTAL	ARMY	MARIINE NAVY	AIR FORCE	MAP- FMS- DIRECT SALE	TOTAL	RDT&E	PRODUCTION	TOTAL	

SECTION B

PRODUCTION QUANTITIES

	ACTUAL		PROJECTION		ACTUAL
MAP					
DIRECT SALE					
FMS					
DIRECT SALE					

Appendix B to part 165-FORMAT FOR RECOUPMENT OF NONRECURRING COSTS ON SALES OF U.S.G. PRODUCTS AND TECHNOLOGY (DSAA(Q) 1112 REPORT FORMAT)

Department of the _____
($ THOUSANDS)

Reports Control Symbol: DSAA(Q)1112
Report Preparation Date _____
Report Cutoff Date _____

Case Designator (1)	Purchaser	Item	Quantity	Fiscal Year of Sale	Delivery Date (4)	Total Anticipated NC Charge (2)(3)	Actual Collection: Amount Collected This Quarter	Actual Collection: Amount Collected This Fiscal Year to Date	Actual Collection: Cumulative Collections(5)

Part 1. Recoveries on USG sales to foreign governments and international organizations.

Part 2. Recoveries on direct commercial sales to foreign governments, international organizations, and foreign commercial firms.

Part 3. Recoveries on sales to domestic commercial firms.

Notes:

(1) Applicable to USG sales to foreign governments and international organizations. For direct commercial sales, use the license number. For domestic sales, establish a "dummy" case number for control purpose. When a license number or "dummy" case number is shown in the case designator column, then the purchaser column should also reflect the name of the contractor who is liable for the payment.
(2) When collection results from the sales of technology, rather than product, place a (T) after the anticipated charge.
(3) Place an asterisk after charge when collection is completed.
(4) For proposed or pending direct commercial sales, place a "P" in this column.
(5) Collections that are completed during the fiscal year will be dropped on the first quarterly report of the subsequent fiscal year.

BILLING CODE 3810-01-C

Dated: October 21, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-25682 Filed 10-24-91; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-4025-5]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Amendment and Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed amendment and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to amend an upfront conditional exclusion previously granted, in March 11, 1988, for certain wastes that were to be generated by the incineration of cancelled 2,4,5-T and Silvex pesticide products using the EPA Mobile Incineration System (MIS) in McDowell, Missouri. The Agency is proposing to transfer the March 1988 exclusion to wastes to be generated from the same materials by a different, state-of-the-art incinerator that is owned and operated by Aptus, Incorporated, located in Coffeyville, Kansas. The Agency, however, is also proposing to modify verification testing requirements.

This action responds to a delisting petition submitted by Aptus under section 3001(f) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6921(f) and under EPA regulations at 40 CFR 260.20, which allow any person to petition the Administrator to modify or revoke any provision of parts 260 through 265 and 268 of title 40 of the Code of Federal Regulations, and at 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific basis" from the hazardous waste lists. The effect of today's amendment would be to exclude from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32 the solid wastes generated by Aptus during the incineration of the cancelled 2,4,5-T and Silvex pesticide products.

DATES: EPA is requesting public comments on today's proposed amendment and criteria for modifying verification testing conditions. Comments will be accepted until November 25, 1991. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on the proposed decision by filing a request with the Director, Characterization and Assessment Division, Office of Solid Waste, whose address appears below, by November 12, 1991. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (OS-305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Delisting Section, Waste Identification Branch, CAD/OSW (OS-333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F-91-CPAP-FFFFF".

Requests for a hearing should be addressed to Director, Characterization and Assessment Division, Office of Solid Waste (OS-330), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed amendment is located at the U.S. Environmental Protection Agency, 401 M Street, SW. (room M2427), Washington, DC 20460, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 260-9327 for appointments. The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (703) 920-9810. For technical information concerning this proposed amendment, contact Robert Kayser, Office of Solid Waste (OS-333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (202) 260-2224.

SUPPLEMENTARY INFORMATION:

I. Authority

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (*i.e.*, ignitability, corrosivity, reactivity, and toxicity) or meet the criteria for listing contained in 40 CFR 261.11(a)(2) or (a)(3). Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

II. Background

As discussed in the proposed exclusion for the EPA Mobile Incineration System or MIS (see 53 FR 31, January 4, 1988), the Administrator, in February 1979, issued emergency suspension orders and notices of intent to cancel the registration for a number of uses of the pesticides 2,4,5-T and Silvex. EPA has the power to suspend or cancel a pesticide's registration under the authority of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., as administered by the Office of Pesticide Programs of EPA. Among the products affected by the Administrator's actions were certain 2,4,5-T and Silvex products registered by Union Carbide Corporation. Union Carbide's 2,4,5-T and Silvex registrations were finally cancelled in November 1984. Pursuant to section 19 FIFRA (prior to its amendment in 1988), upon request, EPA was required to accept for safe disposal Union Carbide's existing stocks of suspended and cancelled 2,4,5-T and Silvex. Union Carbide requested such acceptance by EPA and later sued the Agency in an effort to require it to act. As a result of a settlement agreement with Union Carbide, EPA accepted title to the cancelled 2,4,5-T and Silvex pesticides stored at the Byers Warehouse in St. Joseph Missouri.

The Agency originally planned to incinerate these wastes in the MIS and, as such, the EPA Releases Control Branch (RCB), Office of Research and Development, submitted a petition and received an exclusion from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32 for the wastes that would have been generated by the MIS (see 53 FR 7903, March 11, 1988). RCB's petition was for an "upfront" exclusion. A petitioner may request an upfront exclusion for wastes that have not yet been generated or that will be subject to further treatment based on untreated

waste characteristics, pilot scale treatment data if available, process descriptions and batch testing. The final exclusion for RCB's wastes contained verification testing conditions designed to ensure that levels of hazardous constitutents in the incineration residues will not present a threat to human health and the environment.

EPA applied to the state of Missouri for a permit modification to allow the incineration of the cancelled pesticides to proceed. However, the modification was not obtained and the Agency has since dismantled the MIS. The Agency's Superfund contractor intends to enter into a contract with Aptus to incinerate the same stockpiles of wastes identified in the MIS exclusion. Specifically, Aptus, as described in its petition, will be contracted to incinerate the pesticide stockpiles held at the Byers Warehouse in St. Joseph, Missouri. Approximately 110 tons of liquid pesticide products, 330 tons of solid pesticide products, and 105 tons of pesticide packing materials were to have been incinerated by MIS. In addition, approximately 4 tons of contaminated liquid and 70 tons of contaminated solid materials that may have been generated during the incineration and handling process were also to have been incinerated. (See 53 FR 31, January 4, 1988, for a more detailed list of the Byers Warehouse materials Aptus intends to incinerate.)

III. Disposition of Delisting Petition

A. Aptus, Incorporated

1. Petition to Amend 40 Part 261, Appendix IX

Aptus, Incorporated (Aptus), located in Coffeyville, Kansas, is a hazardous waste treatment facility, with a permit under RCRA to store and incinerate hazardous waste materials. Upon successful completion of a trial burn, Aptus will also have a fully effective permit to incinerate hazardous waste. Aptus petition the Agency to amend the March 11, 1988, exclusion previously granted in response to a petition submitted for the EPA MIS in McDowell, Missouri. The MIS exclusion applied to wastes that were to be generated during the incinerator of dioxin-contaminated pesticides, listed as hazardous pursuant to 40 CFR 261.3(c)(2)(i). The pesticides, which include 2, 4, 5-T and Silvex, are presently listed as EPA Hazardous Waste No. F027—Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols. The listed constituents of concern for EPA Hazardous Waste No. F027 are tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans; and tri-, and tetra-, and pentachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amines, and other salts (see 40 CFR part 261, appendix VII).

In its petition, Aptus requested that the Agency amend the MIS exclusion so that the incineration of the cancelled pesticide materials can occur in its own, state-of-the-art incinerator located in Coffeyville, Kansas. Aptus also requested that the applicable verification testing requirements, which would have allowed for delisting of incineration residues from MIS, continue to apply to the incineration residues generated from its facility. Aptus intends to incinerate the same materials that were covered by the original 1988 exclusion.

In support of its petition, Aptus provided detailed descriptions of its incinerator. Aptus also requested that the Agency rely on petition information submitted for the MIS, in particular, descriptions of the pesticide materials to be incinerated, product specification and material safety data sheets of the pesticides, and the analyses for hazardous constituents completed for the major liquid and solid products. Furthermore, on July 6, 1986, EPA Region VII issued Aptus an Approval, under the Toxic Substances Control Act (TSCA), to incinerate polychlorinated biphenyls (PCSs); and on June 24, 1991, the state of Kansas issued Aptus a RCRA permit to store and incinerate hazardous wastes. Before commencing any incineration, however, Aptus must demonstrate that the incinerator is able to meet the performance standards in 40 CFR 264.343(a)(2) during a trial burn.

2. Agency Analysis

The Agency reviewed the information submitted by Aptus regarding pesticide materials to be incinerated, its incineration system, and waste residues that would be produced. Because the pesticide materials to be incinerated by Aptus are the same as those that were proposed to be incinerated by the MIS, the Agency agrees with Aptus that the product characterization data supplied for these materials in the original MIS petition will be sufficient. Also, based on an assessment of the information provided by Aptus regarding design and performance capabilities of its incineration system, the Agency believes that the Aptus incinerator is at least as capable as the MIS of generating non-hazardous waste residues from incineration of the pesticide materials (see public docket accompanying this notice for complete description of each incineration system). A brief comparison of the Aptus incineration system with the MIS is provided below.

The Aptus incinerator, like the MIS, is a rotary style kiln. The primary chamber of the Aptus incinerator is approximately twice the diameter of the MIS and four times as long. The volume of the Aptus incinerator is approximately 2,500 cubic feet compared to the MIS's 100 cubic feet; the heat capacity of the Aptus incinerator is 61.9 MM btu/hr compared to the MIS's 8 MM btu/hr. The average temperature of both the Aptus and MIS kilns is maintained at approximately 1,800°F.

The kiln residues are maintained at the elevated temperatures for extended periods of time (approximately 0.5 hour in the MIS and 1.5 hours in the Aptus incinerator), thus, ensuring the removal and destruction of dioxins and their precursors. Additionally, in the Aptus incinerator, kiln residues overflow and drop into a water quench, where the formation of dioxins is highly unlikely since the favorable temperature regime does not exist.

The Aptus incinerator, like the MIS, also has a secondary combustion chamber where kiln gases from the rotary kiln are received. The temperature range of the Aptus afterburner chamber is maintained slightly higher than the MIS secondary combustion chamber, although average temperatures are similar for both units (approximately 2,200°F).

As with the kiln residues, the Agency believes that the formation of dioxins in the combustion gases is also highly unlikely due to operating temperatures in the combustion zone of 1,800°F in the kiln and 2,200°F in the afterburner, gas residence times of 2 seconds in afterburner, and the very rapid cooling of the combustion gases to below the temperatures required for dioxin formation (by the water spray in the MIS and the spray dryer in the Aptus incinerator).

Both incineration systems remove particulate materials at various stages. In Aptus' case, particulate residues are removed by its air pollution control system (*i.e.*, spray dryer, baghouse, saturator, cross flow scrubber, and ionizing wet scrubber). In the MIS, a cyclone removed particulates prior to the secondary combustion chamber and generated a wet sludge during the clarification of incineration wastewaters.

While the residues generated by the Aptus incinerator differ slightly from those generated by the MIS, they originate in similar components of the

incineration systems. The most noticeable difference between the two incinerators is that the Aptus incinerator does not generate a wastewater stream. Although liquid streams circulate within the components of the Aptus air pollution control system, they are part of a closed system; water is released only as a vapor with the effluent gas. Like the MIS, incombustible residual solids are removed from the Aptus kiln and stored prior to disposal.

The Aptus incinerator also has significantly improved waste storage and handling equipment, a feature that may make the Aptus incinerator more likely to have lower levels of contaminants in the kiln residue and pollution-control wastes. Specifically, the large tanks ensure that a consistent flow of feed reaches the incinerator and will help to prevent dramatic fluctuations in temperature and gas generation. In addition, an improved shredder is available to help ensure the quick and thorough incineration of the solid cancelled pesticide materials. The enclosed waste feed mechanisms of the Aptus incinerator also will help to eliminate possible fugitive emissions.

The Agency's past experiences with incineration technology have demonstrated incineration to be the treatment technology of choice to detoxify hazardous organic wastes containing dioxins. See 50 FR 37338 (September 12, 1985), 51 FR 40585 (November 7, 1986), and 55 FR 22581 (June 1, 1990). Therefore, the Agency believes that the Aptus incinerator, as well as the MIS, would destroy dioxins, dioxin precursors, and furans in the waste materials.

Aptus estimated that a maximum of 362 tons (*i.e.*, 362 cubic yards) of solid residues from the kiln and 188 tons (*i.e.*, 188 cubic yards) of residue from the spray dryer/baghouse will be generated from treatment of the cancelled pesticide materials. The Agency reviews a petitioner's estimate and, on occasion, has requested a petitioner to re-evaluate estimated waste volume. EPA accepts Aptus' certified estimate of 550 cubic yards as the total volume for the two incineration residues.

Today's exclusion amendment would apply to the estimated maximum total of 550 cubic yards of incineration residues that would be generated by the Aptus incinerator. The Agency notes that this is less than the total volume of waste that the MIS would have generated under the 1988 exclusion (*i.e.*, 335 tons of ash, 35 tons of cyclone ash, 10 tons of separator solids, and 2,050 tons of wastewater).

3. Agency Evaluation and Conclusion

In its petition to amend the 1988 exclusion, Aptus requested that the exclusion, including the original maximum allowable levels (MALs) specified in the 1988 exclusion, be applied to residues resulting from treatment of the cancelled pesticides at its incinerator. EPA evaluated this request in light of new data, a new model, and a new analytical method available for use in the delisting program. The original 1988 exclusion established MALs for hazardous constituents in the incineration residues based on the use of a specific ground-water transport model, the Vertical and Horizontal Spread (VHS) model. The model was used to estimate the dilution-attenuation factor (DAF) for the migration of hazardous constituents from a land disposal unit to a hypothetical compliance point.

In the original exclusion, the Agency established the delisting levels for the solids by back-calculating from health-based levels selected on the basis of data available in 1988 (e.g., Maximum Contaminant Levels, or MCLs, set for drinking water), using the VHS-generated DAF of 32.2. The results of these calculations represented concentrations of constituents that would be found in leachate generated from the treated waste residues. For metals, the Agency established these leachate levels as the MALs, and specified that verification testing be performed using the Extraction Procedure (EP) leachate test to generate leachate from the wastes. The Agency, however, generally did not believe that the EP test produced acceptable results for many organic chemicals. Consequently, for the organic constituents in these wastes, the Agency used its "Organic Leachate Model" (OLM) to estimate the concentrations of organic constituents in the treated waste that would yield the maximum allowable leachate levels predicted by the VHS analysis. Verification testing could then be performed by analyzing for the total concentrations of organic constituents of concern in the wastes themselves.

EPA recently proposed an exclusion based on the use of a newer fate and transport model (EPA Composite Model for Landfills or EPACML), more recent health-based levels, and a newer leaching test method (Toxicity Characteristic Leaching Procedure or TCLP). (See 56 FR 32993, July 18, 1991.) Using the newer model (EPACML) for the volume of solid waste to be generated by the Aptus incinerator would yield a significantly higher DAF (100) than the factor obtained from the VHS model (32.2). While a few of the health-based numbers used in making delisting decisions are somewhat lower than those used in 1988, the more than 3-fold increase in DAF resulting from the newer model more than off-sets the lower health-based levels for all but one of the constituents.

Using the newer model and health-based levels, only the MAL for nickel would be significantly lower than the level established in 1988. The updated MAL would be 10 parts per million (ppm) of leachable nickel, compared to the 1988 MAL of 16 ppm. For other metals, the MALs would be higher, or essentially the same, using the newer fate and transport model and health-based levels (e.g., the selenium MAL increases from 0.3 ppm to 1 ppm and cadmium MAL increases from 0.3 ppm to 0.5 ppm). The updated MALs for hazardous organic constituents, using the newer EPACML model, newer health-based levels, and the OLM, would be higher compared to the 1988 MALs (e.g., the benzene MAL increases from 9.7 ppm to 52.3 ppm). See the public docket accompanying this notice for details of this comparison. (EPA notes that the background documents in the docket also present MALs for organic constituents, calculated using the EPACML DAF of 100 and the new health-based numbers, that are expressed as leachate concentrations that could be measured using the TCLP. Using the OLM, as noted above, allows these TCLP levels to be transformed into total concentrations in the waste, which can then be compared directly with the OLM-derived 1988 MALs.)

EPA is proposing to retain all 1988 MALs that are significantly lower than the MALs predicted using the newer model and health-based levels. While EPA does not expect leachable levels of nickel to be significant for the residues generated by the Aptus incinerator (see the September 12, 1991 laboratory analysis report from Aptus that confirmed total metal levels in the cancelled pesticides were low), EPA is proposing to lower the MAL of nickel to 10 ppm, from the original 1988 MAL of 16 ppm. This would ensure that leachable nickel levels do not exceed the MAL that would be established by the newer model and health-based level.

Furthermore, the Agency is proposing to update the verification testing conditions to require the newer leaching procedure (TCLP) for inorganic constituents in place of the EP method in the original exclusion. Since adopting the TCLP in place of the EP for determining allowable leachable levels

as part of the new Toxicity Characteristic (see 55 FR 11798, March 29, 1990), the Agency has required the use of the TCLP for determining leachable levels of inorganic constituents under a variety of RCRA requirements. The TCLP, however, is not necessary or appropriate for setting MALs for organic constituents in this exclusion because, as noted previously, EPA is retaining the MALs that were established in 1988 for organic constituents in terms of total constituent (rather than leachable) levels. The Agency is soliciting comments on whether the above modifications to the original 1988 verification testing conditions are appropriate, and whether the Agency should consider any further modifications.

The Agency believes that the descriptions of Aptus' incinerator (and previous analytical characterization of the untreated pesticide materials), in conjunction with the modified testing requirements, provide a reasonable basis to grant Aptus' petition to amend the March 1988 MIS exclusion. The amended exclusion would continue to require testing of the petitioned kiln residue and spray dryer/baghouse residue, prior to disposal, to ensure that the Aptus incinerator effectively treats the dioxin-contaminated pesticide materials (see Section 111.A.4—Verification Testing Conditions).

The Agency, therefore, proposes to amend the March 1988 exclusion previously granted for EPA's Mobile Incineration System to the Aptus incinerator, located in Coffeyville, Kansas. The amended exclusion would apply specifically to the kiln residue and spray dryer/baghouse residue generated by the Aptus incinerator during the treatment of 2,4,5-T and Silvex and related materials stored in Byers Warehouse, St. Joseph, Missouri.

4. Verification Testing Conditions

The Agency has modified the monitoring and testing requirements in today's proposed amendment in order to conform to the operation of the Aptus incinerator. Therefore, the Agency is also soliciting comments on whether the following modifications to the conditions in the 1988 exclusion which would allow these conditions to apply to the wastes to be generated by Aptus are appropriate.

Aptus will be required to analyze daily batches for of the kiln residue and spray dryer/baghouse residue for certain metals and organic constituents (identified by the characterization of the untreated pesticides as well as potential products of incomplete combustion), prior to disposal, to ensure that the incinerator performs as expected (*i.e.*, generates wastes that meet the Agency's verification testing conditions established in the MIS exclusion). The Agency continues to believe that an upfront conditional delisting is appropriate because (1) the composition of the materials to be incinerated is relatively uniform (*i.e.*, cancelled pesticide products), (2) the design and performance capabilities of the Aptus incinerator indicate that it is at least as effective as the MIS in the destruction of organic hazardous wastes, (3) the Aptus incinerator will generate a smaller total volume of waste than the MIS due to the lack of any wastewater stream, and (4) the results of the batch verification testing will provide validation that the Aptus incinerator is operating effectively, and help ensure that only materials which have been treated to nonhazardous levels will be disposed in nonhazardous waste facilities.

The modified conditions refer to Aptus as the responsible party for the analysis of waste samples and the submission of data and information to the Agency. References to the collection and analysis of wastewater samples and the maximum allowable levels established for watewaters in the MIS exclusion testing conditions have been deleted. In particular, Condition (2) of the MIS exclusion, which referred only to the collection of wastewater samples, has been deleted and the numbering sequence of the testing conditions has been adjusted accordingly.

In addition, references to the collection of samples of the solid residues generated by the Aptus incinerator (*i.e.*, kiln residues and spray dryer/baghouse residue) have replaced references to the solid residues that would have been generated by the MIS. Thus, Condition (2) of today's proposed exclusion amendment (previously Condition (3) of the MIS exclusion) now describes procedures for collecting samples of the Aptus incinerator residues and identifies the maximum allowable levels for inorganic constituents (with the modifications to the nickel level and the extraction procedure noted previously). Also, Aptus would be collecting the incineration residues in containers which are larger than the drums specified in the 1988 exclusion (*i.e.*, in "hoppers" which may hold up to eight times the volume of typical storage drums). Therefore, Condition (2) of today's proposed exclusion amendment has also been modified to require Aptus to take a minimum of four grab samples from each container rather than the one grab sample originally specified. Conditions (3) and (4) of today's proposed exclusion amendment (previously Conditions (4) and (5) of the MIS exclusion) now specify the maximum allowable levels for the hazardous organic constituents, dioxins, and furans.

Finally, the Agency has modified the definition of a "batch" of waste (a batch is the amount of waste that is represented by the sample collected for analysis) based on feed handling and operating information available for the Aptus incinerator. Conditions (2), (3), and (4) of today's proposed exclusion amendment (previously Conditions (3), (4), and (5) of the MIS exclusion) now refer to the amount of waste generated over a 24 hour period, rather than an 8 hour period.

As stated previously in today's notice, Aptus' waste storage and handling equipment will help prevent dramatic fluctuations in the incinerator operating conditions, thus, ensuring efficient incineration of the solid cancelled pesticide materials. In addition, the Aptus incinerator is a large commercial incinerator that is approved under TSCA for the incineration of PCBs, and its operators are experienced with the continuous operation of the incinerator on a around-the-clock basis. Based on the maximum feed rates for the Aptus and MIS units (*e.g.*, the maximum feed rate for solids in the Aptus is 10,000 lbs./hr., compared to a maximum solids feed rate of 700 lbs./hr. reported for the MIS), the larger Aptus incinerator should be able to complete the treatment of the pesticide materials much more rapidly than the smaller MIS. EPA believes that the operating procedures and maintenance needs of the MIS, coupled with the longer time needed to incinerate the pesticide materials, might have resulted in intermittent shut-downs and start-ups of the MIS unit. EPA wanted more frequent testing for such intermittent operating conditions.

Furthermore, unlike the MIS, the Aptus incinerator will not generate the large volume of wastewater from the scrubber system. Smaller batches were more appropriate for the MIS because, prior to disposal, the wastewater needed to be stored and tested to confirm that delisting levels were met. Therefore, more frequent testing for the MIS also was reasonable in order to minimize the storage volume necessary to hold the wastewater. For these reasons, the Agency believes that daily testing of the solid residues (through the collection of composite samples that represent a full-day's waste generation) generated by the Aptus incinerator is appropriate, and will be sufficient.

If made final, the amended one-time exclusion will only apply to the kiln residue and spray dryer/baghouse residue generated during the treatment of the cancelled pesticide materials stored in Byers Warehouse. The facility would require a new exclusion if the treatment process is significantly altered, or if other materials are incinerated with the cancelled pesticides, and accordingly would need to file a new petition. The facility must treat such wastes generated from significantly altered processes (or from co-incineration of other materials) as hazardous until a new exclusion is granted. The separate incineration of any other hazardous waste would also require a new petition for the residues to be nonhazardous.

Although the management of the wastes covered by this proposed amendment would be relieved from RCRA Subtitle C jurisdiction upon final promulgation of an exclusion (provided the conditions specified in the exclusion are met), the generator of a delisted waste must either treat or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, delisted waste may be delivered to a facility which beneficially uses or reuses, or legitimately recycles or reclaims the waste or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

IV. Limited Effect of Federal Exclusion

The amendment of a previously granted exclusion being proposed today is being issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a federally-issued exclusion from taking effect in the State. Since a petitioner's waste may be regulated under a dual system (*i.e.*, both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact their State regulatory authority to determine the status of their wastes under State law.

V. Effective Date

This rule, if finally promulgated, will become effective immediately upon such final promulgation. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective immediately upon final promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedure Act, pursuant to 5 USC 553(d).

VI. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a regulatory Impact Analysis. This proposal to grant an amendment to an existing exclusion is not major, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding wastes generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its wastes as non-hazardous. There is no additional impact, therefore, due to today's proposed rule. This proposal is not a major regulation; therefore, no Regulatory Impact Analysis is required.

VII. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VIII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling, and Reporting and recordkeeping requirements.

Dated: October 22, 1991.

Devereaux Barnes,

Acting Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, part 261 of chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

Appendix IX—[Amended]

2. In Table 1 of appendix IX to part 261 the entry name and address for "EPA's Mobile Incineration System (MIS), McDowell, MO," is revised to read "Aptus, Incorporated, Coffeyville, Kansas" and the entry is further revised to read as follows:

* * * * *

Appendix IX—Wastes Excluded Under Section's 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
A tus Incorporated	Coffeyville, Kansas.	Kiln residue and spray dryer/bagnouse residue (EPA hazardous Waste No. F027) generated during the treatment of canceled pesticides containing 2,4,5-T and Silvex and related materials by Aptus' incinerator at Coffeyville, Kansas after [Insert date of publication of final rule in FEDERAL REGISTER], so long as: (1) The incinerator is monitored continuously and is in compliance with operating permit conditions. Should the incinerator fail to comply with the permit conditions relevant to the mechanical operation of the incinerator, Aptus must test the residues generated during the run when the failure occurred according to the requirements of Conditions (2) through (4), regardless of whether or not the demonstration in Condition (5) has been made. (2) A minimum of four grab samples must be taken from each hopper (or other container) of kiln residue generated during each 24 hour run; all grabs collected during a given 24 hour run must then be composited to form one composite sample. A minimum of four grab samples must also be taken from each hopper (or other container) of spray dryer/baghouse residue generated during each 24 hour run; all grabs collected during a given 24 hour run must then be composited to form one composite sample. Prior to the disposal of the residues from each 24 hour run, a TCLP leachate test must be performed on these composite samples and the leachate analyzed for the TC toxic metals, nickel, and cyanide. If arsenic, chromium, lead, or silver TC leachate test results exceed 1.6 ppm; barium levels exceed 32 ppm; cadmium or selenium levels exceed 0.3 ppm; mercury levels exceed 0.07 ppm; nickel levels exceed 10 ppm; or cyanide levels exceed 6.5 ppm, the wastes must be retreated to achieve these levels or must be disposed in accordance with subtitle C of RCRA. Analyses must be performed according to SW-846 methodologies. (3) Aptus must generate, prior to the disposal of the residues, verification data from each 24 hour run for each treatment residue (*i.e.*, kiln residue, baghouse/spray dryer residue) to demonstrate that the maximum allowable treatment residue concentration listed below are not exceeded. Samples must be collected as specified in Condition (2). Analyses must be performed according to SW-846 methodologies. Any residues which exceed any of the levels listed below must be retreated or must be disposed as hazardous. (Kiln residue and spray dryer/baghouse residue must not exceed the following levels:. Aldrin ..... 0.015 ppm Benzene ..... 9.7 ppm Benzo(a)pyrene ..... 0.43 ppm Benzo(b)fluoranthene ..... 1.8 ppm Chlordane ..... 0.37 ppm Chloroform ..... 5.4 ppm Chrysene ..... 170 ppm Dibenz(a,h)anthracene ..... 0.083 ppm 1,2-Dichloroethane ..... 4.1 ppm Dichloromethane ..... 2.4 ppm 2,4-Dichlorophenol ..... 480 ppm Dichlorvos ..... 260 ppm Disulfaton ..... 23 ppm Endosulfan I ..... 310 ppm Fluorene ..... 120 ppm Indeno (1,2,3,cd)pyrene ..... 330 ppm Methyl parathion ..... 210 ppm Nitrosodiphenylamine ..... 130 ppm Phenanthrene ..... 150 ppm Polychlorinated biphenyls ..... 0.31 ppm Tetrachloroethylene ..... 59 ppm

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description	
		2,4,5-TP (silvex)	110 ppm
		2,4,6-Trichlorophenol	3.9 ppm
		(4) Aptus must generate, prior to disposal of residues, verification data from each 24 hour run for each treatment residue (*i.e.*, kiln residue, spray dryer/baghouse residue) to demonstrate that the residues do not contain tetra-, penta-, or hexachlorodibenzo-p-dioxins or furans at levels of regulatory concern. Samples must be collected as specified in Condition (2). The TCDD equivalent levels for the solid residues must be less than 5 ppt. Any residues with detected dioxins or furans in excess of this level must be retreated or must be disposed of as acutely hazardous. SW-846 Method 8290, a high resolution gas chromatography and high resolution mass spectroscopy (HRGC/HRMS) analytical method must be used. For tetra- and penta-chlorinated dioxin and furan homologs, the maximum practical quantitation limit must not exceed 15 ppt for the solid residues. For hexachlorinated dioxin and furan homologs, the maximum practical quantitation limit must not exceed 37 ppt for the solid residues.	
		(5) The test data from Conditions (1), (2), (3), and (4) must be kept on file by Aptus for inspection purposes and must be compiled, summarized, and submitted to the Director for the Characterization and Assessment Division, Office of Solid Waste, by certified mail on a monthly basis and when the treatment of the canceled pesticides and related materials is concluded. The testing requirements for Conditions (2), (3), and (4) will continue until Aptus provides the Director with the results of four consecutive batch analyses for the petitioned wastes, none of which exceed the maximum allowable levels listed in these conditions and the Director notifies Aptus that the conditions have been lifted. All data submitted will be placed in the RCRA public docket.	
		(6) Aptus must provide a signed copy of the following certification statement when submitting data in response to the conditions listed above: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations, I certify that the information contained in or accompanying this document is true, accurate, and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate, and complete."	

* * * * *

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DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

RIN 1094-AA42

Special Rules Applicable to Surface Coal Mining Hearings and Appeals

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Office of Hearings and Appeals is extending the period for the submission of comments on the proposed rules providing procedures for administrative review of decisions by the Office of Surface Mining Reclamation and Enforcement (OSM) to rescind permits that should not have been issued and OSM decisions which determine that a person is linked, within

the meaning of OSM's ownership and control and permit review regulations, to a person currently in violation of the Surface Mining Control and Reclamation Act of 1977 or other applicable law.

DATES: The comment period on the proposed rules is extended until November 20, 1991.

ADDRESSES: Written comments may be mailed or delivered in person to: Director, Office of Hearings and Appeals, U.S. Department of the Interior, room 1111, 4015 Wilson Blvd., Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Blvd., Arlington, Virginia 22203. Telephone: 703-235-3750.

SUPPLEMENTARY INFORMATION: On September 6, 1991, in 56 FR 45806, the Office of Hearings and Appeals published proposed rules to amend its regulations applicable to surface coal mining hearings and appeals by adding procedural rules for administrative review of (1) decisions by OSM to rescind permits that should not have been issued, and (2) decisions by OSM which determine that a person or entity is linked, within the meaning of OSM's ownership and control and permit review regulations, to a person currently in violation of the Surface Mining Control and Reclamation Act of 1977 or other applicable law. The proposed rules would provide for a hearing before an Administrative Law Judge and for discretionary review of his initial decision by the Interior Board of Land Appeals. In addition, amendment was proposed of the rule pertaining to the burden of going forward with evidence to establish a prima facie case in an individual civil penalty proceeding. OSM's companion rules were published on September 6, 1991, 56 FR 45780, and September 26, 1991, 56 FR 48924.

On October 16, 1991, the Joint National Coal Association/American Mining Congress Committee on Surface Mining Regulations filed a request for an additional 30 days to file comments on the proposed rules, to correspond with OSM's planned extension of the comment period on its proposed rules published at 56 FR 45780 (Sept. 6, 1991).

The Office of Hearings and Appeals extends the comment period on its proposed rules until November 20, 1991.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure, Mines, Public lands, Surface mining.

Dated: October 18, 1991.

Roger E. Middleton,

Director.

[FR Doc. 91-25673 Filed 10-24-91; 8:45 am]

BILLING CODE 4310-79-M

DEPARTMENT OF DEFENSE

48 CFR Parts 215, 252, and 270

Defense Federal Acquisition Regulation Supplement; Recoupment of Nonrecurring Costs on Sales of U.S. Products and Technology

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for public comments.

SUMMARY: The Defense Acquisition Regulations Council is proposing changes to the Defense FAR Supplement (DFARS) language on recoupment of nonrecurring costs to implement changes to DoD Directive 2140.2, Recoupment of Nonrecurring Costs on Sales of U.S. Products and Technology. This rule amends the 1991 Edition of DFARS, which was published July 31, 1991 (56 FR 36280).

DATES: Comments on the proposed DFARS rule should be submitted in writing at the address shown below on or before December 9, 1991, to be considered in the formulation of a final rule. Please cite DAR Case 91-033.

ADDRESSES: Interested parties should submit written comments to The Defense Acquisition Regulations Council, ATTN: Mr. Charles W. Lloyd, OUSD (A) DP (DARS), room 3D139, The Pentagon, Washington, DC 20301-3000. FAX (703) 697-9845.

FOR FURTHER INFORMATION CONTACT: Charles W. Lloyd, (703) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends the interim rule published in the 1991 edition of the DFARS as part 270, Recovery of Nonrecurring Costs and Royalty Fees on Commercial Sales. It implements the latest revision of DoDD 2140.2, Recoupment on Sales of U.S. Products and Technology, which appears elsewhere in this issue of the Federal Register.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act applies, but 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 recoupment policies now generally apply only to items which have at least a $50 million dollar nonrecurring cost investment. An initial regulatory flexibility analysis has therefore not been performed. However, comments are invited from small businesses and other interested parties. Such comments must be submitted separately and must cite DAR Case 91-610 in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies and approval from OMB is being requested.

List of Subjects in 48 CFR Parts 215, 252, and 270

Government procurement.

Claudia L. Naugle,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, it is proposed that 48 CFR parts 215, 252, and 270 be amended as follows:

1. The authority citation for 48 CFR parts 215, 252, and 270 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, Defense FAR Supplement 201.301.

PART 215—CONTRACTING BY NEGOTIATION

2. Subpart 215.70 is added to read as follows:

Subpart 215.70—Recoupment of Nonrecurring Costs

Sec.
215.7000 Scope.
215.7001 Definitions.
215.7002 Policy.
215.7003 General.
215.7004 Contractor responsibilities.
215.7005 Waiver or reduction of recoupment charges.
215.7006 Contract clause.

Subpart 215.70—Recoupment of Nonrecurring Costs

215.7000 Scope.

This subpart sets forth policy and procedures for recoupment from DoD contractors and their subcontractors of a fair share of the DoD's investment, or of a foreign military sale (FMS) customer's investment, in the nonrecurring costs of major defense equipment, major items, and related technology. It implements DoDD 2140.2, Recoupment of Nonrecurring Costs on Sales of U.S. Products and Technology.

215.7001 Definitions.

See the clause at 252.215-7004, Recoupment of Nonrecurring Costs, for definitions of the terms used in this subpart.

215.7002 Policy.

(a) DoD policy is to recoup a fair (pro rata) share of its investment in the nonrecurring costs of major defense equipment, major items, and related technology when the contractor or its subcontractor—

(1) Sells the equipment, item, technology, or a derivative item to any customer other than the U.S. Government, unless the U.S. Government is the ultimate customer of the sale; or

(2) Otherwise transfers the technology to any entity other than the U.S. Government for coproduction, assembly, or licensed production, unless the U.S. Government is the ultimate customer.

(b) DoD policy also is to recoup in selected cases, on behalf of a foreign government or international organization, a fair share of the nonrecurring costs for a special feature, unique requirement, or product paid for by the foreign government or international organization under an FMS case.

215.7003 General.

(a) The fair share is recovered through assessment of nonrecurring cost recoupment charges established by DoD. The recoupment charges are determined in accordance with DoD 2140.2, Recoupment of Nonrecurring Costs on Sales of U.S. Products and Technology, and are administered through the following DoD focal points:

(1) U.S. Army Security Affairs Command, Attn: AMSAC-RP; 5001 Eisenhower Avenue, Alexandria, Va 22333-0001

(2) Commanding Officer, Navy International Logistics Control Office; 700 Robbins Avenue (Code 10); Philadelphia, PA 19111-5095

(3) Assistant for Security Assistance, SAF/FMBIS; Pentagon, Washington, DC 20330-1000

(b) Contracting officers should refer immediately any issue raised by contractors concerning a recoupment charge to the appropriate DoD focal point.

215.7004 Contractor responsibilities.

DoD contractors and their subcontractors are responsible, under the terms of the clause at 252.215-7004, Recoupment of Nonrecurring Costs, for—

(a) Contacting the appropriate DoD focal point to determine the recoupment charge before entering into any sale, coproduction agreement, license to produce, technical assistance agreement, or transfer agreement for major defense equipment, major items, derivative items, or technology subject to the recoupment policy in 215.7002;

(b) Notifying the appropriate DoD focal point of all sales to, or agreements or licenses with customers other than the U.S. Government, except when the U.S. Government is the eventual purchaser, for major defense equipment, major items, derivative items, or technology subject to the recoupment policy in 215.7002; and

(c) Paying the recoupment charges to the DoD focal point.

215.7005 Waiver or reduction of recoupment charges.

Requests for waiver or reduction of a recoupment charge are submitted in accordance with DoDD 2140.2, Recoupment of Nonrecurring Costs on Sales of U.S. Products and Technology—

(a) For foreign sales, from the foreign government or international organization to the Director, DSAA; or

(b) For domestic sales, from the military department or the contractor to the Under Secretary of Defense (Acquisition).

215.7006 Contract clause.

Use the clause at 252.215-7004, Recoupment of Nonrecurring Costs, in all research, development, test, and evaluation and production contracts of $10 million or more.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.215-7004 is added to read as follows:

252.215-7004 Recoupment of nonrecurring costs.

As prescribed in 215.7006, use the following clause:

Recoupment of Nonrecurring Costs (XXX 1992)

(a) *Definitions*—as used in this clause:

(1) *Derivative item* means any item derived from a major defense equipment or major item where there is commonality equal to, or more than 50 percent of the major defense equipment or major item.

(2) *Major defense equipment* means any item of significant military equipment on the United States Munitions List that has a nonrecurring research, development, test, and evaluation cost of more than $50 million or a total production cost of more than $200 million, as determined in accordance with DoD Directive 2140.2, Recoupment of Nonrecurring Costs on Sales of U.S. Products and Technology.

(3) *Major item* means any item, other than a major defense item, that has a nonrecurring research, development, test, and evaluation (RDT&E) cost of more than $50 million or a total production cost of more than $200 million, as determined in accordance with DoD Directive 2140.2, Recoupment of Nonrecurring Costs on Sales of U.S. Products and Technology.

(4) *Nonrecurring costs* is as defined in DoD Directive 2140.2 and generally means cost funded by a Department of Defense (DoD) RDT&E appropriation or one-time production costs, funded by a DoD procurement or other appropriation, such as preproduction engineering, rate and special tooling, special test equipment, production engineering, product improvement, destructive testing, and pilot model production, testing, and evaluation.

(5) *Sale* includes interdivisional transfers to a rental division.

(b) The Contractor agrees to pay the U.S. Government recoupment charges, determined in accordance with DoD Directive 2140.2, Recoupment of Nonrecurring Costs on Sales of U.S. Products and Technology, for the Government's investment, or for a foreign military sale customer's investment, in the nonrecurring costs of major defense equipment, major items, and related technology acquired under this contract when the Contractor or its subcontractor—

(1) Sells such equipment, items, technology or derivative items to a customer other than the U.S. Government, unless the U.S. Government is the ultimate customer of such sale; or

(2) Otherwise transfers the technology to any entity other than the U.S. Government for coproduction, assembly, or licensed production, unless the U.S. Government is the ultimate customer.

(c) The Contractor shall: (1) Before entering into any sale, coproduction agreement, license to produce, technical assistance agreement, or other transfer or rental agreement for major defense equipment, major items, or technology acquired under this contract, or for derivative items, contact the appropriate Department of Defense (DoD) focal point listed in section 215.7003 of the Defense Federal Acquisition Regulation Supplement to determine the recoupment charge applied to such equipment, items, and technology;

(2) Within ten days after entering into any sale or agreement of the type in paragraph (c)(1) of this clause, provide a notification to the appropriate DoD focal point to include—

(i) Brief description of the major defense equipment, major item, derivative item, or technology;

(ii) Name and addres of the purchaser;

(iii) Quantity;

(iv) Delivery schedule;

(v) Identification of the U.S. Government export license, if applicable; and

(vi) Recoupment charges.

(3) Within 30 days after delivery to or acceptance of the equipment, item, or technology by the purchaser, whichever comes first, pay the recoupment charges to the DoD focal point.

(4) Within 60 calendar days after the end of each calendar year in which payment of a recoupment charge was due, submit the following certification to the DoD focal point:

Recoupment of Nonrecurring Costs Certification

I hereby certify that, to the best of my knowledge and belief, all notifications required by the Recoupment of Nonrecurring Costs clause of contract _____ have been provided and are accurate, complete, and current as of the end of calendar year ____.

Contractor

Signature

Title

Date

(d) In the event of a sale or transfer of the equipment, items, or technology subject to a recoupment charge, the Contractor agrees to relieve the Government of any and all loss or liability that might result from the use of Government data, tooling, test equipment, or facilities.

(e) The Contractor shall include this clause, including this paragraph (e), in all subcontracts of $10 million or more.
(End of clause)

252.270-7000 [Removed]

4. Section 252.270-7000 is removed.

Part 270 [Removed]

5. Part 270 is removed.

[FR Doc. 91-25681 Filed 10-24-91; 8:45 am]
BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 85-06; Notice 6]

Federal Motor Vehicle Safety Standards; Hydraulic Brake Systems; Passenger Car Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Supplemental notice of proposed rulemaking (SNPRM); Extension of comment period.

SUMMARY: This notice grants a request from the Ford Motor Company for extension of the period to submit written comments on an agency Supplemental Notice of Proposed Rulemaking (SNPRM) which would establish a new Federal Motor Vehicle Safety Standard No. 135, Passenger Car Brake Systems. The comment closing date is changed from October 31, 1991, to January 10, 1992.

DATES: Comments must be received on or before January 10, 1992.

ADDRESSES: Comments should refer to Docket No. 85-06, Notice 5 and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Docket hours are 9:30 am. to 4 pm., Monday through Friday .

FOR FURTHER INFORMATION CONTACT: Larry Cook, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366-4803).

SUPPLEMENTARY INFORMATION: On July 3, 1991, NHTSA published in the **Federal Register** (56 FR 30528) a Supplemental Notice of Proposed Rulemaking (SNPRM) to establish a new Standard No. 135, Passenger Car Brake Systems. That standard would replace Standard No. 105, Hydraulic Brake Systems, as it applies to passenger cars. The agency originally established a 120-day comment period.

The Ford Motor Company has requested an extension to January 10, 1992. Ford has determined that due to significant proposed changes to test procedures and the additional proposed performance requirements, it is necessary for them to conduct a series of partial compliance tests.

After consideration of the request, NHTSA has decided to extend the comment period until January 10, 1992. The agency has concluded that this extension of the comment period is warranted considering the significance of this rulemaking.

This notice also denies a request from the Economic Commission for Europe's Experts on Brakes and Running Gear (GRRF) to extend the comment period to April 30, 1992. The agency believes that the extension to January 10, 1992, should provide the GRRF sufficient time to conduct evaluations and vehicle tests and present their findings at additional international meetings.

Issued on: October 18, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-25567 Filed 10-24-91; 8:45 am]
BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB42

Endangered and Threatened Wildlife and Plants; Six-Month Extension on Proposed Threatened Status for Argali

AGENCY: Fish and Wildlife Service, Interior.

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

SUMMARY: The Service extends for 6 months the deadline for issuing a final rule on the proposed threatened status for the argali. The Service has encountered difficulty in acquiring sufficient bioconservation and legal information on this Asian sheep, and the sufficiency and accuracy of information that has been obtained is disputed among scientists. The comment period is hereby reopened.

DATES: The new deadline for the final rule will be April 5, 1991. Comments must be received by December 24, 1991.

ADDRESSES: Please send correspondence regarding this notice to the Chief, Office of Scientific Authority; Mail Stop: Arlington Square, room 725; U.S. Fish and Wildlife Service; Washington, DC 20240 (Fax number 703-358-2202). Express and messenger-delivered mail should be addressed to the Office of Scientific Authority; room 750, 4401 North Fairfax Drive; Arlington, Virginia 22203. Comments and other information received will be available for public inspection, by appointment, from 8 a.m. to 4 p.m, Monday through Friday, at the Arlington, Virginia address.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, at the above address (phone 703-358-1708 or FTS 921-1708).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 5, 1990 (55 FR 40890-40896), the Fish and Wildlife Service (Service) issued a proposed rule to determine threatened status for the argali (*Ovis ammon*), a large wild sheep found in Soviet Central Asia, Mongolia, China, and the Himalayan region. The proposal states that any resulting final rule might take a substantially different form, perhaps designating the entire species *O. ammon*, or any subspecies or populations thereof, as endangered, or perhaps excluding certain subspecies or populations from any classification. In the **Federal Register** of February 8, 1991 (56 FR 5192), the comment period was

extended to April 20, 1991. Although the Service emphasizes that it has as yet reached no decision regarding a final rule, and still is considering the whole range of alternatives indicated in the proposal, the information that is currently available suggests that it might not be inappropriate to classify the entire species *O. ammon* as endangered, except possibly in parts of the Soviet Union and Mongolia, where it might be classified as threatened and covered by special regulations.

However, the Service has encountered difficulty in obtaining sufficient data on the bioconservation and legal status of the argali from various foreign authorities and certain other interested parties. Moreover, some of the information that the Service has obtained is contradictory in nature, and some of the comments received indicate considerable unresolved disagreement among scientists knowledgeable of the species regarding the sufficiency and accuracy of available data. Section 4(b)(6)(B)(i) of the Endangered Species Act of 1973, as amended, provides that in such cases the deadline for issuing a final rule may be extended for not more than 6 months for purposes of soliciting additional data. The Service, therefore, announces an extension of the deadline and a new comment period, as indicated in the above dates.

Authority: 16 U.S.C. 1531–1544.

List of Subjects in 50 CFR Part 17

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

Dated: October 10, 1991.

Bruce Blanchard,

Acting Director.

[FR Doc. 91–25469 Filed 10–24–91 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 56, No. 207
Friday, October 25, 1991

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

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

Decision by HUD to Permit an Elderly Housing Exemption Under the Fair Housing Amendments Act of 1988

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of decision for exemption.

SUMMARY: The Farmers Home Administration announces that pursuant to the exemption authority of section 807 (b)(2)(A) of the Fair Housing Amendments Act of 1988 (42 USC 3607), the Secretary of Housing and Urban Development (HUD) has, under signature by Frank Keating, General Counsel, granted to Farmers Home Administration (FmHA), an exemption upon a request for the statutory exemption by FmHA. The exemption permits the FmHA to continue to administer its rural rental housing (RRH) program for elderly persons according to the definition of "elderly" at section 501 (b)(3) of the Housing Act of 1949, as amended (42 USC 1471). Without the exemption, FmHA would have had to restrict occupancy in RRH it has financed since 1962, designated for elderly persons, exclusively to persons 62 years of age or older. With the exemption, HUD recognizes the FmHA "housing for the elderly" program as representative of the programs that Congress envisioned when it provided for certain elderly housing exemptions under the Fair Housing Amendments Act of 1988. The result is that the FmHA elderly housing program maintains its status. Consequently, FmHA will continue to administer the definition of "elderly," which means elderly or handicapped persons or families, to house persons in rural areas who are at least 62 years of age or are handicapped (including disabled) without interruption of program and purpose.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Agriculture, Farmers Home Administration, attn: William F. Daniel, Senior Loan Officer, Multi-Housing Servicing and Property Management Division, Room 5321-S, Washington, DC 20250, (202) 382-1619.

Dated: October 15, 1991.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 91-25759 Filed 10-24-91; 8:45 am]

BILLING CODE 3410-07-M

Federal Grain Inspection Service

Request for Applications from Persons Interested in Designation to Provide Official Services at Mid-States Terminals, Inc. and Peavey Elevator, Carrollton, Michigan (MI)

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: As a result of the absence of export grain shipments, Mid-States Terminals, Inc. and Peavey Elevator at Carrollton, Michigan, requested that FGIS no longer recognize these elevators as export elevators at export port locations, but rather view the elevators as domestic grain elevators at which official services would be provided by a designated official agency. The FGIS is requesting persons interested in providing official services at these elevators to submit an application for designation to perform such services. The FGIS has been and will continue to provide official services at these elevators until a decision can be made in this matter. FGIS anticipates that an applicant may be designated to provide official services at these two elevators by January 30, 1992, or earlier.

DATES: Applications must be postmarked on or before November 25, 1991.

ADDRESSES: Applications must be submitted to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. All applications will be made available for public inspection at this address at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-447-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the United States Grain Standards Act, as amended (Act), authorizes the FGIS Administrator to designate any qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services. The FGIS is requesting persons interested in providing official services at Mid-States Terminals, Inc., Carrollton, Michigan and Peavey Elevator, Carrollton, Michigan to submit an application for designation.

The FGIS has been providing official services at these facilities since the FGIS recognized them as export elevatorsat export port locations. Only the FGIS and delegated States may provide official services at export elevators at export port locations. However, no ships have been loaded at either of these facilities since fiscal year 1989, and a total of only two ships have been loaded at these facilities during the past five fiscal years. Consequently, both facilities have requested that FGIS no longer recognize these elevators as export elevators at export port locations, but rather view the elevators as domestic grain elevators at which official services would be provided by an agency designated according to the Act. FGIS will continue to provide official services at these facilities until a decision can be made in this matter. As a result of the designation process required by the Act, FGIS anticipates this will be approximately January 30, 1992.

Section 7(g)(1) of the Act provides that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in section 7(f) of the Act. Designation of an applicant to provide official inspection at these two elevators will be for a period not to exceed 3 years.

The geographic area, in the State of Michigan, that will be assigned to the applicant selected for designation, pursuant to section 7(f)(2) of the Act, is as follows:

Mid-States Terminals, Inc., Carrollton, Michigan; and Peavey Elevator, Carrollton, Michigan.

Interested persons are hereby given an opportunity to apply for designation to provide official services at these two elevators under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services at these two elevators.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: October 18, 1991.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 91-25649 Filed 10-24-91; 8:45 am]

BILLING CODE 3410-EN-F

Request for Comments on the Designation Applicant for the Geographic Area Currently Assigned to the Grand Forks (ND) Agency

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: The FGIS requests interested persons to submit comments on the applicant for designation in the geographic area currently assigned to Robert J. Bohlman dba Grand Forks Grain Inspection Department (Grand Forks).

DATES: Comments must be postmarked on or before December 9, 1991.

ADDRESSES: Comments must be submitted in writing to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. SprintMail users may respond to [HDUNN/FGIS/USDA].Telecopier users may send responses to the automatic telecopier machine at 202-382-1015, attention: Homer E. Dunn. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-447-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the August 1, 1991, **Federal Register** (56 FR 36760), the FGIS asked persons interested in providing official services within the geographic area currently assigned to Grand Forks to submit an application for designation. Applications were to be postmarked by September 3, 1991. Grand Forks Grain Inspection Department, Inc., the only applicant, applied for the entire available area.

The FGIS is publishing this notice to provide interested persons the opportunity to present comments concerning the applicant for designation. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of Grand Forks Grain Inspection Department, Inc. All comments must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in making a final decision. The FGIS will publish notice of the final decision in the **Federal Register**, and the FGIS will send the applicant written notification of the decision.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: October 18, 1991.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 91-25650 Filed 10-24-91; 8:45 am]

BILLING CODE 3410-EN-F

Cancellation of Chattanooga's Designation, Request for Comments on the Need for Official Services in the Geographic Area Formerly Assigned to Chattanooga, and Request for Applications from Persons Interested in Designation to Provide Official Services in the Geographic Area Formerly Assigned to the Chattanooga, (TN) Agency

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: Chattanooga Grain Inspection Company, Inc. (Chattanooga), advised the FGIS that due to a lack of requests for official grain inspection and weighing it ceased doing business on September 25, 1991, and is requesting voluntary designation cancellation. The FGIS is cancelling the designation and is requesting comments on the need for official inspection and weighing in the geographic area formerly assigned to Chattanooga. The FGIS also is requesting persons interested in providing official services in this geographic area to submit an application for designation.

DATES: Applications and comments must be postmarked on or before November 25, 1991.

ADDRESSES: Applications and comments must be submitted to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. All applications and comments will be made available for public inspection at this address at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-447-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the United States Grain Standards Act, as amended (Act), authorizes the Administrator of FGIS, after determining that there is a need for official services, to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

Section 7(g)(1) of the Act provides that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in section 7(f) of the Act.

The FGIS designated Chattanooga, located at Judd Road, Chattanooga, TN 37406, to provide official inspection and weighing for the period beginning May 1, 1990, and ending April 30, 1993. Chattanooga ceased operations on September 25, 1991, due to a lack of requests for official inspection and weighing, and is requesting voluntary designation cancellation. Persons wishing to obtain official inspection or weighing in this geographic area should contact the FGIS's Lutcher Field Office at 504-869-5451 (FAX: 504-589-3792).

The FGIS is requesting comments on the need for official inspection and weighing in the geographic area formerly served by Chattanooga. At the same time the FGIS is requesting applications from persons interested in designation to provide official services in this area. The FGIS will not designate an applicant unless it determines that there is sufficient need for official services.

The geographic area formerly assigned to Chattanooga, in eastern Tennessee, pursuant to section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation is as follows:

Bounded on the North by the northern Tennessee State line from Sumner County east;

Bounded on the East by the eastern Tennessee State line southwest;

Bounded on the South by the southern Tennessee State line west to Interstate 65; and

Bounded on the West by Interstate 65 north to the northern Williamson County line; the northern Williamson County line east; the western Rutherford, Wilson, and Sumner County lines north.

Interested persons are hereby given an opportunity to submit comments on the need for official inspection and weighing in the geographic area formerly assigned to Chattanooga, as specified above, and to apply for designation under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in the Chattanooga, Tennessee area, is for a period beginning June 1, 1992, and not to exceed 3-years. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated after the FGIS determines that there is a need for official services.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: October 18, 1991.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 91-25651 Filed 10-24-91; 8:45 am]

BILLING CODE 3410-EN-F

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

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

Agency: Economic Development Administration

Title: Applicant Certification Clause

Form Number: Agency—None OMB—0610–

Type of Request: New

Burden: 385 respondents; 7,700 reporting hours. Average time per response is 20 hours.

Needs and Uses: To avoid liability under CERCLA and meet EDA's responsibility under NEPA, applicants will be required to certify regarding their knowledge of any hazardous or toxic contamination that may affect properties subject to project construction activities.

Affected Public: Public Works and Title IX applicants connected with EDA projects.

Frequency: On occasion

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

OMB Desk Officer: Gary Waxman, 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5327, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Gary Waxman, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: October 22, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-25764 Filed 10-24-91; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

A-588-055

Acrylic Sheet From Japan; Determination not to Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of determination not to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping finding on acrylic sheet from Japan.

EFFECTIVE DATE: October 25, 1991.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes or Thomas F. Futtner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-8120/3814.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 36764) its intent to revoke the antidumping finding on acrylic sheet from Japan (41 FR 36497, August 30, 1976). The Department may revoke an order if the Secretary concludes that the order is no longer of interest to interested parties.We did not receive a request for administrative review of the finding for the last five consecutive annual anniversary months, and, therefore published a notice of intent to revoke the finding pursuant to 19 CFR 353.25 (d)(4).

On August 12 and 15, 1991, Cyro Industries and E.I. DuPont de Nemours & Co., Inc., respectively, both domestic manufacturers of acrylic sheet, objected to our intent to revoke the finding. Therefore, we no longer intend to revoke the finding.

Dated: October 18, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-25765 Filed 10-24-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-601]

Initiation of Anti-circumvention Inquiry on Antidumping Duty Order on Certain Brass Sheet and Strip From Canada

AGENCY: Import Administration/International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Anti-circumvention Inquiry.

SUMMARY: On the basis of an allegation filed with the Department of Commerce, we are initiating an anti-circumvention inquiry to determine whether the actions of one producer of brass from Canada and one U.S. importer constitute circumvention of the antidumping duty order on brass sheet and strip from Canada.

EFFECTIVE DATE: October 18, 1991.

FOR FURTHER INFORMATION CONTACT: David Mason or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923.

SUPPLEMENTARY INFORMATION:

Background

On October 2, 1991, the Department of Commerce (the Department) received an allegation by Hussey Copper Ltd., The Miller Company, Olin Corp. (Brass Group), Outokumpu American Brass,

Revere Copper Products, the International Association of Machinists & Aerospace Workers, the International Union, Allied Industrial Workers of America (AFL–CIO), the Mechanics Educational Society of America (Local 56), and the United Steelworkers of America (AFL–CIO/CLC), requesting that the Department conduct an anti-circumvention inquiry on the antidumping duty order on brass sheet and strip from Canada (52 FR 1217, January 12, 1987), in accordance with section 781(a) of the Omnibus Trade and Competitiveness Act of 1988. The applicants allege that a producer of brass in Canada and a U.S. importer of brass are circumventing the antidumping duty order on brass sheet and strip by importing Canadian brass plate, a product not included within the antidumping duty order, into the United States where it is rolled down slightly into brass sheet and strip, which is included in the order.

Initiation of Anti-circumvention Proceeding

Section 781(a) of the Tariff Act of 1930, as amended, allows the Department, after taking into consideration any advice from the U.S. International Trade Commission, to include a product within the scope of an existing antidumping duty order if the product sold in the United States is of the same class or kind as the merchandise that is the subject of the antidumping duty order, and the product sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which the antidumping duty order applies, and the difference between the value of the product sold in the United States and the imported parts and components from the country with respect to which the antidumping duty order applies is small.

In reaching a determination on whether to include the product within an antidumping duty order, section 781(a)(2) of the Tariff Act directs the Department to consider such factors as (1) the pattern of trade, (2) whether the manufacturer or exporter is related to the entity that assembled or completed the merchandise sold in the United States, and (3) whether imports of the parts or components from the country with respect to which the antidumping duty order applies have increased after issuance of that order.

We intend to complete this inquiry according to the following schedule unless extraordinary complications arise:

Initial Request for Information...October 25, 1991
Response.....November 8, 1991
Anti-circumvention Questionnaire November 15, 1991
Response.....December 16, 1991
Issue Preliminary Determination...March 6, 1992
Hearing.....March 24, 1992
Issue Final Determination.....April 17, 1992

The Department will not suspend liquidation at this time. However, the Department will instruct the U.S. Customs Service to suspend liquidation in the event of an affirmative preliminary determination of circumvention.

This notice is published in accordance with section 781(a) of the Tariff Act (19 U.S.C. 1677j(a)), and § 353.29(e) of the Commerce regulations (19 CFR 353.29(e)) (1991).

Dated: October 18, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–25766 Filed 10–24–91; 8:45 am]

BILLING CODE 3510–DS–M

[A–570–807]

Final Determinations of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 22, 1991.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Steven Lim, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–4136 or (202) 377–4087, respectively.

FINAL DETERMINATIONS: The Department of Commerce ("the Department") determines that oscillating fans and ceiling fans (collectively "fans") from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since our preliminary determinations on May 29, 1991 (56 FR 25664, June 5, 1991), the following events have occurred:

On June 3, 1991, oscillating fans respondent Durable Electrical Metal Factory Ltd./Parawind Ltd./Paragon Industries ("Durable") requested that the Department postpone its final determination in the oscillating fans investigation to 135 days after the publication of the preliminary determination. On June 4, 1991, ceiling fans respondents CEC Electrical Manufacturing (International) Co., Ltd. / CEC Industries (Shenzhen) Ltd./CEC (USA) Texas Group, Inc. ("CEC") and Wing Tat Electric Manufacturing Co., Ltd./China Miles Co. Ltd. ("Wing Tat"), made the same request with respect to the ceiling fans investigation. On June 17, 1991, we published a notice postponing the final determinations for both investigations until no later than October 18, 1991 (56 FR 27732).

We verified the responses of the respondents, Durable, Esteem Industries Ltd. /HASM Manufacturing Co., Ltd./ Holmes Products Corp. ("Esteem"), Polaray Industrial Corporation/Paragon Industries (China) Inc./Polaray Industrial (Hong Kong) Corporation, Ltd. ("Polaray"), Wuxi Electric Fan Factory ("Wuxi"), CEC, Shell Electric Mfg. (China) Co./SMC Electric Mfg. (Sian Hua) Co./SMC Marketing Corporation ("Shell"), Wing Tat, Xinhui Electric Motor Factory ("Xinhui"), and Xinhui's unrelated export trading company, Guangdong Machinery and Equipment Import & Export Corporation ("GDME") at facilities in the PRC, Hong Kong, Taiwan, and the United States, as appropriate, from July 15 through August 8, 1991.

Petitioner and respondents filed case briefs on September 9, 1991, and rebuttal briefs on September 16, 1991. A public hearing was held on September 19, 1991.

On September 27, 1991, we invited all interested parties to submit comments on the definition of industrial fans for purposes of the scope of these investigations. Comments were received on September 30 and October 1, 1991.

Scope of the Investigations

Imports covered by these investigations constitute two separate classes or kinds of merchandise: (1) oscillating fans; and (2) ceiling fans. Oscillating fans are electric fans that direct a flow of air using a fan blade/ motor unit that pivots back and forth on a stationary base ("oscillates"). Oscillating fans incorporate a self-contained electric motor of an output not exceeding 125 watts.

Ceiling fans are electric fans that direct a downward and/or upward flow of air using a fan blade/motor unit. Ceiling fans incorporate a self-contained electric motor of an output not exceeding 125 watts. Ceiling fans are

designed for permanent or semi-permanent installation.

Window fans, industrial oscillating fans, industrial ceiling fans, and commercial ventilator fans are not included within the scope of these investigations. Furthermore, industrial ceiling fans are defined as ceiling fans that meet six or more of the following criteria in any combination: a maximum speed of greater than 280 revolutions per minute (RPMs); a minimum air delivery capacity of 8000 cubic feet per minute (CFM); no reversible motor switch; controlled by wall-mounted electronic switch; no built-in motor controls; no decorative features; not light adaptable; fan blades greater than 52 inches in diameter; metal fan blades; downrod mounting only—no hugger mounting capability; three fan blades; fan blades mounted on top of motor housing; single-speed motor.

The Harmonized Tariff Schedule (HTS) subheading under which oscillating fans are classifiable is 8414.51.0090. The HTS subheading under which ceiling fans are classifiable is 8414.51.0030. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of these proceedings is dispositive.

Periods of Investigation

The period of investigation (POI) for all respondents in the ceiling fans investigation is May 1, 1990 through October 31, 1990.

For oscillating fans respondents Esteem and Durable, the POI was expanded to cover the period from November 1, 1989 through October 31, 1990. The POI for all other respondents in the oscillating fans investigation is May 1, 1990 through October 31, 1990.

Fair Value Comparisons

To determine whether sales of fans from the PRC to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

I. Oscillating Fans

For Polaray, Wuxi, and certain sales made by Durable and Esteem, we based USP price on purchase price, in accordance with section 772(b) of the Act, both because the subject merchandise was sold to unrelated purchasers in the United States prior to importation and because exporter's sale price (ESP) methodology was not indicated by other circumstances.

For Durable and Esteem, where sales to the first unrelated purchaser took place after importation into the United States, we based USP on ESP, in accordance with section 772(c) of the Act.

Unless otherwise specified, movement services were provided by market economy parties and the reported expenses were used in our calculation of USP.

The reported surrogate percent rate for selling, general, and administrative expenses (SG&A) was less than the statutory minimum. Therefore, we used the ten percent statutory minimum. We made no adjustments to ESP, other than for movement charges. To do so would have required an arbitrary division of SG&A (on the FMV side) into amounts for direct and indirect selling, and other general and administrative expenses. Furthermore, there was no information available which would have enabled us to segregate the expenses obtained from the surrogate country. To reduce ESP selling expenses without making corresponding adjustments to FMV would have resulted in an unfair and unreasonable inflation of any difference between USP and FMV. See Comment 4.

A. Durable

For Durable, we calculated both purchase price and ESP based on packed, FOB Hong Kong, CIF duty paid, FOB U.S. warehouse, or delivered prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling, marine insurance, ocean freight, U.S. duties, U.S. brokerage and handling, U.S. inland insurance, U.S. inland freight, and other movement expenses, including customs declaration fees, inspection fees, container rerouting fees, and containerization expenses. We excluded from our analysis certain reported purchase price sales of oscillating fans not manufactured by Durable. These sales were reported by the respondent related to the products' manufacturer.

In addition, for those U.S. sales improperly excluded from Durable's sales listing, and where no sale-specific transaction data was available, we have estimated a margin based on the highest transaction margin calculated for Durable as best information available (BIA). See Comment 12.

B. Esteem

For Esteem, we calculated both purchase price and ESP based on packed, FOB Hong Kong or delivered prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, foreign inland insurance, customs declaration fees, marine insurance, ocean freight, U.S. duties, U.S. brokerage and handling, U.S. inland insurance, and U.S. inland freight.

C. Polaray

For Polaray, we calculated purchase price based on packed, FOB Hong Kong prices to unrelated customers in the United States. We made deductions for foreign inland freight, foreign brokerage, declaration fees, and discounts.

D. Wuxi

For Wuxi, we calculated purchase price based on packed, FOB PRC port prices to unrelated customers in the United States. We made deductions for foreign inland freight. Since Wuxi reported the use of PRC-sourced providers for foreign inland freight, we based the deduction for this service on freight rates in Pakistan, the primary source of surrogate data in these investigations.

II. Ceiling Fans

For Wing Tat, Xinhui, and certain sales made by CEC and Shell, we based USP on purchase price, in accordance with section 772(b) of the Act, both because the subject merchandise was sold to unrelated purchasers in the United States prior to importation and because ESP methodology was not indicated by other circumstances.

For CEC and Shell, where sales to the first unrelated purchaser took place after importation into the United States, we based USP on ESP, in accordance with section 772(c) of the Act.

Unless otherwise specified, movement services were provided by market economy parties and the reported expenses were used in our calculation of USP.

For the reasons described above under oscillating fans, we made no adjustments to ESP, other than for movement charges.

A. CEC

For CEC, we calculated purchase price based on packed, FOB Hong Kong prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight and customs declaration fees.

We calculated ESP based on packed, FOB warehouse prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, customs declaration fees, ocean freight, marine

insurance, U.S. brokerage, and U.S. duties.

B. Shell

For Shell, we calculated purchase price based on packed, FOB Hong Kong or C&F U.S. port prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, foreign inland insurance, customs declaration fees, ocean freight, and discounts.

We calculated ESP based on packed, FOB warehouse or C&F U.S. customer prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, foreign inland insurance, customs declaration fees, ocean freight, marine insurance, U.S. duties, U.S. brokerage, and U.S. inland freight. See also Comment 28.

C. Wing Tat

For Wing Tat, we calculated purchase price based on packed, FOB Hong Kong prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, foreign inland insurance, and customs declaration fees.

D. Xinhui

For Xinhui, we calculated purchase price based on packed, CIF U.S. port prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, wharfage and ocean freight, and marine insurance. Since Xinhui reported the use of PRC-sourced providers for foreign inland freight, we based the deduction for this service on freight rates in Pakistan. Xinhui also reported the use of PRC-sourced providers for wharfage, ocean freight, and marine insurance. Since no surrogate country information was available for these expenses, we used a market economy value from public information provided by another respondent. As we had no alternative for the wharfage incurred in the PRC as part of the ocean freight expense, we used Xinhui's reported U.S. dollar expense for wharfage and ocean freight.

Foreign Market Value

The Department treated the PRC as a nonmarket economy country (NME) for purposes of the preliminary determinations. Since no party to these proceedings has disputed this finding, and given that there is no information in the record of these investigations to support a different determination, the Department has treated the PRC as an NME for purposes of the final determinations

As we stated in our preliminary determinations, and further articulated in the Final Determination of Sales at Less than Fair Value: Chrome-Plated Lug Nuts from the People's Republic of China (56 FR 46153, September 10, 1991) (Lug Nuts), once we find that a country is an NME, it is our presumption that no domestic production factor is valued on market principles, and that all NME factors must be valued in the appropriate surrogate market. However, this presumption can be overcome for individual factors by individual respondents with a showing that a particular NME value is market driven.

Although several respondents claim that the prices of various PRC-sourced inputs are market driven because they were purchased in market economy currencies, no respondent has provided sufficient evidence to support the assertions. While we are aware that the PRC economy has changed over the years, the evidence submitted in these proceedings for these particular POIs does not support the conclusion advocated by respondents. Thus, respondents have not sufficiently overcome the presumption that the prices for these particular inputs are not market-based in these investigations. Therefore, we have valued the factors of production as discussed below.

For PRC-sourced parts, we valued the reported factors of production using surrogate values, where available. We used data for the values of the factors of production provided by U.S. posts in Pakistan. This information was obtained from local Pakistani producers and exporters of oscillating fans and ceiling fans, and was the most complete information received from the countries that are known producers of oscillating fans and ceiling fans that are comparable to the PRC in terms of per capita gross national product (GNP), the national distribution of labor, and growth rate in per capita GNP. For those factors for which we did not obtain values from Pakistan, we have relied on alternative published sources of Pakistani data and data from the U.S. Embassy in India, an alternate surrogate country.

As in our preliminary determinations, we were unable to obtain appropriate surrogate values from any of our surrogate country sources for certain material and labor inputs. We classified certain small parts (*e.g.*, washers and insulation materials) and certain other materials not incorporated into the completed fan (*e.g.*, cleaning agents) either as part of the surrogate information category "other hardware parts", or factory overhead, respectively. We did not include in our FMV calculations values for certain other small, insignificant PRC-sourced parts where no surrogate value was available (*e.g.*, a piece of string). Where we have other information on the record regarding a market economy price or value for an input, we assigned the material that market economy price or value. Where we lacked input values for one respondent, but another respondent submitted market economy values for those inputs (*e.g.*, glass lampshades), we assigned values to those inputs based on the public version submission provided by the latter respondent. For a further discussion of our valuation methodology, *see* Memorandum dated October 9, 1991, "Valuation Methodology for the Final Determinations" ("Valuation Memo").

Materials sourced from market-economy countries and paid for in convertible currencies were valued using the actual market prices reported by the respondents. *See* also Comment 1.

To the values for materials and labor, we added an amount for factory overhead based on Pakistani experience.

For SG&A, we used the statutory minimum of ten percent, as the reported SG&A expenses incurred by surrogate oscillating fans and ceiling fans producers were below the statutory minimum. Finally, we added an amount for profit based on the experience of Pakistani oscillating fans and ceiling fans producers because these profit percentages were higher than the statutory eight percent minimum.

To this constructed FMV, we added an amount for packing, where appropriate.

We made currency conversions in accordance with 19 CFR 353.60(a).

For Durable, we adjusted the material input value by deducting the market economy price of the power cord purchased from a related party and, as BIA, adding the power cord price provided in the petition. *See* Comment 13.

For Esteem, we adjusted the material input value by deducting the reported values of motor inputs produced by a related party and, as BIA, adding the motor price provided in the petition. See Comment 17.

For reasons stated above under "United States Price", we made no adjustments for circumstances of sale. See also Comment 4.

Negative Determination of Critical Circumstances

Petitioner alleged that critical circumstances exist with respect to

imports of oscillating fans. Under section 735(a) (3) of the Act, critical circumstances exist if we determine that there is either a history of dumping, or the importer knew or should have known that the exporter was selling the merchandise at less than fair value, and if there have been massive imports of the merchandise over a relatively short period of time.

There are currently no findings of dumping in the United States or elsewhere of oscillating fans by PRC manufacturers. However, it is our standard practice to impute knowledge of dumping under section 735 (a) (3) (A) (ii) of the Act when the estimated margins are of such a magnitude (normally 25 percent or greater in purchase prices transactions and 15 percent or greater in ESP transactions) that the importer should realize that dumping exists with regard to the subject merchandise. All of the margins for the respondents are below 25 percent, and for those who also sell on an ESP basis, the margins are below 15 percent. Therefore, we find that knowledge of dumping by the importer cannot be imputed and we do not need to consider whether there have been massive imports. Accordingly, we determine that critical circumstances do not exist with respect to imports of oscillating fans from the PRC.

Verification

Pursuant to section 776(b) of the Act, we verified information used in reaching our final determinations. We used standard verification procedures, including examination of relevant accounting records and original source documents provided by the respondents.

Interested Party Comments

Comment 1

Petitioner contends that the Department's preliminary determination methodology, which utilized respondents' actual prices for inputs produced in market economy countries and paid for in market economy currencies, is contrary to law. Petitioner states that the Department improperly chose to "mix and match" the factors of production methodology required by law in these proceedings with elements of a constructed value methodology. Petitioner argues that, once determinations are made that a country is an NME and the factors of production methodology must be used, the Department must use surrogate country values for all factor inputs, in accordance with section 773(c) of the Act. Moreover, petitioner argues that using the prices of market economy inputs is tantamount to the unlawful selection of Hong Kong, Taiwan, Japan, and the United States as surrogate countries in this case, rather than those countries which meet the comparability test of section 773 (c) (4) of the Act.

All respondents state that the Department's methodology is in accordance with applicable law. They contend that it is reasonable for the Department to interpret section 773 (c) (1) (B) as requiring the Department to determine the extent to which factor inputs are "market driven" in determining whether the available information permits a determination of FMV under section 773 (a). Once the Department has determined a country to be an NME, respondents maintain that there is nothing in the Act to require the Department to take an "all or nothing" approach and base FMV entirely on values derived from a surrogate country.

Some respondents argue that, before valuing factors in the surrogate economy, the Department must first determine that the available information does not permit FMV to be determined under constructed value methodologies. Accordingly, the use of actual acquisition prices for material inputs purchased from market economy countries fulfills the statutory mandate of using (1) Actual costs, to the extent possible, to calculate FMV, and (2) surrogate values only to the extent that the Department finds that available information does not permit FMV to be determined under subsection (a) of Section 773. In support of this position, these respondents refer to China Nat'l Metals & Minerals Import & Export Corp. v. U.S., 674 F. Supp. 1483, 1488 (CIT 1987) (quoting Chemical Products Corp. v. U.S., 645 F. Supp. 289, 293 (CIT 1986), and Technoimportexport v. U.S., 766 F. Supp. 1169 (CIT 1991)), where the CIT stated that, "[t]he reason for this provision is so the agency can acquire an accurate reading of the actual costs of a company operating in a state-controlled economy."

Additionally, some respondents contend that the statute does not compel the analysis proposed by petitioner, arguing that the purpose of section 773(c) is to arrive at the best estimate of what the total cost of production plus profit would be for the merchandise under consideration in a market-based economy. Respondents cite the legislative history of the 1988 amendments to the Act (S. Rep. 71, 100th Cong., 1st Sess. 108) in noting Congress' intent that the Department should use actual transaction prices even in nonmarket economy countries, where such prices fairly reflect elements for constructing the foreign market value of the goods.

Finally, some respondents contend that the Department's use of actual acquisition prices is consistent with long-standing administrative practice, citing Final Determination of Sales at Less than Fair Value: Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the Hungarian People's Republic, (52 FR 17428, May 8, 1987) (TRBs from Hungary) and Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, (56 FR 20588, May 6, 1991) (Sparklers), as well as other cases.

DOC Position

Where an input was sourced from a market economy country and paid for in a market economy currency, we have used the actual price paid for the input in calculating FMV.

Under section 773(c) (1) of the Act, if both

> (A) the merchandise under investigation is exported from a nonmarket country, and (B) the administering authority finds that available information does not permit the foreign market value of the merchandise to be determined under subsection (a)

we are directed to apply the factors of production methodology.

Under the factors methodology, the Department is directed by section 773(c) (4) to construct a value for the subject merchandise by valuing the factors used to produce the merchandise in a market economy which is "at a level of economic development comparable to that of the nonmarket economy country" and is "a significant producer of the comparable merchandise."

This provision for the valuation of factors of production was intended to be used when the NME values for individual input factors are unreliable, *i.e.*, not market-based. *See, e.g.*, S. Rep. No. 93–1298, 93d Cong., 2d Sess. 174 (1974). In such situations, Congress directed the Department to identify an appropriate market economy surrogate country for valuation of the NME factors. Prices in the surrogate country are then used to calculate FMV. The FMV is then compared with the USP to determine whether dumping is occurring.

The statute and the legislative history of the NME provision do not explicitly address the situation in which an NME producer imports some inputs from market economies. In this situation, the Department's task is to determine dispositive congressional intent by projecting, as well as it can, how Congress would have dealt with this particular situation if Congress had

spoken. *Georgetown Steel Corporation* v. *United States*, 801 F.2d 1308, 1314 (Fed. Cir. 1986). Therefore, the Department has determined that if an NME producer reports prices that are market-based, it is appropriate to use those prices instead of a surrogate value. See Lug Nuts, Sparklers, TRBs from Hungary, and Preliminary Results of Antidumping Duty Administrative Review: Tapered Roller Bearings and Parts Thereof from the People's Republic of China, (56 FR 50309, October 4, 1991) (TRBs from the PRC). This approach is based on the following rationale.

In general, the purpose of the antidumping statute is to "determine margins as accurately as possible." *Rhone Poulenc, Inc.* v. *United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1991). More specifically, in the case of a firm operating in an NME, the purpose of section 773(c) is to determine what the firm's prices or costs would be if such prices or costs were determined by market forces. Requiring the use of surrogate values in a situation where actual market-based prices incurred by a particular firm are available would be contrary to the statutory purpose. Where we can determine that an NME producer's input prices are market determined, accuracy, fairness, and predictability are enhanced by using those prices. Therefore, using surrogate values when market-based values are available would, in fact, be contrary to the intent of the law.

In addition, the goals of accuracy, fairness, and predictability should apply whether a country's economy is market or nonmarket oriented. In antidumping proceedings concerning imports from market economy countries, the Department uses the price of imported inputs when calculating FMV using constructed value methodology. The fact that it is more accurate to use an actual input value for merchandise sourced from a third country should not change simply because the country under investigation is an NME. Different treatment of an imported input based solely on whether the input is imported into a market or nonmarket economy country is illogical.

The simplest example of a value based on market principles in a proceeding involving an NME is a price paid in convertible or market economy currency for an input sourced from a market economy country. A number of the factors involved in these investigations have such values and the Department has used them to calculate FMV.

The petitioner has argued that the use of the input prices for materials sourced from Japan, the United States, Hong Kong, and Taiwan is, in effect, an unlawful selection of those countries as surrogates. However, these input values are not surrogate values. They are the actual market based prices incurred by the respondents in producing the subject merchandise and, as such, are the most accurate and appropriate values for these particular factors for the purposes of calculating FMV.

Comment 2

Petitioner cites U.S. Treasury reports in contending that the PRC maintains an extensive subsidy system, which, in turn, provides the oscillating fans and ceiling fans industries with export subsidies. Under our normal rules, since the PRC is an NME, subsidized imports from that country are not subject to the U.S. countervailing duty law. However, petitioner claims that the Department has, in effect, treated the PRC fans industries in the same way that it would treat industries operating in a market economy with respect to the valuation of inputs sourced from market economy countries. Thus, the Department's rationale for excluding the PRC from the countervailing duty law no longer applies. Accordingly, petitioner calls for the Department to self-initiate a countervailing duty investigation with respect to the subject merchandise, or alternatively, to determine the subsidy element reflected in the export prices of the subject merchandise, so that petitioner may receive appropriate protection from unfairly traded subject merchandise.

Durable, Esteem, and Shell state that, since the courts have held that the countervailing duty law is not applicable to nonmarket economies (citing *Georgetown Steel Corporation* v. *United States*, 810 F.2d 1308 (Fed. Cir. 1986)), and as all parties agree that the PRC is still an NME, the Department is judicially precluded from self-initiating a countervailing duty investigation. Durable and Esteem assert that there is no evidence on the record to suggest that the PRC government is providing export incentives to fans manufacturers. Shell adds that there is no need to adjust FMV for any effects of alleged subsidies because, under the Department's methodology, all PRC-sourced inputs are valued according to the surrogate country values.

CEC and Wing Tat claim that petitioner's argument improperly characterizes the Department's methodology in this case. These respondents contend that the Department's methodology does not alter the Department's conclusion that the PRC is an NME, and as an NME, the PRC is not covered by the U.S. countervailing duty law.

DOC Position

The issue of whether the countervailing duty law applies to fans from the PRC cannot, and should not, be resolved in an antidumping proceeding. We note that the petitioner in these investigations, on October 17, 1991, filed a countervailing duty petition on oscillating fans and ceiling fans from the PRC. We will address this issue in the context of the countervailing duty proceedings, based on the record in those cases.

Comment 3

Petitioner contends that none of the respondents have demonstrated an absence of central government control or economic independence from PRC government entities. Petitioner further asserts that, while the Department may have verified the existence of business licenses for certain respondents, it did not verify the independence of the respondents at the source of any such control, *i.e.*, the PRC government agencies. Accordingly, petitioner argues that the Department must presume that central government control exists with respect to production and sales of the subject merchandise, and single, country-wide dumping margins should be calculated for each class or kind of merchandise.

Both Durable and Esteem assert that they have established in this case record that they are non-PRC companies, that they are not owned, in part or in whole, by government authorities in the PRC, and their factories are not regulated by PRC government authorities. They further contend that all raw material purchasing, pricing, and sales decisions are made by their offices outside the PRC, and no PRC governmental entity plays a part in these decisions.

Respondents CEC, Shell, Wing Tat, Wuxi, and Xinhui argue that documentation supporting their respective economic independence from central government control and from other manufacturers was fully verified, and that they have satisfied the test, as set forth in Sparklers, for determining that an exporter in an NME is entitled to a separate, company-specific margin. CEC and Wing Tat add that the verification confirmed both a *de jure* and *de facto* absence of central control.

DOC Position

Our analysis of the evidence presented by each respondent demonstrates both *de jure* and *de facto* absence of central control, as described

in our Memorandum dated May 28, 1991 ("Company Specific Dumping Margins"). Since the preliminary determinations, nc additional information has been brought to the Department's attention to change these findings. Furthermore, this issue was sufficiently addressed at verification. Therefore, the respondents have overcome the presumption in favor of a single country-wide rate and we have calculated a separate margin for each respondent.

Comment 4

Petitioner states that the Department unlawfully failed to make circumstance of sale (COS) adjustments and ESP deductions in its preliminary determinations and must make these adjustments in the final determinations. Petitioner cites *Funai Electric Co. Ltd.* v. *United States*, 713 F. Supp 240 (CIT 1989) (*Funai*), to support its contention that COS adjustments must be made even when SG&A expenses in a constructed value are based on the statutory minimum of ten percent.

Shell states that the statute calls for making adjustments based on the differences in circumstances of sales. Shell notes that in NME cases, the Department does not consider or collect information on any sales to other markets, and thus, there is no COS data available to offset the adjustments to USP on FMV. Similarly, Shell contends that the Department cannot make adjustments to ESP because the Department has no information to distinguish between foreign direct and indirect selling expenses to make corresponding adjustments to FMV. Finally, Shell cites *Zenith Electronics Corporation* v. *United States* CIT Slip Op. 9166 (July 29, 1991) for the proposition that the Department may not make COS adjustments if the adjustments reduce the constructed value general expenses to less than the statutory minimum amount, as it would in these investigations.

Durable and Esteem state that to make adjustments to USP without corresponding adjustments to FMV would be patently unfair and result in the comparison of incomparable prices. Absent evidence as to the amount of direct and indirect selling expenses incurred by producers in the surrogate country, they argue that it would also be unfair to make adjustments solely to the U.S. price on ESP sales transactions. Because respondents do not control the submission of the relevant information, it would be unfair to penalize them for the absence of information in the administrative record.

CEC and Wing Tat argue that there is extensive administrative precedent for the Department's position in the preliminary determinations. They cite a number of NME cases such as *Lug Nuts, Final Determination of Sales at Less than Fair Value: Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the Socialist Republic of Romania. (52 FR 17433, 17437, May 8, 1987), and Barbed Wire and Barbless Fencing Wire From Poland: Final Determination of Sales at Less Than Fair Value,* (56 FR 29711, 29712, July 22, 1985), where information concerning general expenses incurred in the selected surrogate country was insufficient to allow a breakdown of expenses into direct and indirect selling expenses, and the Department refrained from making COS adjustments or ESP deductions. CEC and Wing Tat further argue that, in the Funai decision, the CIT sustained the exercise of discretion by the Department in making COS adjustments to constructed value. They contend that the Funai decision did not conclude that the Department is required to make COS adjustments.

DOC Position

We have made no adjustment to FMV for U.S. selling expenses since we had no information on the specific amount of direct selling expenses included in the surrogate country which was used as the basis for determining FMV. It would be unreasonable to make an upward adjustment to FMV for the selling expenses incurred on U.S. sales without making a corresponding downward adjustment to account for the selling expenses embodied in the ten percent SG&A.

Similarly, we have not made adjustments to ESP for selling expenses, since we were unable to isolate the selling expenses from total SG&A on the FMV side in order to make corresponding offset adjustments to FMV. See TRBs from the PRC at 50310.

One of the goals of the antidumping statute is for the Department to make a fair comparison between USP and FMV. *See, e.g., The Budd Company* v. *United States*, 746 F.Supp. 1093, 1098 (CIT 1990). Though section 772(e) of the Act directs the Department to make adjustments to ESP for selling expenses, where there is an indication that both ESP and FMV include selling expenses, and where there is a lack of information on the record to make adjustments to both sides of the equation, to adjust one side and not the other would not be a fair comparison. In such a situation, it would be inconsistent with the statutory scheme to adjust only one side of the dumping equation.

Comment 5

Petitioner agrees with the selection of Pakistan as the primary surrogate country, but suggests that the Department consider using an average of factor values from Pakistan and India to reflect information from a larger sampling of ceiling fan and oscillating fan producers.

All respondents agreed with the selection of Pakistan as the surrogate country. Durable and Polaray state that India would be less appropriate as a surrogate because Indian manufacturers do not export oscillating fans.

DOC Position

We are continuing to use Pakistan as the primary surrogate country for these investigations, for the reasons cited above under "Foreign Market Value", and in our preliminary determinations, though we have used some Indian surrogate data where Pakistani data was unavailable. There is no need to average factor values from other potential surrogates, as suggested by petitioner, as we have no reason to believe that the use of Pakistani values by themselves is less representative of surrogate costs than the use of average factor values.

Comment 6

According to petitioner, section 773(e)(1)(B) of the Act specifies that an amount, not a rate, must be added for profit found to be usual among fan producers in the surrogate country. Consequently, petitioners claim that the Department erred in calculating SG&A and profit for FMV by using a surrogate percentage rate, rather than an amount.

Polaray finds fault in petitioner's argument for two reasons. First, Polaray argues that section 773(e) seems to equate rate and amount because the minimum "amount" is expressed explicitly as a "rate." Second, Polaray contends that SG&A must be expressed as a percentage because it is an expense that is not directly related to sales and must be allocated over all sales.

CEC and Wing Tat argue that, while the statute does indicate that amounts rather than rates should be used, in order to derive these amounts, the Department must use percentage rates. Respondents cite Department precedent where the Department has used rates calculated in the surrogate as the basis for deriving SG&A and profit figures (e.g., Sparklers at 20589), and state that the use of surrogate-based profit and general expense percentage rates in NME cases has been upheld by the CIT in *Chemical Products Corp.* v. *United States*, 650 F. Supp. 178, 183 (CIT 1986).

Shell, Wuxi, and Xinhui also note that section 773(e)(1)(B) of the Act specifically calls for the Department to obtain and apply surrogate rates for general expenses and profit as expressed in percentage terms. They contend that applying a calculated amount for each respondent would be unreasonable because of varying costs of manufacture incurred in producing each respondent's range of models, and would result in variable amounts of general expenses and profit attributable to each model.

DOC Position

We agree with respondents. The petitioner's reading of the word "amount" in section 773(e)(1)(B) of the Act is inconsistent with the intent of the statute. To do as the petitioner suggests would require a fixed amount for profit and SG&A for each and every product produced by each and every respondent, disregarding completely the variable cost structure of each product. This approach contradicts the methodology required under section 773(e), where the amount for SG&A and profit is specifically defined as being not less than a percent of cost.

Comment 7

Ceiling fans respondents Shell and Xinhui argue that, as petitioner has not demonstrated that it accounts for the majority of domestic production of ceiling fans, the Department is required to investigate whether the petitioner has standing to represent the domestic ceiling fan industry, in accordance with *Suramerica de Aleaciones Laminadas C.A.* v. *United States*, 746 F. Supp. 139, 152 (CIT 1990), appeal docketed, consolidated no. 91-1015, -1050,-1055, September 20, October 16, and October 19, 1990, respectively (Suramerica). Shell and Xinhui argue that there are at least two other major domestic producers of ceiling fans who have not joined with petitioner in bringing this proceeding. Thus they contend that the petitioner does not represent the majority of the U.S. industry and, therefore, the petition must be dismissed with respect to ceiling fans.

Petitioner states that no other U.S. manufacturer of ceiling fans has expressed opposition to the petition and cites a number of previous cases, including Polyethylene Terephthalate Film, Sheet and Strip from Japan (56 FR 16300, April 22, 1991) and Sodium Thiosulfate from the Federal Republic of Germany (55 FR 51749, December 17, 1990), in which the Department did not require the petitioner to establish affirmatively that it had the support of a majority of the producers in its industry. With respect to Suramerica, petitioner notes that the Department is appealing the decision and is not following the decision, pending the resolution of the appeal. Furthermore, in at least eight other court decisions, the Department's practice has been sustained. See, e.g., *Koyo Seiko* v. *United States*, CIT Slip Op. 91-52 (June 27, 1991) (Koyo Seiko); *Citrosuco Paulista S.A.* v. *United States*, 704 F. Supp. 1075 (CIT 1988).

DOC Position

We agree with petitioner. There is nothing in the statute, the legislative history, or the regulations requiring that petitioners establish affirmatively that they have the support of a majority of the domestic producers of the merchandise. In many cases, such a requirement would be so onerous as to preclude access to import relief under the antidumping duty laws. This position has been recently upheld by the Court of International Trade in Koyo Seiko, and the Department has appealed Suramerica and is awaiting a decision in that case. We note that no members of the domestic industry have expressed opposition to these petitions. Therefore, we have no basis for determining that the petitioner lacks standing.

Comment 8

Shell and Xinhui argue that, in accordance with Luo Nuts, the Department should value certain material inputs or services sourced from the PRC, but purchased in convertible currencies, based on the price in the convertible currency actually paid for those items, because market forces are at work in determining the prices for goods and services obtained through convertible currency markets in the PRC.

Similarly, CEC and Wing Tat also cite Luo Nuts and argue that purchases of materials from Hong Kong-owned companies producing in the PRC are made in convertible currency, negotiated at arms-length in Hong Kong, and free of PRC government involvement. Therefore, they claim that these prices reflect market forces and should be used to calculate FMV, as in Luo Nuts.

Petitioner contends that the Department must use surrogate values for these inputs or, where the surrogate information is not available, BIA, because these inputs have not been demonstrated to be driven by market forces. In Luo Nuts, the Department only used PRC costs for those PRC inputs which the Department verified to be market driven, and refused to use PRC costs where it could not verify that they were market driven. In these investigations, petitioner states that the Department did not even attempt to verify whether in fact the PRC prices for these inputs were market driven.

DOC Position

We disagree with respondents. As we stated in the Luo Nuts determination, a respondent must overcome the presumption of state control with respect to the prices and costs of a given NME sourced input. Respondents evidence simply focuses on the currency used and, in some cases, the location of the transaction. Where an input is produced in an NME, the mere fact that a transaction is consummated in a market economy currency is not, in and of itself, evidence that an input was valued according to market principles. See also "Foreign Market Value."

Comment 9

All respondents claim that the Department incorrectly applied the surrogate profit percentage reported by the U.S. Embassy in Pakistan in calculating FMV. According to respondents, the Department should have applied the profit percentage to the cost of manufacture, instead of to the cost of production, because the Embassy reported the profit as percentage of the cost of manufacture.

DOC Position

Subsequent to the preliminary determinations, the U.S. Embassy in Pakistan confirmed that the surrogate profit percentage was calculated on the basis of the cost of manufacturing plus general expenses, as defined by section 773(e)(1)(B) of the Act. We have calculated profit accordingly.

Comment 10

Durable and Esteem claim that the Department misclassified their direct labor costs at the preliminary determination and assert that all direct labor should be classified as unskilled labor. They contend that, at their respective verifications, the Department determined that all direct labor involved in producing the subject merchandise was unskilled labor.

DOC Position

We agree with respondents and have reclassified all direct labor for Durable and Esteem as unskilled labor.

Comment 11

CEC and Wing Tat argue that the Department should use their actual SG&A expenses to calculate FMV because: (1) The majority of these expenses are incurred in market economy countries; and (2) it would be

consistent with the Department's methodology of using actual acquisition prices for goods purchased from market economy countries to use the actual percentage rate for SG&A incurred outside the PRC in market economy countries. Both CEC and Wing Tat claim that the use of actual SG&A expenses would be more appropriate because virtually no SG&A expense-related activities take place within their production facilities in the PRC.

CEC adds that, if the Department uses a surrogate value for CEC's SG&A expenses in the final determination, the surrogate value should apply only to that portion of CEC's SG&A expenses that are incurred in the PRC. CEC claims that this methodology would be consistent with the Department's treatment of inputs purchased from market economy countries in the preliminary determination.

DOC Position

We are using the statutory minimum of 10 percent for SG&A because the surrogate SG&A rate for Pakistani producers of the subject merchandise was below the statutory minimum. Furthermore, with respect to CEC and Wing Tat, we could not determine what percentage of their SG&A expenses was free of NME influences because the costs of certain components of SG&A were incurred in the PRC.

Comment 12

Durable contends that it has properly excluded certain purchase price sales from its U.S. sales listing because these sales were outside the POI, according to Durable's date of sale methodology (i.e., purchase order date is the date of sale). These sales include transactions where: (a) The country of origin stated on the purchase order was amended; (b) the original purchase order showed a landed cost, rather than the FOB selling price; and (c) the terms of sale for a particular transaction did not change, but the sale was included in a revised purchase order for other sales where prices were amended. In each of these instances, the original purchase order was within the POI, and the documentation reflecting the amendment, indicating the change described above, was outside of the POI.

Petitioner asserts that these sales should be included because customers had been negotiating with Durable for a long period, parties had met, offers were made, and acceptances had been communicated during the POI. Petitioner concludes that respondent has seized on the broadest possible interpretation of the Department's date of sale test to push these sales beyond the POI.

DOC Position

With respect to the country of origin change, the price and quantity of the merchandise were set when the customer sent the purchase order to Durable. Although the Department recognizes that the "country of origin", under certain circumstances, can represent a vital contract term, in this case the change in "country of origin" designation was purely the correction of a clerical error. In fact, Durable does not even manufacture the subject merchandise in the country identified on the original purchase order. Accordingly, these sales are properly considered sales within the POI and have been included in our calculations.

With respect to the sales where the customer recorded the "landed" cost on the purchase order, we determined that the underlying unit price of the merchandise did not change. The only difference between the original and the amended purchase order appeared to be the party paying the movement expenses. Since the essential terms of sale—price and quantity—did not change, these sales should have been reported. Since we had no transaction-specific data, we are assigning to these sales the highest transaction margin calculated for Durable as BIA.

For the transaction which was included in documentation that established changes for other sales, we determine that this sale should be included in our analysis because the essential terms of sale, price and quantity, did not change. Since we had no transaction-specific data, we are assigning to these sales the highest transaction margin calculated for Durable as BIA.

Comment 13

Petitioner contends that the Department has not established that the price of market-economy sourced power cords purchased by Durable from a related party is an arm's-length price, and, therefore, should use information provided in the petition as BIA.

Durable claims that the power cords were purchased at a price that is substantially identical to the arm's-length price reported by other manufacturers in this proceeding. In addition, Durable states that the power cords represent a relatively small percentage of the overall raw material cost of the oscillating fan.

DOC Position

Durable did not identify the power cord purchases as related party transactions until verification and did not provide information to substantiate its claim that these were arm's-length transactions. Accordingly, we are using the power cord value provided by petitioner as BIA in calculating Durable's FMV.

Comment 14

Citing Final Determination of Sales at Less Than Fair Value: Circular Welded Carbon Steel Pipe and Tube from Thailand, (51 FR 3384, 3386, January 27, 1986) (Pipe and Tube from Thailand) and other cases, Durable claims that the financing expenses incurred on the purchase of raw materials from market economy sources should be deducted from the acquisition costs because these expenses are properly classified as SG&A expenses.

Petitioner contends that these costs are part of the cost of purchasing the raw materials and, as such, should not be deducted in the calculation of FMV.

DOC Position

In Pipe and Tube from Thailand, the financing expenses in question appeared to be those additional interest expenses charged by the supplier for the delayed payment of raw materials. In this case, Durable is claiming that its costs for raw materials should be reduced by an imputed interest credit, and there is no evidence on the record that Durable incurs an additional interest expense.

The proper price for valuing these market economy inputs is the price actually paid for them. Since Durable reported raw material costs of market economy sourced inputs net of imputed interest, we have adjusted Durable's reported costs to reflect the prices that Durable actually paid, based on information obtained at verification.

Comment 15

Petitioner contends that the Department should recalculate Durable's labor inputs based on Durable's monthly production and labor reports.

Durable responds that its method of calculating labor hours per unit was fully verified and is internally consistent.

DOC Position

We have used Durable's verified labor inputs in our final determination. We have no reason to believe that the methodology used by Durable incorrectly reported labor inputs, nor to conclude that petitioner's methodology is more accurate than Durable's.

Comment 16

Petitioner alleges that Durable may not have fully accounted for the cost of molds purchased from a related party.

Durable states that the costs of the molds in question are properly categorized as factory overhead expenses and are, therefore, included in the surrogate overhead rate applied in the FMV calculation.

DOC Position

We agree with Durable that these costs are properly classified as factory overhead because they relate to the manufacture of the product. However, this point is irrelevant to our calculations since we are using surrogate country data to calculate factory overhead.

Comment 17

Petitioner argues that the final determination for Esteem should be entirely based on BIA for the following reasons: (1) Super Electric, a related producer of electric motors used in the production of fans, failed to cooperate in the Department's verification; (2) Esteem failed to report a number of its U.S. sales during the POI; and (3) Esteem failed to report its weighted-average material costs over its entire POI, thereby avoiding reporting potentially higher material costs incurred during the portion of the POI not included in the reported data.

Petitioner asserts that, because Super Electric is a respondent in this investigation, its non-cooperation is far more serious and material than if Super Electric were a mere supplier of electric motors to Esteem. However, if the Department were to use BIA only for the value of the electric motors, petitioner contends that the motor values should be based on information contained in the petition.

Esteem contends that rejecting its response is inappropriate because Super Electric's non-cooperation does not reflect the same degree of non-cooperation as if Esteem and its wholly-owned subsidiaries had not cooperated. However, Esteem concedes that, as Super Electric did not participate in the Department's verification, BIA must be used for valuing the motor input. To value the motor, Esteem proposes using (a) the value of verified motor inputs from other respondents, (b) Super Electric's transfer price to Esteem, or (c) the weighted-average cost of motors purchased by Esteem from Taiwan.

Regarding the omitted sales, Esteem claims that, because the omission of the purchase order was due to an inadvertent computer error and these sales were reported and verified by the Department, they should be included in the Department's final determination.

With regard to weighted-average material costs, Esteem states that it reported raw material purchases from market economy sources only for a portion of the POI in order to stay within the same fiscal year for ease of calculation and verification of costs. Moreover, Esteem points out that it did not produce the subject merchandise over the entire POI.

DOC Position

We agree with respondent that rejecting its response and basing its margin entirely on BIA is not warranted in this case because it substantially complied with the Department's request for information.

However, because Super Electric did not fully cooperate at verification, we have valued the motor inputs using information contained in the petition as BIA.

Regarding the omitted sales which were brought to the Department's attention at the onset of verification, we believe that these omissions were inadvertent and we are accepting the reported sales data for these sales in the final determination.

With respect to Esteem's reporting of weighted-average material costs, the documentation examined at verification demonstrated that Esteem's reported costs for market economy inputs were representative of the cost of materials purchased during the entire POI. We found no evidence that material purchases during the months not included in Esteem's weighted-average were consistently either higher or lower than the reported costs. Therefore, we are accepting Esteem's reported cost data for calculating FMV.

Comment 18

Petitioner argues that certain tooling, product development, and manufacturing liaison costs claimed by Esteem as indirect selling expenses should properly be classified as manufacturing costs.

Esteem claims that on the cost side, these expenses would be properly classified as factory overhead or SG&A expenses. Esteem argues that, since the Department used surrogate values for factory overhead and SG&A expenses, it would be unfair and duplicative to include tooling, product development, and manufacturing liaison costs in the amounts already included in the Department's calculation of factory overhead and SG&A. In addition, Esteem adds that on the price side, these costs would have no effect on the margin if the Department does not deduct indirect selling expenses from U.S. price, as in the preliminary determination.

DOC Position

We agree that these costs are properly classified as factory overhead because they relate to the manufacture of the product and not the sale of the product. However, this point is irrelevant to our calculation of FMV since we are using surrogate country data to calculate factory overhead.

Comment 19

Polaray claims that its import and export declaration fees and its "other bank charges" were included in its reported SG&A expenses. Polaray argues that if the Department considers these expenses as direct selling expenses, they should be deducted from the surrogate SG&A attributed to Polaray, to avoid double counting.

Concerning "other bank charges," Polaray claims: (1) that these charges were verified with the same degree of completeness as the other charges; and (2) that the verification report is incorrect in its statement that the "other bank charges" for certain observations were equal to a certain percentage of the sales value. Polaray claims that this percentage results from incorrectly dividing "other bank charges" in New Taiwan dollars by the sales value in U.S. dollars.

DOC Position

"Other bank charges" are not an issue because we are not making COS adjustments for the final determination. See Comment 4. With respect to import and export declaration fees, no evidence was provided at verification to indicate that these expenses should be treated as anything other than movement expenses or that to treat them as such would result in double counting. For purposes of the final determinations, we are considering import and export declaration fees as movement expenses for all respondents, including Polaray.

Comment 20

Polaray claims that the verification report is incorrect in stating that the date of sale is the date of the shipment's confirmation, and that the verification confirmed that the date of sale is the date of the order confirmation. Polaray also claims that the statement in the report that the payment dates "could not be quantitatively established" is misleading because it implies that Polaray's credit expense could not be established. Polaray states that, since its

reported credit expense is based on the actual credit expense paid by Polaray to its bank, the actual date that the customer pays the bank is irrelevant. Finally, Polaray claims that the Department properly verified the labor data reported by Polaray.

DOC Position

At verification we confirmed: (1) That Polaray used the date of the order confirmation as the date of sale; (2) the actual bank charges that Polaray paid to the bank and reported as its credit expense (however, this point is not relevant here since, as stated previously, we are not making COS adjustments); and (3) that the reported labor hours tied to the production reports. Concerning labor times, we are using the revised data provided at verification.

Comment 21

Concerning Polaray's "shoot costs" for molded plastic parts, petitioner argues that the Department should not accept the price quotes provided at verification as evidence that Polaray's own PRC-based shoot costs are comparable to market prices charged by non-PRC owned companies. Petitioner alleges that these documents were "manufactured" solely as support for Polaray's position.

Polaray claims that the Department should use the subcontract (shoot) costs for plastic materials reported by Polaray, based on its claim that the Department verified that the plastic material shoot costs in Polaray's response were comparable to market prices charged by non-PRC owned companies. Should the Department choose not to use Polaray's actual reported costs, Polaray states that the price quotations from unrelated suppliers in Taiwan provided at verification should be used. Polaray also argues that petitioner offers no substitute data and no reason to distrust the data provided at verification.

DOC Position

In the absence of an acceptable surrogate value for Polaray's shoot costs and in keeping with our hierarchy for valuing PRC-sourced inputs (see "Valuation Memo"), we are using the Taiwan market economy price quotes provided at verification to value Polaray's shoot costs. Furthermore, petitioner has offered no alternative data.

Comment 22

Wuxi claims that the Department used incorrect surrogate values for certain material inputs in the preliminary determination and should make appropriate corrections in the final determination. Wuxi states that (a) the material reported as "bearings" is actually "hollow-rounded metal pieces" and should not be valued as bearings, (b) slot insulators and wedges are actually laminated cardboard pieces and should not be valued as "other plastic parts", and (c) the surrogate value for oscillating fans capacitors is wrong because it represents the value for a much larger and higher-rated capacitor than the type used by Wuxi in its oscillating fans. Moreover, Wuxi's experience is that there is a significant price difference between capacitors of different ratings.

Petitioner states that Wuxi has not demonstrated any relationship between a capacitor's size and rating, and its price. Petitioner adds that, in its experience, there is little difference in price between capacitors of different ratings and, therefore, Wuxi's argument with respect to capacitors is wrong.

DOC Position

We agree with Wuxi with respect to the input originally classified as a "bearing", and the slot insulators and wedges. We verified that a ball or roller bearing is not used in Wuxi's fans and have valued the hollow metal ring on the basis of its weight and the surrogate value for the metal input. The value of the slot insulators and wedges is included in the value assigned to "other hardware parts" in our FMV calculation.

Since Wuxi's capacitor is produced in the PRC, we valued the cost of this input on the basis of the surrogate value reported for a capacitor used in an oscillating fan produced in Pakistan, in accordance with our FMV methodology. No other information was available to suggest that this surrogate value was inaccurate, nor was any alternative surrogate value provided for our consideration.

Comment 23

Petitioner alleges that the packing box used by Wuxi for its U.S. sales proved to be PRC-sourced at verification, despite Wuxi's contention that the boxes are dual-sourced. Consequently, petitioner asserts that the cost of this packing material should be based on the surrogate value.

Wuxi contends that, because it demonstrated at verification that it also obtains packing boxes from market economies, the actual price paid should be used in calculating FMV.

DOC Position

We agree with Wuxi. We verified that packing boxes were obtained from market economy sources, as well as PRC sources, during the POI. Where we had dual sources of inputs, we used the price of the market economy sourced input to calculate FMV.

Comment 24

CEC argues that the Department incorrectly calculated CEC's labor costs for purposes of the preliminary determination.

DOC Position

We agree with CEC. At the preliminary determination, labor was double-counted. For the final determination, we have calculated CEC's reported labor costs by multiplying CEC's reported skilled and unskilled labor times by the applicable Pakistani labor rates.

Comment 25

CEC argues that the surrogate-based valuation of CEC's ceiling fan components was overstated because the Department did not reduce the value of PRC-sourced materials by CEC's reported material purchase discount and scrap revenue percentage. CEC states that the Department's May 21, 1991 Memorandum indicates that the Department would reduce the total cost of materials (*i.e.*, the sum of the values of market economy sourced materials and PRC-sourced materials) by the purchase discount and scrap revenue percentage.

Petitioner argues that CEC's attempt to average its discount on some raw materials over its costs of all raw materials must be rejected. Petitioner contends that CEC's methodology is faulty in that not all components are used, or are used in equal amounts, in all fans. Petitioner claims that CEC's approach could reduce the cost of market-valued inputs on the basis of discounts on inputs that will be valued in a surrogate economy. Finally, petitioner argues that CEC's claim that the Department should reduce the surrogate-based value of PRC-sourced materials to account for purchase discounts and scrap revenues should be rejected on the grounds that, although the factors to be used are the respondent's, the values to be used are those found in the surrogate. Petitioner claims that to reduce the value of the input below the value in the surrogate country contravenes the statute.

CEC contends that because it does not employ a sophisticated accounting system and does not maintain records that tie its purchase discount amounts to particular material purchases, it allocated its purchase discount amount over its total raw materials purchases to

arrive at its reported discount amount. CEC argues that this allocation methodology is reasonable and is consistent with the allocation methodology accepted by the Department in Certain All-Terrain Vehicles from Japan: Final Determination of Sales at Less Than Fair Value. (54 FR 4864, January 31, 1989).

DOC Position

For purposes of the final determination, we applied CEC's reported purchase discount and scrap revenue percentage to those inputs sourced from a market economy country. At verification, we confirmed that CEC receives discounts on some raw material purchases. We examined CEC's methodology for calculating the purchase discount and scrap revenue percentage and found it to be reasonable. Concerning CEC's claim that the discount should be applied to PRC-sourced inputs, we did not reduce the surrogate values by the reported discount amount because PRC prices were not used in this case.

Comment 26

Petitioner argues that the Department should consider two types of defective merchandise provisions that Shell offered to specific customers as discounts and deduct from Shell's USP expenses related to these provisions.

Shell states that these provisions are exclusive warranty provisions extended to two customers, such expenses are already included in the reported per-unit warranty expenses, and making an additional deduction for these provisions would result in erroneous double-counting of expenses.

DOC Position

Shell was unable to demonstrate at verification that these exclusive warranty provisions were in lieu of usual warranty procedures and that all expenses related to them were included in the reported warranty expense. Consequently, we agree with petitioner that these expenses should be considered as discounts. We have accounted for the expenses incurred on sales to one customer, the specifics of which cannot be described here because of the business proprietary information involved in the adjustment. We made no adjustment for expenses related to the second customer because the adjustment to be made, according to the business proprietary information developed at verification, would be equivalent to a COS adjustment, which we are not making, as discussed above at Comment 4.

Comment 27

Shell states that customer-specific fan models with identical model codes vary in some product features and, therefore, also in cost, as verified by the Department. Thus, Shell contends that separate FMVs should be calculated for these customer-specific fans, rather than averaging the costs of all models with the same model codes, as in the preliminary determination.

DOC Position

We agree. Shell demonstrated at verification that fan models sold to purchase price customers included customer-specific physical differences with associated cost differences. Therefore, we have compared purchase price sales to model- and customer-specific FMVs. Since the ultimate U.S. customer is not known at the time of production for ESP sales, we have compared ESP sales to model-specific FMVs only, averaging the costs of any models where Shell has reported customer-specific data for more than one version of the model.

Comment 28

Shell contends that, since a related transportation company in Hong Kong arranges for Shell's ocean freight and inland freight, the Department should disregard the amount Shell paid to the related company and adjust these reported movement expenses to reflect the amount paid by the related transportation company to unrelated transportation service companies.

Petitioner asserts that the Department's concern in related party transactions has been whether or not the respondent is benefitting from the relationship by obtaining a lower than arm's-length price for the good or service. Accordingly, petitioner holds that, because Shell's actual, verified expenses are not lower but higher than the arm's-length price, Shell does not receive an unfair benefit from its related party and, therefore, the reported expenses should be used without adjustment.

DOC Position

Based on the information developed at verification, we have determined that the transportation company is related to Shell, as defined under section 773(e)(4) of the Act. However, under section 773(e)(2) of the Act, only when the Department has evidence that the amount reported does not fairly represent the amount usually reflected in sales in the market under consideration of the merchandise under consideration, will the Department consider basing the amount on other information. In this instance, the services provided through the related Hong Kong transportation company are charged at a price greater than the cost of providing the services. Consequently, there is no basis for rejecting the price charged to Shell by its related party. Accordingly, foreign inland freight and ocean freight deductions from U.S. price should reflect the prices charged to Shell by the transportation company. Since Shell did not report foreign inland freight and ESP ocean freight based on the charges from the related transportation company, we have recalculated these expenses using information developed at verification.

Comment 29

Shell claims that the Department should exclude from its margin analysis certain "obsolete" fan models sold on an ESP basis during the POI. Shell alleges that inclusion of these sales would distort the Department's margin calculation due to the artificially low price of these sales.

DOC Position

We disagree. Notwithstanding its characterization of the models as "obsolete", Shell provided no evidence that these sales were anything other than normal transactions. Moreover, Shell reported contemporaneous sales of the same model at other prices. Consequently, there is no basis to exclude these sales from our margin calculation.

Comment 30

Petitioner alleges that Shell consistently under-reported the labor input for components of its fans and that the higher, verified figures should be used in the final determination.

Shell states that the labor times examined at verification reflect only one individual's one-month labor report, while it calculated labor time as an average among all workers, by manufacturing process, over an entire year. Shell contends that this sample is too small for the accuracy of its reported labor input to be contested, particularly as the Department was unable to check further labor examples due to the time constraints imposed by the Department's "streamlined verification" procedures for these investigations. Therefore, the reported labor time should be used in the final determination.

DOC Position

We have used Shell's reported labor time inputs in calculating FMV. We

agree with Shell that our sample is too small to assume that it has understated its labor inputs across the board. Due to time restrictions at verification, we were unable to fully test all of Shell's labor input calculations. Moreover, the petitioner has not offered any better alternative to Shell's methodology. Therefore, we have accepted Shell's reported labor inputs.

Comment 31

Shell claims that, in the preliminary determination, the Department incorrectly applied a surrogate value to account for the painting and electroplating of its ceiling fans models, when, in fact, the costs for these non-PRC sourced materials were already included in the separate, non-PRC input cost total reported.

DOC Position

We agree. We confirmed at verification that the painting and electroplating materials in question were non-PRC sourced and included in its non-PRC cost totals.

Comment 32

Petitioner asserts that Shell's input freight amount for non-PRC sourced material inputs should be calculated on a POI basis, rather than the calendar year basis as reported by Shell.

Shell responds that the reported amount is more representative than the narrower time frame of the POI.

DOC Position

The Department's normal practice is to base movement expenses on the period most closely related to the POI. Shell provided no substantiation for its contention that annual expenses are more representative. Consequently, we agree with petitioner and have used the POI-based amount for calculating FMV.

Comment 33

In the final determination, Wing Tat claims that the Department should reduce its gross materials cost by the company's reported cash or purchase discount amount to arrive at a net materials cost.

DOC Position

For purposes of the final determination, we applied Wing Tat's reported purchase discount to those inputs for which we accepted actual acquisition costs in calculating FMV. At verification, we confirmed that Wing Tat receives a discount on some raw material purchases. We examined Wing Tat's methodology for calculating the purchase discount percentage and found it to be reasonable. We did not, however, reduce the surrogate values by the reported discount amount because PRC prices were not used.

Comment 34

Wing Tat argues that the Department should exclude the sales of what it considers to be industrial ceiling fans because (1) industrial fans are specifically excluded from the scope of the investigation, and (2) Wing Tat's fans are clearly industrial. In its post-verification submission of August 9, 1991, Wing Tat cites testimony at the U.S. International Trade Commission hearing as evidence that the petitioner did not intend to include industrial ceiling fans in the scope of the investigation. Wing Tat has provided information for the record explaining the numerous differences between its industrial and decorative ceiling fans (*e.g.*, industrial fans have metal blades, decorative fans have wood blades; unlike decorative fans, industrial fans are non-reversible and do not have a light adaptation; industrial fans operate at higher RPMs than decorative fans, etc.).

DOC Position

We agree with respondent and are not including Wing Tat's sales of industrial fans for purposes of our final determination. The petitioner did not intend to include industrial fans in the scope of the investigation, and given the evidence on the record, the Department has determined that the ceiling fans identified by Wing Tat are not within the scope of investigation for ceiling fans. (See Memorandum dated October 18, 1991, "The Definition of Industrial Fans for the Final Determination.")

Comment 35

Xinhui states that it has demonstrated that its trading company, GDME, is not related to its U.S. customer and its dealings with the customer are conducted in an arm's-length buyer-seller relationship.

DOC Position

At verification, we noted that GDME referred to its U.S. customer as a "joint venture" partner in a promotional brochure. Other than this reference, we found no evidence of any relationship between the customer and either Xinhui or GDME. Furthermore, we have no basis to dispute the respondent's assertion that a more accurate translation of the Chinese word at issue is "cooperative" rather than "joint venture." Therefore, we have treated the customer as an unrelated party.

Comment 36

Petitioner states that because Xinhui was unable to demonstrate the country of origin for a number of foreign purchased material inputs, the Department should value these inputs on the basis of surrogate country inputs or petitioner's costs.

Xinhui contends that it provided the documentation requested at verification to demonstrate that the country of origin for these inputs was not the PRC.

DOC Position

We agree with Xinhui. While Xinhui's normal accounting records did not indicate the country of origin for these inputs, Xinhui located adequate documentation or physical evidence at verification to establish that these inputs were, in fact, manufactured in market economies. This confirmation was detailed in the verification report and examples of the evidence reviewed were available to counsel for petitioner as part of the verification exhibits released under the administrative protective order.

Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of oscillating fans (except for those of Durable and Polaray) and ceiling fans (except for those of Shell and Xinhui) from the PRC, and to begin suspension of liquidation of all oscillating fans entries of Esteem, and ceiling fans entries of CEC, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or bond equal to the estimated amount by which the foreign market value exceeds the United States price as shown below. The suspension of liquidation will remain in effect until further notice. With respect to oscillating fans of Durable, and ceiling fans of Shell, any bond or other security ordered in the preliminary antidumping duty determination is hereby released.

The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin Percentage
I. Oscillating Fans:	
Durable Electrical Metal Factory Ltd./Parawind Ltd./Paragon Industries	[1] 0.22
Esteem Industries Ltd./HASM Manufacturing Co., Ltd./Holmes Products Corp.	0.79

Manufacturer/producer/exporter	Margin Percentage
Polaray Industrial Corporation/Paragon Industries (China) Inc./Polaray Industrial (Hong Kong) Corporation, Ltd.	0.00
Wuxi Electric Fan Factory	1.43
All Others	0.99
II. Ceiling Fans:	
CEC Electrical Manufacturing (International) Company, Ltd./CEC Industries (Shenzhen) Ltd./ CEC (USA) Texas Group, Inc.	2.70
Shell Electric Mfg. (China) Co./SMC Electric Mfg. (Sian Hua) Co./SMC Marketing Corporation	[1] 0.47
Wing Tat Electric Manufacturing Co., Ltd./ China Miles Co., Ltd.	1.65
Xinhui Electric Motor Factory/Guangdong Machinery and Equipment Import & Export Corp.	0.00
All Others	2.16

[1] De minimis.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determinations.

These determinations are published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20(a)(4)).

Dated: October 18, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-25767 Filed 10-24-91; 8:45am]

BILLING CODE 3510-DS-M

[C-549-804]

Carbon Steel Butt-Weld Pipe Fittings From Thailand; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on carbon steel butt-weld pipe fittings from Thailand for the period November 3, 1989 through December 31, 1990. We preliminarily determine the total bounty or grant to be 1.02 percent *ad valorem* for all exports for the period November 3, 1989 through December 31, 1989 and 2.07 percent *ad valorem* for all exports for the period January 1, 1990 through December 31, 1990. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: October 25, 1991.

FOR FURTHER INFORMATION CONTACT: Donna Kinsella or Barbara Tillman, Office of Countervailing Duty Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2104.

SUPPLEMENTARY INFORMATION:

Background

On January 17, 1991, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (56 FR 1793) of the countervailing duty order on carbon steel butt-weld pipe fittings from Thailand (55 FR 1695; January 18, 1990). On January 30, 1991, the petitioners, the U.S. Butt-Weld Fittings Committee, requested an administrative review of the order. We initiated the review, covering the period November 3, 1989 through December 31, 1990, on February 19, 1991 (56 FR 6621).

Scope of Review

Imports covered by this review are shipments of carbon steel butt-weld pipe fittings, having an inside diameter of less than 360 millimeters (fourteen inches), imported in either finished or unfinished form. These formed or forged pipe fittings are used to join sections in piping systems where conditions require permanent, welded connections, as distinguished from fittings based on other fastening methods (e.g., threaded, grooved, or bolted fittings). During the review period, such merchandise was classifiable under item number 73.07.93.30 of the Harmonized Tariff Schedule. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period November 3, 1989 through December 31, 1990, and nine programs. Three producers of Thai butt-weld pipe fittings exported subject merchandise to the United States during the review period. All three producers, TTU Industrial Corporation Ltd., Awaji Sangyo (Thailand) Company, Ltd., and Thai Benkan Company, Ltd., responded to the Department's questionnaire.

Analysis of Programs

(1) Tax Certificates for Exports

Under the Tax and Duty Compensation of Exported Goods Produced in the Kingdom Act of 1981 (Tax and Duty Act), the Royal Thai Government (RTG) issues tax certificates to the exporter of record to rebate indirect taxes and import duties on inputs used to produce exports. The rebate rates are computed on the basis of an input/output (I/0) study initially published in 1980 based on 1975 data, and updated in 1985 using 1980 data.

The Thai Ministry of Finance uses the I/0 study to compute the value of total inputs (both imports and local purchases) used in a discrete range of sector-specific products at ex-factory prices. The Ministry then calculates the import duties and indirect taxes on each input, and two rebate rates. The "A" rate rebates import duties and indirect domestic taxes. The "B" rate rebates only business taxes. The "B" rate is used by exporters that receive duty drawback, import duty exemptions on raw materials, or that do not use imported raw materials in their production process. The "A" or "B" rate is then applied to the total f.o.b. value of the export to determine the amount of the rebate.

The rebates are paid to companies by tax certificates which can be used to pay various tax liabilities, transferred, or sold to other companies. The rebate rates in effect during the review period were set forth in the "Notification of the Committee on Tax Rebates, No. Or. 2/2529," effective February 5, 1986. The calculation of these rates was based on the updated I/0 study published in 1985. The "A" rate for sector I/0 106, which includes carbon steel butt-weld pipe fittings, is 8.11 percent, and the "B" rate is 4.98 percent.

In Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Certain Apparel from Thailand, 50 FR 9318 (March 12, 1985), we examined Thailand's rebate system under the Tax and Duty Act. We found that the program was intended to rebate indirect taxes and import duties and that the rebate rates had been reasonably calculated. In subsequent investigations involving products from Thailand, most recently in Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Steel Wire Rope from Thailand (56 FR 46299, September 11, 1991) (Steel Wire Rope) we reaffirmed this determination. Because this program is available only to exporters, it is countervailable to the extent that it confers a rebate in excess of the Department's calculated allowable rebate of import duties and indirect taxes on physically incorporated inputs.

To calculate the rate of allowable rebate, the Department must first determine the f.o.b. value of exports. The value of all domestically-produced finished goods, as shown in the I/0 tables, is an ex-factory value. Because

the rebate is applied to the f.o.b. value of export, we adjusted the ex-factory value to reflect an f.o.b. value. In addition, the I/0 tables do not separate wholesale margin and transportation costs applicable solely to domestically-produced finished goods. Therefore, we divided the wholesale margin and transportation costs for all finished goods in the I/0 106 sector, including imports, by the ex-factory value of imported and domestically-produced finished goods in the sector. We then multiplied the ex-factory value of all domestically-produced finished goods in the sector by this ratio. We added the result of the ex-factory value of domestically-produced finished goods in order to obtain an f.o.b. adjusted value.

Consistent with Steel Wire Rope, we divided the import duties and tax incidence on all items physically incorporated into I/0 106 sector products by the f.o.b. adjusted value of all domestically produced finished goods in the sector to obtain the allowable rebate rates. We then compared the authorized rebate rates of 8.11 percent and 4.98 percent, based on both physically and non-physically incorporated inputs, to the allowable rebate rates and found that there is an excessive remission of import duties and indirect taxes to exports of pipe fittings. The difference between the "A" rate and the allowable rebate is 0.81 percent, while the difference between the "B" rate and the allowable rebate is 0.51 percent.

All three respondents used only the "B" rate. On this basis, we preliminarily determine the benefit from this program to be 0.51 percent *ad valorem* for the periods November 3, 1989 through December 31, 1909 and January 1, 1990 through December 31, 1990.

(2) Export Packing Credits

Export packing credits (EPCs) are short-term pre-shipment and post-shipment export loans. Exporters apply to commercial banks for EPCs and the commercial banks, in turn, submit the applications to the Bank of Thailand (BOT) for approval. The BOT repurchases promissory notes issued by creditworthy exporters through commercial banks. To qualify for the repurchase arrangement, promissory notes must be supported by a letter of credit, sales contract, purchase order, usance bill or warehouse receipt. The notes are available for a maximum of 180 days and interest is payable on the due date of the loan.

The BOT charges the commercial bank account for the principal amount plus five percent interest per annum on repurchased packing credits issued in connection with exports in categories one and two of the "Notification of the Board Of Investment No. 40/2521." If the terms of the loan are not met, the BOT charges the commercial bank a penalty, retroactive to the first day of the loan. The commercial bank then charges the exporter's account for the principal amount plus a penalty on the due date of the loan. If the exporter has not met the terms of the loan, the commercial bank passes on the additional penalty charge over the term of the loan.

On October 1, 1988, the RTG issued new regulations that coexisted with the prior regulations until December 31, 1988. Effective October 1, 1988, all first time applicants for EPCs had to apply under the new regulations. EPCs received under the previous regulations but still outstanding as of January 1, 1989, continued under those regulations until their expiration dates. Effective January 1, 1989, all applicants had to apply under the new regulations.

Under the new regulations, the maximum rate commercial banks can charge exporters was increased from 7 to 10 percent. In addition, commercial banks can lend up to 100 percent of the shipment value, but can rediscount only up to 50 percent of the loan amount with the BOT. Under the previous regulations, the commercial banks could only lend up to 90 percent of the shipment value and the BOT rediscounted 100 percent of the loan amount. The penalty fee was lowered from 8 to 5 percent and is charged only over that portion of the loan (e.g., 50 percent) rediscounted with the BOT. As of June 11, 1990, the penalty rate was increased to 6.5 percent.

If the exporter can prove that shipment of the goods took place within 60 days after the due date (in the case of pre-shipment loans), or the foreign currency was received within 60 days after the due date (in the case of post-shipment loans), the penalty is refunded to the commercial bank by the BOT. If only a portion of the goods was shipped or only a portion of the foreign currency was received by the due date, the exporter receives only a partial refund, proportional to the value of the goods shipped or the foreign currency received. The purpose of the penalty charge is to ensure that companies are using the EPCs to finance export sales.

TTU Industrial Corporation, Ltd., (TTU) received EPC loans on which interest was paid during the period of review. Because only exporters are eligible for these loans, we preliminarily determine that they are countervailable to the extent that they are provided at preferential rates.

As a benchmark for short-term financing, we ordinarily use the predominant source of short-term financing in the country in question. Where there is no single predominant source of short-term financing in the country in question, we may use a benchmark composed of the interest rates for two or more sources of short-term financing in the country in question, weighted, if possible, by the total value of financing from each source.

In Steel Wire Rope, the Department concluded that the minimum loan rate (MLR) and the minimum overdraft rate (MOR) as reported in the Bank of Thailand Quarterly Bulletin are more representative of short-term interest rates in Thailand for calendar years 1988 and 1989 than the weighted-average interest rates charged by commercial banks on domestic loans, bills, and overdrafts used in previous Thai cases. As a result, for our benchmark interest rate for loans taken out in 1989 we used a rate of 12.23 percent which is an average of the 1989 MLR and MOR rates as calculated in Steel Wire Rope. For 1990, we averaged the monthly MOR and MLR rates and calculated a benchmark of 14.60 percent.

To calculate the benefit from the EPC loans on which interest was paid during the review period, we compared the amount of interest actually paid during the review period to the amount that would have been paid at the benchmark rate. Because interest is paid on the due date of the loan, together with any penalty payments charged, the benefit from loans on which penalties are charged is not realized unless or until the penalties are refunded. Accordingly, for each loan on which penalties were charged, we treated penalties debited but not refunded as interest paid and subtracted these penalties, along with the EPC interest paid, from the amount of interest that would have been paid at the benchmark rate. In those instances where the amount of interest paid exceeded the amount of interest that would have been paid at the benchmark rate, we have excluded those loans from our calculations. Similarly, we included in our calculations all loans on which penalties were refunded during the review period, even though the interest on some of these loans was paid before the review period.

Because all EPC loans received by respondent were tied to specific export shipments, we calculated the amount of interest that would have been paid at the benchmark rate on loans covering exports of pipe fittings to the United States and subtracted the amount of interest that was actually paid. We then divided the result by the value of

respondent's exports of pipe fittings to the United States during the review period. We weighted the resulting benefit by respondent's share of exports of subject merchandise to the United States. On this basis, we preliminarily determine the benefit from this program to be 0.51 percent *ad valorem* for the period November 3, 1989 through December 31, 1989 and 0.23 percent *ad valorem* for the period January 1, 1990 through December 31, 1990.

(3) Tax and Duty Exemptions Under Section 28 of the Investment Promotion Act

The Investment Promotion Act (IPA) of 1977 provides incentives for investment to promote development of the Thai economy. Administered by the Board of Investment, the IPA authorizes, among other incentives, the exemption of import duties and domestic taxes with respect to qualifying projects. Section 28 of the IPA provides an exemption from payment of import duties and business taxes on machinery used to produce promoted products.

Awaji Sangyo (Thailand) Company Ltd., (AST) received tax and duty exemptions under section 28 during the period of review. Because benefits under this program are provided on the basis of export performance, and cover capital equipment (i.e., machinery) that is not physically incorporated in the subject merchandise, we preliminarily determine that the benefits provided under this program are countervailable. See Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Butt-Weld Pipe Fittings from Thailand (55 FR 1695, January 18, 1990).

AST claimed that a portion of the exemptions they received under section 28 during the period of review were granted on machinery used to produce merchandise outside the scope of this order. However, based on the evidence on the record, we have been unable to attribute actual duties and taxes exempted to specific pieces of imported machinery. Therefore, we have used the total amount of tax and duty exemptions received by respondent during the period of review to calculate the benefit from this program. We divided the total amount of exemptions by the respondent's total export sales value during the period of review. We weighted the resulting benefit by respondent's share of exports of subject merchandise to the United States. On this basis, we preliminarily determine the benefit from this program to be zero for the period November 3, 1989 through December 31, 1989 and 1.28 percent *ad valorem* for the period January 1, 1990 through December 31, 1990.

(4) Other Programs

We also examined the following programs and preliminarily determine that the exporters of the subject merchandise did not use them during the review period.

A. Electricity Discounts for Exporters
B. Repurchase of Industrial Bills
C. Export Processing Zones
D. International Trade Promotion Fund
E. Reduced Business Taxes for Producers of Intermediate Goods for Export Industries
F. Additional Incentives Under the IPA
- Income tax exemption
- Goodwill and royalties tax exemption
- Tax deduction of foreign marketing expenses and foreign taxes
- Exemption of sales tax for promoted industries
- Exemption on export duties and business taxes on products produced or assembled by promoted firms
- Deduction from assessable income of an amount equal to 5 percent of the increase over the previous year of income derived from exports

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant for the period November 3, 1989 through December 31, 1989 to be 1.02 percent *ad valorem* and for the period January 1, 1990 through December 31, 1990 to be 2.02 percent *ad valorem*. The Department intends to instruct the Customs Service to assess countervailing duties of 1.02 percent of the f.o.b. invoice price on shipments exported on or after November 3, 1989 and on or before December 31, 1989 and countervailing duties of 2.02 percent of the f.o.b. invoice price on shipments exported on or after January 1, 1990 and on or before December 31, 1990.

Further, the Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 2.02 percent of the f.o.b. invoice price on all shipments of subject merchandise from Thailand entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Parties to the proceeding may request disclosure of the calculation methodologies and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with § 355.38(e) of the Commerce regulations.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 355.38(c), are due.

The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1) and 19 CFR 355.22.

Dated: October 17, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-25768 Filed 10-24-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-223-601]

Certain Cut Flowers From Costa Rica; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the agreement suspending the countervailing duty investigation on certain cut flowers from Costa Rica. We preliminarily determine that the signatories have complied with the terms of the suspension agreement during the period January 1, 1990 through December 31, 1990. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: October 25, 1991.

FOR FURTHER INFORMATION CONTACT: Millie Mack or Barbara Males, Office of Agreements Compliance, International

Trade Administration, U.S. Department of Commerce, Constitution Avenue and 14th Street, NW., Washington, DC 20230; telephone (202) 377-3793.

SUPPLEMENTARY INFORMATION:

Background

On January 17, 1991, the Department of Commerce (the Department) published a notice of "Opportunity to Request an Administrative Review" (56 FR 1793) of the agreement suspending the countervailing duty investigation on certain cut flowers from Costa Rica (52 FR 1356; January 13, 1987). On January 15, 1991, the respondent, the Association of Costa Rican Flower Growers (ACOFLOR), requested an administrative review of the suspension agreement. We initiated the review on February 19, 1991 (56 FR 6621). The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act). The final results of the last administrative review in this case were published in the **Federal Register** on January 22, 1991 (56 FR 2163).

Scope of Review

Imports covered by this review are shipments of miniature (spray) carnations, standard carnations, and pompon chrysanthemums from Costa Rica. This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) items 0603.10.30 and 0603.10.70. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1990 through December 31, 1990 and six programs. The producers and exporters listed in appendix A, accounting for more than eighty-five (85) percent of total exports of subject merchandise from Costa Rica to the United States, are signatories to the suspension agreement.

Analysis of Programs

(1) Tax Credit Certificates

Certificados do Abono Tributario (CAT) are bearer instruments issued by the Central Bank of Costa Rica. The value of the CAT is equal to 15 percent of the f.o.b. value of a firm's shipments of non-traditional exports. The suspension agreement prohibits Costa Rican producers and exporters of cut flowers from applying for or receiving any benefits under the CAT program for shipments of the subject merchandise to the United States. Effective the date of the agreement (January 13, 1987), any unused certificates received on prior shipments of the subject merchandise to the United States were to be returned to the Central Bank of Costa Rica. We determined during the administrative review that none of the signatory producers and exporters received or possessed unused CATs during the review period. Therefore, we preliminarily determine that, with respect to this program, the signatories have complied with the agreement.

(2) Certificates for Increasing Exports (CIEX)

This program provides grants to agricultural and agro-industrial producers who increase exports from one year to the next. The suspension agreement prohibits Costa Rican producers and exporters of cut flowers from applying for or receiving any benefits under the CIEX program. In August 1984, the program was discontinued due to lack of funds, and the last benefits were paid in 1986. In 1988, the Costa Rican Congress approved a special emission of bonds for the purpose of liquidating the outstanding CIEX benefits for 1983/84, 1984/85, and 1985/86. During the administrative review, we determined that none of the signatory producers and exporters received benefits under this program. We preliminarily determine that the signatories were in compliance with the portion of the agreement covering this program.

(3) Income Tax Exemptions for Export Earnings

Firms in Costa Rica are eligible for a tax exemption for export earnings. The suspension agreement prohibits Costa Rican producers and exporters of cut flowers from applying for or receiving any income tax exemptions for income derived from exports of the subject merchandise to the United States. We preliminarily determine that, with respect to this program, the signatories have complied with the agreement.

(4) Exporter Credit for Sales Tax and Consumption Tax on Certain Domestic Purchases

Exporting firms in Costa Rica are eligible for a rebate of sales taxes and selective excise taxes (*i.e.*, indirect taxes) paid on certain domestically-purchased articles. The suspension agreement prohibits Costa Rican producers and exporters of cut flowers from applying for or receiving any rebates of sales taxes and selective excise taxes on domestic purchases not physically incorporated into any exports. During the administrative review, we determined that none of the signatory producers and exporters applied for or received any rebates of these taxes during the review period on domestic purchases not physically incorporated into exports. Therefore, we preliminarily determine that, with respect to this program, the signatories have complied with the agreement.

(5) Exporter Exemptions for Taxes and Duties on Imports

Costa Rican firms with export contracts may be exempted from paying duties and taxes on imported raw materials, intermediate products and capital goods used to produce exported finished products. The suspension agreement prohibits Costa Rican producers and exporters of cut flowers from applying for or receiving any exemptions from taxes, surcharges and duties (*i.e.*, indirect taxes) on non-physically incorporated imports. We determined that no exporter or producer received such exemptions on any item without verification that the item in question has not been or will not be used in the production of the subject merchandise. The verification procedures are administered by the Costa Rican Treasury, the Centro para la Promocion de las Inversiones (the government agency responsible for granting exemptions), and ACOFLOR. Therefore, we preliminarily determine that the signatories are in compliance with the portion of the agreement covering this program.

(6) Accelerated Depreciation

Exporting firms in Costa Rica may use accelerated depreciation for new equipment if they are authorized for that benefit by the Ministerio de Hacienda. The suspension agreement prohibits Costa Rican producers and exporters of cut flowers from making use of accelerated depreciation in the calculation of income taxes. No firm claimed or used accelerated depreciation on its tax forms filed in 1990. Therefore, we preliminarily determine that the signatories have complied with the terms of the suspension agreement.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the signators have complied with the terms of the suspension agreement for the period January 1, 1990 through December 31, 1990.

The agreement can remain in force only as long as shipments from the signatories account for at least 85 percent of imports of the subject cut flowers into the United States. Our information indicates that the 37 signatory companies accounted for

substantially all of the imports into the United States of this merchandise during the period of review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days after the date of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first workday thereafter. Rebuttal briefs and rebuttals to written comments, limited to issues in those comments, must be filed not later than 37 days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any written comments.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: October 17, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

Appendix A—List of Signatory Producers and Exporters

1. American Flower Corporation, S.A.
2. Flores del Cerro, S.A.
3. Agroflor de Paraiso, S.A.
4. Hermelink y Garces, S.A.
5. Tico Flor, S.A.
6. Cooexflo R.L.
7. Compania Agricola Flex, S.A.
8. Flor Bella, S.A.
9. Exporflor de Cartago, S.A.
10. Lianpa, S.A.
11. Floricultura de Costa Rica, S.A.
12. Vivero El Zamorano, S.A.
13. Flores de Iztaru, S.A.
14. Inversiones Costa Flor, S.A.
15. Coopeflor
16. Euroflores, S.A.
17. Flores y Follajes del Tirol, S.A.
18. Flores del Volcan CRP, S.A.
19. Goreza, S.A.
20. Llano Claro, S.A.
21. Ornamentales Cargil, S.A.
22. Floricultura La Colina, S.A.
23. Flores Intercontinentales, S.A.
24. Fincas Nabori, S.A.
25. Flores de Coris, S.A.
26. Florex, S.A.
27. C.R.B. Internacional, S.A.
28. Flores del Caribe, S.A.
29. Zurqui Flor de Costa Rica, S.A.
30. Rio Tapezco Ltda.
31. Jardin Botanico LDL de Costa Rica, S.A.
32. Tropiflor de la Montana, S.A.
33. Floricultura Santa Rosa, S.A.
34. Corporacion Rica Flor, S.A.
35. Intertec, S.A.
36. Accoreo, S.A.
37. Floricultura Cartaginesa

[FR Doc. 91-25668 Filed 10-24-91; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Services, NOAA, Commerce.

The Pacific Fishery Management Council's (Council) Oregon Coastal Natural Coho Review Group (Review Group) will hold a public meeting beginning at 9:30 a.m. on November 7, 1991. The meeting will be held in room 200 of the Forestry Sciences Laboratory on the Oregon State University Campus at 3200 SW. Jefferson Way, Corvallis, Oregon.

This will be the third meeting of the Review Group to examine the causes that have led to failure in attaining the spawning escapement objective for the Oregon coastal natural coho stock. The Review Group will report its findings and recommendations to the Council prior to the development of management recommendations for the 1992 ocean salmon season.

For more information, contact John Coon, Staff Officer (Salmon), Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone (503) 326-6352.

Dated: October 21, 1991.

Joe P. Clem,

Acting Director,

Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-25744 Filed 10-24-91; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SERVERELY HANDICAPPED

Production List Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to procurement list.

SUMMARY: This action adds to the Procurement List a commodity to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: November 25, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On May 31, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (56 FR 24790) of proposed additions to the Procurement List.

Comments were received from the current contractor for this item. The contractor stated that it is a small business which has performed the contract for four of the past five years. It claimed that loss of the item would have a significant adverse impact on its viability because the contract is an essential part of its return to profitability and it would lose the opportunity to recoup a substantial investment in retooling if the item is removed from competitive procurement.

The procuring agency has informed the Committee that it is unaware of any retooling being done for the performance of this contract. The contractor explained the reference by stating that it had purchased some equipment and changed its production process in order to perform the contract more efficiently. The contractor said that all but one piece of equipment could be used on other applications.

Given these facts, the Committee does not believe that the contractor would lose the opportunity to recoup its retooling investment solely because of the addition of this item to the Procurement List. As for the company's return to profitability, the Committee has concluded that the proposed addition represents such a small percentage of the company's sales that its loss would not constitute serious adverse impact on the company, even allowing for the company's recent reliance on performing this contract.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodity at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodity listed.

c. The action will result in authorizing small entities to produce the commodity procured by the Government.

Accordingly, the following commodity is hereby added to the Procurement List.

Microfiche, Federal Register
7670-00-NSH-0002
(Requirements for the Office of the Federal Register only)

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 91-25771 Filed 10-24-91; 8:45 am]

BILLING CODE 6820-33-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Proposed Additions and Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to and deletion from procurement list.

SUMMARY: The Committee has received proposals to add to and delete from the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: November 25, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2-6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

It is proposed to add the following commodity and services to the Procurement List:

Commodity

Arming Adaptor, Self-Adjusting
1325-01-158-8635

Services

Janitorial/Custodial
Maintenance, Line and Operations Buildings, Springfield, Missouri

Janitorial/Custodial
Lawrence County Veterans Memorial USARC, 533 Taylor Street, New Castle, Pennsylvania

Laundry Service
Naval Station, Long Beach, California

Deletion

It is proposed to delete the following commodity from the Procurement List:

Ash Receiver, Tobacco
9920-00-682-6757

Beverly L. Milkman,

Executive Director.

[FR Doc. 91-25772 Filed 10-24-91; 8:45 am]

BILLING CODE 6820-33-M

Procurement List; Proposed Additions Corrections

In notice document 91-24609, appearing on page 51376 in the issue of Friday, October 11, 1991 the following items were in error:

Under the Defense Subsistence Region Pacific, Building 6 should read Floors 1 & 2 rather than Floors 6 & 7.

The Tray, Plastic MM, P.S. Item 3925 should be followed by (Requirements of the U.S. Postal Service Mail Transport Equipment (MTE) Areas 5, 7, 8, and 10).

Beverly L. Milkman,

Executive Director.

[FR Doc. 91-25773 Filed 10-24-91; 8:45 am]

BILLING CODE 6820-33-M

COUNCIL ON ENVIRONMENTAL QUALITY

President's Commission on Environmental Quality; Meeting

AGENCY: Council on Environmental Quality, Executive Office of the President, President's Commission on Environmental Quality.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is being provided for a meeting of the President's Commission on Environmental Quality. This notice is a revision of the original notice published in the **Federal Register** on October 16, 1991 at 56 FR page 51878 col. 2. The change is in the meeting times found on the agenda. This meeting open to the public and there will be an opportunity for public comment.

DATES: The meeting will be held on October 31, 1991.

ADDRESSES: The meeting will be held from 9 a.m. to 10:30 a.m. and 12:45 p.m. to 2:30 p.m. on Thursday, October 31, 1991, at room 474 (Indian Treaty Room), Old Executive Office Building, 17th & Pennsylvania Avenue, NW., Washington, DC.

Persons attending the meeting will need to provide their names and dates of birth of Ms. Kim Chastain (telephone: (202) 395-5750) by Monday, October 28, 1991, at 5 p.m. for clearance into the Old Executive Office Building. Space in the Indian Treaty Room is limited and persons interested in attending will be accommodated on a first-come, first-served basis.

Agenda:

Thursday, October 31, 1991

Old Executive Office Building, 17th & Pennsylvania Avenue, NW., room 474 (Indian Treaty Room), Washington, DC),

9 a.m.-9:15 a.m.—Opening Remarks & Agenda.

9:15 a.m.-10:30 a.m.—Subcommittee Reports & Discussion.

10:30 a.m.-12:45 p.m.—Break.

12:45 p.m.-1:45 p.m.—Subcommittee Reports & Discussion.

1:45 p.m.-2 p.m.—Public comment.

2 p.m.-2:20 p.m.—Conclusion.

2:30 p.m.—Adjourn.

FOR FURTHER INFORMATION CONTACT: Ms. Kim Chastain, Staff Assistant, President's Commission on Environmental Quality (telephone: (202) 395-5750).

SUPPLEMENTARY INFORMATION: The President's Commission on Environmental Quality was established by Executive Order No. 12737 on December 12, 1990. The Commission has 25 members and is chaired by the Chairman of the Council on Environmental Quality. The function of the Commission is to advise the President on matters involving environmental quality.

David B. Struhs,

Chief of Staff, Council on Environmental Quality.

[FR Doc. 91-25862 Filed 10-24-91; 8:45 am]

BILLING CODE 3125-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

DOD Advisory Group on Electron Devices Advisory Committee Meeting

SUMMARY: Working Group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Tuesday, 12 November 1991.

ADDRESS: The meeting will be held at the Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Becky F. Terry, AGED Secretariat, 2011 Crystal Drive, suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law No. 92–463, as amended, (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: October 21, 1991.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 91–25683 Filed 10–24–91; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices Advisory Committee Meeting

SUMMARY: Working Group C (Mainly Opto-Electronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Wednesday and Thursday, November 13 and 14, 1991.

ADDRESS: The meeting will be held at the Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, suite 307, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Gerald Weiss, AGED Secretariat, 2011 Crystal Drive, suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law No. 92–463, as amended, (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: October 21, 1991.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 91–25684 Filed 10–24–91; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Anti-Submarine Warfare; Meeting

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Anti-Submarine Warfare will meet in closed session on 13 and 14 November, 1991, at the Center for Naval Analyses, Alexandria, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Task Force will review a draft of its final report.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1988), and that accordingly this meeting will be closed to the public.

Dated: October 21, 1991.

Linda M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 91–25685 Filed 10–24–91; 8:45 am]

BILLING CODE 3810-01-M

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: Application for Establishment of Air Force Junior ROTC Unit; AFROTC Form 59, OMB No. 0701–0114.

Type of Request: Extension.

Average Burden Hours/Minutes per Response: 30 Minutes.

Responses per Respondent: 1.

Number of Respondents: 40.

Annual Burden Hours: 20.

Annual Responses: 40.

Needs and Uses: AFROTC Form 59 is used by secondary school officials to make application for hosting an Air Force Junior Unit as part of their school's academic program. Distribution is made only when specifically requested by school officials. AFROTC does not solicit requests, but responds to requests for the form.

Affected Public: State or local governments, and non-profit institutions.

Frequency: On occasion.

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

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

DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal

should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202-4302.

Dated: October 22, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer Department of Defense.

[FR Doc. 91-25742 Filed 10-24-91; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Intent To Waive Certain Requirements Under the Elementary and Secondary Education Act of 1965, for the Republic of Palau

AGENCY: Department of Education.

ACTION: Notice of intent to waive certain requirements.

SUMMARY: Under section 8003(a) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended, the Secretary intends to waive certain requirements under Chapter 1 of Title I of the ESEA for the Ministry of Education (MOE) of the Republic of Palau (formerly part of the Trust Territory of the Pacific Islands). This notice sets forth the terms and conditions under which the Secretary intends to grant the waiver, and invites public comments.

DATES: Comments must be received on or before November 25, 1991.

ADDRESSES: All comments concerning this notice should be addressed to Mary Jean LeTendre, Director, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue SW., (room 2043), Washington, DC 20202-6132.

FOR FURTHER INFORMATION CONTACT: Wendy Jo New, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue SW. (room-2021), Washington, DC 20202-6132. Telephone: (202) 401-0089. Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC, 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION:

A. Background

Title V of the Omnibus Territories Act, 48 U.S.C. 1469a, authorizes the Secretary to consolidate Federal education programs for which an Insular Area is eligible to apply. Programs that the Secretary has consolidated include, for example, Chapter 1 and Chapter 2 of the ESEA. From the list of consolidated programs, an Insular Area may apply annually for a consolidated grant for two or more of those programs. The Insular Area may then use its consolidated grant funds to carry out one or more of the programs included in its consolidated grant application. The Insular Area must comply with the statutory and regulatory requirements that apply to each program under which it expends its consolidated grant funds. The MOE of the Republic of Palau (formerly part of the Trust Territory of the Pacific Islands) has applied to receive consolidated grant funds for the 1991-92 school year.

B. Authority for Granting a Waiver

Under section 8003(a) of the ESEA, 20 U.S.C. 3383(a), the Secretary is authorized to waive, upon request, any requirements of the ESEA, as amended, for an Insular Area if the Secretary determines that compliance with those requirements is "impractical or inappropriate because of conditions or circumstances particular to any of such jurisdictions. . . ." Any waiver under section 8003(a) is subject to the terms and conditions that the Secretary deems necessary to carry out the purposes of the program whose requirements are being waived.

C. Waiver Request

Under its 1991-92 consolidated grant application, the MOE intends to spend a portion of its consolidated grant funds on activities under Chapter 1 of the ESEA. Accordingly, the MOE has requested the Secretary to waive the applicability of four Chapter 1 requirements because those requirements are impractical or inappropriate due to conditions and circumstances particular to the Republic of Palau.

First, the MOE has requested a waiver of section 1014(b), 20 U.S.C. 2724(b), which requires an annual assessment of educational needs and, of the educationally deprived children identified, the selection of those children who have the greatest need for special assistance. According to the MOE, all its children are educationally deprived and eligible for chapter 1 services. Moreover, the educational needs of the children are very basic. This, it is inappropriate to have a selection process for identifying children who are in greatest need when all children have great needs. In addition, the requirement to perform an annual needs assessment is impractical. The instruments available in the Republic of Palau do not address the needs of children at all age levels. Further, because of limited funds and the prohibitive cost for transportation to all of the schools in the outlying areas, conducting an annual assessment would be unrealistic.

Second, the MOE has requested a waiver of section 1017, 20 U.S.C. 2727, which requires that eligible students in private schools receive equitable Chapter 1 services. In *Aquilar* v. *Felton*, the United States Supreme Court held that it was unconstitutional for public school personnel to provide Chapter 1 services on the premises of religiously affiliated private schools. As a result, Chapter 1 services must be provided at a neutral site or by certain other means. In the Republic of Palau, however, neutral facilities to provide Chapter 1 services are not situated near the private schools. Likewise, the use of mobile educational units, for example, is impractical because some of the private schools are accessible only by sea, and the cost of those units is prohibitive. The MOE, under its plan, proposes to use the consolidated grant funds it would be required to spend on services for eligible private school children under Chapter 1 to provide additional services for those children under Chapter 2.

Third, the MOE has requested a waiver of section 1018(c), 20 U.S.C. 2728(c), which requires, in part, that a school district in which all school attendance areas are project areas provide services with State and local funds that are substantially comparable in each area. Comparability is determined by factors such as pupil/staff ratios, expenditure/pupil ratios, districtwide salary schedules, and equivalence among schools in the provision of materials and supplies. According to the MOE, there are conditions and circumstances in Palau that make compliance with this requirement impractical. For example, teachers are assigned to teach in their home villages or islands. Problems with transportation, communication, distance between islands and villages, and prohibitive costs would make relocating teachers and their families difficult. It would also be impractical to reassign students to other schools away from their homes to meet the comparability requirement. To do so would necessitate the establishment of boarding schools for young children which would be neither economically nor socially feasible. Also, many school facilities would not be able to accommodate the additional students who might have to be transferred.

Finally, the MOE has requested a waiver of section 1019, 20 U.S.C. 2729, which requires a local educational

agency (LEA) to evaluate the effectiveness of Chapter 1 programs in accordance with national standards and requires the State educational agency, in accordance with national standards, to conduct an evaluation of its Chapter 1 programs based on the LEA evaluation data and submit the evaluation to the Secretary. According to the MOE, the Republic of Palau has neither a nationally normed test or an equivalent available nor a test to measure more advanced skills, as required by the national standards. Additionally, the available tests are school based and not appropriate to be used districtwide. The tests are only able to measure desired outcomes at the school and student levels. Further, due to limited funds and the prohibitive cost of establishing a nationally normed testing program for Palau, evaluating the effectiveness of Palau's Chapter 1 program in accordance with national standards would be unrealistic.

D. Management Plan

Section 8003(a)(2) of the ESEA provides that any waiver is subject to the terms and conditions that the Secretary deems necessary, including submission of a plan for management of the funds in a manner designed to achieve the purposes of the program whose requirements are being waived. The Secretary has determined that the description of Chapter 1 activities in its consolidated grant application that the MOE plans to conduct is sufficient for purposes of section 8003(a)(2). For example, in 1991–92, the MOE plans to expend approximately $1,000,000 for Chapter 1 activities. Of that amount, approximately $500,000 would be used on building repair and renovations for Palau's schools, which were devastated by a recent typhoon, and $500,000 would be used for basic skills development of the children. Of the $500,000 for basic skills development, the MOE plans to use $150,000 it would be required to expend on services for eligible private school children under Chapter 1 to provide additional services to those children under Chapter 2. For each subsequent year that the MOE submits a consolidated grant application that includes Chapter 1 activities, the Secretary will review these activities to ensure that they are consistent with all applicable requirements, the waiver, and the purposes of chapter 1.

E. Notice of the Secretary's Intent to Grant a Waiver

Section 8003(a)(1) of the ESEA requires that, at least 30 days before approving a request for a waiver, the Secretary must publish the **Federal Register** a notice of his intent to do so and the terms and conditions under which the waiver will be granted. In accordance with this requirement, notice is hereby given that, subject to the terms and conditions described below, the Secretary intends to waive the applicability of the requirements in sections 1014(b), 1017, 1018(c), and 1019 of Chapter 1 to the MOE.

F. Terms and Conditions Under Which a Waiver Would be Granted

Under section 8003(a)(2), the MOE agrees to comply with the following terms and conditions:

(1) All consolidated grant funds that are expended for Chapter 1 activities by the MOE during the period covered by the waiver will be spent in accordance with—

(a) All applicable statutory and regulatory requirements, except those Chapter 1 requirements that are specifically indentified in the waiver;

(b) The Chapter 1 activities described in the MOE's annual consolidated grant application or amendments to the application;

(c) The budget contained in the MOE's annual consolidated grant application; and

(d) These terms and conditions.

(2) Consolidated grant funds that the MOE would be required to expend on Chapter 1 services for students in private schools will be used to provide additional services for those students under Chapter 2.

(3) The waiver remains in effect until the MOE is able to comply with the waived requirements or until the MOE ceases to operate Chapter 1 activities; and

(4) If the conditions or circumstances that justified the waiver change, the MOE will notify the Department and the terms of the waiver will be adjusted accordingly.

(Catalog of Federal Domestic Assistance Number 84.010, Chapter 1 Program in Local Educational Agencies)

Dated: October 21, 1991.

Lamar Alexander,

Secretary of Education.

[FR Doc. 91–25769 Filed 10–24–91; 8:45 am]

BILLING CODE 4000–01–M

Indian Education National Advisory Council; Meeting

AGENCY: National Advisory Council on Indian Education.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND TIMES: Thursday, November 7, 1991, 9 a.m. to approximately 5 p.m. (closed) and Friday, November 8, 1991, 9 a.m. to approximately 4 p.m. (open).

ADDRESSES: Holiday Inn Capitol, 550 C Street SW., Washington, DC 20024. Telephone: 202/479–4000.

FOR FURTHER INFORMATION CONTACT: John Cheek, Office Manager, National Advisory Council on Indian Education, 330 C Street SW., room 4072, Switzer Building, Washington, DC 20202–7556. Telephone: 202/732–1353.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under section 5342 of the Indian Education Act of 1988 (25 U.S.C. 2642). The Council is established to, among other things, assist the Secretary of Education in carrying out responsibilities under the Indian Education Act of 1988 (part C, title V, Public Law 100–297) and to advise Congress and the Secretary of Education with regard to federal education programs in which Indian children or adults participate or from which they can benefit.

The Council is conducting a search to appoint a permanent Executive Director to serve as the chief staff member of the Council. The full Council will meet in closed session from 9 a.m. until approximately 5 p.m. on November 7, 1991, to conclude the Executive Director search process. The agenda for the closed portion of the meeting will consist of a discussion of the Search Committee's recommendation regarding the candidates and the questions and guidelines to be used in the interviews, actual interviews with candidates, and a discussion involving a final decision on the appointment of a permanent Executive Director for the Council.

Interviews with the candidates and discussions held in conjunction with the selection process will involve matters which relate solely to the internal personnel rules and practices of this Council and are likely to disclose information of a personnel nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of section 552b(c) of the Government in the Sunshine Act (Pub. L. 94–409; 5 U.S.C. 552b(c)).

A summary of activities of the closed portion of the meeting and related

matters which are informative to the public consistent with the policy of title 5 U.S.C. 552b will be available to the public within 14 days of the meeting.

The full Council will meet in open session on Friday, November 8, 1991 from 9 a.m. to approximately 4 p.m. for an informational business meeting. This portion of the meeting is open to the public and will include a staff report, presentation from Dr. John Tippeconnic, Director, Office of Indian Education, staff report from the Bureau of Indian Affairs Higher Education Office, Alan Lovesee, House Education and Labor Committee, and Donna Leno, Indian Health Service.

Records shall be kept of all Council proceedings open to the public and shall be available for public inspection at the office of the National Advisory Council on Indian Education located at 330 C Street SW., room 4072, Washington, DC 20202-7556.

John T. MacDonald,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 91-25676 Filed 10-24-91; 8:45 am]

BILLING CODE 4000-01-M

DEPARMTENT OF ENERGY

Certification of the Radiological Condition of Certain Niagara Falls Storage Site Vicinity Properties in Lewiston, NY Following Cleanup Activities From 1983 Through 1986

AGENCY: Office of Environmental Restoration and Waste Management, Department of Energy.

ACTION: Notice of certification.

SUMMARY: The Department of Energy has completed radiological surveys and taken remedial action to decontaminate certain properties in Lewiston, Niagara Falls, and Porter, New York. These properties, located near or adjacent to the Department's Niagara Falls Storage Site, were found to contain quantities of radioactive material from early Manhattan Engineer District/Atomic Energy Commission activities. The Department has certified that these properties are in compliance with DOE decontamination criteria and standards and that future use of the properties will result in no radiological exposure above current applicable radiological guidelines established to protect members of the general public or site occupants.

FOR FURTHER INFORMATION CONTACT: James J. Fiore, Director, Division of Eastern Area Programs, Office of Environmental Restoration and Waste Management (EM-42), U.S. Department of Energy, Washington, DC 20585, 301-353-8141.

SUPPLEMENTARY INFORMATION: The Department of Energy (DOE), Office of Environmental Restoration and Waste Management, Division of Eastern Area Programs, implemented two remedial action projects, one on the Niagara Falls Storage Site (NFSS) and the other on properties in its vicinity in the Lewiston, New York, area referred to herein as "the NFSS vicinity properties." The NFSS on-site remedial action was managed by DOE's Surplus Facilities Management Program (SFMP). The off-site work associated with remediation of NFSS vicinity properties is being administered by DOE's Formerly Utilized Sites Remedial Action Program (FUSRAP) under the direction of the Office of Environmental Restoration and Waste Management, Division of Eastern Area Programs, Off-Site Branch. The objective of SFMP is to manage and plan the ultimate disposition of surplus DOE-owned facilities and to ensure that properties contaminated as a result of activities of either DOE or DOE's statutory predecessors can be certified to be in compliance with DOE decontamination criteria and standards. The SFMP assigned the NFSS project to the Former Sites Restoration Division of the DOE Field office, Oak ridge (OR) which is also the DOE lead field office for FUSRAP.

Both NFSS and NFSS vicinity properties were part of the U.S. Army's original 3,035-ha (7,500-acre) Lake Ontario Ordnance Works (LOOW), which was constructed and used for TNT production early in World War II. The site never went into TNT production and was subsequently reassigned to the Army Corps of Engineers—Manhattan Engineer District (MED). From 1944 to 1947, the MED used by LOOW to store uranium ore processing residues from a ceramics plant. By 1948, 2,428 ha (6,000 acres) of the LOOW had been transferred or sold by the War Assets Administration. Ownership of the remaining 607 ha (1,500 acres) was given to the newly formed Atomic Energy Commission (AEC). AEC continued to use the 607-ha (1,500-acre) LOOW site to store additional residues. In addition to the storage of uranium ore processing residues, LOOW was also used for interim storage of uranium metal billets (rods) and as a disposal site for radioactive wastes. On-site storage operations had ceased by 1953, and an on-site steam plant was modified to separate nonradioactive isotopes of boron. The plant was in operation between 1953 and 1959 and again between 1965 and 1971. During the first period, a major cleanup of the site included consolidating and removing surface debris and shipping most of these wastes to Oak Ridge, Tennessee. Radioactively contaminated soils and residues were left at the site. From 1955 to 1975, more than 526 ha (1,300 acres) of the LOOW were transferred or sold to private concerns, leaving 77 ha (191 acres) at the current NFSS.

As a result of these operations, some portions of the former LOOW—other than the present NFSS—were also contaminated. In addition, some of the radioactive materials stored at NFSS over the years were subject to water and wind erosion or otherwise migrated off-site onto other properties. DOE refers to all of the above contaminated properties as "the NFSS vicinity properties." DOE surveyed the NFSS vicinity properties for remedial action under FUSRAP and developed a remedial action plan to remove contamination from the NFSS vicinity properties.

From 1983 to 1986, the NFSS vicinity properties listed below were decontaminated. The contaminated materials were disposed of at a waste containment facility located on NFSS. Post-remedial action surveys have demonstrated—and DOE has certified—that the listed properties are in compliance with DOE decontamination criteria and standards and that future use of the properties will result in no radiological exposure above current applicable radiological guidelines established to protect members of the general public or site occupants. These findings are supported by the DOE Certification Docket for the Remedial Action Performed at Niagara Falls Storage Site Vicinity Properties in Lewiston, New York, From 1983 through 1986. Accordingly, these properties are released from FUSRAP.

The certification docket will be available for review between 9:00 a.m. and 4:00 p.m., Monday through Friday (except for Federal holidays) in the Department of Energy Public Reading Room located in room 1E-190 of the Forrestal Building, 1000 Independence Avenue SW., Washington, DC. Copies of the certification docket will also be available in OR's Public Document Room in Oak Ridge, Tennessee, and at the Lewiston Public Library, 505 Center Street, Lewiston, New York, 14092.

The Department of Energy, through OR's Former Sites Restoration Division, has issued the following statement:

Statement of Certification: Niagara Falls Storage Site Vicinity Properties Associated With the Former Manhattan Engineer District (MED) Atomic Energy Commission (AEC) Operations

The Former Sites Restoration Division of the DOE Field Office, Oak Ridge, has reviewed the radiological data obtained following the remedial action at the properties listed below. Based on this review, DOE is certifying that the properties listed below are in compliance with DOE decontamination criteria and standards. This certification of compliance provides assurance that future use of the properties will result in no radiological exposure above applicable guidelines established to protect members of the general public or site occupants. Accordingly, the following properties are released from DOE's FUSRAP.

Property A—as described in the deed, liber 1588, pages 513 and 516 and liber 1503, page 752.
Property B—as described in the deed, liber 1588, page 516, and liber 1599, page 513.
Property C'—as described in the deed, liber 1883, page 342.
Property D—as described in the deed, liber 1599, page 513, liber 1588, page 516, liber 1503, page 752, and liber 1728, page 33.
Property F—as described in the deed, liber 1588, pages 513 and 516.
Property H'—as described in the deed, liber 1728, page 33.
Property L—as described in the deed, liber 2153, page 292.
Property M—as described in the deed, liber 2153, page 292.
Property N/N' North—as described in the deed, liber 1883, page 342.
Property N/N' South—as described in the deed, liber 2153, page 292.
Property P—as described in the deed, liber 1588, page 519.
Property Q—as described in the deed, liber 1369, page 74.
Property R—no deed reference.
Property S—as described in the deed, liber 1568, page 762, and liber 1728, page 33.
Property T—as described in the deed, liber 1588, page 519, liber 1503, page 762, and liber 1728, page 33.
Property U—as described in the deed, liber 1588, page 519, liber 1503, page 752.
Property V—as described in the deed, liber 1588, page 513, 516 and 519, liber 1503, page 752.
Property W—as described in the deed, liber 1728, page 33, and liber 1567, page 762.
Property X—as described in the deed, liber 1728, page 33, and liber 1567, page 762.

Properties located along the Central Drainage Ditch owned by the Somerset Group, Inc. (as described in the deed, liber 1503, page 752 , New York Army National Guard (no deed reference), Mr. Roderick T. Tower (as described in the deed, liber 1387, page 409), Mr. George J. Wolf (as described in the deed, liber 1964, page 243), Mr. Richard Kahl and Robert Hille (as described in the deed, liber 1513, page 773), Town of Porter (no deed reference), and Niagara Falls County (no deed reference).

Areas along Pletcher Road extending from the intersection of Campbell Street and Pletcher Road to Creek Road, owned by the Town of Lewiston (no deed reference).

Areas located at the junction of Highways 18 and 104, referred to as Anomaly AA, owned by the people of the State of New York (no deed reference).

Areas located near the junction of Highway 31 and Military Road, referred to as Anomaly BB, owned by Angelo F. and Joseph S. Lauduca (as described in the deed, liber 2175, page 100).

Areas located near the junction of Buffalo Avenue and Hyde Park Boulevard, referred to as Anomaly CC, owned by the City of Niagara Falls (no deed reference).

Dated: October 17, 1991.

Paul Grimm,

Acting Director, Office of Environmental Restoration and Waste Management.

[FR Doc. 91-25761 Filed 10-24-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. QF91-187-001, et al.]

Seneca Power Partners, L.P., et al.; Electric rate, Small power production, and Interlocking Directorate filings

Take notice that the following filings have been made with the Commission:

1. Seneca Power Partners, L.P.

[Docket No. QF91-187-001]

October 17, 1991.

On October 7, 1991, Seneca Power Partners, L.P. tendered for filing an amendment to its filing in this docket.

The amendment provides additional information pertaining primarily to technical data and the ownership structure of the cogeneration facility.

Comment date: November 4, 1991, in accordance with Standard Paragraph E end of this notice.

2. Central Vermont Public Service Corporation

[Docket No. ER92-69-000]

October 18, 1991.

Take notice that Central Vermont Public Service Corporation (CVPS) on October 7, 1991, tendered for filing as an initial rate schedule a contract under which CVPS has agreed to sell 2,000 KW System Capacity and Energy associated therewith to the Village of Ludlow Electric Department.

CVPS requests the Commission to waive its notice of filing requirements to permit the rate schedule to become effective as of October 31, 1987.

Comment date: November 1, 1991, in accordance with Standard Paragraph E at the end of this notice.

Central Power and Light Co. West Texas Utilities Co.

[Docket No. ER92-87-000]

October 18, 1991.

Taken notice that on October 7, 1991, West Texas Utilities Company (WTU) and Central Power and Light Company (CPL) tendered for filing the transmission service agreements listed below:

WTU Agreements

1. Agreement for Planned Capacity Transmission Wheeling Service for the Texasgulf Transaction between TU Electric, WTU and Texasgulf, Inc.

2. Agreement for As Available Transmission Wheeling Service for the Texasgulf Transaction, between TU Electric, WTU and Texasgulf, Inc.

3. Agreement for Planned Capacity Transmission Wheeling Service for the Cogenron Transaction between TU Electric, WTU and Cogenron, Inc.

4. Agreement for As Available Transmission Wheeling Service for the Cogenron Transaction, between TU Electric, WTU and Cogenron, Inc.

5. Agreement for As Available Transmission Wheeling Service for the Cogen Lyondell Transaction between TU Electric and WTU

6. Agreement for AS Available Transmission Wheeling Service for the Dow Chemical Transaction between TU Electric and WTU

7. Letter Agreement for Transmission Wheeling Service for the AES-Deepwater Transaction between TU Electric and WTU

CPL Agreements

1. Agreement for Planned Capacity Transmission Wheeling Service for the Texasgulf Transaction between TU Electric, CPL and Texasgulf, Inc.

2. Agreement for As Available Transmission Wheeling Service for the Texasgulf Transaction, between TU Electric, CPL and Texasgulf, Inc.

3. Agreement for Planned Capacity Transmission Wheeling Service for the Cogenron Transaction between TU Electric, CPL and Cogenron, Inc.

4. Agreement for As Available Transmission Wheeling Service for the Cogenron Transaction, between TU Electric, CPL and Cogenron, Inc.

5. Agreement for As Available Transmission Wheeling Service for the Cogen Lyondell Transaction between TU Electric and CPL

6. Agreement for As Available Transmission Wheeling Service for the Dow Chemical Transaction between TU Electric and CPL

7. Letter Agreement for Transmission Wheeling Service for the AES-Deepwater Transaction between TU Electric and CPL

The listed agreements provide for transmission service by WTU and CPL in connection with purchases of power and energy by Texas Utilities Electric Company (TU Electric) from cogenerators located outside of TU Electric's control area.

Copies of the filing have been posted in conformity with part 35 of the Commission's regulations.

Comment date: November 1, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. Washington Water Power Co.

[Docket No. ER92-96-000]

October 18, 1991.

Take notice that on October 7, 1991, The Washington Water Power Company (WWP) tendered for FERC Electric Tariff Original Volume No. 4.

WWP states that the purpose of the FERC Electric Tariff Original No. 4 is to replace its Original Volume No. 3 and to provide for economy energy, short-term firm capacity and energy, unit contingent capacity and energy, exchange service and provisional energy service.

Comment date: November 1, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. Consumers Power Co.

[Docket No. ER92-21-000]

October 18, 1991.

Take notice that on October 3, 1991, Consumers Power Company (Consumers) tendered for filing a Contract and Rate Schedule for Wholesale for Resale Electric Service with the City of Holland, Michigan.

A copy of this filing was served upon the City of Holland, Michigan.

Comment date: November 1, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. New England Power Co.

[Docket No. ER92-90-000]

October 18, 1991.

Take notice that on October 7, 1991, New England Power Company (NEP) filed thirty (30) Unit Power Contracts between NEP and (1) Boston Edison Company (BECO); (2) Town of Braintree Electric Light Department (Braintree) (3) Central Vermont Public Service Corporation (CVPS); (4) Commonwealth Electric Company (Comm. Electric); (5) Fitchburg Gas and Electric Light Company (FG&E); (6) Green Mountain Power Corporation (GMP); (7) Holyoke Gas & Electric Department (Holyoke); (8) Massachusetts Municipal Wholesale Electric Company (MMWEC); (9) Public Service Company of New Hampshire (PSNH); (10) UNITIL Power Corporation (UNITIL); and (11) Vermont Electric Generation & Transmission Cooperative, Inc. (VEG&T) for the sale of capacity from several of NEP's generation entitlements for the period beginning September 5, 1985 through October 31, 1994.

NEP requests waiver of the Commission's notice requirements so that the Contracts can be made effective and terminated in accordance with their terms.

Comment date: November 1, 1991, in accordance with Standard Paragraph E at the end of this notice.

7. Pennsylvania Electric Co. Metropolitan Edison Co.

[Docket No. ER92-86-000]

October 18, 1991.

Take notice that on October 7, 1991, Pennsylvania Electric Company and Metropolitan Edison Company (collectively, the GPU Companies) tendered for filing a new Supplemental Schedule 9 to the Interconnection Facilities Agreement, dated June 20, 1968, between the GPU Companies and West Penn Power Company and The Potomac Edison Company as a change in rate schedule. Supplemental Schedule 9 provides for transmission service charges for transmission service being provided by Penelec to West Penn as a result of power flows over Penelec's parallel interconnection facilities which are the subject of the Interconnection Facilities Agreement. The GPU Companies have requested a waiver of the Commission's Regulations to permit the rate schedule to become effective January 1, 1991.

A copy of the filing has been served on the Pennsylvania Public Utility Commission.

Comment date: November 1, 1991, in accordance with Standard Paragraph E at the end of this notice.

8. Northern States Power Co. (Minnesota Co.)

[Docket No. ER92-85-000]

October 18, 1991.

Take notice that Northern States Company (Minnesota) [NSP] on October 7, 1991, tendered for filing proposed supplements to Federal Energy Regulatory Commission transmission service contracts.

The twelve affected transmission service wheeling customers and the current Federal Energy Regulatory Commission rate schedule designation of their contracts are as follows:

Customer	Federal Energy Regulatory Commission Rate Schedule No.
ADA	390
Blue Earth	452
East River Electric Power Cooperative.	331
Fairfax	400
Hillsboro	414
Marshall	403
Melrose	401
Mountain Lake	444
Olivia	388
St. James	412
Sauk Centre	449
Sleep Eye	393

NSP periodically analyzes losses on its transmission system and uses the results to apply a loss percentage to its off-line transmission service wheeling customers. The most recent analysis, accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER90-523-000, determined that NSP's system currently experiences a lower loss percentage than that previously accepted by the Commission in Docket No. EL87-45-000. NSP's proposed contract supplements reduce the loss factor applied to each off-line transmission service wheeling customer from 4.2% to 3.5% effective January 1, 1991. In addition, the proposed supplements provide that the loss percentage will change from time to time, based on NSP's then currently effective loss percentage on file with the Commission.

Comment date: November 1, 1991, in accordance with Standard Paragraph E at the end of this notice.

9. Northern States Power Co.

[Docket No. ER92-84-000]

October 18, 1991.

Take notice that on October 7, 1991, Northern States Power Company (NSP) tendered for filing a Arpin Substation Benefit Area Joint Operating Planning and Cost Sharing Agreement (Agreement) dated June 1, 1988, between NSP-Minnesota (NSP-M); NSP-Wisconsin (NSP-W); the City of Marshfield, a Wiscnsin municipal corporation acting b and through the Marshfield Electric & Water Department (MEWD); Wisconsin Power and Light Company; Wisconsin Public Service Corporation; all collectively referred to as the "parties; and Wisconsin Electric Power Company (WE). NSP filed the Agreement on behalf of the other Parties and WE.

The Arpin Substation Benefit Area Joint Operating, Planning and Cost Sharing Agreement provides that the Parties equitably share the costs of transportation facilities at the Arpin Substation to enable each Party to meet its area electrical demand in a reliable and efficient manner; and that the Parties mutually solve any future unacceptable conditions occurring in the Central Wisconsin System as well as on NSP-W's and WE's 345 kV line arising out of the existence of the Arpin Substation.

The Parties request the Arpin Substation Benefit Area Joint Operating, Planning and Cost Sharing Agreement be accepted for filing effective June 1, 1988, and request waiver of Commission's notice requirements in order for the Agreement to be accepted for filing on that date.

Comment date: November 1, 1991, in accordance with Standard Paragraph E at the end of this notice.

10. Ohio Power Co.

[Docket No. ER91-589-000]

October 18, 1991.

Take notice that American Electric Power Service Corporation (AEPSC) on September 30, 1991, tendered for filing on behalf of its American Electric Power System affiliate, Ohio Power Company (OPCO), an Amendment to Supplement No. 12 dated August 1, 1991 to the Agreement dated April 1, 1974 between OPCO and American Municipal Power-Ohio, Inc., OPCO Rate Schedule FERC No. 74.

The Amendment revises OPCO's Interchange power rates to include demand rate caps. An effective date of August 15, 1991 has been requested for service pursuant to the filing of Supplement No. 12.

A copy of the filing was served upon the Public Utilities Commission of Ohio.

Comment date: November 1, 1991, in accordance with Standard Paragraph E at the end of this notice.

11. PacifiCorp Electric Operations

[Docket No. ER91-553-000]

October 18, 1991.

Take notice that PacifiCorp Electric Operations (PacifiCorp), on October 11, 1991, tendered for filing, in accordance with Commission Staff's request an Amended Filing.

The Amendment provides additional information relating to PacifiCorp's original filing of an Agreement which provides for the sale to Brigham of supplemental power and energy.

PacifiCorp respectfully renews its request for a waiver of prior notice and that the Commission accept PacifiCorp's filing effective as of October 1, 1990.

Copies of this filing have been supplied to Brigham and the Utah Public Service Commission.

Comment date: November 1, 1991, in accordance with Standard Paragraph E at the end of this notice.

12. Orange and Rockland Utilities, Inc.

[Docket No. ER91-637-000]

October 18, 1991.

Take notice that Orange and Rockland Utilities, Inc. (Orange and Rockland) on October 11, 1991, amended its rate filing to provide the Commission additional data to clarify the definition of the energy charge rate as set forth under 5b, page 5, of an executed System Power Agreement dated June 1, 1991, between Orange and Rockland and Pennsylvania Power and Light Company (PP&L) for the sale of interruptible power and energy by Orange and Rockland to PP&L.

The energy charge rate is determined by the weighted average forecasted energy charge rate for the generating units determined to be available to provide system energy at the time of a transaction. The forecasted energy charge rate for each individual generating unit is determined by summing all fuel and variable operation and maintenance costs associated with the production of energy for the transaction. The costs include start-up and no-load costs when appropriate.

Orange and Rockland states that a copy of its amendment was served on Pennsylvania Power and Light Company.

Comment date: November 1, 1991, in accordance with Standard Paragraph E at the end of this notice.

13. UtiliCorp United Inc.

[Docket No. ES92-3-000]

October 18, 1991.

Take notice that on October 10, 1991 UtiliCorp United Inc. filed an application with the Federal Energy Regulatory Commission pursuant to section 204 of the Federal Power Act seeking authorization to issue, from time to time, unsecured notes and other obligations, up to and including $400 million in the aggregate at any one time outstanding, for periods of time not exceeding twelve months after issuance. All notes and other evidences of indebtedness would have final maturities no later than December 31, 1994.

Comment date: November 8, 1991, in accordance with Standard Paragraph E at the end of this notice.

14. UNITIL Power Corporation

[Docket No. ER92-89-000]

October 18, 1991.

Take notice that on October 7, 1991, UNITIL Power Corporation ("UNITIL Power") filed with the Commission three service agreements providing for the sale of capacity and associated energy under UNITIL Power's FERC Electric tariff, Original Volume 1, Sale of Electric Generating Capacity and Energy. The commencement and termination dates for service under the agreements are listed below. UNITIL Power proposes that the service agreements commence and terminate on those dates and, by its filing, gives notice of termination of each such agreement.

Purchaser	Commencement	Termination
Fitchburg Gas and Electric Light Co.	September 1, 1989.	October 31, 1989.
Fitchburg Gas and Electric Light Co.	December 1, 1989..	March 31, 1990.
Public Service Company of New Hampshire.	April 1, 1990.....	April 30, 1990.

UNITIL Power requests waiver of the Commission's notice requirements, 18 CFR 35.3, to permit the service agreements to become effective on the dates set forth above.

UNITIL Power states that copies of its filing have been served on each Purchaser and on the New Hampshire Public Utility Commission.

Comment date: November 1, 1991, in accordance with Standard Paragraph E at the end of this notice.

15. Montaup Electric Co.

[Docket No. ER92-91-000]

October 18, 1991.

Take notice that on October 7, 1991, Montaup Electric Company ("Montaup") filed six (6) System Exchange Agreements relative to short-term daily energy sales to the following utilities: The Connecticut Light and Power Company/Western Massachusetts Electric Company (NU Companies) dated March 6, 1984; New England Power Company dated March 24, 1984; Taunton Municipal Lighting Plant dated September 1, 1985; Connecticut Municipal Electric Energy Cooperative dated January 1, 1986; Green Mountain Power Corporation dated March 17, 1990; and Commonwealth Electric Company dated January 17, 1991.

In addition, Montaup filed a Letter Agreement between Montaup and New England Power Company ("NEP") under which Montaup sold 10 MW of capacity and energy from its purchased entitlements in various gas turbine units to NEP for the month of October, 1988.

Montaup requests waiver of the notice requirement to permit the above agreements to become effective as of the dates when service commenced.

Comment date: November 1, 1991, in accordance with Standard Paragraph E at the end of this notice.

16. Idaho Power Co.

[Docket No. ER92-92-000]

October 18, 1991.

Take notice that on October 7, 1991, Idaho Power Company tendered for filing various Agreements and/or Revised Exhibits to Agreements between Idaho Power Company (Idaho Power), various utilities and the Bonneville Power Administration (BPA):

Letter Agreement with BPA, dated April 21, 1986, Use of Facilities at Slatt Substation, BPA No. DE-MS79-85BP91839.

Amendment to the Washington City, Utah Agreement for Supply of Power and Energy, dated July 6, 1987.

Revised Exhibits to the Washington City, Utah Agreement for Supply of Power and Energy, dated July 6, 1987.

The Utah Associated Municipal Power Systems Second Agreement for Supply for Power and Energy, dated August 24, 1989.

Letter Agreement with The Utah Associated Municipal Power Systems for the assignment of transmission rights and obligations, dated August 6, 1989.

Revised Exhibits to The Utah Associated Municipal Power Systems Agreement for Supply of Power and Energy, dated February 10, 1988.

etters of Agreement with Pacific Power and Light Company, The Montana Power Company, The Washington Water Power Company, and Utah Power and Light company, dated July 11, 1975, for the tapping of an Interconnecting 230 kV Transmission Line.

Revised Exhibits to the BPA Transmission Services Agreement, dated June 6, 1989, BPA No. DE-MS79-89BP2383.

Amendment to the Sierra Pacific Power Company Agreement for Supply of Power and Energy, dated October 15, 1982.

Revised Exhibits to the Sierra Pacific Power Company Agreement for Supply of Power and Energy, dated February 23, 1989.

Letter Agreements with BPA dated August 16, 1984 and July 23, 1981 for the Heyburn Tap, BPA No. DE-79-84BP91694.

Residential Purchase and Sale Agreement with BPA, dated November 13, 1981.

Idaho Power has requested waiver of the notice provisions of § 35.3 of the Commission's Regulations in order to permit the Agreements and Revised Exhibits to become effective on their respective execution dates.

Comment date: November 1, 1991, in accordance with Standard Paragraph E at the end of this notice.

17. Idaho Power Co.

[Docket No. ER92-93-000]

Ocotober 18, 1991.

Take notice that on October 7, 1991, Idaho Power Company tendered for filing the following Agreements with various entities:

Letter Agreement, dated January 13, 1987, between Bonneville Power Administration British Columbia Hydro & Power Authority and Idaho Power Company

Letter Agreement, dated July 22, 1987, between Washington Water Power Company and Idaho Power Company

Letter Agreement, dated July 22, 1987, between Pacific Power & Light Company and Idaho Power Company

Agreement for Supply & Excess Non-Firm Energy, dated October 18, 1977, between Washington Water Power Company and Idaho Power Company

Amendment No. 1 to Short-Term Agreement for Supply of Power & Energy between Idaho Power Company and Sierra Pacific Power Company

Idaho Power has requested waiver of the notice provisions of § 35.3 of the Commission's Regulations in order to permit the Agreements to become effective on their respective execution dates.

Comment date: November 1, 1991, in accordance with Standard Paragraph E at the end of this notice.

18. Fitchburg Gas and Electric Light Co.

[Docket No. ER92-88-000]

October 18, 1991.

Take notice that on October 7, 1991, Fitchburg Gas and Electric Light Company ("Fitchburg") filed with the Commission FERC Electric Tariff, Sale of Electric Generating Capacity and Energy, and six service agreements under that tariff, providing for the sale of capacity and associated energy from contractual entitlements of Fitchburg in various generating units not owned or operated by Fitchburg and generating units owned solely or jointly by Fitchburg. The commencement and termination dates for service under the agreement are listed below. Fitchburg proposes that the service agreements commence and terminate on those dates and, by its filing, gives notice of termination of each agreement.

Purchaser	Commencement	Termination
Vermont Electric Generation and Transmission Cooperative, Inc. ("Vermont G&T").	May 1, 1989	October 31, 1989.
UNITIL Power Corp.	June 1, 1989	June 30, 1989.
UNITIL Power Corp.	September 1, 1989.	October 31, 1989.
New England Power Co.	December 1, 1989	April 30, 1990.
UNITIL Power Corp.	February 1, 1990	March 31, 1990.
Vermont G&T	May 1, 1990	August 31, 1990.

Fitchburg also filed a notice of termination of its existing tariff, FERC Electric Tariff, Original Volume No. 1, which provides for the sale of capacity and associated energy from a combustion turbine generator owned by Fitchburg, known as Unit No. 7.

Fitchburg requests waiver of the Commission's notice requirements in 18 CFR 35.3 and 35.15 to permit the notice of termination to become effective April 30, 1989, the new Tariff to become effective May 1, 1989, and the service agreements to become effective in accordance with their stated terms.

Fitchburg states that copies of its filing have been served on each Purchaser listed above, Central Vermont Public Service Company, and the Massachusetts Department of Public Utilities.

Comment date: November 1, 1991, in accordance with Standard Paragraph E end of this notice.

19. UtiliCorp United Inc.

[Docket No. ES92-2-000]

October 18, 1991.

Take notice that on October 10, 1991, UtiliCorp United Inc. filed an application with the Federal Energy Regulatory Commission pursuant to section 204 of the Federal Power Act seeking authorization to issue, from time to time, up to and including $200 million, in the aggregate at any one time outstanding, of notes and other evidences of indebtedness. All notes and other evidences of indebtedness would have final maturities no later than December 31, 1994.

Comment date: November 8, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-25690 Filed 10-24-91; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1953-003 Wisconsin]

Consolidated Water Power Co.; Availability of Environmental Assessment

October 21, 1991.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major new license for the constructed DuBay Project located on the Wisconsin River in Portage, Marathon, and Wood counties, near Mosinee, Wisconsin, and has prepared an Environmental Assessment (EA) for the constructed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the constructed project and has concluded that approval of the constructed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 91-25691 Filed 10-24-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP92-37-000, e al.]

Panhandle Eastern Pipe Line Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Panhandle Eastern Pipe Line Co.

[Docket No. CP92-37-000]

October 17, 1991.

Take notice that on October 4, 1991, Panhandle Eastern Pipe Line Company (Panhandle), P. O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP92-37-000 an application with the Commission, pursuant to section 7(b) of the Natural Gas Act (NGA), for permission and approval to abandon a portion of its firm sales to the Central Illinois Public Service Company (CIPSCO), all as more fully set forth in the application which is open to public inspection.

Panhandle states that it currently provides CIPSCO a firm sales service of up to 31,053,375 Mcf of natural gas per year under Panhandle's FERC Rate Schedule G-2, as authorized in Docket No. CP91-1828-000. CIPSCO negotiated a new service agreement with Panhandle on October 1, 1991, to reduce its annual contract demand by 2,356,375 Mcf of natural gas and convert a portion of its contract demand to firm transportation service under Panhandle's FERC Rate Schedule PT-Firm, also effective October 1, 1991. Panhandle, therefore, also requests herein for an October 1, 1991, effective date for its proposed abandonment of CIPSCO's partial abandonment of contract demand and conversion to firm transportation service. No facilities are proposed to be abandoned.

Comment date: November 7, 1991, in accordance with Standard Paragraph F at the end of this notice.

2. Columbia Gulf Transmission Co.

[Docket Nos. CP92-83-000, CP92-84-000, CP92-85-000, CP92-86-000, CP92-87-000]

October 17, 1991.

Take notice that on October 11, 1991, Columbia Gulf Transmission Company (Applicant), P.O. Box 683, Houston, Texas 77001, filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-239-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: December 2, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No.[3] (date filed)	Shipper name	Peak day,[1] avg., annual	Points of [2]		Startup date, rate schedule, service type	Related docket contract date
			Receipt	Delivery		
CP92-83-000 (10-11-91)	NGC Transportation, Inc.	200,000 160,000 58,400,000	LA, OLA	LA, MS, TN, TX	9-1-91, ITS-1 & ITS-2, Interruptible.	ST91-10515-000 5-23-88 & 9-1-89 [4].

Docket No.[3] (date filed)	Shipper name	Peak day,[1] avg., annual	Points of [2]		Startup date, rate schedule, service type	Related docket contract date
			Receipt	Delivery		
CP92-84-000 (10-11-91)	Unocal Exploration Corporation.	60,000 48,000 17,520,000	LA, OLA	LA, MS, TN, TX	9-1-91, ITS-1 & ITS-2, Interruptible.	ST91-10536-000 7-1-91.
CP92-85-000 (10-11-91)	Atlas Gas Marketing, Inc.	10,000 8,000 2,920,000	LA, OLA	LA	9-1-91, ITS-2, Interruptible.	ST91-10452-000 12-1-90.

[1] Quantities are shown in MMBtu.
[2] Offshore Louisiana and Offshore Texas are shown as OLA and OTX.
[3] If an ST docket is shown, 120-day transportation service was reported in it.
[4] ITS-2 dated 5-23-88, amended 9-28-88, 11-21-88, 2-26-90, and 6-30-91; ITS-1 dated 9-1-89, amended 2-26-90.

Docket No.[3] (date filed)	Shipper name	Peak day,[1] avg. annual	Points of [2]		Startup date, rate schedule, service type	Related docket contract date
			Receipt	Delivery		
CP92-86-000 (10-11-91)	Stellar Gas Company	60,000 48,000 17,520,000	LA, OLA	LA, OLA	9-1-91, ITS-2, Interruptible.	ST91-10455-000, 12-1-90 [4].
CP92-87-000 (10-11-91)	Energy Development Corporation.	80,000 64,000 23,360,000	LA, OLA	LA, OLA	9-1-91, ITS-2, Interruptible.	ST91-10454-000, 4-1-89 [5].

[1] Quantities are shown in MMBtu.
[2] Offshore Louisiana and Offshore Texas are shown as OLA and OTX.
[3] If an ST docket is shown, 120-day transportation service was reported in it.
[4] ITS-2 agreement amended 11-21-89, 8-24-90 and 8-8-91.
[5] ITS-2 agreement amended 8-24-90, 1-10-91, 6-27-91, 8-23-91 and 10-31-90.

3. Mississippi River Transmission Corp.

[Docket Nos. CP92-94-000, CP92-95-000, CP92-96-000]

October 17, 1991.

Take notice that Applicant filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: December 2, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

APPLICANT: MISSISSIPPI RIVER TRANSMISSION CORPORATION, 9900 CLAYTON ROAD, ST. LOUIS, MO, 63124

[Blanket Certificate Issued in Docket No. CP89-1121-000]

Docket No. (date filed)	Shipper name (type shipper)	Peak day,[1] avg., annual	Points of		Start up date, rate schedule	Related [2] dockets
			Receipt	Delivery		
CP92-94-000 (10-15-91)	EnTrade Corporation (Marketer).	50,000 50,000 18,250,000	OK, LA, TX, AR, IL	IL, MO	09-07-91, ITS	ST91-10615-000
CP92-95-000 (10-15-91)	O & R Energy (Marketer).	1,000 500 182,500	LA, OK, TX, IL, AR	MO	08-21-91, FTS	ST91-10424-000
CP92-96-000 (10-15-91)	The City of Red Bud, Illinois (LDC).	810 530 193,450	AR, LA, TX, OK, IL	IL	09-16-91, ITS	ST91-10616-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] If an ST docket is shown, 120-day transportation service was reported in it.

4. Columbia Gulf Transmission Co.

[Docket No. CP92-39-000]

October 17, 1991.

Take notice that on October 4, 1991, Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP92-39-000 an application with the Commission, pursuant to section 7(b) of the Natural Gas Act (NGA), for permission and approval to abandon a firm transportation service for Southern Natural Gas Company (Southern), all as more fully set forth in the application which is open to public inspection.

Columbia Gulf currently transports 6,250 Mcf of natural gas per day on a firm basis, as authorized by the Commission order issued April 29, 1981, in Docket No. CP80-318-000 (15 FERC

¶ 61,090). Columbia Gulf states that it receives Southern's Vemilion Block 287, offshore Louisiana, gas volumes from Southern at an underwater side tap on Columbia Gulf's jointly-owned 16-inch pipeline in Vemilion Block 267, offshore Louisiana. Columbia Gulf transports the gas through its capacity in the Blue Water Project west lateral and mainline systems and delivers the gas to Southern at the interconnection of Columbia Gulf's mainline facilities and Southern's measurement facilities in East Carroll Parish, Louisiana. Columbia Gulf also states that Southern wishes to cancel their transportation agreement, filed as Columbia Gulf's FERC Rate Schedule X-76, effective May 21, 1992. No facilities are proposed to be abandoned.

Comment date: November 7, 1991, in accordance with Standard Paragraph F at the end of this notice.

5. Northern Natural Gas Co.

[Docket No. CP92-93-000]

October 17, 1991.

Take notice that October 15, 1991, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124-1000, filed in Docket No. CP92-93-000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon certain facilities under Northern's blanket certificate issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern proposes to abandon by transfer to Iowa Electric Light and Power Company (Iowa Electric) approximately 0.53 miles of 6-inch pipe on the Cherokee Branchline located in Cherokee County, Iowa. Northern states that the pipe is located downstream of Northern's measuring station facilities and exists solely to serve as the connecting link to the distribution facilities of Iowa Electric. Northern explains that such transfer of ownership would cause the measuring and delivery points to occur at the same location. Northern advises that no service would be abandoned as a result of the abandonment since Iowa Electric would continue to operate the subject line segment in the existing manner.

Comment date: December 2, 1991, in accordance with Standard Paragraph G at the end of this notice.

6. K N Energy, Inc.

[Docket No. CP92-58-000]

October 17, 1991.

Take notice that on October 8, 1991, K N Energy, Inc. (K N), P.O. Box 281304, Lakewood, Colorado, 80228, filed in Docket No. CP92-58-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) to convert an existing receipt point to a delivery point and to add this point as a delivery point under an existing transportation agreement with K N Gas Marketing, Inc. (KNGM), under K N's blanket certificate issued in Docket No. CP83-140-000 and CP83-140-001 pursuant to section 7 of the Natural Gas Act, all as more fully detailed in the application which is on file with the Commission and open to public inspection.

K N proposes to convert the receipt point, which is located in Roger Mills County, Oklahoma, to a delivery point because the producer from which K N was receiving gas at this point has experienced a decline in deliverability, and to utilize the point for deliveries to KNGM, which serves the town of Reydon, Oklahoma. It is stated that K N transports gas for KNGM under its transportation blanket certificate issued in Docket No. CP89-1043-000 pursuant to section 7 of the Natural Gas Act.

Comment date: December 2, 1991, in accordance with Standard Paragraph G at the end of this notice.

7. CNG Transmission Corp.

[Docket No. CP92-70-000]

October 18, 1991.

Take notice that on October 9, 1991, CNG Transportation Corporation, 445 West Main Street, Clarksburg, West Virginia 26302-2450 (CNG) filed in Docket No. CP92-70-000 a prior notice request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-311-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Information applicable to the proposed transportation service, including the identity of the shippers, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by CNG and is summarized in the attached appendix.

Comment date: December 2, 1991, in accordance with Standard Paragraph G at the end of this notice.

Shipper name (type)	Peak day, average day, annual Dth	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
Commonwealth Gas Company	9,338 7,402 2,701,731	PA, NY, WV	NY, PA	9-24-91, IT, Interruptible	ST91-10137, 8-14-91.
Meridan Marketing & Transmission Corporation	1,800 394 143,810	PA, NY, WV	NY	8-13-91, IT, Interruptible	ST91-10364, 8-17-91.
Indeck Energy Services Limited Partnership	8,350 5,000 1,825,000	PA, NY, WV	NY	9-1-91, IT, Interruptible	ST91-10537, 9-1-91.

8. National Fuel Gas Supply Corp.

[Docket No. CP91-2938-000]

October 18, 1991.

Take notice that on August 30, 1991, National Fuel Gas Supply Corporation (Applicant), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP91-2938-000 an application pursuant to section 7(b) of the Natural Gas Act for an order permitting and approving pregranted authority to abandon firm transportation service of 12,000 Mcf per day for Indeck Energy Services of Oswego, Inc. and 12,000 Mcf per day for Indeck Yerkes Energy Services, Inc. (collectively known as Indeck), in the event Indeck breaches its

obligation to pay for that service, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Applicant states that the firm transportation service was authorized by the Commission in an order issued on September 13, 1990, in Docket No. CP88-194-001.

Comment date: November 4, 1991, in accordance with Standard Paragraph F at the end of this notice.

9. Colorado Interstate Gas Co.

[Docket No. CP92-88-000]

Take notice that on October 11, 1991, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP92-88-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new meter station under CIG's blanket certificate issued in Docket No. CP83-21-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

CIG states that it proposes to construct and operate the Mountain Cement Meter Station located in Section 17, Township 15 North, Range 73 West, Albany County, Wyoming. CIG further states that this facility would be constructed so that natural gas can be delivered to this point pursuant to an existing transportation service agreement dated March 1, 1991, between CIG and Mountain Cement Company (MCC). It is indicated that the new delivery point would be located within the yard of an existing meter station in Albany County, Wyoming, currently used to deliver natural gas to Northern Gas of Wyoming Inc. CIG states that it has been advised that such natural gas would be delivered to the MCC plant.

Comment date: December 2, 1991, in accordance with Standard Paragraph G at the end of this notice.

10. Panhandle Eastern Pipe Line Co.

[Docket No. CP92-36-000]

October 18, 1991.

Take notice that on October 4, 1991, Panhandle Eastern Pipe Line Company (Panhandle) filed in Docket No. CP92-36-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon sales service to nine customers and for authorization to increase the contract demand of sales service to two customers and to increase the delivery pressure at the delivery point for one customer, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle proposes to abandon sales service to the customers as shown in the table below. Panhandle state that the nine Rate Schedule SSS or SG customers listed in the table have elected to terminate their sales service and convert to firm transportation under Rate Schedule SCT. It is indicated that all nine of the customers are municipalities.

Customer	Current rate schedule	Current peak CD (Mcf)	Proposed rate schedule SCT (Dth/d)	Effective date
Auburn, Il	SSS	2,100	2,100	9-1-91
Divernon, IL	SSS	1,050	1,050	9-1-91
Montgomery, MO	SSS	1,400	1,400	8-1-91
Roodhouse, Il	SSS	1,525	1,525	8-1-91
White Hall, IL	SSS	2,200	2,200	8-1-91
Winchester, IL	SSS	1,450	1,450	9-1-91
Pawnee, IL	SSS	1,550	1,550	9-1-91
Riverton, IL	SSS	1,650	1,650	9-1-91
Gruver, TX	SG	200	1,000	9-1-91

Panhandle also proposes to increase the sales CD levels for two other Rate Schedule SSS customers, Associated Natural Gas Company (Associated) and the City of Sunray, Texas (Sunray). It is indicated that the effective dates for the proposed increases for Associated and Sunray would be August 1, 1991, and October 1, 1991, respectively. The details of these proposed changes are shown in the table below.

Month(s)	Associated		City of Sunray, TX	
	Current	Proposed	Current	Proposed
November-March	5,700	5,700	10	100
April	3,100	3,220	10	10
May	1,400	2,200	10	10
June	1,200	1,430	10	10
July	800	1,400	10	10
August	800	1,400	10	10
September	1,500	2,100	10	10
October	2,300	2,900	10	10

Finally, Panhandle proposes to increase the delivery pressure for one Rate Schedule SSS customer, the City of Pittsfield, Illinois (Pittsfield), effective August 1, 1991. It is stated that Pittsfield has requested that Panhandle increase the pressure at the point of delivery from the current delivery pressure of 100 psig to the proposed delivery pressure of 125 psig.

Comment date: November 8, 1991, in accordance with Standard Paragraph F at the end of this notice.

11. CNG Transmission Corporation

[Docket No. CP86-146-000]

October 18, 1991.

Take notice that on October 11, 1991, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26302-2450, filed a petition to vacate that portion of a Commission order issued on October 19, 1987, which granted Consolidated Gas Transmission Corporation (Consolidated), CNG's predecessor, certificate authorization in Docket No. CP86-146-000, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

CNG states that the Commission's order issued on October 19, 1987, in Docket No. CP86-146-000 authorized Consolidated to perform a long-term transportation service for South Jersey Natural Gas Company (South Jersey), conditioned to the denial of flexible receipt points. It is also indicated that South Jersey sought rehearing of that portion of the order denying the flexible receipt points. It was then indicated that the Commission denied the request for rehearing by order issued on March 2, 1988. CNG then indicated that it initiated service to South Jersey on December 4, 1987, pursuant to its Order 436/500 blanket certificate rather than under the service authorized by the October 19, 1987, order.

In view of the service being performed under CNG's blanket certificate, which permits flexible receipt points, CNG requests that the October 19, 1987, order be vacated. It is also indicated that South Jersey concurs with the request to vacate the October 19, 1987, order

Comment date: November 8, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

12. Texas Eastern Transmission Corporation

[Docket No. CP92-92-000]

October 18, 1991.

Take notice that on October 15, 1991, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, TX 77056-5310, filed a prior notice request with the Commission in Docket No. CP92-92-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a new delivery point in order to provide an interruptible transportation service for Woodward Marketing, Inc. (Woodward), a marketer, under the blanket certificate issued in Docket No. CP82-535-000, pursuant to section 7 of the NGA, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Eastern proposes to construct and operate a two-inch hot tap in Itawamba County, Mississippi, on its 36-inch mainline to provide deliveries for Woodward to the City of Fulton (Fulton), Mississippi. Fulton would also construct a nonjurisdictional four-inch meter and regulator. Texas Eastern states that it would deliver at the proposed tap up to 1,000 dekatherms of natural gas on peak and average days and 365,000 dekatherms annually pursuant to their existing November 15, 1988, transportation agreement, as amended July 1, 1991, under its FERC Rate Schedule IT-1. Texas Eastern indicates that it would transport Woodward's gas under its blanket certificate issued in Docket No. CP88-136-000, as amended in Docket No. CP88-136-007. Texas Eastern also states that its tariff permits the addition of delivery points.

Comment date: December 2, 1991, in accordance with Standard Paragraph G at the end of this notice.

13. Texas Eastern Transmission Corporation

[Docket No. CP92-80-000]

October 18, 1991.

Take notice that on October 11, 1991, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056-5310, filed a prior notice request with the Commission in Docket No. CP92-80-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a new delivery point in order to provide an interruptible transportation service for Centran Corporation (Centran), a marketer, under the blanket certificate issued in Docket No. CP82-535-000, pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

Texas Eastern proposes to construct and operate a two-inch hot tap in Macon County, Tennessee, on its 30-inch mainline to provide deliveries to Centran via Red Boiling Springs Gas Utilities, Inc. (RBS). RBS would also construct a nonjurisdictional four-inch meter and regulator. Texas Eastern states that it would deliver at the proposed tap up to 2,000 dekatherms of natural gas on peak and average days and 730,000 dekatherms annually pursuant to their existing November 7, 1989, transportation agreements, as amended October 16, 1990, under its FERC Rate Schedule IT-1. Texas Eastern indicates that it would transport Centran's gas under its blanket certificate issued in Docket No. CP88-136-000, as amended in Docket No. CP88-136-007. Texas Eastern also states that its tariff permits the addition of delivery points.

Comment date: December 2, 1991, in accordance with Standard Paragraph G at the end of this notice.

14. Michigan Gas Storage Co.

[Docket No. CP92-90-000]

October 18, 1991.

Take notice that on October 15, 1991, Michigan Gas Storage Company (Applicant), 212 West Michigan Avenue, Jackson, Michigan 49201, filed in Docket No. CP92-90-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon a gas transportation service that Applicant provides for Consumers Power Company (Consumers) under the blanket certificate issued in Docket No. CP84-451-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Applicant requests authorization to abandon the gas transportation service authorized by Commission Order in Docket No. CP74-322 whereby Applicant transports gas to Consumers that is received from Trunkline Gas Company near White Pigeon, Michigan.

Applicant states that the gas which is transported for Consumers is purchased by Consumers from Northern Michigan Exploration Company pursuant to a contract that is scheduled to terminate on December 1, 1991; therefore, continuation of the transportation service provided by Applicant is not required.

Applicant does not propose to abandon any facilities, it is stated.

Comment date: December 2, 1991, in accordance with Standard Paragraph G at the end of this notice.

15. K N Energy, Inc.

[Docket No. CP92-89-000]

October 18, 1991.

Take notice that on October 15, 1991, K N Energy, Inc. (Applicant), Post Office Box 28103, Lakewood, Colorado 80228, filed in Docket No. CP92-89-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate seven sales taps for delivery of gas to end users under Applicant's blanket certificate issued in Docket No. CP83-140-000, CP83-140-001 and CP83-140-002 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate seven sales taps along its jurisdictional pipeline in the states of Nebraska and Kansas. Applicant states that the gas would be used for irrigation, grain drying and domestic purposes with maximum daily and annual volumes of 123 Mcf and 4400 Mcf, respectively.

Applicant asserts that the proposed sales taps are not prohibited by any of its existing tariffs and that the additional taps will have no significant impact on Applicant's peak day and annual deliveries.

Comment date: December 2, 1991, in accordance with Standard Paragraph G at the end of this notice.

16. Global Petroleum Corp.

[Docket No. CI92-4-000]

October 18, 1991.

Take notice that on October 15, 1991, Global Petroleum Corporation (Global) of 800 South Street, Waltham, Massachusetts 02254-9161, filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorizing sales for resale in interstate commerce of natural gas subject to the Commission's NGA jurisdiction, imported natural gas and gas purchased from non-first sellers such as interstate pipelines, intrastate pipelines and local distribution companies, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: November 7, 1991, in accordance with Standard Paragraph J at the end of the notice.

17. Western Gas Resources, Inc. (Successor-in-Interest to Western Gas Processors, Ltd.)

[Docket No. CI89-479-004]

October 18, 1991.

Take notice that on October 15, 1991, Western Gas Resources, Inc. (Applicant) of 12200 N. Pecos Street, suite 230, Denver, Colorado 80234, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder requesting that the Commission amend the certificate previously issued to Western Gas Processors, Ltd. (WGP) to reflect WGP's name change to Western Gas Resources, Inc., all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant states that due to a corporate restructuring, WGP changed its name to Western Gas Resources, Inc., effective on May 1, 1991.

Comment date: November 7, 1991, in accordance with Standard Paragraph J at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 91-25692 Filed 10-24-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-216-001]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

October 21, 1991.

Take notice that ANR Pipeline Company ("ANR") on October 15, 1991 tendered for filing as part of its FERC Gas Tariff, six copies of the tariff sheets listed in appendix A attached to the filing.

ANR states that the tariff sheets are being filed to comply with the Commission's Letter Order dated September 30, 1991. In that order, the Commission directed ANR to file revised tariff sheets to institute a tariff provision that will require it to issue refunds to its customers by wire transfer. Accordingly, ANR has modified its tariff language to comply with this direction.

ANR states that notification is being served to each of ANR's Volume No. 1, Volume No. 1-A, Volume No. 2, and Volume No. 3 customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before October 28, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-25693 Filed 10-24-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP91-82-007 and RP90-108-015]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 21, 1991.

Take notice that on October 15, 1991, Columbia Gas Transmission Corporation (Columbia) tendered for filing proposed changes to Sheet No. 76H of its FERC Gas Tariff, First Revised Volume No. 1. The tariff sheet bears an issue date of October 15, 1991, and a proposed effective date of July 1, 1991.

Columbia states that the tariff sheet submitted complies with Ordering Paragraph (C) of the July 31 Order and Ordering Paragraph (C) of the September 27 Order. It reflects in paragraph (1) that, during the winter period, OPT service will be interrupted before other firm rate schedules in the event OPT service must be interrupted beyond the 30 or 60 days due to force majeure circumstances.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before October 28, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-25694 Filed 10-24-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-1-24-001]

Equitrans, Inc.; Proposed Change in FERC Gas Tariff

October 21, 1991.

Take notice that Equitrans, Inc. (Equitrans) on October 10, 1991, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to become effective November 1, 1991.

Twenty-First Revised Sheet No. 34

Equitrans states that the purpose of the filing is to correct the pagination of Tariff Sheet No. 34 filed on October 8, 1991.

Equitrans states that copies of the filing were served upon Equitrans' jurisdictional sales customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before October 28, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-25695 Filed 10-24-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket RP89-248-009]

Mississippi River Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 21, 1991.

Take notice that on October 4, 1991 Mississippi River Transmission Corporation (MRT) tendered for filing the tariff sheets listed on the attached Appendix to its FERC Gas Tariff, Second Revised Volume No. 1.

MRT states that on May 20, 1991, it filed an uncontested Stipulation and Agreement ("Base S & A") and a Stipulation and Agreement Regarding Interim Rates ("Interim S & A") in the above captioned dockets. On August 7, 1991 the Commission issued an order approving without modification the Base S & A. MRT submitted its compliance filing on August 23, 1991 in order to effectuate the terms and provisions of the Base S & A and the tariff sheets contained in Appendix C therein. The filing included revised tariff sheets reflecting MRT's annual and interim purchased gas cost adjustment filings accepted by the Commission subsequent to MRT's filing the Base S & A as well as certain other changes in MRT's tariff.

MRT states that it has recently become aware of the fact that the Substitution Charge set forth on all Sheet Nos. 4 (Market Zone) from April 1, 1991 forward and all Sheet Nos. 4.1 (Field Zone) from April 1, 1991 forward were inadvertently reversed. In other words, the Field Zone Substitution Charge was mistakenly reflected on the market Zone tariff sheet and vice versa.

MRT states that the purpose of the instant filing is reflect the correct Substitution Charge on all Sheets Nos. 4 and 4.1 from April, 1991 through September, 1991.

MRT states that a copy of this filing has been mailed to each of MRT's jurisdictional sales customers, parties on the restricted service list and to the state commissions of Arkansas, Illinois and Missouri.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before October 28, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-25696 Filed 10-24-91 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-211-001]

Natural Gas Pipeline Co. of America; Tariff Filing in Compliance With Commission Order

October 21, 1991.

Take notice that on October 15, 1991, Natural Gas Pipeline Company of America (Natural) tendered for filing Substitute First Revised Sheet No. 91 and Original Sheet No. 92 to be a part of its FERC Gas Tariff, First Revised Volume No. 1A, to be effective October 1, 1991.

Natural states that the purpose of this filing is to comply with the Commission's letter order issued September 30, 1991 at Docket No. RP91-211-000. The Commission's order approved an Insufficient Supply penalty provision in Natural's Rate Schedule FTS-G to be effective October 1, 1991, subject to condition. That condition requires Natural to file within fifteen days tariff language that distinguishes the operational circumstances when a customer would be subject to the Insufficient Supply penalty and when the customer would be subject to an imbalance penalty. Natural also states that a sentence was added to specifically state the corrective actions that can be taken by shipper to rectify an insufficient supply situation.

Natural states that copies of the filing were served upon Natural's

jurisdictional sales customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before October 28, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-25697 Filed 10-24-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-262-017, RP88-88-010]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

October 21, 1991.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on October 15, 1991, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Third Revised Sheet No. 32-BE
Revised Second Revised Sheet No. 32-BS
Second Revised Sheet No. 32-BU.1
Original Sheet No. 32-BU.1A
Third Revised Sheet No. 32-BU.2

The subject tariff sheets bear a proposed effective date of September 30, 1991.

Panhandle states that on April 22, 1991 it submitted an Offer of Settlement in connection with the above-referenced proceedings. The Commission issued orders on August 1, 1991 and September 30, 1991 which approved the Stipulation and Agreement. Pursuant to Article III, section 5 of the Stipulation and Agreement, Panhandle is submitting the revised tariff sheets referenced above.

Panhandle states that a copy of the filing has been sent to all affected sales and transportation customers, affected state commissions and all parties on the service lists in the referenced proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before October 28, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-25698 Filed 10-24-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-212-001]

Stingray Pipeline Co.; Compliance Filing

October 21, 1991.

Take notice that Stingray Pipeline Company, on October 15, 1991, filed certain revised tariff sheets in its FERC Gas Tariff, First Revised Volume No. 1, to comply with an order of the Federal Energy Regulatory Commission (Commission) issued on September 30, 1991 in Docket No. RP91-212-000. The tendered tariff sheets, set forth on appendix A attached to the filing, are to be effective October 1, 1991.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before October 28, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-25699 Filed 10-24-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-210-002]

Tennessee Gas Pipeline Co.; Filing

October 21, 1991.

Take notice on October 15, 1991, Tennessee Gas Pipeline Company (Tennessee) tendered for filing the following revised tariff sheets in Third Revised Volume No. 1 of its FERC Gas Tariff to be effective on October 1, 1991:

Second Revised First Revised Sheet No. 132
First Revised Sheet No. 136
First Revised Sheet No. 138
Second Revised First Revised Sheet No. 141
Substitute Original Sheet No. 227C
Substitute First Revised Sheet No. 228
Original Sheet No. 228A
Second Revised Sheet No. 230
Second Revised Sheet No. 231
Second Revised First Revised Sheet No. 232
Second Revised First Revised Sheet No. 233
Second Revised Sheet No. 404
Second Revised Sheet No. 406 through 409
Original Sheet No. 409A
Second Revised Sheet No. 412 through 416
Original Sheet No. 416A

Tennessee states that this filing is being made to comply with the Commission's order on September 30, 1991, which directed Tennessee to file various modifications. In addition, Tennessee states that this filing is being made to withdraw the tariff sheets that concerned the procedure to correct imbalances on a cash basis. The Commission directed Tennessee to provide notice and cure rights prior to the cash-out of any imbalance. Tennessee stated that it was unable to account for and correct imbalances on both a volumetric and cash basis. As a result, Tennessee requested a withdraw of such tariff sheets. In the place of the withdrawn tariff sheets, Tennessee states that it is refiling the imbalance provisions that were in existence prior to October 1, 1991, with the exception that the tariff sheets do not reincorporate the previous scheduling penalties.

Tennessee states that copies of its filing are available for inspection at its principal place of business in the Tenneco Building, Houston, Texas, and have been mailed to all affected customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before October 28, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-25700 Filed 10-24-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. PR92-1-000]

TEX/CON Gas Pipeline Co.; Petition for Rate Approval

October 18, 1991.

Take notice that on October 1, 1991, TEX/CON Gas Pipeline Company (TCGPL) filed pursuant to § 284.123(b)(2)

of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of $0.2158 per MMBtu plus 2% for fuel allowance for transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

TCGPL's petition states that it is an intrastate pipeline within the meaning of section 2(16) of the NGPA in the states of Oklahoma and Louisiana. TCGPL states that it owns facilities in the state of Louisiana, which are the subject of this petition, which consist of approximately 462 miles of 2 inch through 16 inch pipe lines in the north central part of Louisiana. TCGPL's previous maximum interruptible transportation rate of $0.1866 per MMBtu for section 311(a)(2) service was approved by the Commission in the June 21, 1989, Letter Order issued in Docket Nos. ST88-5892-000, *et al.* (47 FERC ¶61,440 (1989))

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before November 12, 1991. The petition for rate approval is on file with the Commission and is available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-25701 Filed 10-24-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TM92-1-18-001]

Texas Gas Transmission Corp., Proposed Changes In FERC Gas Tariff

October 21, 1991.

Take notice that Texas Gas Transmission Corporation (Texas Gas), on October 9, 1991, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

TM92-1-18-001

Substitute Forty-second Revised Sheet No. 10
Substitute Forty-second Revised Sheet No. 10A
Substitute Twenty-third Revised Sheet No. 11
Substitute Thirteenth Revised Sheet No. 11A
Substitute Thirteenth Revised Sheet No. 11B

TF92-1-18-001

Substitute Forty-third Revised Sheet No. 10
Substitute Forty-third Revised Sheet No. 10A
Substitute Twenty-fourth Revised Sheet No. 11
Substitute Fourteenth Revised Sheet No. 11A
Substitute Fourteenth Revised Sheet No. 11B

Texas Gas states that these tariff sheets are being filed to correct the pagination of certain superseded sheets and requests an effective date of October 1, 1991. Texas Gas states that those sheets listed under Docket No. TM92-1-18 were originally filed August 30, 1991, to reflect changes in the FERC ACA unit charge, and those sheets listed under Docket No. TF92-1-18 were originally filed September 27, 1991, to reflect changes made under an Interim Purchased Gas Adjustment.

Texas Gas states that copies of the filing were served upon Texas Gas's jurisdictional sales customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before October 28, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-25702 Filed 10-24-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

Health and Environmental Research Advisory Committee; Open Meeting

Under the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Health and Environmental Research Advisory Committee (HERAC).

Date and Time: November 13, 1991—9 a.m.-5 p.m.; November 14, 1991—9 a.m.-1 p.m.

Place: Holiday Inn Hotel, 2 Montgomery Village Avenue, Gaithersburg, Maryland 20879.

Contact: George D. Duda, Office of Health and Environmental Research (ER-72), Office of Energy Research, U.S. Department of Energy, Washington, DC 20585, Telephone: 301/353-3651 (Effective 11/9/91: 301/903-3651).

Purpose of the Committee: To provide advice on a continuing basis to the Director of Energy Research of the Department of Energy (DOE), on the many complex scientific and technical issues that arise in the development and implementation of the Health and Environmental Research (HER) program.

Tentative Agenda: Briefings and discussions of:

November 13, 1991

- New Business
- HER Program Activities
- HER Multiyear Program Plan
- Public Comment (10 minute rule)

November 14, 1991

- HER Multiyear Program Plan
- Public comment (10 minute rule)

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact George D. Duda at the address or telephone number listed above. Requests to make oral statements must be received 5 days prior to the meeting; reasonable provision will be made to include the statement in the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, IE-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on October 22, 1991.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 91-25762 Filed 10-24-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-4025-1]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260-5073 or (202) 260-5076.

Availability of Environmental Impact Statements Filed October 14, 1991 Through October 18, 1991 Pursuant to 40 CFR 1506.9.

EIS No. 910374, Draft EIS, BLM, WA, Spokane District Resource Management Plan Amendment (RMP), Fluid Mineral

Leasing, Implementation, Yakima River Canyon and Upper Crab Creek Management Areas, Several Counties, WA Due: January 16, 1992, Contact: Joseph Buesing (509) 353-2570.

EIS No. 910375, Draft EIS, BIA, CA, AZ, NV, Fort Mojave Indian Reservation Planned Community Development, Mojave Valley Resort, Lease Approval, Sites Selected, Section 404 Permit and Coast Guard Permit, San Bernardino Co., CA, Clark Co., NV and Mojave Co., AZ, Due: December 13, 1991, Contact: Amy L. Heuslein (602) 379-6750.

EIS No. 910376, Final EIS, AFS, AK, Starfish Timber Sale, Implementation Analysis, Section 404 Permit, Tongass National Forest, Etolin Island, Stikine Area, AK, Due: November 25, 1991, Contact: Richard K. Kohrt (907) 874-2323.

EIS No. 910377, Draft EIS, AFS, UT, North Slope Timber Sale and Road Construction/Reconstruction, Implementation, Dixie National Forest, Teasdale Ranger District, Wayne County, UT, Due: December 09, 1991, Contact: Marvin R. Turner (801) 425-3702.

EIS No. 910378, Draft EIS, FHW, FL, Wonderwood Connector Transportation Facility Construction, connecting the Dame Point Expressway (SR-9A) in the Arlington District to Mayport Road (SR-101), Funding, Section 10 and 404 Permits and NPDES Permit, City of Jacksonville, Duval County, FL, Due: December 09, 1991, Contact: J. R. Skinner (904) 681-7223.

EIS No. 910379, Draft EIS, COE, PA, Lackawanna River Basin Flood Protection Plan, Funding and Implementation, Borough of Olyphant, City of Scranton, Lackawanna County, PA, Due: December 09, 1991, Contact: Steven Stegner (301) 962-4959.

EIS No. 910380, Draft EIS, AFS, ID, Lucky Peak Nursery Pest Management Program, Implementation, Intermountain Region, Boise National Forest, Ada County, ID, Due: December 09, 1991, Contact: Sally Campbell (503) 326-7755.

EIS NO. 910381, Draft EIS, UAF, ID, Air Force in Idaho Proposal, Mountain Home AFB Composite Wing Establishment; Modification of Airspace to Accommodate Air Force and Idaho Air National Guard Flying Activities; and Air-to-Ground Training Range Establishment, Elmore County, ID, Due: December 10, 1991, Contact: Ltc. Thomas J. Bartol (714) 382-4891.

EIS No. 910382, Draft EIS, BPA, WA, Puget Sound Area Electric Reliability Plan, Power System Problems Resolution, Implementation, Section 10 and 404 Permits, Columbia River Basin, Several Counties, WA, Due: December 24, 1991, Contact: Kennety Barnhart (503) 230-3667.

EIS No. 910383, Draft EIS, USA, OR, Umatilla Depot Activity, On-Site Facility for Disposal of Stockpiled Chemical Agents and Munitions, Construction and Operation, Morrow and Umatilla Counties, OR, Due: December 09, 1991, Contact: Monica Satrape (301) 671-3633.

Dated: October 22, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91-25745 Filed 10-24-91; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-4025-2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared October 7, 1991 Through October 11, 1991 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 5, 1991 (56 FR 14096).

Draft EISs

ERP No. D-BOP-D80018-DC Rating EC1, Washington, DC Metropolitan Detention Center (MDC), Construction/Operation, City of Washington, DC.

Summary: EPA has environmental concerns with Alternative Sites A, B, and C because they are: close to schools and residential neighborhoods, have a greater likelihood of impacting historic or archaeological resources, and are farther from mass transit stops. Additionally, Alternative Site B contains some hazardous waste (polynuclear aromatic hydrocarbons) which would have to be removed or capped if the site were selected. Alternative Site D is the preferred alternative.

ERP No. D-FAA-K51034-AZ Rating EC2, Phoenix Sky Harbor International Airport Master Plan Update Improvements, Runway 8L/26R Extension, Funding, City of Phoenix, Maricopa County, AZ.

Summary: EPA expressed concerns and requested that the final EIS provide additional discussions on air quality/conformity, air toxics, consistency with Section 404 and PCBs.

ERP No. DS-AFS-K83000-CA Rating EC2, Plumas National Forest Prototype Project, Augmenting Snow Pack by Cloud Seeding Using Ground Based Dispenses, Additional Information, Plumas and Sierra Counties, CA.

Summary: EPA expressed environmental concerns regarding potential impacts to water quality and protected beneficial uses such as public drinking water supplies and fisheries. EPA requested additional information concerning potential cumulative watershed impacts.

ERP No. DS-AFS-L01004-ID Rating EC2, Sunbeam Mining Project Modifications, Grouse Creek Gold and Silver Mines Project, Development and Operation, Section 404 Permit and NPDES Permit, Challis National Forest, Yankee Fork Ranger District, Custer County, ID.

Summary: EPA concurred with the Forest Service's identification of the proposed project as the preferred alternative. EPA requested additional information to address concerns related to potential project impacts to wetlands, riparian habitat, and water quality.

Final EISs

ERP No. F-AFS-L61190-OR, Mt. Ashland Ski Area Development Plan, Implementation, Additional Alternatives, Special Use Permit, Ashland Ranger District, Rogue River National Forest, Jackson County, OR.

Summary: Review of the final EIS has been completed and the project found to be satisfactory. No formal letter was sent to the agency.

ERP No. F-AFS-L65145-WA, Loose Bark/Grouse Butte West Timber Sale, Road Construction, Implementation, Mt Baker-Snoqualmie National Forest, Mt. Baker Ranger District, Whatcom and Skagit Counties, WA.

Summary: Review of the final EIS has been completed and the project found to be satisfactory. No formal letter was sent to the agency.

ERP No. F-AFS-L65150-ID, Accelerated Engelmann Spruce Harvest and Reforestation in Brush Creek, Hendricks Creek, and Copet Creek Salvage Timber Sales, Implementation, McCall Ranger District, Payette National Forest, Adams and Idaho Counties, ID.

Summary: Review of the final EIS has been completed and the project found to be satisfactory. No formal letter was sent to the agency.

ERP No. F-FHW-B40066-00, US 7 in Bennington, VT Improvements, US 7 to US 7/VT-67A Interchange; VT-9 in Bennington, VT and NY-7 in Hoosick, NY Improvements, VT-9 or NY-7 to US 7/VT-67A Interchange or VT-9 east of Bennington Village, Funding, Bennington County, VT and Rensselaer County, NY.

Summary: EPA expressed concerns regarding project compliance with the 404(b)(1) Guidelines, in terms of alternatives considered and the availability and suitability of compensatory mitigation to offset unavoidable project-related impacts. EPA also recommended that the Record of Decision reflect adoption of appropriate measures to protect the Bennington Aquifer Protection Area and individual water supply wells.

ERP No. F-FHW-E40205-NC, US 264/ Wilson Bypass Construction, US 264 west of Wilson to US 264 to Greenville east of Wilson, Funding, Section 404 Permit, Wilson County, NC.

Summary: EPA recommended that a conceptual mitigation plan be developed prior to the Section 404 Permit stage.

ERP No. F-FHW-E40716-TN, Kirby Parkway Construction, Split Oak Drive to Stage Road and Sycamore View Road Extension, Mullins Station Road to Kirby Parkway, Funding and Possible Section 404 Permit, City of Memphis, Shelby County, TN.

Summary: EPA expressed concern about noise impacts.

ERP No. F-FHW-K40177-CA, CA-198 Freeway Improvements, Plaza Road to Mooney Boulevard, Funding and Possible Section 404 Permit, City of Visalia, Tulare County, CA.

Summary: Review of the final EIS was not deemed necessary. No formal letter was sent to the agency.

ERP No. F-UMT-L40114-OR, Westside Corridor Mass Transit and Highway Improvement, Updated Alternatives, Funding and Section 404 Permit City of Portland, Beaverton, Hillsboro, Multnomah and Washington Counties, OR.

Summary: Review of the final EIS has been completed and the project found to be satisfactory. No formal letter was sent to the agency.

Dated: October 22, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91-25746 Filed 10-24-91; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00311; FRL-4001-3]

State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committees; Open Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 3-day meeting of the State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committees on Registration and Classification, and Enforcement and Certification. This notice announces the location and times for the meetings and sets forth tentative agenda topics. The meetings are open to the public.

DATES: The SFIREG Working Committee on Enforcement and Certification will meet on Monday, October 28, 1991, from 8:30 a.m. to 4 p.m. On Tuesday, October 29, 1991, there will be a joint meeting of the Enforcement and Certification Working Committee and the Working Committee on Registration and Classification to discuss issues of mutual interest. This meeting will begin at 8:30 a.m. and adjourn at approximately 4 p.m. The Working Committee on Registration and Classification will meet on Wednesday, October 30, 1991, beginning at 8:30 a.m. and adjourning at approximately 4 p.m.

ADDRESSES: The meetings will be held at: Omni Netherland Plaza, 35 West Fifth St., Cincinnati, OH, (513) 421-9100.

FOR FURTHER INFORMATION CONTACT: By mail: Arty Williams, Office of Pesticide Programs (H7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1100-E, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-7371.

SUPPLEMENTARY INFORMATION: The tentative agenda of the Working Committee on Enforcement and Certification includes the following topics:

1. Update on Coastal Zone Management Plan.
2. Report from State representative on and discussion of multimedia enforcement.
3. Discussion of State suggestion for network to notify other States of violative pesticide applicators.
4. Status report on EBDC market-basket survey.
5. Discussion of national level projects to support the Certification and Training Programs in the States.
6. Other topics as appropriate.

The tentative agenda of the joint meeting of the Enforcement and Certification, and the Registration and Classification Working Committees includes the following:

1. Discussion of whether there is need for a policy regarding the intent and use of FIFRA section 2(ee).
2. Discussion of potential problems associated with use of Experimental Use Permits.
3. Discussion of concern regarding repeated exposures to indoor pesticide applications.
4. Discussion of how States can use Best Management Practices to reduce pesticide use.
5. Discussion of using section 24(c) to implement ground water State Management Plans for pesticides.
6. Review of EPA's Draft Project Officers' Manual.
7. Other topics as appropriate.

The tentative agenda of the Registration and Classification Working Committee includes the following topics:

1. Report on the Congressional hearing regarding FIFRA section 18.
2. Status of section 18 guidance document being developed by Registration Division.
3. Status of EPA developing policy on less risky pesticides.
4. Outcome of priority setting exercise on labeling issues.
5. Other topics as appropriate.

Dated: October 21, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 91-25749 Filed 10-22-91; 2:32 pm]

BILLING CODE 6560-50-F

[OPTS-140159; FRL-3998-3]

Access to Confidential Business Information by Mathtech, Incorporated and Subcontractors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Mathtech, Incorporated (MAT), of Falls Church, Virginia, and its subcontractors, Dynamac Incorporated (DYN), of Rockville, Maryland, and ICF Incorporated (ICF) of Falls Church, Virginia, for access to information which has been submitted to EPA under all sections 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 November 8, 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-D8-0087, contractor MAT, of 5111 Leesburg Pike, Falls Church, VA, and its subcontractors DYN, of 2275 Research Boulevard,

Rockville, MD and ICF, of Falls Church, VA, will assist the Office of Toxic Substances (OTS) in performing economic and regulatory analyses of Agency decisionmaking on new and existing chemicals under TSCA.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68-D8-0087, MAT, DYN, and ICF will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. MAT, DYN, and ICF personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

In a previous notice published in the **Federal Register** of October 26, 1988 (53 FR 43268), MAT was authorized for access to CBI submitted to EPA under all sections of TSCA. EPA is issuing this notice to extend MAT's access to TSCA CBI under the extension of contract number 68-D8-0087, and to announce access to TSCA CBI for DYN and ICF under contract number 68-D8-0087.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide MAT, DYN, and ICF 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 MAT's Falls Church, VA facility, DYN's Rockville, MD facility, and ICF's 409 12th St., SW., Washington, DC facility only.

MAT, DYN, and ICF have been authorized access to TSCA CBI at the above listed facilities under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. EPA has approved MAT's, DYN's, and ICF's security plans and has performed the required inspections of their facilities and has found the facilities to be in compliance with the manual. Upon completing review of the CBI materials, MAT, DYN, and ICF will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until June 30, 1992.

MAT, DYN, and ICF personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: October 11, 1991.

Linda A. Travers,

Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 91-25747 Filed 10-24-91; 8:45 am]

BILLING CODE 6560-50-F

[OPTS-140158; FRL-3949-8]

Access to Confidential Business Information by ABT Associates Incorporated and Eastern Research Group

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, ABT Associates (ABT), of Cambridge, Massachusetts, and its subcontractor Eastern Research Group (ERG), of Arlington, Massachusetts, for access to information which has been submitted to EPA under all sections 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 November 8, 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-D9-0169, contractor ABT, of 55 Wheeler St., Cambridge, MA, and its subcontractor Eastern Research Group (ERG), of 6 Whittemore St., Arlington, MA, will assist the Office of Toxic Substances (OTS) in performing economic and regulatory analyses of actual or potential EPA actions under TSCA.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68-D9-0169, ABT and ERG will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. ABT and ERG personnel will be given access to information submitted to EPA under all sections 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 all sections of TSCA that EPA may provide ABT and ERG access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract for ABT will take place at ABT's Cambridge, MA and 4800 Montgomery Lane, suite 500, Bethesda, MD facilities, and at EPA facilities. All access to TSCA CBI under this contract for ERG will take place at ERG's Arlington, MA facility and at EPA facilities.

ABT and ERG have been authorized access to TSCA CBI at their facilities under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. EPA has approved ABT's and ERG's security plans and has performed the required inspections of their facilities and has found the facilities to be in compliance with the manual. Upon completing review of the CBI materials, ABT and ERG will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until September 30, 1992.

ABT and ERG personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: October 11, 1991.

Linda A. Travers,

Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 91-25748 Filed 10-24-91; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL MARITIME COMMISSION

City of Los Angeles, et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200100-003.

Title: City of Los Angeles/Distribution and Auto Service, Inc. Terminal Agreement.

Parties: The City of Los Angeles Distribution and Auto Service, Inc.

Synopsis: The Agreement, filed October 16, 1991, clarifies the intent of the parties with respect to "incremental monthly payments" to allow overages to be carried forward in meeting an annual guaranteed payment.

Agreement No.: 202–010676–052.

Title: South Europe/U.S.A. Freight Conference.

Parties: Achille Lauro, Compagnie Generale Maritime, Compania Trasatlantica Espanola, S.A., Evergreen Marine Corporation (Taiwan), Ltd., Farrell Lines, Inc., "Italia" di Navigazione, S.p.A., Jugolinija, Jugooceanija, Lykes Lines, A.P. Moller-Maersk Line, Nedlloyd Lines, Sea-Land Service, Inc., P&O Containers Limited, Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment would extend from November 1, 1991 to June 30, 1992 the authority of the members to take independent action to increase the level of compensation paid to freight forwarders. The parties have requested a shortened review period.

Agreement No.: 202–010676–053.

Title: South Europe/U.S.A. Freight Conference.

Parties: Achille Lauro, Compagnie Generale Maritime, Compania Trasatlantica Espanola, S.A., Evergreen Marine Corporation (Taiwan) Ltd., Farrell Lines, Inc., "Italia" di Navigazione, S.p.A., Jugolinija, Jugooceanija, Lykes Lines (Lykes Bros. Steamship Co., Ltd.), A.P. Moller-Maersk Line, Nedlloyd Lines (Nedlloyd Lijnen B.V.), Sea-land Service, Inc., P&O Containers Limited, Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment would establish rules and regulations governing neutral body policing of Agreement activities.

Agreement No.: 202–011102–015.

Title: U.S. Atlantic & Gulf/Western Mediterranean Rate Agreement.

Parties: Compagnie Generale Maritime, Compania Trasatlantica Espanola, S.A., Evergreen Marine Corporation (Taiwan), Ltd., Italia di Navigazione, S.p.A., Lykes Lines (Lykes Bros. Steamship Company, Inc.), Nedlloyd Lines (Nedlloyd Lijnen B.V), P&O Containers Limited, Sea-Land Service, Inc., Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment establishes rules to govern neutral body policing. It also modifies other articles of the Agreement to specify the obligations of Agreement members regarding the payments of fines and costs associated with neutral body policing.

By Order of the Federal Maritime Commission.

Dated: October 21, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–25689 Filed 10–24–91; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 91–48]

Sea-Land Service, Inc. v. B.E.B. Ltd., Inc.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Sea-Land Service, Inc. (Complainant) against B.E.B. Ltd., Inc. ("Respondent") was served October 18, 1991. Complainant alleges that Respondent engaged in violations of section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. 1709(a)(1), by failing and refusing to pay ocean freight and other charges lawfully assessed pursuant to the applicable tariffs or service contracts on two shipments of synthetic resin to Santo Domingo, Dominican Republic on November 19, 1989, and May 31, 1990.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline (Presiding Officer). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by October 19, 1992, and the final decision of the Commission shall be issued by February 16, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 91–25664 Filed 10–24–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of August 20, 1991

In accordance with § 217.5 of its rules regarding availability of information, there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on August 20, 1991.[1] The Directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting has been mixed, but it suggests on balance that economic activity is expanding at a moderate pace. The unemployment rate fell slightly to 6.8 percent in July, but total nonfarm payroll employment edged down and the average workweek posted a sharp decline. Industrial production rose appreciably further in July. Consumer spending has increased considerably in recent months, led by sizable gains in expenditures for motor vehicles. New orders for nondefense capital goods point to little change in spending for business equipment of the near term, and nonresidential construction remains weak. Housing starts rose further in June and July. The nominal U.S. merchandise trade deficit declined in June, and its average for the second quarter was somewhat below the rate in the first quarter. Increases in consumer prices have been small in recent months.

Over the intermeeting period prior to August 19, market interest rates declined appreciably and the trade-weighted value of the dollar in terms of the other G-10 currencies depreciated somewhat. Subsequently, in the wake of events in the Soviet Union, Treasury bill rates fell somewhat further and the dollar rebounded sharply against many European currencies.

M2 contracted in July after several months of slow growth and M3 fell further. For the year through July, expansion of M2 and M3 has been near the lower ends of the Committee's ranges.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee at its meeting in July reaffirmed the ranges it had established in February for growth of M2 and M3 of 2-1/2 to 6-1/2 percent and 1 to 5 percent, respectively, measured from the fourth quarter of 1990 to the fourth quarter of 1991. The monitoring range for growth of total domestic nonfinancial debt also was maintained at 4-1/2 to 8-1/2 percent for the year. For 1991, on a tentative basis, the Committee agreed in July to used monetary aggregates and debt, measured from the fourth quarter of 1991 to the fourth quarter of 1992. With regard to M3, the Committee anticipated that the ongoing restructuring of thrift depository institutions would continue to depress the growth of this aggregate relative to spending and total credit. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure on reserve positions. Depending upon progress toward price stability, trends in economic activity, the behavior of the monetary aggregates, and developments in foreign exchange and domestic financial markets, somewhat greater reserve restraint might or

[1] Copies of the Record of policy actions of the Committee for the meeting of August 20, 1991, are available upon request to The Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

somewhat lesser reserve restraint would be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with a resumption of growth of M2 and M3 in the weeks ahead; but in view of the declines already posted since June, the Committee anticipates that M2 would be little changed and M3 would be down at an annual rate of about 1 percent over the period from June through September.

By order of the Federal Open Market Committee, October 21, 1991.

Normand Bernard,

Deputy Secretary, Federal Open Market Committee.

[FR Doc. 91-25738 Filed 10-24-91; 8:45 am]

BILLING CODE 6210-01-F

First of America Bank Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 15, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First of America Bank Corporation, Kalamazoo, Michigan; to acquire Champion Federal Savings and Loan Association, Bloomington, Illinois, and thereby engage in operating a savings association pursuant to § 225.25(b)(9); making and servicing loans pursuant to § 225.25(b)(1); providing investment or financial advice pursuant to § 225.25(b)(4); data processing activities pursuant to § 225.25(b)(7); insurance agency and underwriting activities for credit-related insurance pursuant to § 225.25(b)(8)(i); and securities brokerage pursuant to § 225.25(b)(15) of the Board's Regulation Y. These activities will be conducted in the State of Illinois.

Board of Governors of the Federal Reserve System, October 21, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-25720 Filed 10-24-91; 8:45 am]

BILLING CODE 6210-01-F

Mahaska Investment Company ESOP; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these 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 November 15, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Mahaska Investment Company ESOP, Oskaloosa, Iowa; to become a bank holding company by acquiring 34.4 percent of the voting shares of Mahaska Investment Company, Oskaloosa, Iowa, and thereby indirectly acquire Mahaska State Bank, Oskaloosa, Iowa, and First National Bank, Sumner, Iowa.

In connection with this application, Applicant also proposes to engage in making and servicing loans pursuant to § 225.25(b)(1); and to acquire 25 percent of the MIC Leasing Company, Oskaloosa, Iowa, and thereby engage in leasing personal property pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 21, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-25721 Filed 10-24-91; 8:45 am]

BILLING CODE 6210-01-F

Mid Penn Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are

considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 15, 1991.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Mid Penn Bancorp, Inc., Millersburg, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Mid Penn Bank, Millersburg, Pennsylvania.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Mansura Bancshares, Inc., Mansura, Louisiana; to merge with Cottonport Bancshares, Inc., Cottonport, Louisiana, and thereby indirectly acquire Cottonport Bank, Cottonport, Louisiana; and Cen-La Bancshares, Inc., Marksville, Louisiana, and thereby indirecty acquire Central Louisiana Bank & Trust, Marksville, Louisiana.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. NBD Bancorp, Inc., Detroit, Michigan; to acquire 100 percent of the voting shares of Gainer Corporation, Merrillville, Indiana, and thereby indirectly acquire Gainer Bank, National Association, Gary, Indiana. In connection with this application, NBD Indiana, Inc., Detroit, Michigan, has applied to become a bank holding company by acquiring 100 percent of the voting shares of Gainer Corporation, Merrillville, Indiana, and thereby indirectly acquire Gainer Bank, National Association, Gary, Indiana.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Laredo National Bancshares, Inc., Laredo, Texas; to acquire 100 percent of the voting shares of Southshares, Inc., Laredo, Texas, and thereby indirectly acquire South Texas National Bank of Laredo, Laredo, Texas.

Board of Governors of the Federal Reserve System, October 21, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-25722 Filed 10-24-91; 8:45 am]

BILLING CODE 6210-01-F

Douglas R. Steffensmeier, 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 November 12, 1991.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Douglas R. Steffensmeier, Beemer, Nebraska; to acquire an additional 3.55 percent for a total of 31.15 percent; and David D. Steffensmeier, Beemer, Nebraska, to acquire an additional 6.97 percent of the voting shares of First Beemer Corporation, Beemer, Nebraska, and thereby indirectly acquire The First National Bank of Beemer, Beemer, Nebraska, and American State Bank of Homer, Homer, Nebraska.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Lacy J. Harber, Denison, Texas; to acquire 94.87 percent of the voting shares of North American Bancshares, Sherman, Texas, and thereby indirectly acquire American Bank and Trust, Denison, Texas, and American Bank of Sherman, N.A., Sherman, Texas.

Board of Governors of the Federal Reserve System, October 21, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-25723 Filed 10-24-91; 8:45 am]

BILLING CODE 6210-01-F

Summit Bank Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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 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.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than November 15, 1991.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Summit Bank Corporation, Atlanta, Georgia; to establish Summit Interim

FSB, Atlanta, Georgia ("Interim Bank"), pursuant to section 4(c)(8) of the Bank Holding Company Act, to facilitate the acquisition of the Doraville, Georgia branch office of Tucker Federal Savings and Loan Association, Tucker, Georgia. Applicant also proposes to merge Interim Bank with and into its bank subsidiary, The Summit National Bank, Atlanta, Georgia, pursuant to the Oakar Amendment of FIRREA.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Alpha Financial Group, Inc., Minonk, Illinois; to acquire Bob Bookler Insurance Agency, Washburn, Illinois, and thereby engage in general insurance activities in Washburn, Illinois, a town with a population of less than 5,000, pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y.

2. Alpha Financial Group, Inc., Minonk, Illinois; to acquire Dace Insurance Agency, Toluca, Illinois, and thereby engage in general insurance activities in Toluca, Illinois, a town with a population of less than 5,000, pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Wes-Tenn Bancorp, Inc., Covington, Tennessee; to acquire Tri-County Federal Savings Bank, Covington, Tennessee, and thereby engage in operating a savings and loan association pursuant to § 225.25(b)(9) of the Board's Regulation Y. These activities will be conducted out of the thrift's office in Covington, Somerville, and Millington, Tennessee.

Board of Governors of the Federal Reserve System, October 21, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-25724 Filed 10-24-91; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 093091 AND 101191

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Mid-American Waste Systems, Inc., Berwind Group Partners, Resource Conservation Corp	91-1307	10/01/91
Zodiac S.A., U.S. Leisure, Inc., Muskin, Inc	91-1484	10/01/91
Weatherford International Incorporated, Petroleum Equipment Tools Co., Petroleum Equipment Tools Co	91-1435	10/02/91
Gary Morgan, MNC Financial, Inc., American Financial Service Group, Inc	91-1465	10/02/91
Kirby Corporation, Lepercq Pioneer 101 Corporation, Lepercq Pioneer 101 Corporation	91-1480	10/02/91
C.H. Boehringer Sohn, Whittaker Corporation, Whittaker Bioproducts, Inc	91-1410	10/03/91
TriMas Corporation, Vestar/Mag Aerospace Limited Partnership, Monogram Aerospace Fasteners, Inc	91-1462	10/03/91
Herbert K. Horita, Frederick Forster, Cove Enterprises, Inc	91-1206	10/04/91
Takeshi Sekiguchi, Frederick Forster, Cove Enterprises, Inc	91-1220	10/04/91
LDI, Ltd., The Chas. Levy Company, Video Trend, Inc. and VT Laser, Inc	91-1504	10/04/91
Computer Sciences Corporation, General Dynamics Corporation, General Dynamics Corporation	91-1510	10/04/91
Petroleo Brasileiro, SA—PETROBRAS, Chiles Offshore Corporation, Chiles Offshore Corporation	91-1486	10/07/91
Wainoco Oil Corporation, Compagnie Financiere Ehrbar, Frontier Holdings Inc	91-1492	10/07/91
Voting Trust of Hallmark Cards, Incorporated, Cancom Cable Associates, Inc., Cencom Cable Associates, Inc	91-1516	10/07/91
Korea Machinery Co. Ltd., Universal Bearings, Inc., Universal Bearings, Inc	91-1467	10/08/91
Timex Group Ltd., Philip E. Callanen, Callanen Group, Inc	91-1476	10/08/91
Callon Petroleum Company, Chevron Corporation, Chevron U.S.A. Inc	92-0009	10/08/91
Bitten og Mads Clausens Fond, WICOR, Inc., Webster Electric Company, Inc	91-1451	10/09/91
Coeur d'Alene Mines Corporation, Callahan Mining Corporation, Callahan Mining Corporation	91-1511	10/09/91
The Morgan Stanley Leveraged Equity Fund II, L.P., E. I. du Pont de Nemours and Company, E. I. du Pont de Nemours and Company	91-1515	10/11/91
CGW Southeast Partners I. L.P., Florida Progress Corporation, Ashley Aluminum, Inc	91-1529	10/11/91
Kawasaki Steel Corporation, Imperial Chemical Industries PLC, ICI Americas, Inc	92-0004	10/11/91
W.R. Grace & Co., M. A. Hanna Company,	92-0005	10/11/91
Western Hanna, Inc., and assets of three partnerships		
Melville Corporation, Foot Action, Inc., Foot Action, Inc	92-0015	10/11/91

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326-1300.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 91-25739 Filed 10-24-91; 8:45 am]

BILLING CODE 6750-01-M

[File Nos. 912 3102, 912 3221, 912 3166, and 912 3099]

Keystone Carbon Co.; The Kobacker Co; Macy's Northeast, Inc., et al.; and McDonnell Douglas Corp.; Proposed Consent Agreements with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreements.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, and of the Fair Credit Reporting Act (FCRA), the four consent agreements, accepted subject to final Commission approval, would require, among other things, the respondents to comply with the consumer disclosure provisions of the FCRA for future job applicants, and to mail to applicants denied employment based on a consumer report from a consumer credit reporting agency, letters stating the name and address of the consumer reporting agency that supplied the respondents with the reports, and the reason for the adverse action.

DATES: Comments must be received on or before December 24, 1991.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: David Medine or Cynthia Lamb, FTC/S-4429, Washington, DC 20580, (202) 326-3224 or 326-3001.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following four consent agreements containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, have been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the Matter of Keystone Carbon Company, a corporation; File No. 912 3102; Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Keystone Carbon Company, a corporation, and it now appearing that Keystone Carbon Company, a corporation, hereinafter sometimes referred to as proposed respondent, without acknowledging the violation of any law or rule or regulation, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Keystone Carbon Company, by its duly authorized officer, its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Keystone Carbon Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at St. Marys, Pennsylvania 15857-0313.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the proposed respondent, and the proceeding is in the public interest.

3. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

4. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered into pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act, 5 U.S.C. § 50 *et seq.*

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that any law has been violated as alleged in the draft of complaint here attached.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For the purpose of this Order, the terms "consumer," "consumer report," and "consumer reporting agency" shall be defined as provided in Sections 603(c), 603(d), and 603(f), respectively, of the Fair Credit Reporting Act, 15 U.S.C. 1681a(c), 1681a(d), and 1681a(f).

I

It is ordered That respondent Keystone Carbon Company, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with any application for employment, do forthwith cease and desist from:

1. Failing, whenever employment is denied either wholly or partly because of information contained in a consumer report from a consumer reporting agency, to disclose to the applicant for employment at the time such adverse action is communicated to the applicant (a) that the adverse action was based wholly or partly on information contained in such a report and (b) the name and address of the consumer reporting agency making the report. Respondent shall not be held liable for a violation of Section 615 of the Fair Credit Reporting Act if it shows by a preponderance of the evidence that at the time of the alleged violation it maintained reasonable procedures to assure compliance with Section 615(a) of the Fair Credit Reporting Act.

2. Failing, within ninety (90) days after the date of service of this Order, to mail two (2) copies of either Appendix A or Appendix B, attached hereto, as completed to provide the name and address of the consumer reporting agency supplying the report and to state the reasons for the denial of employment with respondent based wholly or partly on information contained in the report, to each applicant who was denied employment by Keystone Carbon Company between January 1, 1990, and the date this Order is issued, based in whole or in part on information contained in a consumer report from a consumer reporting agency, such copies of the letter to be sent first class mail to the last known address of the applicant that is reflected in respondent's files, and accompanied by a copy of the Federal Trade Commission brochure attached hereto as Appendix C, copies of which are to be provided by respondent. Copies of the letters attached as Appendix A and Appendix B need not be sent to any applicant who is denied employment with respondent during the time period specified above if the applicant's application file clearly shows that respondent Keystone Carbon Company has previously given the applicant notification that complies in all respects with the provisions of Paragraph I.1 of this Order.

II

It is further ordered That respondent, its successors, and assigns shall maintain for at least five (5) years and upon request make available to the Federal Trade Commission for inspection and copying, documents demonstrating compliance with this Order, such documents to include, but not be limited to, all employment evaluation criteria relating to consumer reports, instructions given to employees regarding compliance with the provisions of this Order, all notices provided to consumers pursuant to any provisions of this Order, and the complete application files for all applicants for whom consumer reports were obtained for whom offers of employment are not made or have been withheld, withdrawn, or rescinded based, in whole or in part, on information contained in a consumer report.

III

It is further ordered That for a period of four (4) years after the date of service of this Order, respondent shall deliver a copy of this Order to all persons responsible for the respondent's compliance with Section 615(a) of the Fair Credit Reporting Act.

IV

It is further ordered That respondent shall, notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate structure of respondent such as dissolution, assignment, or sale resulting in the emergence of a successor operation, the creation or dissolution of subsidiaries or divisions, or any other change in the corporation which may affect compliance obligations arising out of the Order.

It is further ordered That respondent shall, within one hundred twenty (120) days of service of this Order, file with the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Appendix A

Dear Employment Applicant:

Our records show that sometime within the last two years, Keystone Carbon Company denied your application for employment. The federal Fair Credit Reporting Act gives persons who are denied employment the right to know if the denial was based, in whole or in part, on information supplied by a consumer reporting agency or credit bureau and, if so, the name and address of the credit bureau.

Our records show that when we denied your application, we may not have told you that our decision was based, at least in part, on information contained in your credit report and may not have given you the reasons for our decision. The credit bureau that furnished the report is:

_____

[name of Consumer Reporting Agency]

_____

[Street Address]

You should contact the credit bureau to learn what information is in your file. You may obtain this information without charge if you contact the credit bureau within 30 days. An extra copy of this notice is enclosed so that you may give it to the credit bureau when you request to review your file.

The information in your credit report led us, at least in part, to deny your application for the following reason(s):

—No credit file
—Unable to verify references
—Delinquent past or present obligations with others
—Excessive obligations in relation to income
—Garnishment, attachment, foreclosure, repossession, collection action, or judgment
—Bankruptcy
—other: _____

A brochure explaining your rights under the federal credit laws are enclosed. If you want more information about your rights, write to the Federal Trade Commission, Division of Credit Practices, Washington, DC 20580.

Thank you.

Appendix B

Dear Employment Applicant:

Our records show that sometime within the last two years, Keystone Carbon Company denied your application for employment. Your application, however, remains on file for further consideration. The federal Fair Credit Reporting Act gives persons who are denied employment the right to know if the denial was based, in whole or in part, on information supplied by a consumer reporting agency or credit bureau and, if so, the name and address of the credit bureau.

Our records show that when we denied your application, we may not have told you that our decision was based, at least in part, on information contained in your credit report and may not have given you the reasons for our decision. The credit bureau that furnished the report is:

_____

[name of Consumer Reporting Agency]

_____

[Street Address]

You should contact the credit bureau to learn what information is in your file. You may obtain this information without charge if you contact the credit bureau within 30 days. An extra copy of this notice is enclosed so that you may give it to the credit bureau when you request to review your file.

The information in your credit report led us, at least in part, to deny your application for the following reason(s):

—No credit file
—Unable to verify references
—Delinquent past or present obligations with others
—Excessive obligations in relation to income
—Garnishment, attachment, foreclosure, repossession, collection action, or judgment

—Bankruptcy
—other: _____

A brochure explaining your rights under the federal credit laws are enclosed. If you want more information about your rights, write to the Federal Trade Commission, Division of Credit Practices, Washington, DC 20580.

Thank you.

Appendix C

Fair Credit Reporting

If you've ever applied for a charge account, a personal loan, insurance, or a job, someone is probably keeping a file on you. This file might contain information on how you pay your bills, or whether you've been sued, arrested, or have filed for bankruptcy.

The companies that gather and sell this information are called "Consumer Reporting Agencies," or "CRA's." The most common type of CRA is the credit bureau. The information sold by CRA's to creditors, employers, insurers, and other businesses is called a "consumer report." This generally contains information about where you work and live and about your bill-paying habits.

In 1970, Congress passed the Fair Credit Reporting Act to give consumers specific rights in dealing with CRA's. The Act protects you by requiring credit bureaus to furnish correct and complete information to businesses to use in evaluating your applications for credit, insurance, or a job.

The Federal Trade Commission enforces the Fair Credit Reporting Act. Here are answers to some questions about consumer reports and CRA's:

How do I locate the CRA that has my file?

If your application was denied because of information supplied by a CRA, that agency's name and address must be supplied to you by the company you applied to. Otherwise, you can find the CRA that has your file by calling those listed in the Yellow Pages under "credit" or "credit rating and reporting." Since more than one CRA may have a file about you, call each one listed until you locate all agencies maintaining your file.

Do I have the right to know what the report says?

Yes, if you request it. The CRA is required to tell you about every piece of information in the report and, in most cases, the sources of that information. Medical information is exempt from this rule, but you can have your physician try to obtain it for you. The CRA is not required to give you a copy of the report, although more and more are doing so. You also have the right to be told the name of anyone who received a report on you in the past six months. (If your inquiry concerns a job application, you can get the names of those who received a report during the past two years.)

Is this information free?

Yes, if your application was denied because of information furnished by the CRA, and if you request it within 30 days of receiving the denial notice. If you don't meet these requirements, the CRA may charge a reasonable fee.

What can I do if the information is inaccurate or incomplete?

Notify the CRA. They're required to reinvestigate the items in question. If the new investigation reveals an error, a corrected version will be sent, on your request, to anyone who received your report in the past six months. (Job applicants can have corrected reports sent to anyone who received a copy during the past two years.)

What can I do if the CRA won't modify the report?

The new investigation may not resolve your dispute with the CRA. If this happens, have the CRA include your version or a summary of your version of the disputed information in your file and in future reports. At your request, the CRA will also show your version to anyone who recently received a copy of the old report. There is no charge for this service if it's requested within 30 days after you receive notice of your application denial. After that, there may a reasonable charge.

Do I have to go in person to get the information?

No, you may also request information over the phone. But before the CRA will provide any information, you must establish your identity by completing forms they will send you. If you do wish to visit in person, you'll need to make an appointment.

Are reports prepared on insurance and job applicants different?

If a report is prepared on you in response to an insurance or job application, it may be an investigative consumer report. These are much more detailed than regular consumer reports. They often involve interviews with acquaintances about your lifestyle, character, and reputation. Unlike regular consumer reports, you'll be notified in writing when a company orders an investigative report about you. This notice will also explain your right to ask for additional information about the report from the company you applied to. If your application is rejected, however, you may prefer to obtain a complete disclosure by contacting the CRA, as outlined in this brochure. Note that the CRA does not have to reveal the sources of the investigative information.

How long can CRA's report unfavorable information?

Generally seven years. Adverse information can't be reported after that, with certain exceptions:

- ☐ bankruptcy information can be reported for 10 years;
- ☐ information reported because of an application for a job with a salary of more than $20,000 has no time limitation;
- ☐ information reported because of an application for more than $50,000 worth of credit or life insurance has no time limitation;
- ☐ information concerning a lawsuit or judgment against you can be reported for seven years or until the statute of limitations runs out, whichever is longer.

Can anyone get a copy of the report?

No, it's only given to those with a legitimate business need.

Are there other laws I should know about?

Yes, if you applied for and were denied credit, the Equal Credit Opportunity Act requires creditors to tell you the specific reasons for your denial. For example, the creditor must tell you whether the denial was because you have "no credit file" with a CRA or because the CRA says you have "delinquent obligations." This law also requires creditors to consider, upon request, additional information you might supply about your credit history.

You may wish to obtain the reason for denial from the creditor before you go to the credit bureau.

Do women have special problems with credit applications?

Married and formerly married women may encounter some common credit-related problems. For more information, write the FTC for a free brochure on "Women and Credit Histories" at the address listed below.

Where should I report violations of the law?

Although the FTC can't act as your lawyer in private disputes, information about your experiences and concerns is vital to the enforcement of the Fair Credit Reporting Act. Please send questions or complaints to the FTC, Washington, D.C. 20580.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Keystone Carbon Company, a corporation ("the respondent"). Under this agreement, the respondent will cease and desist from failing to disclose required information to applicants not accepted for employment, and will mail Commission informational brochures and letter that disclose required information to all applicable applicants who were not accepted for employment during a specified one year period.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

This matter concerns the denial of employment based on information obtained from consumer reporting agencies. The complaint accompanying the proposed consent order alleges that in connection with its employment practices, the respondent engaged in acts and practices in violation of section 615(a) of the Fair Credit Reporting Act and section 5(a)(1) of the Federal Trade Commission Act.

According to the complaint, the respondent has denied applications or rescinded offers for employment based in whole or in part on information supplied by a consumer reporting agency, but has failed to advise

consumers that the information so supplied contributed to the adverse action taken on their applications and has failed to advise consumers of the name and address of the consumer reporting agency that supplied the information, in violation of section 615(a) of the Fair Credit Reporting Act.

Further, the complaint alleges that by its failure to comply with section 615(a) of the Fair Credit Reporting Act and pursuant to section 621(a) of the Fair Credit Reporting Act, respondent has engaged in unfair or deceptive acts or practices in or affecting commerce in violation of section 5(a)(1) of the Federal Trade Commission Act.

The consent order contains provisions designed to ensure that the respondent does not engage in similar allegedly illegal acts and practices in the future.

Specifically, Part I of the order requires the respondent to cease and desist from failing to provide the required disclosures outlined in section 615(a) of the Fair Credit Reporting Act whenever employment is denied either wholly or partly because of information contained in a consumer report from a consumer reporting agency.

Further, Part I of the order requires the respondent, within ninety (90) days after the date of service of the order, to mail Commission brochures and letters to each consumer denied employment between January 1, 1990, and the date the order becomes effective, based in whole or in part on information contained in a consumer report from a consumer reporting agency. Each letter to consumers against whom adverse action was taken based on a consumer report from a consumer reporting agency must provide the name and address of the consumer reporting agency that supplied the report in question, as well as the reason for the adverse action. While the Fair Credit Reporting Act does not require employers to supply reasons for denial, Keystone has agreed to provide such reasons to the affected applicants in an effort to redress the violations at issue.

Part II of the order requires the respondent, its successors, and assigns to maintain documents demonstrating compliance with the order for five (5) year and to make all such documents available to the Commission upon request.

Part III of the order requires the respondent to deliver a copy of the order for four (4) years from the date of the order to all present and future employees responsible for respondent's compliance with section 615(a) of the Fair Credit Reporting Act.

Part IV of the order requires the respondent to notify the Commission at lest thirty (30) days prior to any proposed change in its corporate structure that may affect its compliance with the order.

Part V of the order requires the respondent to file a written report with the Commission within one hundred twenty (120) days after service of the order detailing the manner and form in which it has complied with the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

In the Matter of The Kobacker Company, a corporation; File No. 912 3221; Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of the The Kobacker Company, a corporation, and it now appearing that The Kobacker Company, a corporation, hereinafter sometimes referred to as proposed respondent, without acknowledging the violation of any law or rule or regulation, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between The Kobacker Company, by its duly authorized officer, and counsel for the Federal Trade Commission that:

1. Proposed respondent The Kobacker Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at P.O. Box 16751, 6606 Tussing Road, Columbus, Ohio 43216–6571.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the proposed respondent, and the proceeding is in the public interest.

3. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

4. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered into pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act, 5 U.S.C. § 50 *et seq.*

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that any law has been violated as alleged in the draft of complaint here attached.

This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each

violation of the order after it becomes final.

Order

For the purpose of this Order, the terms "consumer," "consumer report," and "consumer reporting agency" shall be defined as provided in sections 603(c), 603(d), and 603(f), respectively, of the Fair Credit Reporting Act, 15 U.S.C. 1681a(c), 1681a(d), and 1681a(f).

It is ordered That respondent The Kobacker Company, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with any application for employment, do forthwith cease and desist from:

1. Failing, whenever employment is denied either wholly or partly because of information contained in a consumer report from a consumer reporting agency, to disclose to the applicant for employment at the time such adverse action is communicated to the applicant (a) that the adverse action was based wholly or partly on information contained in such a report and (b) the name and address of the consumer reporting agency making the report. Respondent shall not be held liable for a violation of section 615 of the Fair Credit Reporting Act if it shows by a preponderance of the evidence that at the time of the alleged violation it maintained reasonable procedures to assure compliance with section 615(a) of the Fair Credit Reporting Act.

2. Failing, within ninety (90) days after the date of service of this Order, to mail two (2) copies of the letter attached hereto as Appendix A, completed to provide the name and address of the consumer reporting agency supplying the report to each applicant who was denied employment by The Kobacker Company between November 30, 1989 and October 22, 1990, based in whole or in part on information contained in a consumer report from a consumer reporting agency, such copies of the letter to be sent first class mail to the last known address of the applicant that is reflected in respondent's files, and accompanied by a copy of the Federal Trade Commission brochure attached hereto as Appendix B, copies of which are to be provided by respondent. Copies of the letter attached as Appendix A need not be sent to any applicant who is denied employment with respondent during the time period specified above if the applicant's application file clearly shows that respondent The Kobacker Company has previously given the applicant notification that complies in all respects with the provisions of Paragraph I.1 of this Order.

II

It is further ordered That respondent, its successors, and assigns shall maintain for at least five (5) years and upon request make available to the Federal Trade Commission for inspection and copying, documents demonstrating compliance with this Order, such documents to include, but not be limited to, all employment evaluation criteria relating to consumer reports, instructions given to employees regarding compliance with the provisions of this Order, all notices provided to consumers pursuant to any provisions of this Order.

III

It is further ordered That for a period of four (4) years after the date of service of this Order, respondent shall deliver a copy of this Order to all persons responsible for the respondent's compliance with Section 615(a) of the Fair Credit Reporting Act.

IV

It is further ordered That respondent shall, for a period of four (4) years from the date of this Order, notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate structure of respondent such as dissolution, assignment, or sale resulting in the emergence of a successor operation, the creation or dissolution of subsidiaries or divisions, or any other change in the corporation which may affect compliance obligations arising out of the Order.

V

It is further ordered That respondent shall, within one hundred twenty (120) days of service of this Order, file with the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Appendix A

Dear _____:

At some point in time between November 1989 and October 1990, you applied to The Kobacker Company for employment. To help us in considering your eligibility for employment, we requested a consumer report from the consumer reporting agency identified below: Name of Agency, Street Address, City, State Zip, Telephone Number.

Under the Fair Credit Reporting Act, you may learn what information is in your credit file by contacting this consumer reporting agency. Federal law entitles you to review your credit file for free if you were denied employment based on information in your credit file and you ask to review the file within thirty (30) days of receiving this notice. An extra copy of this notice is enclosed so that you may give it to the agency, should you decide to review your file.

Sincerely,

The Kobacker Company,
Human Resources Department.

Appendix B

Fair Credit Reporting

If you've ever applied for a charge account, a personal loan, insurance, or a job, someone is probably keeping a file on you. This file might contain information on how you pay your bills, or whether you've been sued, arrested, or have filed for bankruptcy.

The companies that gather and sell this information are called "Consumer Reporting Agencies," or "CRA's." The most common type of CRA is the credit bureau. The information sold by CRA's to creditors, employers, insurers, and other businesses is called a "consumer report." This generally contains information about where you work and live and about your bill-paying habits.

In 1970, Congress passed the Fair Credit Reporting Act to give consumers specific rights in dealing with CRA's. The Act protects you by requiring credit bureaus to furnish correct and complete information to businesses to use in evaluating your applications for credit, insurance, or a job.

The Federal Trade Commission enforces the Fair Credit Reporting Act. Here are answers to some questions about consumer reports and CRA's:

How do I locate the CRA that has my file?

If your application was denied because of information supplied by a CRA, the agency's name and address must be supplied to you by the company you applied to. Otherwise, you can find the CRA that has your file by calling those listed in the Yellow Pages under "credit" or "credit rating and reporting." Since more than one CRA may have a file about you, call each one listed until you locate all agencies maintaining your file.

Do I have the right to know what the report says?

Yes, if you request it. The CRA is required to tell you about every piece of information in the report and, in most cases, the sources of that information. Medical information is exempt from this rule, but you can have your physician try to obtain it for you. The CRA is *not* required to give you a copy of the report, although more and more are doing so. You also have the right to be told the name of anyone who received a report on you in the past six months. (If your inquiry concerns a job application, you can get the names of those who received a report during the past two years.)

Is this information free?

Yes, if your application was denied because of information furnished by the CRA, and if you request it within 30 days of receiving the denial notice. If you don't meet these requirements, the CRA may charge a reasonable fee.

What can I do if the information is inaccurate or incomplete?

Notify the CRA. They're required to reinvestigate the items in question. If the new investigation reveals an error, a corrected

version will be sent, on your request, to anyone who received your report in the past six months. (Job applicants can have corrected reports sent to anyone who received a copy during the past two years.)

What can I do if the CRA won't modify the report?

The new investigation may not resolve your dispute with the CRA. If this happens, have the CRA include your version or a summary of your version of the disputed information in your file and in future reports. At your request, the CRA will also show your version to anyone who recently received a copy of the old report. There is no charge for this service if it's requested within 30 days after you receive notice of your application denial. After that, there may be a reasonable charge.

Do I have to go in person to get the information?

No, you may also request information over the phone. But before the CRA will provide any information, you must establish your identity by completing forms they will send you. If you do wish to visit in person, you'll need to make an appointment.

Are reports prepared on insurance and job applicants different?

If a report is prepared on you in response to an insurance of job application, it may be an *investigative* consumer report. These are much more detailed than regular consumer reports. They often involve interviews with acquaintances about your lifestyle, character, and reputation. Unlike regular consumer reports, you'll be notified in writing when a company orders an investigative report about you. This notice will also explain your right to ask for additional information about the report from the company you applied to. If your application is rejected, however, you may prefer to obtain a *complete* disclosure by contacting the CRA, as outlined in this brochure. Note that the CRA does not have to reveal the sources of the investigative information.

How long can CRA's report unfavorable information?

Generally seven years. Adverse information can't be reported after than, with certain exceptions:

- ☐ bankruptcy information can be reported for 10 years;
- ☐ information reported because of an application for a job with a salary of more than $20,000 has no time limitation;
- ☐ information reported because of an application for more than $50,000 worth of credit or life insurance has no time limitation;
- ☐ information concerning a lawsuit or judgment against you can be reported for seven years or until the statute of limitations runs out, whichever is longer.

Can anyone get a copy of the report?

No, it's only given to those with a legitimate business need.

Are there other laws I should know about?

Yes, if you applied for and were denied credit, the Equal Credit Opportunity Act requires creditors to tell you the specific reasons for your denial. For example, the creditor must tell you whether the denial was because you have "no credit file" with a CRA or because the CRA says you have "delinquent obligations." This law also requires creditors to consider, upon request, additional information you might supply about your credit history.

You may wish to obtain the reason for denial from the creditor before you go to the credit bureau.

Do women have special problems with credit applications?

Married and formerly married women may encounter some common credit-related problems. For more information write the FTC for a free brochure on "Women and Credit Histories" at the address listed below.

Where should I report violations of the law?

Although the FTC can't act as your lawyer in private disputes, information about your experiences and concerns is vital to the enforcement of the Fair Credit Reporting Act. Please send questions or complaints to the FTC, Washington, D.C. 20580.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from The Kobacker Company, a corporation ("the respondent"). Under this agreement, the respondent will cease and desist from failing to disclose required information to applicants not accepted for employment, and will mail Commission informational brochures and letters that disclose required information to all applicable applicants who were not accepted for employment during a specified eleven month period.

The proposed consent agreement is for settlement purposes only and does not constitute an admission by the company that it violated the law. The Kobacker Company, in fact, cooperated with fully with the Commission in this matter. The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

This matter concerns the denial of employment based on information obtained from consumer reporting agencies. The complaint accompanying the proposed consent order alleges that in connection with its employment practices, the respondent engaged in acts and practices in violation of section 615(a) of the Fair Credit Reporting Act and section 5(a)(1) of the Federal Trade Commission Act.

According to the complaint, the respondent has denied applications or rescinded offers for employment based in whole or in part on information supplied by a consumer reporting agency, but has failed to advise consumers that the information so supplied contributed to the adverse action taken on their applications and has failed to advise consumers of the name and address of the consumer reporting agency that supplied the information, in violation of section 615(a) of the Fair Credit Reporting Act.

Further, the complaint alleges that by its failure to comply with section 615(a) of the Fair Credit Reporting Act and pursuant to section 621(a) of the Fair Credit Reporting Act, respondent has engaged in unfair or deceptive acts or practices in or affecting commerce in violation of section 5(a)(1) of the Federal Trade Commission Act.

The consent order contains provisions designed to ensure that the respondent does not engage in similar allegedly illegal acts and practices in the future.

Specifically, Part I of the order requires the respondent to cease and desist from failing to provide the required disclosures outlined in section 615(a) of the Fair Credit Reporting Act whenever employment is denied either wholly or partly because of information contained in a consumer report from a consumer reporting agency.

Further, Part I of the order requires the respondent, within ninety (90) days after the date of service of the order, to mail Commission brochures and letters to each consumer denied employment between November 30, 1989 and October 22, 1990, based in whole or in part on information contained in a consumer report from a consumer reporting agency. Each letter to consumers against whom adverse action was taken based on a consumer report from a consumer reporting agency, must provide the name and address of the consumer reporting agency that supplied the report in question.

Part II of the order requires the respondent, its successors, and assigns to maintain documents demonstrating compliance with the order for five (5) years and to make all such documents available to the Commission upon request.

Part III of the order requires the respondent to deliver a copy of the order for four (4) years from the date of the order to all present and future employees responsible for respondent's compliance with section 615(a) of the Fair Credit Reporting Act.

Part IV of the order requires the respondent for a period of four (4) years to notify the Commission at least thirty (30) days prior to any proposed change

in its corporate structure that may affect its compliance with the order.

Part V of the order requires the respondent to file a written report with the Commission within one hundred twenty (120) days after service of the order detailing the manner and form in which it has complied with the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

In the Matter of Macy's Northeast, Inc., Macy's South, Inc., Macy's California, Inc., I. Magnin, Inc., and Macy's Data and Credit Services Corp., corporations; File No. 912-3166; Agreement Containing Consent Order to Cease and Desist.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Macy's Northeast, Inc., Macy's South, Inc., Macy's California, Inc., I. Magnin, Inc. and Macy's Data and Credit Services Corp., corporations (hereinafter sometimes referred to as "proposed respondents" or as "the named subsidiaries"), wholly owned subsidiaries of R.H. Macy & Co., Inc., a Delaware corporation, and it now appearing that the named subsidiaries, without acknowledging the violation of any law or rule or regulation, are willing to enter into an agreement containing an order to cease and desist from the use of the alleged acts and practices being investigated,

It Is Hereby Agreed by and between the named subsidiaries, by their duly authorized officers, and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed Respondent Macy's Northeast, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 151 West 34th Street, New York, NY 10001.

Proposed respondent Macy's South, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 180 Peachtree Street, NW., Atlanta, GA 30303.

Proposed respondent Macy's California, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 50 O'Farrell, San Francisco, CA 94108.

Proposed respondent I. Magnin, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 135 Stockton Street, San Francisco, CA 94108.

Proposed respondent Macy's Data and Credit Services Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 61 Myrtle Street, Cranford, NJ 07016.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the proposed respondents, and the proceeding is in the public interest.

3. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

4. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered into pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act, 5 U.S.C. 504 *et seq.*

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents of any of the allegations in the complaint or that any law has been violated as alleged in the draft of complaint here attached.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For the purpose of this Order, the terms "consumer," "consumer report," and "consumer reporting agency" shall be defined as provided in sections 603(c), 603(d), and 603(f), respectively, of the Fair Credit Reporting Act, 15 U.S.C. 1681a(c), 1681a(d), and 1681a(f).

I

It is ordered That respondents Macy's Northeast, Inc., Macy's South, Inc., Macy's California, Inc., I. Magnin, Inc. and Macy's Data and Credit Services Corp., their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with any application for employment, do forthwith cease and desist from:

1. Failing, whenever employment is denied either wholly or partly because of information contained in a consumer report from a consumer reporting agency, to disclose to the applicant for employment at the time such adverse action is communicated to the applicant (a) that the adverse action was based wholly or partly on information contained in such a report and (b) the

name and address of the consumer reporting agency making the report. A respondent shall not be held liable for a violation of Section 615 of the Fair Credit Reporting Act if it shows by a preponderance of the evidence that at the time of the alleged violation it maintained reasonable procedures to assure compliance with Section 615(a) of the Fair Credit Reporting Act.

2. Failing, within ninety (90) days after the date of service of this Order, to mail two (2) copies of the letter attached hereto as appendix A, completed to provide the name and address of the consumer reporting agency from which a report was obtained, to each job applicant who was denied employment by a respondent between January 1, 1990, and the date of service of this Order, based in whole or in part on information contained in a consumer report from a consumer reporting agency. Such copies of the letter shall be sent by first class mail to the last known address of the applicant that is reflected in the files of the applicable respondent, and accompanied by a copy of the Federal Trade Commission brochure attached hereto as Appendix B, copies of which are to be provided by respondents. Copies of the letter attached as Appendix A need not be sent to any applicant who was denied employment with a respondent during the time period specified above if the the respondent demonstrates that it had previously given the applicant notification that complies in all respects with the provisions of Paragraph I.1 of this Order.

II

It is further ordered That for the first six (6) years, commencing with the service of this order, respondents, their successors, and assigns shall maintain for at least one (1) year, and upon request make available to the Federal Trade Commission for inspection and copying, documents demonstrating compliance with this Order, such documents to include, but not be limited to, all written employment evaluation criteria relating to consumer reports, written instructions given to employees regarding compliance with the provisions of this Order, all notices or a written notation of the description of the form of notice and the date such notice was provided to each job applicant pursuant to any provisions of this Order, and the complete application files for all applicants for whom consumer reports were obtained for whom offers of employment are not made or have been withheld, withdrawn, or rescinded based, in whole or in part, on information contained in a consumer report.

III

It is further ordered That respondents shall, for a period of four years after the date of service of this Order, deliver a copy of this Order at least once per year to all employees responsible for respondents' compliance with Section 615(a) of the Fair Credit Reporting Act in respect of the use of consumer reports for employment purposes.

IV

It is further ordered That respondents shall, for a period of six (6) years from the date of service of this Order, notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate structure of respondents such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or divisions, or any other change in the corporation which may affect compliance obligations arising out of the Order.

V

It is further ordered That respondents shall, within one hundred twenty (120) days of the date of service of this Order, file with the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Appendix A

Dear _____: Our records show that you applied for employment to (insert name of applicable respondent) at sometime after January 1, 1990. In considering your job application, we obtained information from the consumer reporting agency identified below.

Credit Bureau of X
1234 Main Street
Anytown, USA Zip
(AC) Telephone number

Under the federal Fair Credit Reporting Act, you may learn what information is in your file by contacting this consumer reporting agency. You may obtain this information without charge if you contact the agency within the next 30 days. An extra copy of this notice is enclosed so that you may give it to the agency, should you decide to review your file.

Yours truly,
Director of Personnel

Fair Credit Reporting

If you've ever applied for a charge account, a personal loan, insurance, or a job, someone is probably keeping a file on you. This file might contain information on how you pay your bills, or whether you've been sued, arrested, or have filed for bankruptcy.

The companies that gather and sell this information are called "Consumer Reporting Agencies," or "CRA's." The most common type of CRA is the credit bureau. The information sold by CRA's to creditors, employers, insurers, and other businesses is called a "consumer report." This generally contains information about where you work and live and about your bill-paying habits.

In 1970, Congress passed the Fair Credit Reporting Act to give consumers specific rights in dealing with CRA's. The Act protects you by requiring credit bureaus to furnish correct and complete information to businesses to use in evaluating your applications for credit, insurance, or a job.

The Federal Trade Commission enforces the Fair Credit Reporting Act. Here are answers to some questions about consumer reports and CRA's:

How do I locate the CRA that has my file?

If your application was denied because of information supplied by a CRA, that agency's name and address must be supplied to you by the company you applied to. Otherwise, you can find the CRA that has your file by calling those listed in the Yellow Pages under "credit" or "credit rating and reporting." Since more than one CRA may have a file about you, call each one listed until you locate all agencies maintaining your file.

Do I have the right to know what the report says?

Yes, if you request it. The CRA is required to tell you about every piece of information in the report and, in most cases, the sources of that information. Medical information is exempt from this rule, but you can have your physician try to obtain it for you. The CRA is *not* required to give you a copy of the report, although more and more are doing so. You also have the right to be told the name of anyone who received a report on you in the past six months. (If your inquiry concerns a job application, you can get the names of those who received a report during the past two years.)

Is this information free?

Yes, if your application was denied because of information furnished by the CRA, and if you request it within 30 days of receiving the denial notice. If you don't meet these requirements, the CRA may charge a reasonable fee.

What can I do if the information is inaccurate or incomplete?

Notify the CRA. They're required to reinvestigate the items in question. If the new investigation reveals an error, a corrected version will be sent, on your request, to anyone who received your report in the past six months. (Job applicants can have corrected reports sent to anyone who received a copy during the past two years.)

What can I do if the CRA won't modify the report?

The new investigation may not resolve your disputed with the CRA. If this happens, have the CRA include your version or a summary of your version of the disputed information in your file and in future reports. At your request, the CRA will also show your version to anyone who recently received a copy of the old report. There is no charge for this service if it's requested within 30 days after you receive notice of your application

denial. After that, there may be a reasonable charge.

Do I have to go in person to get the information?

No, you may also request information over the phone. But before the CRA will provide any information, you must establish your identity by completing forms they will send you. If you do wish to visit in person, you'll need to make an appointment.

Are reports prepared on insurance and job applicants different?

If a report is prepared on you in response to an insurance or job application, it may be an *investigative* consumer report. These are much more detailed than regular consumer reports. They often involve interviews with acquaintances about your lifestyle, character, and reputation. Unlike regular consumer reports, you'll be notified in writing when a company orders an investigative report about you. This notice will also explain your right to ask for additional information about the report from the company you applied to. If your application is rejected, however, you may prefer to obtain a *complete* disclosure by contacting the CRA, as outlined in this brochure. Note that the CRA does not have to reveal the sources of the investigative information.

How long can CRA's report unfavorable information?

Generally seven years. Adverse information can't be reported after that, with certain exceptions:

- ☐ backruptcy information can be reported for 10 years;
- ☐ information reported because of an application for a job with a salary of more than $20,000 has no time limitation;
- ☐ information reported because of an application for more than $50,000 worth of credit or life insurance has no time limitation.
- ☐ information concerning a lawsuit or judgment against you can be reported for seven years or until the statute of limitations runs out, whichever is longer.

Can anyone get a coy of the report?

No, it's only given to those with a legitimate business need.

Are there other laws I should know about?

Yes, if you applied for and were denied credit, the Equal Credit Opportunity Act requires creditors to tell you the specific reasons for your denial. For example, the creditor must tell you whether the denial was because you have "no credit file" with a CRA or because the CRA says you have "delinquent obligations." This law also requires creditors to consider, upon request, additional information you might supply about your credit history.

You may wish to obtain the reason for denial from the creditor before you go to the credit bureau.

Do women have special problems with credit applications?

Married and formerly married women may encounter some common credit-related problems. For more information, write the FTC for a free brochure on "Women and Credit Histories" at the address listed below.

Where should I report violations of the law?

Although the FTC can't act as your lawyer in private disputes, information about your experiences and concerns is vital to the enforcement of the Fair Credit Reporting Act. Please send questions or complaints to the FTC, Washington, DC 20580.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Macy's Northeast, Inc., Macy's South, Inc., Macy's California, Inc., I. Magnin, Inc. and Macy's Data and Credit Services Corp. corporations hereinafter known as Macy's Northeast, Inc., et. al. ("the respondents"). Under this agreement, the respondents will cease and desist from failing to disclose required information to applicants not accepted for employment, and will mail Commission informational brochures and letters that disclose required information to all applicable applicants who were not accepted for employment during a specified period.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

This matter concerns the denial of employment based on information obtained from consumer reporting agencies. The complaint accompanying the proposed consent order alleges that in connection with their employment practices, the respondents engaged in acts and practices in violation of Section 615(a) of the Fair Credit Reporting Act and section 5(a)(1) of the Federal Trade Commission Act.

According to the complaint, the respondents have denied applications or rescinded offers for employment based in whole or in part on information supplied by consumer reporting agencies, but have failed to advise consumers that the information so supplied contributed to the adverse action taken on their applications and have failed to advise consumers of the name and address of the consumer reporting agency that supplied the information, in violation of Section 615(a) of the Fair Credit Reporting Act. The definition of the term "consumer reporting agency" includes retail loss prevention organizations or associations that compile and disseminate consumer reports on theft incidents.

Further, the complaint alleges that by their failure to comply with section 615(a) of the Fair Credit Reporting Act and pursuant to section 621(a) of the Fair Credit Reporting Act, respondents have engaged in unfair and deceptive acts or practices in or affecting commerce in violation of Section 5(a)(1) of the Federal Trade Commission Act.

The consent order contains provisions designed to ensure that the respondents do not engage in similar allegedly illegal acts and practices in the future.

Specifically, Part I of the order requires the respondents to cease and desist from failing to provide the required disclosures outlined in section 615(a) of the Fair Credit Reporting Act whenever employment is denied either wholly or partly because of information contained in a consumer report from a consumer reporting agency.

Further, Part I of the order also requires the respondents, within ninety (90) days after the date of service of the order, to mail Commission brochures and letters to each consumer denied employment between January 1, 1990, and the date the order becomes effective, based in whole or in part on information contained in a consumer report from a consumer reporting agency. Each letter to consumers against whom adverse action was taken based on a consumer report from a consumer reporting agency, must provide the name and address of the consumer reporting agency that supplied the report in question.

Part II of the order requires the respondents, their successors, and assigns to maintain documents demonstrating compliance with the order for six (6) years and to make all such documents available to the Commission upon request.

Part III of the order requires the respondents to deliver a copy of the order at least once a year for four (4) years from the date of the order to all present and future employees responsible for respondents' compliance with Section 615(a) of the Fair Credit Reporting Act.

Part IV of the order requires the respondents, for a period of six (6) years, to notify the Commission at least thirty (30) days prior to any proposed change in their corporate structure that may affect their compliance with the order.

Part V of the order requires the respondents to file a written report with the Commission within one hundred twenty (120) days after service of the order detailing the manner and form in which they have complied with the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of

the agreement and proposed order or to modify in any way their terms.

In the Matter of McDonnell Douglas Corporation, a corporation; File No. 912 3099; Agreement Containing Consent Order to Cease and Desist.

The Federal Trade Commission having initiated an investigation of certain acts and practices of McDonnell Douglas Corporation, a corporation, and it now appearing that McDonnell Douglas Corporation, a corporation, hereinafter sometimes referred to as proposed respondent, without acknowledging the violation of any law or rule or regulation, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between McDonnell Douglas Corporation, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent McDonnell Douglas Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and a principal place of business located at P.O. Box 516, Saint Louis, MO 63166-0516.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the proposed respondent, and the proceeding is in the public interest.

3. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

4. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of laws;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered into pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act, 5 U.S.C. 50 *et seq.*

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that any law has been violated as alleged in the draft of complaint here attached.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For the purpose of this Order, the terms "consumer," "consumer report," and "consumer reporting agency" shall be defined as provided in sections 603(c), 603(d), and 603(f), respectively, of the Fair Credit Reporting Act, 15 U.S.C. 1681, 1681a(c), 1681a(d), and 1681a(f).

I

It is ordered That respondent McDonnell Douglas Corporation, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with any application for employment, do forthwith cease and desist from:

1. Failing, whenever employment is denied either wholly or partly because of information contained in a consumer report from a consumer reporting agency, to disclose to the applicant for employment at the time such adverse action is communicated to the applicant (a) that the adverse action was based wholly or partly on information contained in such a report and (b) the name and address of the consumer reporting agency making the report. Respondent shall not be held liable for a violation of Section 615 of the Fair Credit Reporting Act if it shows by a preponderance of the evidence that at the time of the alleged violation it maintained reasonable procedures to assure compliance with section 615(a) of the Fair Credit Reporting Act.

2. Failing, within ninety (90) days after the date of service of this Order, to mail two (2) copies of the letter attached hereto as appendix A, completed to provide the name and address of the consumer reporting agency supplying the report to state the reasons for denial of employment with respondent based wholly or partly on information contained in the report, to each applicant who was denied employment by McDonnell Douglas Corporation between June 1, 1989, and the date this Order is issued, based on whole or in part on information contained in a consumer report from a consumer reporting agency, such copies of the letter to be sent first class mail to the last known address of the applicant that is reflected in respondent's files, and accompanied by a copy of the Federal Trade Commission brochure attached hereto as appendix B, copies of which are to be provided by respondent. Copies of the letter attached as appendix A need not be sent to any applicant who is denied employment with respondent during the time period specified above if the applicant's application file clearly shows that respondent McDonnell Douglas Corporation has previously given the applicant notification that complies in all respects with the provisions of Paragraph I.1 of this Order.

II

It is further ordered That respondent, its successors, and assigns shall maintain for at least five (5) years and upon request shall make available to the Federal Trade Commission for inspection and copying, documents demonstrating compliance with the requirements of Part I of this Order, such documents to include, but not be limited to, all employment evaluation criteria relating to consumer reports, instructions given to employees regarding compliance with the provisions of this Order, all notices provided to consumers pursuant to any provisions of this Order, and the complete application files for all applicants for whom consumer reports were obtained for whom offer of employment are not made or have been withheld, withdrawn, or rescinded based, in whole or in part, on information contained in a consumer report.

III

It is further ordered That respondent shall deliver a copy of this Order at least once per year for a period of four (4) years from the date of this Order, to all persons responsible for the respondent's compliance with Section 615(a) of the Fair Credit Reporting Act.

IV

It is further ordered That respondent shall, for a period of four (4) years from the date of this Order, notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the corporate structure of respondent such as dissolution, assignment, or sale resulting in the emergence of a successor operation, the creation or dissolution of subsidiaries or divisions, or any other change in the corporation which may affect compliance obligations arising out of the Order.

V

It is further ordered That respondent shall, within one hundred twenty (120) days of service of this Order, file with the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Appendix A

Date
Jane Doe
Street Name
City, State, 00000

Dear Ms. Doe: Sometime since June 1989, (MDC Component) ceased further processing of your employment application. This letter is to advise you that information contained in a consumer credit report may have been used, among other factors, in the decision by (MDC Component) to cease further processing of your employment application.

(MDC Component) obtained your consumer credit report from:

(Name, Address, Telephone Number of consumer reporting agency furnishing the report)

Please contact the agency listed above if you would like to learn more about the information contained in your file there.

Federal law entitles you to review your credit file for free if you were denied employment and you ask to review the file within thirty (30) days of receiving this notice. A brochure explaining your rights under the Fair Credit Reporting Act is enclosed. If you want more information about your rights, write to the Federal Trade Commission, Division of Credit Practices, Washington, DC 20580.

Sincerely,

Name

Component Employment Manager

Fair Credit Reporting

If you've ever applied for a charge account, a personal loan, insurance, or a job, someone is probably keeping a file on you. This file might contain information on how you pay your bills, or whether you've been sued, arrested, or have filed for bankruptcy.

The companies that gather and sell this information are called "Consumer Reporting Agencies," or "CRA's." The most common type of CRA is the credit bureau. The information sold by CRA's to creditors, employers, insurers, and other businesses is called a "consumer report." This generally contains information about where you work and live and about your bill-paying habits.

In 1970, Congress passed the Fair Credit Reporting Act to give consumers specific rights in dealing with CRA's. The Act protects you by requiring credit bureaus to furnish correct and complete information to businesses to use in evaluating your applications for credit, insurance, or a job.

The Federal Trade Commission enforces the Fair Credit Reporting Act. Here are answers to some questions about consumer reports and CRA's.

How do I locate the CRA that has my file?

If your application was denied because of information supplied by a CRA, the agency's name and address must be supplied to you by the company you applied to. Otherwise, you can find the CRA that has your file by calling those listed in the Yellow Pages under "credit" or "credit rating and reporting." Since more than one CRA may have a file about you, call each one listed until you locate all agencies maintaining your file.

Do I have the right to know what the report says?

Yes, if you request it. The CRA is required to tell you about every piece of information in the report and, in most cases, the sources of that information. Medical information is exempt from this rule, but you can have your physician try to obtain it for you. The CRA is *not* required to give you a copy of the report, although more and more are doing so. You also have the right to be told the name of anyone who received a report on you in the past six months. (if your inquiry concerns a job application, you can get the names of those who received a report during the past two years.)

Is this information free?

Yes, if your application was denied because of information furnished by the CRA, and if you request it within 30 days of receiving the denial notice. If you don't meet these requirements, the CRA may charge a reasonable fee.

What can I do if the information is inaccurate or incomplete?

Notify the CRA. They're requested to reinvestigate the items in question. If the new investigation reveals an error, a corrected version will be sent, on your request, to anyone who received your report in the past six months. (Job applicants can have corrected reports sent to anyone who received a copy during the past two years.)

What can I do if the CRA won't modify the report?

The new investigation may not resolve your dispute with the CRA. If this happens, have the CRA include your version or a summary of your version of the disputed information in your file and in future reports. At your request, the CRA will also show your version to anyone who recently received a copy of the old report. There is no charge for this service if it's requested within 30 days after you receive notice of your application denial. After that, there may be a reasonable charge.

Do I have to go in person to get the information?

No, you may also request information over the phone. But before the CRA will provide any information, you must establish your identity by completing forms they will send you. If you wish to visit in person, you'll need to make an appointment.

Are reports prepared on insurance and job applicants different?

If a report is prepared on you in response to an insurance or job application, it may be an *investigative* consumer report. These are much more detailed than regular consumer reports. They often involve interviews with acquaintances about your lifestyle, character, and reputation. Unlike regular consumer reports, you'll be notified in writing when a company orders an investigative report about you. This notice will also explain your right to ask for additional information about the report from the company you applied to. If your application is rejected, however, you may prefer to obtain a *complete* disclosure by contacting the CRA, as outlined in this brochure. Note that the CRA does not have to reveal the sources of the investigative information.

How long can CRA's report unfavorable information?

Generally seven years. Adverse information can't be reported after that, with certain exceptions.

- ☐ bankruptcy information can be reported for 10 years.
- ☐ information reported because of an application for a job with a salary of more than $20,000 has no time limitation;
- ☐ information reported because of an application for more than $50,000 worth of credit or life insurance has no time limitation;

- information concerning a lawsuit or judgment against you can be reported for seven years or until the statute of limitations runs out, whichever is longer.

Can anyone get a copy of the report?

No, it's only given to those with a legitimate business need.

Are there other laws I should know about?

Yes, if you applied for and were denied credit, the Equal Credit Opportunity Act requires creditors to tell you the specific reasons for your denial. For example, the creditor must tell you whether the denial was because you have "no credit file" with a CRA or because the CRA says you have "delinquent obligations." This law also requires creditors to consider, upon request, additional information you might supply about your credit history.

You may wish to obtain the reason for denial from the creditor before you go to the credit bureau.

Do women have special problems with credit applications?

Married and formerly married women may encounter some common credit-related problems. For more information, write the FTC for a free brochure on "Women and Credit Histories" at the address listed below.

Where should I report violations of the law?

Although the FTC can't act as your lawyer in private disputes, information about your experiences and concerns is vital to the enforcement of the Fair Credit Reporting Act. Please send questions or complaints to the FTC, Washington, DC 20580.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from McDonnell Douglas Corporation, a corporation ("the respondent"). Under this agreement, the respondent will cease and desist from failing to disclose required information to applicants not accepted for employment, and will mail Commission informational brochures and letters that disclose required information to all applicable applicants who were not accepted for employment during a specified two year period.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

This matter concerns the denial of employment based on information obtained from consumer reporting agencies. The complaint accompanying the proposed consent order alleges that in connection with its employment practices, the respondent engaged in acts and practices in violation of Section 615(a) of the Fair Credit Reporting Act and section 5(a)(1) of the Federal Trade Commission Act.

According to the complaint, the respondent has denied applications or rescinded offers for employment based in whole or in part on information supplied by a consumer reporting agency, but has failed to advise consumers that the information so supplied contributed to the adverse action taken on their applications and has failed to advise consumers of the name and address of the consumer reporting agency that supplied the information, in violation of section 615(a) of the Fair Credit Reporting Act.

Further, the complaint alleges that by its failure to comply with section 615(a) of the Fair Credit Reporting Act and pursuant to section 621(a) of the Fair Credit Reporting Act, respondent has engaged in unfair and deceptive acts or practices in or affecting commerce in violation of section 5(a)(1) of the Federal Trade Commission Act.

The consent order contains provisions designed to ensure that the respondent does not engage in similar allegedly illegal acts and practices in the future.

Specifically, Part I of the order requires the respondent to cease and desist from failing to provide the required disclosures outlined in section 615(a) of the Fair Credit Reporting Act whenever employment is denied either wholly or partly because of information contained in a consumer report from a consumer reporting agency.

Further, Part I of the order requires the respondent, within ninety (90) days after the date of service of the order, to mail Commission brochures and letters to each consumer denied employment between June 1, 1989, and the date the order becomes effective, based in whole or in part on information contained in a consumer report from a consumer reporting agency. Each letter to consumers against whom adverse action was taken based on a consumer report from a consumer reporting agency, must provide the name and address of the consumer reporting agency that supplied the report in question.

Part II of the order requires the respondent, its successors, and assigns to maintain documents demonstrating compliance with the order for five (5) years and to make all such documents available to the Commission upon request.

Part III of the order requires the respondent to deliver a copy of the order at least once a year for four (4) years from the date of the order to all present and future employees responsible for respondent's compliance with Section 615(a) of the Fair Credit Reporting Act.

Part IV of the order requires the respondent, for a period of 4 years, to notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure that may affect its compliance with the order.

Part V of the order requires the respondent to file a written report with the Commission within one hundred twenty (120) days after service of the order detailing the manner and form in which it has complied with the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

Concurring Statement of Commissioner Mary L. Azcuenaga in The Kobacker Company, File 912-3221, and Macy's Northeast, Inc., File 912-3166

I have voted to accept for public comment the proposed orders, which will prohibit Kobacker and Macy's from violating Section 615(a) of the Fair Credit Reporting Act. I would have preferred, however, to have ordered the respondents to make the proposed consumer redress—free copies of credit reports—more clearly available.

Under the Act, a consumer may obtain a free copy of his or her credit report if the credit report was the basis for adverse employment action. Without this link, the credit reporting agencies are permitted by the Act to "impose a reasonable charge." Because neither Kobacker nor Macy's is required by the order to tell consumers that adverse action may have been based on information from credit reporting agencies, the ability of consumers to obtain redress will depend on the willingness of the reporting agencies voluntarily to provide free copies.

The difference between Paragraph IV in the *Kobacker, McDonnell Douglas* and *Macy's* orders and the *Keystone* order raises concerns about fairness to the respondents. Certain reporting requirements that are standard in Commission orders are limited to four years for Kobacker and McDonnell Douglas and to six years for Macy's, but Keystone's obligation is not limited in time. There is no apparent justification for treating these similarly situated respondents differently. This inconsistency, with its potential for unfairness to respondents, is just one of the costs of treating standard Commission order provisions as negotiable.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

1992 Cost-of-Living Increase and Other Determinations

AGENCY: Social Security Administration, HHS.

ACTION: Notice.

SUMMARY: The Secretary has determined—

(1) A 3.7 percent cost-of-living increase in benefits under title II, effective for December 1991 (the Old-Age, Survivors, and Disability Insurance (OASDI) fund ratio, determined to be 82.2 percent for 1991, does not affect this cost-of-living increase);

(2) An increase in the Federal Supplemental Security Income (SSI) (title XVI) monthly benefit amounts for 1992 to $422 for an eligible individual, $633 for an eligible individual with an eligible spouse, and $211 for an essential person;

(3) The average of the total wages for 1990 to be $21,027.98;

(4) The amount of earnings a person must have to be credited with a quarter of coverage in 1992 to be $570;

(5) The monthly exempt amounts under the Social Security retirement earnings test for taxable years ending in calendar year 1992 to be $850 for beneficiaries age 65 through 69 and $620 for beneficiaries under age 65;

(6) The "bend points" used in the benefit formula for workers who become eligible for benefits in 1992 and in the formula for computing maximum family benefits;

(7) The deemed average wages total for 1990 to be $21,341.82;

(8) The OASDI contribution and benefit base to be $55,500 for remuneration paid in 1992 and self-employment income earned in taxable years beginning in 1992;

(9) The Hospital Insurance contribution base to be $130,200 for remuneration paid in 1992 and self-employment income earned in taxable years beginning in 1992; and

(10) The "old-law" contribution and benefit base to be $41,400 for 1992.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Kunkel, Office of the Actuary, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-3013.

SUPPLEMENTARY INFORMATION: The Secretary is required by the Social Security Act (the Act) to publish within 45 days after the close of the third calendar quarter of 1991 the benefit increase percentage and the revised table of "special minimum" benefits (section 215(i)(2)(D)). Also, the Secretary is required to publish before November 1 the average of the total wages for 1990 (section 215(i)(2)(C)(ii)) and the OASDI fund ratio for 1991 (section 215(i)(2)(C)(ii)). Finally, the Secretary is required to publish on or before November 1 the contribution and benefit base for 1992 (section 230(a)), the amount of earnings required to be credited with a quarter of coverage in 1992 (section 213(d)(2)), the monthly exempt amounts under the Social Security retirement earnings test for 1992 (section 203(f)(8)(A)), the formula for computing a primary insurance amount for workers who first become eligible for benefits or die in 1992 (section 215(a)(1)(D)), and the formula for computing the maximum amount of benefits payable to the family of a worker who first becomes eligible for old-age benefits or dies in 1992 (section 203(a)(2)(C)).

OASDI Fund Ratio

General

Section 215(i) of the Act provides for automatic cost-of-living increases in OASDI benefit amounts. This section also includes a "stabilizer" provision that can limit the automatic OASDI benefit increase under certain circumstances. If the combined assets of the OASI and DI Trust Funds, as a percentage of annual expenditures, are below a specified threshold, the automatic benefit increase is equal to the lesser of (1) the increase in average wages or (2) the increase in prices. The threshold specified for the OASDI fund ratio is 20.0 percent for benefit increases for December of 1989 and later. The law also provides for subsequent "catch-up" benefit increases for beneficiaries whose previous benefit increases were affected by this provision. "Catch-up" benefit increases can occur only when trust fund assets exceed 32.0 percent of annual expenditures.

Computation

Section 215(i) specifies the computation and application of the OASDI fund ratio. The OASDI fund ratio for 1991 is the ratio of (1) the combined assets of the OASI and DI Trust Funds at the beginning of 1991 to (2) the estimated expenditures of the OASI and DI Trust Funds during 1991, excluding transfer payments between the OASI and DI Trust Funds, and reducing any transfers to the Railroad Retirement Account by any transfers from that account into either trust fund.

Ratio

The combined assets of the OASI and DI Trust Funds at the beginning of 1991 equaled $225,277 million, and the expenditures are estimated to be $274,154 million. Thus, the OASDI fund ratio for 1991 is 82.2 percent, which exceeds the applicable threshold of 20.0 percent. Therefore, the stabilizer provision does not affect the benefit increase for December 1991. Although the OASDI fund ratio exceeds the 32.0-percent threshold for potential "catch-up" benefit increases, no past benefit increase has been reduced under the stabilizer provision. Thus, no "catch-up" benefit increase is required.

Cost-of-Living Increases

General

The cost-of-living increase is 3.7 percent for benefits under titles II and XVI of the Act.

Under title II, old-age, survivors, and disability insurance benefits will increase by 3.7 percent beginning with the December 1991 benefits, which are payable on January 3, 1992. This increase is unaffected by the stabilizer provision, as described above. This increase is based on the authority contained in section 215(i) of the Act (42 U.S.C. 415(i)).

Under title XVI, Federal SSI payment levels will also increase by 3.7 percent effective for payments made for the month of January 1992 but paid on December 31, 1991. This is based on the authority contained in section 1617 of the Act (42 U.S.C. 1382f). The percentage increase effective January 1992 is the same as the title II benefit increase and the annual payment amount is rounded, when not a multiple of $12, to the next lower multiple of $12. (The stabilizer provision does not affect SSI payment levels.)

Automatic Benefit Increase Computation

Under section 215(i) of the Act, the third calendar quarter of 1991 is a cost-of-living computation quarter for all the purposes of the Act. The Secretary is, therefore, required to increase benefits, effective with December 1991, for individuals entitled under section 227 or 228 of the Act, to increase primary insurance amounts of all other individuals entitled under title II of the Act, and to increase maximum benefits payable to a family. For December 1991, the benefit increase is the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers from the third quarter of 1990 through the third quarter of 1991. The

December 1991 benefit increase is not affected by the stabilizer provision because the OASDI fund ratio for 1991 exceeds the 20.0 percent threshold fixed by statute.

Section 215(i)(1) of the Act provides that the Consumer Price Index for a cost-of-living computation quarter shall be the arithmetic mean of this index for the 3 months in that quarter. The Department of Labor's Consumer Price Index for Urban Wage Earners and Clerical Workers for each month in the quarter ending September 30, 1990, was: for July 1990, 128.7; for August 1990, 129.9; and for September 1990, 131.1. The arithmetic mean for this calendar quarter is 129.9 (after rounding to the nearest 0.1). The corresponding Consumer Price Index for each month in the quarter ending September 30, 1991, was: for July 1991, 134.3; for August 1991, 134.6; and for September 1991, 135.2. The arithmetic mean for this calendar quarter is 134.7. Thus, because the Consumer Price Index for the calendar quarter ending September 30, 1991, exceeds that for the calendar quarter ending September 30, 1990 by 3.7 percent, a cost-of-living benefit increase of 3.7 percent is effective for benefits under title II of the Act beginning December 1991.

Title II Benefit Amounts

In accordance with section 215(i) of the Act, in the case of insured workers and family members for whom eligibility for benefit (i.e., the worker's attainment of age 62, or disability or death before age 62) occurred before 1992, benefits will increase by 3.7 percent beginning with benefits for December 1991 which are payable on January 3, 1992. In the case of first eligibility after 1991, the 3.7 percent increase will not apply.

For eligibility after 1978, benefits are generally determined by a benefit formula provided by the Social Security Amendments of 1977 (Pub. L. 95–216), as described later in this notice.

For eligibility before 1979, benefits are determined by means of a benefit table. In accordance with section 215(i)(4) of the Act, the primary insurance amounts and the maximum family benefits shown in this table are revised by (1) increasing by 3.7 percent the corresponding amounts established by the last cost-of-living increase and the last extension of the benefit table made under section 215(i)(4) (to reflect the increase in the contribution and benefit base for 1991); and (2) by extending the table to reflect the higher monthly wage and related benefit amounts now possible under the increased contribution and benefit base for 1992, as described later in this notice. A copy of this table may be obtained by writing to: Social Security Administration, Office of Public Inquiries, 4100 Annex, Baltimore, MD 21235.

Section 215(i)(2)(D) of the Act also requires that, when the Secretary determines an automatic increase in Social Security benefits, the Secretary shall publish in the **Federal Register** a revision of the range of the primary insurance amounts and corresponding maximum family benefits based on the dollar amount and other provisions described in section 215(a)(1)(C)(i). These benefits are referred to as "special minimum" benefits and are payable to certain individuals with long periods of relatively low earnings. In accordance with section 215(a)(1)(C)(i), the table below shows the revised range of primary insurance amounts and corresponding maximum family benefit amounts after the 3.7 percent benefit increase.

SPECIAL MINIMUM PRIMARY INSURANCE AMOUNTS AND MAXIMUM FAMILY BENEFITS

Special minimum primary insurance amount payable for Dec. 1990	Number of years required at minimum earnings level	Special minimum primary insurance amount payable for Dec. 1991	Special minimum family benefit payable for Dec. 1991
$23.00	11	$23.80	$35.90
45.90	12	47.50	71.70
69.10	13	71.60	107.80
92.10	14	95.50	143.40
115.20	15	119.40	179.10
138.20	16	143.30	215.40
161.30	17	167.20	251.20
184.40	18	191.20	287.00
207.50	19	215.10	322.90
230.40	20	238.90	358.90
253.80	21	263.10	394.80
276.60	22	286.80	430.50
299.90	23	310.90	466.90
322.90	24	334.80	502.70
345.90	25	358.60	538.20
369.20	26	382.80	574.70
392.20	27	406.70	610.40
415.10	28	430.40	646.10
438.10	29	454.30	682.20
461.20	30	478.20	717.80

Section 227 of the Act provides flat-rate benefits to a worker who became age 72 before 1969 and was not insured under the usual requirements, and to his or her spouse or surviving spouse. Section 228 of the Act provides similar benefits at age 72 for certain uninsured persons. The current monthly benefit amount of $167.50 for an individual under sections 227 and 228 of the Act is increased by 3.7 percent to obtain the new amount of $173.60. The present monthly benefit amount of $83.80 for a spouse under section 227 is increased by 3.7 percent to $86.90.

Title XVI Benefit Amounts

In accordance with section 1617 of the Act, Federal SSI benefit amounts for the aged, blind, and disabled are increased by 3.7 percent effective January 1992. Therefore, the yearly Federal SSI benefit amounts of $4,884 for an eligible individual, $7,320 for an eligible individual with an eligible spouse, and $2,448 for an essential person, which became effective January 1991, are increased, effective January 1992, to $5,064, $7,596, and $2,532, respectively, after rounding. The corresponding monthly amounts for 1992 are determined by dividing the yearly amounts by 12, giving $422, $633, and $211, respectively. The monthly amount is reduced by subtracting monthly countable income. In the case of an eligible individual with an eligible spouse, the amount payable is further divided equally between the two spouses.

Averages of the Total Wages for 1990

General

Under various provisions of the Act, several amounts are scheduled to increase automatically for 1992. These include (1) the contribution and benefit base, (2) the "old law" contribution and benefit base (as determined under section 230 of the Act as in effect before the 1977 amendments), (3) the Hospital Insurance contribution base, (4) the amount of earnings required for a worker to be credited with a quarter of coverage, (5) the retirement test exempt amounts, and (6) the "bend points" in the PIA and maximum family benefit formulas. Normally, all of these amounts would be based on the increase in the average of the total wages.

However, section 10208 of Public Law 101–239 (the Omnibus Budget Reconciliation Act of 1989) requires that the contribution and benefit base and the "old law" contribution and benefit base be determined under a "transitional rule" using deemed average wage amounts. Also, section 11331 of Public Law 101–508 (the Omnibus Budget Reconciliation Act of 1990) established the Hospital Insurance contribution base for 1991 and requires that this new base be automatically increased following the same procedure used for the contribution and benefit base. This results in a contribution and benefit base for the OASDI program (the OASDI contribution and benefit base) and a contribution base that is separate for the Hospital Insurance program (the Hospital Insurance contribution base). The deemed average wages and the

resulting bases are determined later in this notice.

Computation

The determination of the average wage figure for 1990 is based on the 1989 average wage figure of $20,099.55 announced in the **Federal Register** on October 31, 1990 (55 FR 45856), along with the percentage increase in average wages from 1989 to 1990 measured by annual wage data tabulated by the Social Security Administration (SSA). The average amounts of wages calculated directly from this data were $18,997.93 and $19,875.47 for 1989 and 1990, respectively. To determine an average wage figure for 1990 at a level that is consistent with the series of average wages for 1951 through 1977 (published December 29, 1978, at 43 FR 61016), we multiplied the 1989 average wage figure of $20,099.55 by the percentage increase in average wages from 1989 to 1990 (based on SSA-tabulated wage data) as follows (with the result rounded to the nearest cent):

Amount

Average wage for 1990=$20,099.55×$19,875.47÷$18,997.98=$21,027.98. Therefore, the average wage for 1990 is determined to be $21,027.98.

Quarter of Coverage Amount

General

The 1992 amount of earnings required for a quarter of coverage is $570. A quarter of coverage is the basic unit for determining whether a worker is insured under the Social Security program. For years before 1978, an individual generally was credited with a quarter of coverage for each quarter in which wages of $50 or more were paid, or an individual was credited with 4 quarters of coverage for every taxable year in which $400 or more of self-employment income was earned. Beginning in 1978, wages generally are no longer reported on a quarterly basis; instead, annual reports are made. With the change to annual reporting, section 352(b) of the Social Security Amendments of 1977 (Pub. L. 95–216) amended section 213(d) of the Act to provide that a quarter of coverage would be credited for each $250 of an individual's total wages and self-employment income from calendar year 1978 (up to a maximum of 4 quarters of coverage for the year).

Computation

Under the prescribed formula, the quarter of coverage amount for 1992 shall be equal to the 1978 amount of $250 multiplied by the ratio of (1) the average amount, per employee, of total wages for calendar year 1990 to (2) the average amount of those wages reported for calendar year 1976. The section further provides that if the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Average Wages

The average wage for calendar year 1976 was previously determined to be $9,226.48. This was published in the **Federal Register** on December 29, 1978, at 43 FR 61016. The average wage for calendar year 1990 has been determined to be $21,027.98 as stated above.

Quarter of Coverage Amount

The ratio of the average wage for 1990, $21,027.98, compared to that for 1976, $9,226.48, is 2.2790902. Multiplying the 1978 quarter of coverage amount of $250 by the ratio of 2.2790902 produces the amount of $569.77, which must then be rounded to $570. Accordingly, the quarter of coverage amount is determined to be $570 for 1992.

Retirement Earnings Test Exempt Amounts

(a) Beneficiaries Aged 70 or Over. Beginning with months after December 1982, there is no limit on the amount of individual aged 70 or over may earn and still receive Social Security benefits.

(b) Beneficiaries Aged 65 Through 69. The retirement earnings test monthly exempt amount for beneficiaries aged 65 though 69 is stated in the Act at section 203(f)(8)(D) for years 1978 through 1982. A formula is provided in section 203(f)(8)(B) for computing the exempt amount applicable for years after 1982. The monthly exempt amount for 1991 was determined by this formula to be $810. Under the formula, the exempt amount for 1992 shall be the 1991 exempt amount multiplied by the ratio of (1) the average amount, per employee, of the total wages for calendar year 1990 to (a) the average amount of those wages for calendar year 1989. The section further provides that if the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Average Wages

The average wage for 1990, as determined above, is $21,027.98. Therefore, the ratio of the average wages for 1990, $21,027.98, compared to that for 1989, $20,099.55, is 1.0461916.

Exempt Amount for Beneficiaries Aged 65 through 69

Multiplying the 1991 retirement earnings test monthly exempt amount of $810 by the ratio of 1.0461916 produces the amount of $847.42. This must then be rounded to $850.

The retirement earnings test monthly exempt amount for beneficiaries aged 65 through 69 is determined to be $850 for 1992. The corresponding retirement earnings test annual exempt amount for these beneficiaries is $10,200.

(c) Beneficiaries Under Age 65. Section 203 of the Act provides that beneficiaries under age 65 have a lower retirement earnings test monthly exempt amount than those beneficiaries aged 65 through 69. The exempt amount for beneficiaries under age 65 is determined by a formula provided in section 203(f)(8)(B) of the Act. Under the formula, the monthly exempt amount for beneficiaries under age 65 is $590 for 1991. The formula provides that the exempt amount for 1992 shall be the 1991 exempt amount for beneficiaries under age 65 multiplied by the ratio of (1) the average amount, per employee, of the total wages for calendar year 1990 to (2) the average amount of those wages for calendar year 1989. The section further provides that if the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Average Wages

The average wages for 1990, as determined above, is $21,027.98. Therefore, the ratio of the average wages for 1990, $21,027.98, compared to that of 1989, $20,099.55, is 1.0461916.

Exempt Amount for Beneficiaries Under Age 65

Multiplying the 1991 retirement earnings test monthly exempt amount of $590 by the ratio 1.0461916 produces the amount of $617.25. This must then be rounded to $620. The retirement earnings test monthly exempt amount for beneficiaries under age 65 is thus determined to be $620 for 1992. The corresponding retirement earnings test annual exempt amount for these beneficiaries is $7,440.

Computing Benefits After 1978

General

The Social Security Amendments of 1977 provided a new method for determining an individual's primary insurance amount. This method uses a formula based on "wage indexing" and was fully explained with interim regulations and final regulations published in the **Federal Register** on December 29, 1978, at 43 FR 60877 and July 15, 1982, at 47 FR 30731 respectively. It generally applies when a worker first becomes eligible for benefits after 1978.

The formula uses the worker's earnings after they have been adjusted, or "indexed," in proportion to the increase in average wages of all workers. Using this method, we determine the worker's "average indexed monthly earnings." We then compute the primary insurance amount, using the worker's average indexed monthly earnings. The computation formula is adjusted automatically each year to reflect changes in general wage levels.

Average Indexed Monthly Earnings

To ensure that a worker's future benefits reflect the general rise in the standard of living that occurs during his or her working lifetime, we adjust or "index" the workers' past earnings to take into account the change in general wage levels that has occurred during the worker's years of employment. These adjusted earnings are then used to compute the worker's primary insurance amount.

For example, to compute the average indexed monthly earnings for a worker attaining age 62, becoming disabled before age 62, or dying before attaining age 62, in 1992, we divide the average of the total wages for 1990, $21,027.98, by the average of the total wages for each year prior to 1990 in which the worker had earnings. We then multiply the actual wages and self-employment income as defined in section 211(b) of the Act credited for each year by the corresponding ratio to obtain the worker's adjusted earnings for each year. After determining the number of years we must use to compute the primary insurance amount, we pick those years with highest indexed earnings, total those indexed earnings and divide by the total number of months in those years. This figure is rounded down to the next lower dollar amount, and becomes the average indexed monthly earnings figure to be used in computing the worker's primary insurance amount for 1992.

Computing the Primary Insurance Amount

The primary insurance amount is the sum of three separate percentages of portions of the average indexed monthly earnings. In 1979 (the first year the formula was in effect), these portions were the first $180, the amount between $180 and $1,085, and the amount over $1,085. The dollar amounts in the formula which govern the portions of the average indexed monthly earnings are frequently referred to as the "bend points" of the formula. Thus, the bend points for 1979 were $180 and $1,085.

The bend points for 1992 are obtained by multiplying the corresponding 1979 bend-point amounts by the ratio between the average of the total wages for 1990, $21,027.98, and for 1977, $9,779.44. These results are then rounded to the nearest dollar. For 1992, the ratio is 2.1502233. Multiplying the 1979 amounts of $180 and $1,085 by 2.1502233 produces the amounts of $387.04 and $2,332.99. These must then be rounded to $387 and $2,333. Accordingly, the portions of the average indexed monthly earnings to be used in 1992 are determined to be the first $387, the amount between $387 and $2,333, and the amount over $2,333.

Consequently, for individuals who first become eligible for old-age insurance benefits or disability insurance benefits in 1992, or who die in 1992 before becoming eligible for benefits, we will compute their primary insurance amount by adding the following:

(a) 90 percent of the first $387 of their average indexed monthly earnings, plus

(b) 32 percent of the average indexed monthly earnings over $387 and through $2,333, plus

(c) 15 percent of the average indexed monthly earnings over $2,333.

This amount is then rounded to the next lower multiple of $.10 if it is not already a multiple of $.10. This formula and the adjustments we have described are contained in section 215(a) of the Act (42 U.S.C. 415(a)).

Maximum Benefits Payable to a Family

General

The 1977 amendments continued the long established policy of limiting the total monthly benefits which a worker's family may receive based on his or her primary insurance amount. Those amendments also continued the then existing relationship between maximum family benefits and primary insurance amounts but did change the method of computing the maximum amount of benefits which may be paid to a worker's family. The Social Security Disability Amendments of 1980 (Pub. L. 96–265) established a new formula for computing the maximum benefits payable to the family of a disabled worker. This new formula is applied to the family benefits of workers who first become entitled to disability insurance benefits after June 30, 1980, and who first become eligible for these benefits after 1978. The new formula was explained in a final rule published in the **Federal Register** on May 8, 1981, at 46 FR 25601. For disabled workers initially entitled to disability benefits before July 1980, or whose disability began before 1979, the family maximum payable is computed the same as the old-age and survivor family maximum.

Computing the Old-Age and Survivor Family Maximum

The formula used to compute the family maximum is similar to that used to compute the primary insurance amount. It involves computing the sum of four separate percentages of portions of the worker's primary insurance amount. In 1979, these portions were the first $230, the amount between $230 and $332, the amount between $332 and $433, and the amount over $443. The dollar amounts in the formula which govern the portions of the primary insurance amount are frequently referred to as the "bend points" of the family-maximum formula. Thus, the bend points for 1979 were $230, $332, and $433.

The bend points for 1992 are obtained by multiplying the corresponding 1979 bend-point amounts by the ratio between the average of the total wages for 1990, $21,027.98, and the average for 1977, $9,779.44. This amount is then rounded to the nearest dollar. For 1992, the ratio is 2.1502233. Multiplying the amounts of $230, $332, and $433 by 2.1502233 produces the amounts of $494.55, $713.87, and $931.05. These amounts are then rounded to $495, $714, and $931. Accordingly, the portions of the primary insurance amounts to be used in 1992 are determined to be the first $495, the amount between $495 and $714, the amount between $714 and $931, and the amount over $931.

Consequently, for the family of a worker who becomes age 62 or dies in 1992 before age 62, the total amount of benefits payable to them will be computed so that it does not exceed:

(a) 150 percent of the first $495 of the worker's primary insurance amount, plus

(b) 272 percent of the worker's primary insurance amount over $495 through $714, plus

(c) 134 percent of the worker's primary insurance amount over $714 through $931, plus

(d) 175 percent of the worker's primary insurance amount over $931.

This amount is then rounded to the next lower multiple of $.10 if it is not already a multiple of $.10. This formula and the adjustments we have described are contained in section 203(a) of the Act (42 U.S.C. 403(a)).

Deemed Average of the Total Wages Under Transitional Rule

General

Section 10208 of Public Law 101–239, which amended section 209 of the Act (42 U.S.C. 409), provides a transitional

rule for computing the average of the total wages used in the formula for determining the contribution and benefit base and the "old-law" contribution and benefit base. The transitional rule was used to determine the bases for 1990 and 1991, and will be used herein to determine both bases for 1992. In accordance with section 11331 of Public Law 101-508, the transitional rule also applies in determining the Hospital Insurance contribution base for 1992.

Computation

The determination of the deemed average wage figure for 1990 is based on the 1989 deemed average wage figure of $20,486.23 announced in the **Federal Register** on October 31, 1990 (55 FR 45856), along with the percentage increase in the average of wages, excluding contributions to certain deferred compensation plans, for 1989 to the average of wages including such contributions for 1990, as measured by annual wage data tabulated by SSA. The average amounts of wages calculated directly from this data were $18,997.93 and $20,172.11 for 1989 and 1990, respectively. To determine the deemed average wage figure for 1990, we multiplied the 1989 deemed average wage figure of $20,486.23 by the percentage increase in average wages from 1989 to 1990 (based on SSA-tabulated wage data) as follows (with the result rounded to the nearest cent):

Amount

Deemed average wage for 1990 = $20,486.23 × $20,172.11 ÷ $ 18,997.93 = $21,341.82. Therefore, the deemed average wage for 1990 is determined to be $21,341.82.

OASDI Contribution and Benefit Base

General

The contribution and benefit base is $55,500 for remuneration paid in 1992 and self-employment income earned in taxable years beginning in 1992.

The contribution and benefit base serves two purposes:

(a) It is the maximum annual amount of earnings on which Old-Age, Survivors and Disability Insurance taxes are paid.

(b) It is the maximum annual amount used in determining a person's OASDI benefits.

Computation

Section 230(c) of the Act provides a table with the contribution and benefit base for each year 1978, 1979, 1980, and 1981. For years after 1981, section 230(b) of the Act contains a formula for determining the contribution and benefit base. This formula was amended by section 10208 of Public Law 101-239 to substitute deemed average wage amounts for average wage amounts. Under the prescribed formula, the contribution and benefit base for 1992 shall be equal to the 1991 base of $53,400 multiplied by the ratio of (1) the deemed average amount, per employee, of total wages for the calendar year 1990 to (2) the deemed average amount of those wages for the calendar year 1989. Section 230(b) further provides that if the amount so determined is not multiple of $300, it shall be rounded to the nearest multiple of $300.

Deemed Average Wages

The deemed average wage for calendar year 1989 was previously determined to be $20,486.23. The deemed average wage for calendar year 1990 has been determined to be $21,341.82, as stated above.

Amount

The ratio of the deemed average wage for 1990, $21,341.82, compared to the deemed average wage for 1989, $20,486.23, is 1.0417642. Multiplying the 1991 contribution and benefit base amount of $53,400 by the ratio of 1.0417642 produces the amount of $55,630.21 which must then be rounded to $55,500. Accordingly, the contribution and benefit base is determined to be $55,500 for 1992.

Hospital Insurance Contribution Base

General

Section 11331 of Public law 101-508 established a separate contribution base for the Hospital Insurance program, equal to $125,000 for 1991. This base is the maximum annual amount of earnings on which Hospital Insurance taxes are paid. The new legislation requires that the Hospital Insurance contribution base be adjusted each year, following the same method used to adjust the OASDI contribution and benefit base. The Hospital Insurance contribution base is $130,200 for remuneration paid in 1992 and self-employment income earned in taxable years beginning in 1992.

Computation

The Hospital Insurance contribution base for 1992 shall be equal to the 1991 base of $125,000 multiplied by the ratio of (1) the deemed average amount, per employee, of total wages for the calendar year 1990 to (2) the deemed average amount of those wages for the calendar year 1989. If the amount so determined is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Deemed Average Wages

The deemed average wage for calendar year 1989 was previously determined to be $20,486.23. The deemed average wage for calendar year 1990 has been determined to be $21,341.82, as stated above.

Amount

The ratio of the deemed average wage for 1990, $21,341.82, compared to the deemed average wage for 1989, $20,486.23, is 1.0417642. Multiplying the 1991 Hospital Insurance contribution base amount of $125,000 by the ratio of 1.0417642 produces the amount of $130,220.53 which must then be rounded to $130,200. Accordingly, the Hospital Insurance contribution base is determined to be $130,200 for 1992.

"Old-Law" Contribution and Benefit Base

General

The 1992 "old-law" contribution and benefit base is $41,400. This is the base that would have been effective under the Act without the enactment of the 1977 amendments. The base is computed under section 230(b) of the Act as it read prior to the 1977 amendments.

The "old-law" contribution and benefit base is used by:

(a) the Railroad Retirement program to determine certain tax liabilities and tier II benefits payable under that program to supplement the tier I payments which correspond to basic Social Security benefits,

(b) the Pension Benefit Guaranty Corporation to determine the maximum amount of pension guaranteed under the Employee Retirement Income Security Act (as stated in section 230(d) of the Act), and

(c) Social Security to determine a "year of coverage" in computing the "special minimum" benefit and in computing benefits for persons who are also eligible to receive pensions based on employment not covered under section 210 of the Act.

Computation

The base is computed using the automatic adjustment formula in section 230(b) of the Act as it read prior to the enactment of the 1977 amendments, but as amended by section 10208 of Public Law 101-239. Under the formula, the "old-law" contribution and benefit base shall be the "old-law" 1991 base multiplied by the ratio of (1) the deemed average amount, per employee, of total wages for the calendar year of 1990 to (2) the deemed average amount of those wages for the calendar year of 1989. If

the amount so determined is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Deemed Average Wages

The deemed average wage for calendar year 1989 was previously determined to be $20,486.23. The deemed average wage for calendar year 1990 has been determined to be $21,341.82, as stated above.

Amount

The ratio of the deemed average wage for 1990, $21,341.82, compared to the deemed average wage for 1989, $20,486,23, is 1.0417642. Multiplying the 1991 "old-law" contribution and benefit base amount of $39,600 by the ratio of 1.0417642 produces the amount of $41,253.86 which must then be rounded to $41,400. Accordingly, the "old-law" contribution and benefit base is determined to be $41,400 for 1992.

Catalog of Federal Domestic Assistance: Program Nos. 93.800 Medicare-Hospital Insurance; 93.802 Social Security-Disability Insurance; 93.803 Social Security-Retirement Insurance; 93.804 Social Security-Special Benefits for Persons Aged 72 and Over; 93.805 Social Security-Survivors Insurance; 93.807 Supplemental Security Income.

Dated: October 21, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

[FR Doc. 91-25677 Filed 10-24-91; 8:45 am]

BILLING CODE 4190-29-M

Health Resources and Services Administration

Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92-463, the Annual Report for the following Health Resources and Service Administration's Federal Advisory Committee has been filed with the Library of Congress:

Maternal and Child Health Research Grants Review Committee Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, DC, or weekdays between 9 a.m. and 4:30 p.m. at the Department of Health and Human Services, Department Library, HHS North Building, room G-619, 330 Independence Avenue, SW., Washington, DC, telephone (202) 619-0791. Copies may be obtained from: Gontran Lamberty, Dr. P.H., Executive Secretary, Maternal and Child Health Research Grants Review Committee, room 9-08, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-2190.

Dated: October 21, 1991.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 91-25734 Filed 10-24-91; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

Availability of Request for Applications

[RFA Available: NIH-NIEHS-ES-92-01]

RFA TITLE: Hazardous Materials and Waste Worker Health and Safety Training

National Institute of Environmental Health Sciences

Letter of Intent Receipt Date: December 24, 1991.

Application Receipt Date: January 24, 1992.

I. Purpose

The National Institute of Environmental Health Sciences (NIEHS) invites applications for cooperative agreements for training and education of workers engaged in activities related to hazardous materials and waste generation, removal, containment, transportation and emergency response.

The major objective of this solicitation is to prevent work-related harm by assisting in the training of workers in how best to protect themselves and their communities from exposure to hazardous materials encountered during hazardous waste operations or emergency response. A variety of sites, such as those involved with chemical waste clean-up and remedial action and transportation-related chemical emergency response may pose severe health and safety concerns. These are often characterized by the multiplicity of substances present, the presence of unknown substances, and the general uncontrolled condition of the site. A major goal of this program is to assist organizations with development of institutional competency to provide appropriate training and education to hazardous materials and waste workers.

II. Healthy People 2000

NIEHS is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000", a priority-setting process for federal public health activities. This RFA, Hazardous Materials and Waste Worker Health and Safety Training, is related to the priority areas of occupational health and environmental health in the health protection initiative. Potential applicants may obtain a copy of "Healthy People 2000" (Full Report: Stock No. 017-001-00474-0) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone 202-783-3238).

III. Eligibility Requirements

Applicants must be nonprofit organizations which demonstrate expertise and experience in implementing and operating training and education programs for workers. Such organizations must demonstrate the ability to reach and involve in training programs target populations of workers. Any nonprofit organization providing worker health and safety education and training may apply.

IV. Mechanism of Support

Awards will be made as cooperative agreements. No commitment of funds will be made beyond Fiscal Year 1994. During FY 1992, NIEHS plans to fund between 15 and 20 cooperative agreements in response to this RFA. Awards authorized under SARA section 126(g) will be made for up to three years with annual renewal based on availability of funds, staff review of progress toward achieving training objectives, and submission of copies of all training and educational materials used under the award to NIEHS. The anticipated starting date for the initial annual period will be September 1, 1992.

The cooperative agreement is an assistance instrument similar in most ways to a grant. It differs in that in addition to the standard stewardship role, the NIEHS program administrator is expected to have a continuing substantive role in one or more technical aspects of the program. The type and degree of this substantial programmatic involvement is specified in the terms and conditions of the cooperative agreement. The awardee will have lead responsibilities in all aspects of the program including any technical modifications to the curriculum, conduct of the training, and quality control.

Applicants are expected to furnish their own estimates of the time required to achieve specific training and education objectives of the proposed training program and conduct appropriate program evaluations. Any substantial modification in the program scope and objectives must be mutually agreed upon by the awardee institution and NIEHS. Because of the varied target audiences for the proposed training and education programs, it is anticipated

that a variety of approaches will be responsive to this announcement and that there will be a range of costs among individual awards.

V. Training Objectives

Training programs shall satisfy minimum requirements for hazardous waste workers and emergency responders as specified in Federal Occupational Safety and Health Administration and other regulations which have been or may be promulgated. Training programs shall also meet the minimum requirements specified in the Minimum Criteria for Worker Health and Safety Training for Hazardous Waste Operations and Emergency Response, published April, 1990 as a result of an NIEHS-sponsored technical workshop on training quality. Previous successful experience in conducting worker training programs for these purposes will be heavily weighted.

Awards will be made for direct student and worker-trainer training, technical support of training, and training program evaluation. It is believed that adequate curricula and training materials exist for worker training that can be adapted with minimal effort. Means of multiplying training are also encouraged to meet the need; thus programs such as effective train-the-trainer programs are encouraged. Programs targeted to multi-state and nationwide coverage to reach wider worker populations will be given preference in review and funding. Applications will not be considered that cover municipalities or other jurisdictions covering less than two states. Programs are encouraged to develop plans to become self sufficient. Program proposals should include plans for reaching undeserved workers in the proposed target populations especially those disadvantaged in education, culture, or language or limited in literacy.

VI. Review Procedures

Review of applications will not include a site visit for additional information. Therefore, it is essential that the application be as complete as possible. Applications will be reviewed on a competitive basis for technical merit by an ad hoc peer review committee convened by the NIEHS. This committee will be primarily composed of non-government members with expertise in occupational health and safety training related to hazardous materials, waste operations and emergency response. The second level of review will be conducted by the National Advisory Environmental Health Sciences Council.

VII. Application Procedures

Applications for Hazardous Materials and Waste Worker Health and Safety Training Grants should be submitted on the most recent revision, October 1988, reprinted September 1989 of the Grant Application Form PHS 398. This form is usually available in the sponsored programs office at academic institutions. However, since this form is used primarily for traditional NIH research and training assistance, several sections have to be modified and expanded to provide additional information needed for worker training assistance applications. Applicants may request a copy of Form PHS 398 from the Application Kits, Office of Grants Inquiries, Division of Research Grants, NIH, Room 253, 5333 Westbard Avenue, Bethesda, MD 20892–4500. Special Instructions and the Request for Worker Training Applications (RFA) are available from the Program Administrator, Worker Training Grants Program, NIEHS at the address listed below.

VIII. Inquiries

NIEHS welcomes the opportunity to clarify any issues or questions from potential applicants concerning this RFA. Technical inquiries regarding the objectives and scope of this RFA may be directed to:

Denny Dobbin, Program Administrator, Worker Training Grants Program, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709–2233, telephone: (919) 541–0752.

Financial management inquiries may be directed to:

Carol Matheny, Grants Management Specialist, Grants Management Branch, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709–2233, telephone: (919) 541–2930.

IX. Authority and Regulations

This program is described in the Catalog of Federal Domestic Assistance, No. 93.142, Superfund Worker Training Grants. Awards will be made under the authority of the Public Health Service Act, Title III, Section 301 (Public Law 78–410, as amended; 42 USC 241) and Section 126(g) of the Superfund Amendments and Reauthorization Act of 1986 and administered under PHS grant policies and Federal Regulations 42 CFR Part 52 and 45 CFR Part 74. This program is not subject to the intergovernmental review requirements of Executive Order 12372 or Health Systems Agency review. The program is administered according to 42 CFR Part 45, part 74 and part 92, DHHS Administration of Grants; 42 CFR Part 65, Special Regulations for National Institute of Environmental Health Sciences Hazardous Waste Worker Training; the PHS Grants Administration Manual; and PHS Grants Policy Statement.

Dated: October 21, 1991.

Kenneth Olden,

Director.

[FR Doc. 91–25706 Filed 10–24–91; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institutes; Meeting

Notice is hereby given of the meeting of the National High Blood Pressure Education Program Coordinating Committee, sponsored by the National Heart, Lung, and Blood Institute on Friday November 1, 1991, from 8:30 a.m. to 1 p.m. The meeting will be held at the Hyatt Regency Bethesda Hotel, One Bethesda Metro Center, Bethesda, Maryland 20814, (301) 657–1234.

The entire meeting is open to the public. The Coordinating Committee is meeting to define the priorities, activities, and needs of the participating groups in the National High Blood Pressure Education Program. Attendance by the public will be limited to space available.

For the detailed program information, agenda, list of participants, and meeting summary, contact: Dr. Edward J. Roccella, Coordinator, National High Blood Pressure Education Program, Office of Prevention, Education and Control, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, room 4A05, Bethesda, Maryland 20892, (301) 496–0554.

Dated: October 21, 1991.

Bernadine Healy,

Director, NIH.

[FR Doc. 91–25794 Filed 10–24–91; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Meeting of the Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee (AMS) of the National

Institute of Arthritis and Musculoskeletal and Skin Diseases on October 28, 1991, Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland.

The meeting will be open to the public on October 28 from 8:30 a.m. to 9 a.m. to discuss administrative details or other issues relating to the committee activities. Attendance by the public will be limited to space available.

The meeting will be closed to the public on October 28 from 9 a.m. to adjournment in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92-463, for the review, discussion and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The reason this notice is being published less than 15 days before the meeting is that there was difficulty in arranging the schedules of the attendees.

Further information concerning this meeting may be obtained from Dr. Theresa Lo, Executive Secretary, Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee, NIAMS, Westwood Building, room 5A07, Bethesda, Maryland 20892, (301) 496-0754.

Ms. Suzanne Sangalan, Committee Management Officer, National Institute of Arthritis and Musculoskeletal and Skin Diseases, National Institutes of Health, Building 31, room 4C27, Bethesda, Maryland 20892, 301-496-0803, will provide summaries of the meeting and roster of the committee members upon request.

(Catalog of Federal Domestic Assistance Program No. 93.846, project grants in arthritis, musculoskeletal and skin diseases research, National Institutes of Health)

Dated: October 3, 1991.

Samuel C. Rawlings,

Acting NIH Committee Management Officer.

[FR Doc. 91-25795 Filed 10-24-91 8:45 am]

BILLING CODE 4140-01-M

Prospective Grant of Exclusive Patent License

AGENCY: National Institute of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent Application Serial Number 7/304,281, "DNA Encoding a Growth Factor Specific for Epithelial Cells," to Amgen Inc. having a place of business at Thousand Oaks, California. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The present invention relates to a new cell-specific epithelial growth factor, keratinocyte growth factor (KGF). This invention augments data on epithelial cell proliferation, from which many human malignancies arise, and may find commercial applications in wound healing, artificial replacement skin, gastrointestinal ulcers and other circumstances related to the regulation of epithelial cell proliferation.

The availability of the invention for licensing was published in the **Federal Register** February Vol. 55, No. 138, p. 29255 (July 18, 1990.)

A copy of this patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Ms. Nina M. Siegler, Office of Technology Transfer, 6003 Executive Boulevard, NIH-339P, Rockville, MD 29852 (telephone: (301) 496-0750; FAX: (301) 402-0220.

Dated: October 9, 1991.

Reid G. Adler,

Director, Office of Technology Transfer.

[FR Doc. 91-25705 Filed 10-24-91; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on September 27, 1991.

(Call PHS Reports Clearance Officer on 202-245-2100 for copies of request)

1. Alcohol, Drug Abuse, and Mental Health Services Block Grant Reporting Requirements—0930-0080—Public Law 100-690, as amended by Public Law 101-74, extends the statutory requirement for annual applications and annual reports describing the intended and actual uses of allotments to the States under the Alcohol, Drug Abuse, and Mental Health Services Block Grant. The information from these reports is used by Congress, the agency, States, and the general public. Respondents: State and local governments; Number of Respondents: 60; Number of Responses per Respondent: 2; Average Burden per Response: 350 hours; Estimated Annual Burden: 42,000 hours.

2. Patent Term Restoration Regulations (Regulatory Review Period Revisions—Due Diligence)—0910-0233—This information collection enables patent term extension applicants, patent holders, and interested parties to request revisions to regulatory review period determinations, file due diligence petitions and request hearings. Respondents: Individuals or households; Businesses or other for-profit; Small businesses or organizations. Number of Respondents: 1; Number of Responses per Respondent: 1; Average Burden per Response: 1 hours; Estimated Annual Burden: 1 hour. (Note: Burden estimate reflects receipt of no submissions during the past three years).

3. Premarket Notification Submission (510(k)), Subpart E—0910-0120—Manufacturers wishing to distribute new or modified medical devices must submit a premarket notification to FDA 90 days before marketing. FDA reviews the notification and determines whether the product is substantially equivalent to a preamendments device. Those which are equivalent may be marketed immediately, and those which are not may not be marketed without further evaluation. Respondents: Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations. Number of Respondents: 5,400; Number of Responses per Respondent: 1; Average Burden per Response: 16.2 hours; Estimated Annual Burden: 87,600 hours.

4. Application for the National Institutes of Health AIDS Research Loan Repayment Program—0925-0361—

The information collection will be used by the PHS to determine an applicant's eligibility for participation in the NIH AIDS Research Loan Repayment Program. Respondents: Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations.

	Number of respondents	Number of responses per respondent	Average burden for response (hours)
Applicant	25	1	9.5
Lender	25	6	.25
State/other entity	5	1	.5

Estimated total annual burden.....277 hours

5. American Stop Smoking Intervention Study for Cancer Prevention (ASSIST) Baseline Evaluation: "Tobacco Use Supplement to the Current Population Survey"—New—The "Tobacco Use" Supplement to the Current Population Survey conducted by the Bureau of the Census will collect data from the civilian, non-institutionalized population on smoking status and prevalence, smoking intervention dissemination, and changes in smoking norms and attitudes. The data will be used by the National Cancer Institute to evaluate the effectiveness of the American Stop Smoking Intervention Study for Cancer Prevention (ASSIST), a large-scale multi-stage demonstration project. Respondents: Individuals or households. Number of Respondents: 115,200; Number of Responses per Respondent: 1.034; Average Burden per Response: .114 hours; Estimated Annual Burden: 13,582 hours.

6. QMAR Quick Launch Physician Practice Survey—New—The Office of Medical Application of Research (OMAR) will conduct surveys of physicians to evaluate changes in their practice behavior related to biomedical technologies, and practices which are assessed in Consensus Development conferences (CDC). For each CDC, identical surveys will be conducted at three times: one-year before, just before, and one-year following CDC. Respondents: Individuals or households; Businesses or other for-profit; Small businesses, or organizations. Number of Respondents: 8,400; Number of Responses per Respondent: 1; Average Burden per Response: .17 hours; Estimated Annual Burden: 1,428 hours.

7. Bureau Common Reporting Requirements (BCRR) Forms—0915-0004—The BCRR data are provided by health centers receiving Federal grants and/or using National Health Service Corps personnel. The data are needed for program monitoring, evaluation, and integration, and to identify grantees in need of technical assistance. Respondents: Non-profit institutions.

	Number of respondents	Number of responses per respondent	Number of hours per response
Annual report	894	1	25
Mid-year report	50	1	10

Estimated Annual Burden..... 22,850

OMB Desk Officer: Shannah Koss-McCallum

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated above at the following address: Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: October 21, 1991.

Phyllis Zucker,

Acting Deputy Assistant Secretary for Public Health Policy.

[FR Doc. 91-25802 Filed 10-24-91; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-1917; FR-2934-N-49]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: October 25, 1991.

ADDRESS: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD publishes a Notice, on a weekly basis, to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C). Today's Notice is for the purpose of announcing that no additional properties have been reviewed for suitability this week.

Dated: October 18, 1991.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 91-25455 Filed 10-24-91; 8:45 am]

BILLING CODE 4210-25-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-060-4332-02]

Battle Mountain District Advisory Council Meeting in Beatty, NV

October 16, 1991.

SUMMARY: Notice is hereby given in accordance with Public Law 94-579 and CFR part 1780 that a meeting of the Battle Mountain District Advisory Council will be held on Wednesday, November 20, 1991. The meeting will convene at 9 a.m. at the Community Center in Beatty, Nevada. In the afternoon a field tour will be conducted.

SUPPLEMENTARY INFORMATION: The agenda will include:

1. Resource Management Plan for Tonopah Resource Area.
2. Biological opinion on Desert Tortoise.
3. FY '92 budget update.
4. Field Trip to Rhyolite Bottle House.

The meeting is open to the public. Interested persons may make oral statements beginning at 11 on November 20, 1991. If you wish to make an oral statement, please contact James D. Currivan by 4:30 p.m., November 15, 1991.

FOR FURTHER INFORMATION CONTACT: James D. Currivan, District Manager, P.O. Box 1420, Battle Mountain, Nevada, 89820 or phone (702) 635-4000.

Dated: October 16, 1991.

Michael Mitchel,

Acting District Manager, Battle Mountain, Nevada.

[FR Doc. 91-25667 Filed 10-24-91; 8:45 am]

BILLING CODE 4310-HC-M

[CO-050-4830-12]

Canon City District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with Public law 94-579 that the Canon City District Advisory Council (DAC) Meeting will be held Thursday, November 14, 1991, 10:30 a.m. to 5 p.m. and Friday, November 15, 1991, 8:30 a.m. to 11:30 a.m. at the Canon City District Office, 3170 East Main, Canon City, Colorado.

The meeting agenda will include:

1. Briefing and question and answer session on the Royal Gorge Resource Area Wild and Scenic River Proposal.

2. DAC work session on the Wild and Scenic River Proposal. The Council will be working toward a recommendation on this issue.

3. DAC discussion on the Garden Park Fossil Area.

4. Public presentations to the council (open invitation). The meeting is open to the public. Persons interested may make oral presentations to the council at 11:30 a.m. November 14, or they may file written statements for the council's consideration. The District Manager may limit the length of oral presentations depending on the number of people wishing to speak.

ADDRESSES: Anyone wishing to make oral or written presentation to the council should notify the District Manager, Bureau of Land Management. P.O. Box 220, 3170 East Main, Canon City, Colorado 81215-2200, by November 13, 1991.

FOR FURTHER INFORMATION CONTACT: Ken Smith (719) 275-0631.

SUPPLEMENTARY INFORMATION: Summary of minutes of the meeting will be available for public inspection and reproduction during regular working hours at the District Office approximately 30 days following the meeting.

Stuart L. Freer,

Associate District Manager.

[FR Doc. 91-25670 Filed 10-24-91; 8:45 am]

BILLING CODE 4310-JB-M

[CA-060-43-7122 08 1016] (CA 28227)

Realty Action, California Desert District, Exchange of Public and Private Lands in San Bernardino County, and Private Lands in San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of Public Lands, San Bernardino County, California.

SUMMARY: BLM proposes to exchange public land in order to achieve more efficient management of the public land through consolidation of ownership. The following specific described public lands, located in San Bernardino County are being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, (43 U.S.C. 1716):

San Bernardino Meridian, California

T. 7 N., R. 5 W.,
Section 19: SE¼
Section 20: W½W½
Comprising 320 acres, more or less.

In exchange for these lands the United States will acquire from Byron L. Rafnson of Hesperia, California, the following offered private lands within the Western Mojave Land Tenure Adjustment Area:

Mount Diablo Meridian, California

T. 32 S., R. 44 E.,
Section 7: All
Section 9: All
Section 16: All
Section 17: All

The offered non-Federal lands are comprised of 2560.00 acres, more or less; and will be acquired by the United States in fee simple, surface and all minerals.

EFFECTIVE DATE: October 25, 1991.

FOR FURTHER INFORMATION CONTACT: For a period of forty-five (45) days, interested parties may submit comments to Neal S. DeLude, Barstow Resource Area, 150 Coolwater Lane, Barstow, California 92311.

SUPPLEMENTARY INFORMATION: On June 6, 1991 all of the selected public lands described above within sections 19 and 20, T. 7 N., R. 5 W., SBM were segregated from appropriation under the public land laws and the mining laws, but not the mineral leasing laws, by publication of the exchange base segregation notice for the Western Mojave Land Tenure Adjustment Project (56 FR 109, pp. 26137-26139). The period of segregation is for a two year period ending June 5, 1993.

The lands to be transferred from the United States will be subject to the following reservations and rights-of-way.

1. A reservation to the United States of a right-of-way for ditches and canals constructed by the authority of the United States: Act of August 30, 1890 (43 U.S.C. 945).

2. The right to itself, its permittees or licensees to enter upon, occupy and use any part or all of the SE¼, Section 19, T. 7 N., R. 5 W., SBM; lying within 40 feet of the centerline of the transmission line right-of-way of the Southern California Edison, Serial No. CACA 21596, (Power Site classification Number 241 established by Secretarial Order dated November 11, 1929).

3. A right-of-way for a transmission line, S 026974, dated August 22, 1912 by Act of Congress dated February 15, 1901: Formerly I 02165 as per amended location LA 015185 dated May 6, 1919. This right-of-way is across Section 19, T. 7 N., R. 5 W., SBM.

4. A right-of-way for a transmission line, CA-16390, dated June 24, 1988 by Act of Congress dated October 21, 1976. This is a 100 foot wide right-of-way which has not been constructed yet. This will be across section 19, T. 7 N., R. 5 W., SBM.

The selected public land parcel will be subject to the following Right-of-Way easement.

1. California State Highway 395 transects the property in the SW¼ of the SE¼ of section 19, T. 7 N., R. 5 W., SBM, in a north-south direction. It is established by RS2477 legislation.

Dated: October 18, 1991.

Jean Rivers-Council,

Acting District Manager.

[FR Doc. 91-25671 Filed 10-24-91; 8:45 am]

BILLING CODE 4310-40-M

[G-010-G1-0125-4212-13: NMNM 65196]

Issuance of Exchange Conveyance Document and Order Providing for Opening of Public Land in San Juan Co.; NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 319.36 acres of public land out of Federal ownership. This action will also open 440.00 acres of reconveyed land to the operation of the public land laws.

FOR FURTHER INFORMATION CONTACT: Farmington Resource Area Manager, 1235 La Plata Highway, Farmington, New Mexico 87401.

SUPPLEMENTARY INFORMATION: The United States issued an exchange conveyance document to ANACAPA, Inc., a New Mexico Corporation, on July 19, 1991, for the surface estate described land in San Juan County, New Mexico, pursuant to Section 206 of the Act of October 21, 1976 (43 U.S.C. 1716):

New Mexico Principal Meridian

T. 31 N., R. 10 W.,
sec. 4, lot 5.
T. 30 N., R. 11 W.,
sec. 2, lot 5;
sec. 10, lot 2;
sec. 15, lots 5 and 7.
T. 31 N., R. 11 w.,
sec. 35, NE¼SE¼ and S½SE¼.
Containing 319.36 acres.

In exchange for the surface estate in the land described above, ANACAPA, Inc., reconveyed to the United States the surface estate in the following described land located in San Juan County, New Mexico:

New Mexico Principal Meridian

T. 31 N., R. 10 W.,
sec. 10, NE¼SE¼ and W½SE¼;
sec. 14, SW¼NW¼;
sec. 15, S½NE¼ and SE¼NW¼;
sec. 23, NE¼SW¼ and N½SE¼;
sec. 24, NW¼SW¼.
Containing 440.00 acres.

The purpose of the exchange was to acquire non-Federal land which has high public values for wildlife habitat and recreational opportunities. The change in ownership pattern will also enhance both public and private ownership in the exchange area.

The exchange was consistent with the Farmington Resource Management Plan approved July 1988. The public interest was served through the completion of this exchange.

The values of the Federal public land and the non-Federal land in the exchange were appraised at $152,400.00 and $145,200.00, respectfully. An equalization payment of $7,200.00 was paid to the United States.

At 9 am. on November 25, 1991, the land reconveyed to the United States shall be open to the operation of the public land laws, generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All applications received at or prior to 9 am. on November 25, 1991, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: October 15, 1991.

Monte G. Jordan,

Associate State Director.

[FR Doc. 91-25732 Filed 10-24-91; 8:45 am]

BILLING CODE 4310-FB-M

[G-010-G1-0126-4212-13; NMNM 77281]

Issuance of Exchange Conveyance Document and Order Providing for Opening of Public Land in San Juan Co.; NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 10.00 acres of public land out of Federal ownership. This action will also open 120.00 acres of reconveyed land to the operation of the public land laws.

FOR FURTHER INFORMATION CONTACT: Farmington Resource Area Manager, 1235 La Plata Highway, Farmington, New Mexico 87401.

SUPPLEMENTARY INFORMATION: The United States issued an exchange conveyance document to Kenneth W. Larsen, Trustee, on August 15, 1991, for the surface estate in the following described land in San Juan County, New Mexico, pursuant to Section 206 of the Act of October 21, 1976 (43 U.S.C. 1716):

New Mexico Principal Meridian

T. 29 N., R. 11 W.,
sec. 27, N½NW¼NW¼SW¼;
sec. 34, W½NW¼NW¼NW¼.
Containing 10.00 acres.

In exchange for the surface estate in the land described above, Kenneth W. Larsen conveyed to the United States the surface estate in the following described land located in San Juan County, New Mexico:

New Mexico Principal Meridian

T. 32 N., R. 6 W.,
sec. 20, NW¼NW¼.
T. 31 N., R. 7 W.,
sec. 29, S½NW¼NE¼ and N½NE¼NE¼.
T. 32 N., R. 7 W.,
sec. 20, W½E½SE¼.
Containing 120.00 acres.

The purpose of the exchange was to acquire non-Federal land offering high public values for recreation, wildlife habitat, and rangeland resources. The change in ownership pattern will also enhance Bureau of Land Management management potential with the Farmington Resource Area.

The exchange was consistent with the Farmington Resource Management Plan approved July 1988. Other resource activity plans that benefit from "blocking up" land include the Pump Mesa and Middle Mesa Allotment Management Plans and Rosa/Middle Mesa Habitat Management Plan. The public interest was served through the completion of this exchange.

The values of the Federal public land and the non-Federal land in the exchange were appraised at $45,000.00 and $40,000.00, respectfully. An equalization payment of $5,000.00 was paid to the United States.

At 9:00 a.m. on November 25, 1991 the land reconveyed to the United States shall be open to the operation of the public land laws, generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All applications received at or prior to 9:00 am. on November 25, 1991, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: October 15, 1991.

Monte G. Jordan,

Associate State Director.

[FR Doc. 91-25733 Filed 10-24-91; 8:45 am]

BILLING CODE 4310-FB-M

[UT-050-01-4211-10]

Preparation of Transportation Plan

AGENCY: Bureau of Land Management.

ACTION: Preparation of the Henry Mountain Resource Area Transportation Plan.

SUMMARY: The time frames for presenting evidence about the status of R.S. 2477 rights of way has been extended to December 13, 1991. Anyone wishing to present evidence about the status of these roads for this process should contact Kay Erickson, Henry Mountain Resource Area, P.O. Box 99, Hanksville, UT 84734.

Dated: October 16, 1991.

Jerry Goodman,

District Manager Richfield District.

[FR Doc. 91-25672 Filed 10-24-91; 8:45 am]

BILLING CODE 4310-DQ-M

National Park Service

Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Golden Gate National Recreation Area Advisory Commission will be held at 7:30 p.m. (PST) on Thursday, November 7, 1991, at Building 201, Fort Mason, San Francisco, California. The Advisory Commission was established by Public Law 92-589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the

solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties.

Members of the Commission are as follows:

Mr. Richard Bartke, Chairman
Ms. Amy Meyer, Vice Chair
Mr. Ernest Ayala
Dr. Howard Cogswell
Brig. Gen. John Crowley, USA (ret)
Mr. Margot Patterson Doss
Mr. Neil D. Eisenberg
Mr. Jerry Friedman
Mr. Steve Jeong
Ms. Daphne Greene
Ms. Gimmy Park Li
Mr. Gary Pinkston
Mr. Merritt Robinson
Mr. R.H. Sciaroni
Mr. John J. Spring
Dr. Edgar Wayburn
Mr. Joseph Williams

The main agenda item at this public meeting will be a San Francisco Committee Report on the Use Policy for the Great Meadow and the San Francisco Blues Festival.

Use of the Great Meadow at Fort Mason was addressed in the Golden Gate National Recreation Area General Management Plan. Largely intended for casual recreation use, the Great Meadow has occasionally been the site of public events, including bike-a-thons, and since 1982, the San Francisco Blues Festival. The growth of the San Francisco Blues Festival into a major event in terms of scale and type, has necessitated an assessment by the park on the use of the Great Meadow.

The San Francisco Committee will make recommendations to the full Advisory Commission regarding the Use Policy for the Great Meadow, with special reference to the San Francisco Blues Festival, and the Commission will hear public comments.

The meeting will also contain a Superintendent's Report.

This meeting is open to the public. It will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. A transcript will be available after November 28, 1991. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Dated: October 17, 1991.

John Cherry,

Acting Regional Director, Western Region.

[FR Doc. 91-25675 Filed 10-24-91; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 12, 1991. Pursuant to § 60.13 of the 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC. 20013-7127. Written comments should be submitted by November 12, 1991.

Patrick Andrus, Acting,

Chief of Registration, National Register.

KENTUCKY

Jefferson County

Harrods Creek Historic District (Louisville and Jefferson County MRA), Jct. of Upper River and Wolf Pen Branch Rds., Harrods Creek, 91001679

LOUISIANA

East Carroll Parish

Byerley House, Jct. of Lake and Ingram Sts., Lake Providence, 91001681

St. Martin Parish

Patin House, 219 W. Bridge St., Breaux Bridge, 91001680

NEW JERSEY

Atlantic County

Estellville Glassworks Historic District, Roughly bounded by Estell Manor Park, Stevens Cr. and NJ 50, Estell Manor City, 91001678

NEW YORK

Nassau County

Long Island Rail Road Station at Farmingdale, Along LIRR tracks between Farmingdale and Forest Aves., Farmingdale, 91001677

TEXAS

Bexar County

Smith—Young Tower, 310 S. St. Mary's St., San Antonio, 91001682

[FR Doc. 91-25770 Filed 10-24-91; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31930]

Canton Railroad Co., Inc.—Trackage Rights Exemption—Maryland Mass Transit Administration

The Maryland Mass Transit Administration (MTA) has agreed to grant trackage rights to the Canton Railroad Company, Inc. (Canton), a Class III rail common carrier owned by the State of Maryland, over approximately 5.78 miles of railroad track, formerly owned and operated by the Baltimore & Annapolis Railroad Company (B&A), between the point of connection with CSX Transportation, Inc. (CSXT), at CSXT milepost 0.0, Clifford Junction, MD, and the end of the line, at a point known as Dorsey, near Glen Burnie, MD.[1] MTA and Canton have concluded an operating agreement, pursuant to which Canton will provide freight service over MTA's line. The trackage rights were to become effective on or after October 9, 1991.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Robert L. Calhoun, Sullivan & Worcester, suite 806, 1025 Connecticut Avenue, NW., Washington, DC 20036.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to Norfolk and Western Ry. Co.—Trackage Rights—Bn, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Dated: October 15, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-25615 Filed 10-23-91; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31929]

Maryland Mass Transit Administration—Acquisition and Operation Exemption—Baltimore & Annapolis Railroad Co.

The Maryland Mass Transit Administration (MTA), an agency of the Maryland Department of Transportation (MDOT), has filed a notice of exemption to acquire and operate approximately

[1] MTA's acquisition of the B&A line is the subject of a concurrently filed Notice of Exemption under 49 CFR 1150.31. See Finance Docket No. 31929, Maryland Mass Transit Administration—Acquisition and Operation Exemption—Baltimore & Annapolis Railroad Company. Also, because both Canton and MTA are under the control of the Maryland Department of Transportation (MDOT), a concurrent Notice of Exemption for approval of MDOT's continuance in control of MTA and Canton has been filed pursuant to 49 CFR 1180.2(d)(2) in Finance Docket No. 31931, Maryland Department of Transportation—Continuance in Control Exemption—Maryland Mass Transit Administration.

5.78 miles of rail line (and other railroad routes) between the point of connection with CSX Transportation, Inc. (CSXT), at CSXT milepost 0.0, Clifford Junction, MD, to the end of the line, at a point known as Dorsey, near Glen Burnie, MD.[1] The line is owned by the Baltimore & Annapolis Railroad Company (B&A), which has concluded a sale agreement with MTA. This transaction became effective on October 9, 1991.[2]

Any comments must be filed with the Commission and served on: Robert L. Calhoun, Sullivan & Worcester, Suite 806, 1025 Connecticut Avenue, N.W., Washington, DC 20036.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: October 15, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-25616 Filed 10-24-91; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31931]

Maryland Department of Transportation—Continuance in Control Exemption—Maryland Mass Transit Administration

The Maryland Department of Transportation (MDOT) has filed a notice of exemption to continue to control the Maryland Mass Transit Administration (MTA) upon MTA becoming a carrier. MTA, a noncarrier, has concurrently filed a notice of exemption in Finance Docket No. 31929, Maryland Mass Transit Administration—Acquisition and Operation Exemption Baltimore & Annapolis Railroad Company, to purchase and operate an approximately 5.78-mile line between the point of connection with CSX Transportation, Inc. (CSXT), at CSXT milepost 0.0, Clifford Junction, MD, and the end of the line, at a point known as Dorsey, near Glen Burnie, MD.[1]

MDOT, an executive department of the State Maryland, owns and controls Canton Railroad Company, Inc., a Class III rail common carrier. MDOT indicates that: (1) This transaction does not involve railroads that connect with each other; (2) the continuance in control is not a part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a Class I carrier. The transaction therefore is exempt from the prior approval requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the commission and served on: Robert L. Calhoun, Sullivan & Worcester, suite 806, 1025 Connecticut Avenue, NW., Washington, DC 20036.

Decided: October 15, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-25617 Filed 10-24-91; 8:45 am]

BILLING CODE 7035-01-M

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[1] A Notice of Exemption has been concurrently filed in Finance Docket No. 31930, Carton Railroad Company Inc.—Trackage Rights Exemption—Maryland Mass Transit Administration pursuant to 49 CFR 1180.2(d)(7), wherein MTA will grant trackage rights for the provision of freight service over the line to be acquired here to the Canton Railroad Canton Inc. (Canton) a Class III rail common carrier owned by the State of Maryland. A Notice of Exemption has also been concurrently filed in Finance Docket No. 31931, Maryland Department Transportation—Continuance in Control Exemption—Maryland Mass Transit Administration, filed pursuant to 49 CFR 1180.2(d)(2), wherein MDOT seeks to continue in control of MTA and Canton.

[2] The parties indicate that the transaction was to have been consummated on October 2, 1991, the same date that MTA filed its notice of the transaction with the Commission. Under the Commission's rules, however, an exemption under 49 CFR 1150, subpart D—Exempt Transaction, will be effective 7 days after the notice is filed.

[1] In a related proceeding, Finance Docket No. 31930, Canton Railroad Company, Inc.—Trackage Rights Exemption—Maryland Mass Transit Administration, MTS has agreed to grant trackage rights for the provision of freight service on the line to the Canton Railroad Company, Inc.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 91-22]

Houba, Inc. Culver, Indiana; Hearing

SUMMARY: Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR) this is notice of an adjudicatory hearing regarding the application of Houba, Inc. (Houba) for registration as a bulk manufacturer of the Schedule II controlled substance methylphenidate. A notice, dated May 20, 1991, naming the applicant and stating that the applicant has applied to be registered as a bulk manufacturer of the Schedule II controlled substance methylphenidate was published in the **Federal Register** on May 28, 1991 (56 FR 24096). By letter dated June 18, 1991, MD Pharmaceutical Inc. (MD Pharmaceutical) filed an objection and a request for hearing on the matter, in accordance with § 1301.43(a).

DATES: The hearing will commence at 10 a.m. on December 3, 1991, at the Drug Enforcement Administration Headquarters, 600 Army Navy Drive, Hearing Room, room E-2103, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Ms. Helen Farmer, Hearing Clerk, Drug Enforcement Administration, Washington, DC 20537; Telephone (202) 307-8188.

SUPPLEMENTARY INFORMATION: On May 28, 1991, a notice was published in the **Federal Register** (56 FR 24096) announcing the proposed registration of Houba as a bulk manufacturer of the Schedule II controlled substance methylphenidate in its generic form. A prehearing ruling issued by the administrative law judge on October 8, 1991, required all parties to file, on or before October 15, 1991, a summary of comments and objections regarding the application of Houba as a bulk manufacturer of methylphenidate.

On October 15, 1991, all parties submitted summaries of comments and objections to Houba's application for registration. This notice acknowledges the filing of comments by attorneys representing Houba and the Office of Chief Counsel of DEA (herein the Agency) and objections by counsel for MD Pharmaceutical on the application for registration of Houba to manufacture in bulk the controlled substance methylphenidate.

Agency Comments

The Drug Enforcement Administration, through counsel, maintains that direct experience in the manufacture and distribution of controlled substances is relevant to the determination of whether Houba meets the public interest criteria of 21 U.S.C. 823(a). In addition, the Agency argues that where a corporate subsidiary does not have appropriate experience the fitness of the experienced parent corporation is relevant. The Agency further maintains that "good manufacturing practices," as defined in

the Food, Drug and Cosmetic Act and its attendant regulations, is also relevant to this inquiry.

MD Pharmaceutical Comments and Objections

MD Pharmaceutical intends to show that the registration of Houba to manufacture methylphenidate in its generic form is not consistent with the public interest pursuant to 21 U.S.C. 823(a). MD Pharmaceutical seeks to establish that Houba has not satisfied all the public interest requirements by showing that:

(1) Houba is wholly-owned subsidiary of Halsey Drug Company (Halsey) which is in a position to control Houba's management and operations; therefore, the public interest criteria listed in 21 U.S.C. 823(a) should be applied to both Houba and Halsey;

(2) Halsey has not maintained effective controls against diversion, specifically in accounting for significant losses of controlled substances and in keeping accurate records;

(3) There is currently an adequate and uninterrupted supply of methylphenidate for legitimate purposes in the United States under adequately competitive conditions;

(4) It is possible that Houba and Halsey are not in compliance with applicable state and local law;

(5) There is no indication that the registration of Houba will promote technical advances in the art of manufacturing controlled substances and the development of new substances;

(6) There is some indication that Halsey is under active investigation for fraudulent practices relating to controlled and uncontrolled substances;

(7) The Food and Drug Administration recently found Halsey was illegally marketing a controlled substance under the Food, Drug, and Cosmetic Act (FDCA);

(8) Houba has no experience in the manufacture of controlled substances;

(9) FDA cited Houba's president for violating the FDCA by suggesting that its egg-yolk product was intended for use in the treatment of AIDS;

(10) Houba's application is premature and unnecessary because neither Houba nor Halsey has submitted a New Drug Application and an Abbreviated New Drug Application to the FDA for approval to market methylphenidate.

Houba Comments

Houba intends to establish that it has met the requirements of 21 U.S.C. 823(a) and, therefore, qualifies for registration as a manufacturer of methylphenidate. Houba seeks to establish it has satisfied all of the requirements section 823(a) by showing the following:

(1) Houba can produce an adequate and uninterrupted supply of methylphenidate for legitimate medical, scientific, research and industrial purposes;

(2) Houba has taken every step necessary to ensure that it is able to maintain effective controls against diversion of methylphenidate;

(3) There are presently inadequate competitive conditions for the sale of methylphenidate, and the presence of Houba in the generic methylphenidate market will greatly increase competition thereby decreasing prices to the consumer and benefiting the public health and safety;

(4) Houba has complied with all applicable state and local law;

(5) The registration of Houba will promote technical advances in the art of manufacture, distribution or dispensing of controlled substances;

(6) Neither Houba nor any of its employees have been convicted under federal or state law in relation to the manufacture, distribution or dispensing of controlled substances;

(7) Houba has past experience in the manufacture of methylphenidate;

(8) Houba personnel have extensive experience in the manufacturing of a variety of pharmaceutical products and have experience in implementing and managing controls necessary to prevent the diversion of controlled substances;

(9) Houba operates on an independent basis from its parent corporation, Halsey Drug Company, and thus must be considered on its own merits;

(10) MD Pharmaceutical has raised no objections to Houba itself, but rather only to the parent corporation, Halsey.

Notice is hereby given that a hearing with respect to the bulk manufacture of the controlled substance methylphenidate will be conducted pursuant to the provisions of 5 U.S.C. 552 *et seq.* and 21 CFR 1301.43 *et seq.* and 1316.41 *et seq.* Every interested person desiring to participate in the hearing shall file a written notice of intention to participate, in duplicate, with the Hearing Clerk, Office of the Administrative Law Judge, Drug Enforcement Administration, Washington, DC 20537, within 30 days after the date of publication of this notice of hearing in the Federal Register. Each notice of intention to participate must be in the form prescribed in 21 CFR 1316.48. The entities whose comments and/or objections have been referenced above need not file a notice of intention to participate.

The hearing will be held on December 3 and 4, 1991, in the Hearing Room at the Drug Enforcement Administration Headquarters, 600 Army-Navy Drive, Arlington, Virginia.

Dated: October 21, 1991.

Robert C. Bonner,

Administrator, Drug Enforcement Administration.

[FR Doc. 91-25680 Filed 10-24-91; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-25,247]

Damson Oil Corp. Headquartered in Houston, TX and Operating at Various Locations in the Following States

TA-W-25,247A	California.
TA-W-25,247B	Colorado.
TA-W-25,247C	Illinois.
TA-W-25,247D	Indiana.
TA-W-25,247E	Louisiana.
TA-W-25,247F	Montana.
TA-W-25,247G	New Mexico.
TA-W-25,247H	North Dakota.
TA-W-25,247I	Oklahoma.
TA-W-25,247J	Pennsylvania.
TA-W-25,247K	Texas (except Houston).
TA-W-25,247L	Wyoming.
TA-W-25,247M	New York.

Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 26, 1991, applicable to all workers of Damson Oil Corporation, headquartered in Houston, Texas and operating at various locations in California, Colorado, Illinois, Indiana, Louisiana, Montana, North Dakota, Oklahoma, Pennsylvania, Texas (except Houston), and Wyoming. The certification was published in the Federal Register on March 19, 1991 (56 FR 11579). The Department subsequently amended the certification to show a new impact date of January 31, 1991. The amended certification was published in the Federal Register on April 2, 1991 (56 FR 13499).

At the request of the New York State Agency, the Department is amending the certification by including the State of New York. New information from the company shows that several layoffs occurred in the State of New York during the coverage period. The intent of

the certification is to include all workers of Damson Oil Corporation headquartered in Houston, Texas and operating at various locations in the above cited States.

The amended notice applicable to TA-W-25,247 is hereby issued as follows:

All workers of Damson Oil Corporation, headquartered in Houston, Texas (TA-W-25,247) and operating at various locations in California, Colorado, Illinois, Indiana, Louisiana, Montana, New Mexico, North Dakota, Oklahoma, Pennyslvania, Texas (except Houston), Wyoming and New York who became totally or partially separated from employment on or after January 31, 1991 are eligible to apply for adjustment assistance under section 233 of the Trade Act of 1974.

Signed at Washington, DC, this 17th day of October 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-25755 Filed 10-24-91; 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 November 4, 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 November 4, 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 15th day of October, 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
Weldotron Corp (IUE)	Piscataway, NJ	10/15/91	10/02/91	26,423	Packaging Equipment.
Brown Sharpe Mfg Co, PTD/MSD (Wkrs).	N Kingstown, RI	10/15/91	09/25/91	26,424	Measuring Machines.
Coulson Heel Co (Wkrs)	Hanover, PA	10/15/91	09/23/91	26,425	Shoe Components.
Debbi-Jo Frocks (Wkrs)	Shenandoah, PA	10/15/91	09/30/91	26,426	Ladies' Apparel.
Digital Equipment Corp. (Wkrs)	Colorado Springs, CO	10/15/91	10/04/91	26,427	Computer Disk Drives.
Drilling Measurements, Inc. (Wkrs)	Broussard, LA	10/15/91	09/30/91	26,428	Oil.
Echo Bay Mines (Wkrs)	Republic, WA	10/15/91	09/17/91	26,429	Gold and Silver.
Euro Knit Inc. ILGWU	Brooklyn, NY	10/15/91	09/30/91	26,430	Sweaters.
Globe Steel Abrasive Co USWA	Mansfield, OH	10/15/91	10/01/91	26,431	Steel Shot.
Halliburton Logging Services, Inc (Wkrs).	Farmington, NM	10/15/91	09/19/91	26,432	Oil and Gas.
Halliburton Logging Services, Inc (Wkrs).	Abilene, TX	10/15/91	09/27/91	26,433	Oil and Gas.
Hewlett Packard (Wkrs)	Rockaway, NJ	10/15/91	10/02/91	26,434	Electronic Measuring Equipment.
M. Liman Co. ACTWU	Minneapolis, MN	10/15/91	10/04/91	26,435	Ladies' Coats and Jackets.
M. Liman Co. ACTWU	Onamia, MN	10/15/91	10/04/91	26,436	Ladies' Coats and Jackets.
M. Liman Co. ACTWU	Lake City, MN	10/15/91	10/04/91	26,437	Ladies' Coats and Jackets.
Maple Gas Corporation (Wkrs)	Fritch, TX	10/15/91	10/03/91	26,438	Natural Gas Liquids.
Parform Foundations Inc. ILGWU	Brooklyn, NY	10/15/91	09/30/91	26,439	Bathing Suits.
Premiere Acquisition Corp. (Wkrs)	Fairfield, VA	10/15/91	10/03/91	26,440	Activewear.
Quarles Drilling Corp (Co.)	Tulsa, OK	10/15/91	10/03/91	26,441	Oil and Gas.
Quarles Drilling Corp (Co.)	Wheatland, OK	10/15/91	10/03/91	26,442	Oil and Gas.
Quarles Drilling Corp (Co.)	Belle Chasse, LA	10/15/91	10/03/91	26,443	Oil and Gas.
RC Industries (Co.)	New Brunswick, NJ	10/15/91	04/11/91	26,444	Fire Extinguishers.
Sherwin-Williams Co. OCAW	Chicago, IL	10/15/91	09/25/91	26,445	Coatings for Industrial uses.
Stroehman Bakeries, Inc. (Wkrs)	Williamsport, PA	10/15/91	09/30/91	26,446	Cakes.
Tuboscope, Inc./Coating Plant (Wkrs)	Mills, WY	10/15/91	10/03/91	26,447	Oilfield Tubular Goods.
Al Kamen Coat Co. ILGWU	West Bergen, NJ	10/15/91	10/02/91	26,448	Coats.
Western Company of North America (Wkrs).	Kilgore, TX	10/15/91	09/28/91	26,449	Oil and Gas.
Worthington Pumps USWA	Harrison, NJ	10/15/91	01/19/91	26,450	Pumps and Compressors.

[FR Doc. 91-25756 Filed 10-24-91; 8:45 am]

BILLING CODE 4510-30-M

Labor Surplus Area Classifications Under Executive Orders 12073 and 10582; Annual List of Labor Surplus Areas

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

DATES: The annual list of labor surplus areas is effective October 1, 1991, through September 30, 1992.

SUMMARY: The purpose of this notice is to announce the annual list of labor surplus areas.

FOR FURTHER INFORMATION CONTACT: William J. McGarrity, Labor Economist, Employment and Training Administration, 200 Constitution Avenue, NW., room N-4470, Attention: TEESS, Washington, DC 20210. Telephone: 202-535-0189.

SUPPLEMENTARY INFORMATION: Executive Order 12073 requires executive agencies to emphasize procurement set-asides in labor surplus areas. The Secretary of Labor is responsible under that Order for classifying and designating areas as labor surplus areas. Executive agencies should refer to Federal Acquisition Regulation part 20 (48 CFR part 20) in order to assess the impact of the labor surplus area program on particular procurement.

Under Executive Order 10582 executive agencies may reject bids or offers of foreign materials in favor of the lowest offer by a domestic supplier, provided that the domestic supplier undertakes to produce substantially all of the materials in areas of substantial unemployment as defined by the Secretary of Labor. The preference given to domestic suppliers under Executive Order 10582 has been modified by Executive Order 12260. Federal Acquisition Regulation part 25 (48 CFR part 25) implements Executive Order 12260. Executive agencies should refer to Federal Acquisition Regulation part 25 in procurements involving foreign businesses or products in order to assess its impact on the particular procurements.

The Department of Labor regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR part 654, subparts A and B. Subpart A requires the Assistant Secretary of Labor to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. Pursuant to those regulations the Assistant Secretary of Labor is publishing the annual list of labor surplus areas.

Subpart B of part 654 states that an area of substantial unemployment for purposes of Executive Order 10582 is any area classified as a labor surplus area under subpart A. Thus, labor surplus areas under Executive Order 12073 are also areas of substantial unemployment under Executive Order 10582.

The areas described below have been classified by the Assistant Secretary of Labor as labor surplus areas pursuant to 20 CFR 654.5(b) (48 FR 15615, April 12, 1983) and are effective October 1, 1991, through September 30, 1992.

The list of labor surplus areas is published for the use of all Federal agencies in directing procurement activities and locating new plants or facilities.

Signed at Washington, DC on October 16, 1991.

Roberts T. Jones,

Assistant Secretary of Labor.

Labor Surplus Areas Eligible for Federal Procurement Preference

[October 1, 1991 through September 30, 1992]

Eligible labor surplus areas	Civil jurisdictions included
ALABAMA	
Anniston City	Anniston City in Calhoun County.
Autauga County	Autauga County.
Barbour County	Barbour County.
Bessemer City	Bessemer City in Jefferson County.
Bibb County	Bibb County.
Birmingham City	Birmingham City in Jefferson County.
Bullock County	Bullock County.
Butler County	Butler County.
Chambers County	Chambers County.
Cherokee County	Cherokee County.
Chilton County	Chilton County.
Choctaw County	Choctaw County.
Clarke County	Clarke County.
Clay County	Clay County.
Cleburne County	Cleburne County.
Colbert County	Colbert County.
Conecuh County	Conecuh County.
Covington County	Covington County.
Crenshaw County	Crenshaw County.
Cullman County	Cullman County.
Dale County	Dale County.
De Kalb County	De Kalb County.
Decatur City	Decatur City in Morgan County.
Escambia County	Escambia County.
Fayette County	Fayette County.
Florence City	Florence City in Lauderdale County.
Franklin County	Franklin County.
Gadsden City	Gadsden City in Etowah County.
Greene County	Greene County.
Hale County	Hale County.
Jackson County	Jackson County.
Lamar County	Lamar County.
Lawrence County	Lawrence County.
Lowndes County	Lowndes County.
Macon County	Macon County.
Marengo County	Marengo County.
Marion County	Marion County.
Marshall County	Marshall County.
Mobile City	Mobile City in Mobile County.
Balance of Mobile County.	Mobile County less Mobile City.
	Prichard City.
Monroe County	Monroe County.
Perry County	Perry County.
Phenix City	Phenix City in Lee County
	Russell County.
Pickens County	Pickens County.
Prichard City	Prichard City in Mobile County.
Randolph County	Randolph County.
Selma City	Selma City in Dallas County.
Sumter County	Sumter County.
Talladega County	Talladega County.

Labor Surplus Areas Eligible for Federal Procurement Preference—Continued

[October 1, 1991 through September 30, 1992]

Eligible labor surplus areas	Civil jurisdictions included
Walker County	Walker County.
Washington County	Washington County.
Wilcox County	Wilcox County.
Winston County	Winston County.
ALASKA	
Fairbanks City	Fairbanks City in Fairbanks North Star Borough.
Balance of Fairbanks North Star Borough.	Fairbanks North Star Borough less Fairbanks City.
Haines Borough	Haines Borough.
Kenai Peninsula Borough	Kenai Peninsula Borough.
Ketchikan Gateway Borough.	Ketchikan Gateway Borough.
Matanuska-Susitna Borough.	Matanuska-Susitna Borough.
Nome Census Area	Nome Census Area.
Northwest Arctic Borough.	Northwest Arctic Borough.
Prince of Wales Outer Ketchikan.	Prince of Wales Outer Ketchikan.
Skagway Yakutat Angoon Cens Area.	Skagway Yakutat Angoon Cens Area.
Southeast Fairbanks Census Area.	Southeast Fairbanks Census Area.
Valdez Cordova Census area.	Valdez Cordova Census area.
Wade Hampton Census area.	Wade Hampton Census area.
Wrangell-Petersburg Census area.	Wrangell-Petersburg Census area.
Yukon-Koyukuk Census area.	Yukon-Koyukuk Census area.
ARIZONA	
Apache County	Apache County.
Balance of Coconino County.	Coconino County less Flagstaff City.
Gila County	Gila County.
Graham County	Graham County.
Greenlee County	Greenlee County.
La Paz County	La Paz County.
Navajo County	Navajo County.
Pinal County	Pinal County.
Santa Cruz County	Santa Cruz County.
Sierra Vista City	Sierra Vista City in Cochise County.
Yuma City	Yuma City in Yuma County.
Balance of Yuma County	Yuma County less Yuma City
ARKANSAS	
Ashley County	Ashley County.
Baxter County	Baxter County.
Bradley County	Bradley County.
Chicot County	Chicot County.
Cleburne County	Cleburne County.
Cleveland County	Cleveland County.
Conway City	Conway City in Faulkner County.
Conway County	Conway County.
Crawford County	Crawford County.
Balance of Crittenden County.	Crittenden County less West Memphis City.
Cross County	Cross County.
Dallas County	Dallas County.
Desha County	Desha County.
Drew County	Drew County.
El Dorado City	El Dorado City in Union County.
Balance of Faulkner County.	Faulkner County less Conway City.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1991 through September 30, 1992]

Eligible labor surplus areas	Civil jurisdictions included
Fort Smith City	Fort Smith City in Sebastian County.
Franklin County	Franklin County.
Fulton County	Fulton County.
Balance of Garland County.	Garland County less Hot Springs City.
Greene County	Greene County.
Hempstead County	Hempstead County.
Hot Spring County	Hot Spring County.
Hot Springs City	Hot Springs City in Garland County.
Howard County	Howard County.
Independence County	Independence County.
Jackson County	Jackson County.
Jacksonville City	Jacksonville City in Pulaski County.
Balance of Jefferson County.	Jefferson County less Pine Bluff City.
Johnson County	Johnson County.
Lafayette County	Lafayette County.
Lawrence County	Lawrence County.
Lee County	Lee County.
Lincoln County	Lincoln County.
Logan County	Logan County.
Lonoke County	Lonoke County.
Mississippi County	Mississippi County.
Monroe County	Monroe County.
Montgomery County	Montgomery County.
Nevada County	Nevada County.
Newton County	Newton County.
Ouachita County	Ouachita County.
Perry County	Perry County.
Phillips County	Phillips County.
Pike County	Pike County
Pine Bluff City	Pine Bluff City in Jefferson County.
Poinsett County	Poinsett County.
Prairie County	Prairie County.
Randolph County	Randolph County.
Searcy County	Searcy County.
Balance of Sebastian County.	Sebastian County less Fort Smith City
St. Francis County	St. Francis County.
Stone County	Stone County.
Texarkana City Ark	Texarkana City Ark in Miller County.
Balance of Union County	Union County less El Dorado City
Van Buren County	Van Buren County.
West Memphis City	West Memphis City in Crittenden County.
White County	White County.
Woodruff County	Woodruff County.
CALIFORNIA	
Bakersfield City	Bakersfield City in Kern County.
Baldwin Park City	Baldwin Park City in Los Angeles County.
Bell Gardens City	Bell Gardens City in Los Angeles County.
Balance of Butte County	Butte County less Chico City, Paradise City
Calaveras County	Calaveras County.
Chico City	Chico City in Butte County.
Clovis City	Clovis City in Fresno County.
Colton City	Colton City in San Bernardino County.
Colusa County	Colusa County.
Compton City	Compton City in Los Angeles County.
Corona City	Corona City in Riverside County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1991 through September 30, 1992]

Eligible labor surplus areas	Civil jurisdictions included
Del Norte County	Del Norte County.
El Centro City	El Centro City in Imperial County.
El Monte City	El Monte City in Los Angeles County.
Fairfield City	Fairfield City in Solano County.
Fontana City	Fontana City in San Bernardino County.
Fresno City	Fresno City in Fresno County.
Balance of Fresno County.	Fresno County less Clovis City, Fresno City
Gilroy City	Gilroy City in Santa Clara County.
Glenn County	Glenn County.
Hanford City	Hanford City in Kings County.
Hemet City	Hemet City in Riverside County.
Hesperia City	Hesperia City in San Bernardino County.
Highland City	Highland City in San Bernardino County.
Humboldt County	Humboldt County.
Huntington Park City	Huntington Park City in Los Angeles County.
Imperial Beach City	Imperial Beach City in San Diego County.
Balance of Imperial County.	Imperial County less El Centro City
Indio City	Indio City in Riverside County.
Balance of Kern County	Kern County less Bakersfield City, Ridgecrest City
Balance of Kings County	Kings County less Hanford City
Lake County	Lake County.
Lassen County	Lassen County.
Lodi City	Lodi City in San Joaquin County.
Lompoc City	Lompoc City in Santa Barbara County.
Lynwood City	Lynwood City in Los Angeles County.
Madera City	Madera City in Madera County.
Balance of Madera County.	Madera County less Madera City.
Manteca City	Manteca City in San Joaquin County.
Marina City	Marina City in Monterey County.
Maywood City	Maywood City in Los Angeles County.
Mendocino County	Mendocino County.
Merced City	Merced City in Merced County.
Balance of Merced County.	Merced County less Merced City.
Modesto City	Modesto City in Stanislaus County.
Modoc County	Modoc County.
Balance of Monterey County.	Monterey County less Marina City, Monterey City, Salinas City, Seaside City.
Moreno Valley	Moreno Valley in Riverside County.
Oxnard City	Oxnard City in Ventura County.
Paradise City	Paradise City in Butte County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1991 through September 30, 1992]

Eligible labor surplus areas	Civil jurisdictions included
Paramount City	Paramount City in Los Angeles County.
Plumas County	Plumas County.
Porterville City	Porterville City in Tulare County.
Redding City	Redding City in Shasta County.
Richmod City	Richmond City in Contra Costa County.
Ridgecrest City	Ridgecrest City in Kern County.
Riverside City	Riverside City in Riverside County.
Balance of Riverside County.	Riverside County less Cathedral City, Corona City, Hemet City, Indio City, Moreno Valley, Norco City, Palm Springs City, Riverside City.
Salinas City	Salinas City in Monterey County.
San Benito County	San Benito County.
Balance of San Joaquin County.	San Joaquin County less Lodi City, Manteca City, Stockton City, Tracey City.
Santa Cruz City	Santa Cruz City in Santa Cruz County.
Santa Maria City	Santa Maria City in Santa Barbara County.
Seaside City	Seaside City in Monterey County.
Balance of Shasta County.	Shasta County less Redding City.
Sierra County	Sierra County.
Siskiyou County	Siskiyou County.
Balance of Stanislaus County.	Stanislaus County less Modesto City, Turlock City.
Stockton City	Stockton City in San Joaquin County.
Sutter City	Sutter County.
Tehama County	Tehama County.
Tracey City	Tracey City in San Joaquin County.
Trinity County	Trinity County.
Tulare City	Tulare City in Tulare County.
Balance of Tulare County.	Tulare County less Porterville City Tulare City.
Tuolumne County	Visalia City Tuolumne County.
Turlock City	Turlock City in Stanislaus County.
Vacaville City	Vacaville City in Solano County.
Victorville City	Victorville City in San Bernardino County.
Visalia City	Visalia City in Tulare County.
Watsonville City	Watsonville City in Santa Cruz County.
West Hollywood City	West Hollywood City in Los Angeles County.
West Sacramento City	West Sacramento City in Yolo County.
Woodland City	Woodland City in Yolo County.
Balance of Yolo County	Yolo County less Davis City West Sacramento City Woodland City.
Yuba County	Yuba County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1991 through September 30, 1992]

Eligible labor surplus areas	Civil jurisdictions included
COLORADO	
Alamosa County	Alamosa County.
Archuleta County	Archuleta County.
Clear Creek County	Clear Creek County.
Conejos County	Conejos County.
Costilla County	Costilla County.
Delta County	Delta County.
Balance of El Paso County.	El Paso County less Colorado Springs City.
Fremont County	Fremont County.
Grand Junction City	Grand Junction City in Mesa County.
Huerfano County	Huerfano County.
Lake County	Lake County.
Las Animas County	Las Animas County.
Mineral County	Mineral County.
Moffat County	Moffat County.
Montezuma County	Montezuma County.
Montrose County	Montrose County.
Otero County	Otero County.
Pueblo City	Pueblo City in Pueblo County.
Balance of Pueblo County.	Pueblo County less Pueblo City.
Rio Grande County	Rio Grande County.
Saguache County	Saguache County.
San Juan County	San Juan County.
CONNECTICUT	
Bridgeport City	Bridgeport City.
Canterbury Town	Canterbury Town.
Hartford City	Hartford City.
Killingly Town	Killingly Town.
Plainfield Town	Plainfield Town.
Putnam Town	Putnam Town.
Sterling Town	Sterling Town.
Thompson Town	Thompson Town.
Voluntown Town	Voluntown Town.
Waterbury City	Waterbury City.
FLORIDA	
Balance of Bay County	Bay County less Panama City.
Boynton Beach City	Boynton Beach City in Palm Beach County.
Calhoun County	Calhoun County.
Citrus County	Citrus County.
Columbia County	Columbia County.
De Soto County	De Soto County.
Deerfield Beach City	Deerfield Bach City in Broward County.
Delray Beach City	Delray Beach City in Palm Beach County.
Dixie County	Dixie County.
Fort Pierce City	Fort Pierce City in St. Lucie County.
Glades County	Glades County.
Greenacres City	Greenacres City in Palm Beach County.
Gulf County	Gulf County.
Hallandale City	Hallandale City in Broward County.
Hamilton County	Hamilton County.
Hardee County	Hardee County.
Hendry County	Hendry County.
Hernando County	Hernando County.
Hialeah City	Hialeah City in Dade County.
Highlands County	Highlands County.
Holmes County	Holmes County.
Indian River County	Indian River County.
Jupiter City	Jupiter City in Palm Beach County.
Balance of Lake County	Lake County less Oakland Park City
Lake Worth City	Lake Worth City in Palm Beach County
Lakeland City	Lakeland City in Polk County.
Lauderdale Lakes City	Lauderdale Lakes City in Broward County.
Madison County	Madison County.
Margate City	Margate City in Broward County.
Balance of Marion County.	Marion County less Ocala City
Martin County	Martin County.
Miami Beach City	Miami Beach City in Dade County.
Miami City	Miami City in Dade County.
North Miami Beach City	North Miami Beach City in Dade County.
Okeechobee County	Okeechobee County
Panama City	Panama City in Bay County.
Pasco County	Pasco County.
Balance of Polk County	Polk County less Lakeland City
Putnam County	Putnam County.
Santa Rosa County	Santa Rosa County.
Balance of St. Lucia County.	St. Lucie County less Fort Pierce City Port St. Lucie City
Sumter County	Sumter County.
Suwannee County	Suwannee County.
Tamarac City	Tamarac City in Broward County.
Taylor County	Taylor County.
Walton County	Walton County.
Washington County	Washington County.
GEORGIA	
Albany City	Albany City in Dougherty County.
Appling County	Appling County.
Atlanta City	Atlanta City in De Kalb County Fulton County.
Augusta City	Augusta City in Richmond County.
Barrow County	Barrow County.
Bartow County	Bartow County.
Berrien County	Berrien County.
Brantley County	Brantley County.
Burke County	Burke County.
Butts County	Butts County.
Chattahoochee County	Chattahoochee County.
Chattooga County	Chattooga County.
Coffee County	Coffee County.
College Park City	College Park City in Clayton County Fulton County.
Cook County	Cook County.
Crawford County	Crawford County.
Crisp County	Crisp County.
Dawson County	Dawson County.
Dodge County	Dodge County.
Elbert County	Elbert County.
Emanuel County	Emanuel County.
Fannin County	Fannin County.
Gilmer County	Gilmer County.
Haralson County	Haralson County.
Irwin County	Irwin County.
Jasper County	Jasper County.
Jefferson County	Jefferson County.
Jenkins County	Jenkins County.
Long County	Long County.
Macon County	Macon County.
Mc Intosh County	Mc Intosh County.
Meriwether County	Meriwether County.
Mitchell County	Mitchell County.
Morgan County	Morgan County.
Murray County	Murray County.
Pickens County	Pickens County.
Pierce County	Pierce County.
Polk County	Polk County.
Quitman County	Quitman County.
Rome City	Rome City in Floyd County.
Schley County	Schley County.
Screven County	Screven County.
Stephens County	Stephens County.
Stewart County	Stewart County.
Sumter County	Sumter County.
Talbot County	Talbot County.
Taylor County	Taylor County.
Telfair County	Telfair County.
Terrell County	Terrell County.
Turner County	Turner County.
Walton County	Walton County.
Warren County	Warren County.
Wayne County	Wayne County.
Webster County	Webster County.
Worth County	Worth County.
IDAHO	
Adams County	Adams County.
Benewah County	Benewah County.
Bingham County	Bingham County.
Boise County	Boise County.
Bonner County	Bonner County.
Boundary County	Boundary County.
Camas County	Camas County.
Cassia County	Cassia County.
Clearwater County	Clearwater County.
Fremont County	Fremont County.
Gem County	Gem County.
Idaho County	Idaho County.
Kootenai County	Kootenai County.
Lemhi County	Lemhi County.
Minidoka County	Minidoka County.
Nampa City	Nampa City in Canyon County.
Power County	Power County.
Shoshone County	Shoshone County.
Valley County	Valley County.
Washington County	Washington County.
ILLINOIS	
Alexander County	Alexander County.
Alton City	Alton City in Madison County.
Aurora City	Aurora City in Du Page County. Kane County.
Belleville City	Belleville City in St. Clair County.
Bond County	Bond County.
Boone County	Boone County.
Brown County	Brown County.
Bureau County	Bureau County.
Calhoun County	Calhoun County.
Carpentersville County	Carpentersville City in Kane County.
Carroll County	Carroll County.
Cass County	Cass County.
Chicago City	Chicago City in Cook County.
Christian County	Christian County.
Cicero City	Cicero City in Cook County.
Clark County	Clark County.
Clay County	Clay County.
Clinton County	Clinton County.
Crawford County	Crawford County.
Cumberland County	Cumberland County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1991 through September 30, 1992]

Eligible labor surplus areas	Civil jurisdictions included
Danville City	Danville City in Vermilion County.
De Witt County	De Witt County.
Decatur City	Decatur City in Macon County.
East St. Louis City	East St. Louis City in St. Clair County.
Edgar County	Edgar County.
Edwards County	Edwards County.
Fayette County	Fayette County.
Franklin County	Franklin County.
Freeport City	Freeport City in Stephenson County.
Fulton County	Fulton County.
Galesburg City	Galesburg City in Knox County.
Gallatin County	Gallatin County.
Granite City	Granite City in Madison County.
Greene County	Greene County.
Grundy County	Grundy County.
Hamilton County	Hamilton County.
Hardin County	Hardin County.
Harvey City	Harvey City in Cook County.
Henderson County	Henderson County.
Henry County	Henry County.
Balance of Jackson County.	Jackson County Less Carbondale City.
Jefferson County	Jefferson County.
Jersey County	Jersey County.
Johnson County	Johnson County.
Joliet City	Joliet City in Will County.
Kankakee City	Kankakee City in Kankakee County.
Balance of Kankakee County.	Kankakee County less Kankakee City
Balance of Knox County	Knox County less Galesburg City.
La Salle County	La Salle County.
Lawrence County	Lawrence County.
Macoupin County	Macoupin County.
Marion County	Marion County.
Mason County	Mason County.
Massac County	Massac County.
Maywood Village	Maywood Village in Cook County.
Mercer County	Mercer County.
Montgomery County	Montgomery County.
North Chicago City	North Chicago City in Lake County.
Pekin City	Pekin City in Tazewell County.
Peoria City	Peoria City in Peoria County.
Perry County	Perry County.
Pike County	Pike County.
Pope County	Pope County.
Pulaski County	Pulaski County.
Putnam County	Putnam County.
Quincy City	Quincy City in Adams County.
Randolph County	Randolph County.
Richland County	Richland County.
Balance of Rock Island County.	Rock Island County less Moline City
Rockford County	Rockford City in Winnebago County.
Saline County	Saline County.
Schuyler County	Schuyler County.
Scott County	Scott County.
Shelby County	Shelby County.
Stark County	Stark County.
Union County	Union County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1991 through September 30, 1992]

Eligible labor surplus areas	Civil jurisdictions included
Balance of Vermilion County.	Vermilion County less Danville City.
Wabash County	Wabash County.
Warren County	Warren County.
Washington County	Washington County.
Wayne County	Wayne County.
White County	White County.
Whiteside County	Whiteside County.
Williamson County	Williamson County.
INDIANA	
Anderson City	Anderson City in Madison County.
Blackford County	Blackford County.
Crawford County	Crawford County.
Dearborn County	Dearborn County.
East Chicago City	East Chicago City in Lake County.
Elkhart City	Elkhart City in Elkhart County.
Fayette County	Fayette County.
Franklin County	Franklin County.
Gary City	Gary City in Lake County.
Greene County	Greene County.
Henry County	Henry County.
Jay County	Jay County.
Kokomo City	Kokomo City in Howard County.
Lawrence County	Lawrence County.
Marion City	Marion City in Grant County.
Ohio County	Ohio County.
Orange County	Orange County.
Perry County	Perry County.
Pike County	Pike County.
Randolph County	Randolph County.
Richmond City	Richmond City in Wayne County.
Scott County	Scott County.
Starke County	Starke County.
Sullivan County	Sullivan County.
Switzerland County	Switzerland County.
IOWA	
Appanoose County	Appanoose County.
Clinton City	Clinton City in Clinton County.
Crawford County	Crawford County.
Jackson County	Jackson County.
Lee County	Lee County.
Balance of Wapello County.	Wapello County less Ottumwa City.
KANSAS	
Kansas City KS	Kansas City KS in Wyandotte County.
Linn County	Linn County.
KENTUCKY	
Allen County	Allen County.
Ballard County	Ballard County.
Barren County	Barren County.
Bath County	Bath County.
Bell County	Bell County.
Bracken County	Bracken County.
Breathitt County	Breathitt County.
Breckinridge County	Breckinridge County.
Caldwell County	Caldwell County.
Carlisle County	Carlisle County.
Carter County	Carter County.
Casey County	Casey County.
Balance of Christian County.	Christian County less Hopkinsville City.
Clark County	Clark County.
Clay County	Clay County.
Clinton County	Clinton County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1991 through September 30, 1992]

Eligible labor surplus areas	Civil jurisdictions included
Crittenden County	Crittenden County.
Cumberland County	Cumberland County.
Edmonson County	Edmonson County.
Elliott County	Elliott County.
Estill County	Estill County.
Fleming County	Fleming County.
Floyd County	Floyd County.
Fulton County	Fulton County.
Garrard County	Garrard County.
Graves County	Graves County.
Grayson County	Grayson County.
Hancock County	Hancock County.
Harlan County	Harlan County.
Hart County	Hart County.
Hopkins County	Hopkins County.
Jackson County	Jackson County.
Johnson County	Johnson County.
Knott County	Knott County.
Knox County	Knox County.
Laurel County	Laurel County.
Lawrence County	Lawrence County.
Lee County	Lee County.
Letcher County	Letcher County.
Lewis County	Lewis County.
Lincoln County	Lincoln County.
Livingston County	Livingston County.
Magoffin County	Magoffin County.
Marion County	Marion County.
Marshall County	Marshall County.
Martin County	Martin County.
McCreary County	McCreary County.
McLean County	McLean County.
Meade County	Meade County.
Menifee County	Menifee County.
Metcalfe County	Metcalfe County.
Montgomery County	Montgomery County.
Morgan County	Morgan County.
Muhlenberg County	Muhlenberg County.
Nelson County	Nelson County.
Nicholas County	Nicholas County.
Ohio County	Ohio County.
Owsley County	Owsley County.
Perry County	Perry County.
Pike County	Pike County.
Powell County	Powell County.
Pulaski County	Pulaski County.
Robertson County	Robertson County.
Rockcastle County	Rockcastle County.
Trigg County	Trigg County.
Balance of Warren County.	Warren County less Bowling Green City.
Washington County	Washington County.
Wayne County	Wayne County.
Webster County	Webster County.
Whitley County	Whitley County.
Wolfe County	Wolfe County.
LOUISIANA	
Acadia Parish	Acadia Parish.
Alexandria City	Alexandria City in Rapides Parish.
Allen Parish	Allen Parish.
Ascension Parish	Ascension Parish.
Assumption Parish	Assumption Parish.
Avoyelles Parish	Avoyelles Parish.
Beauregard Parish	Beauregard Parish.
Bienville Parish	Bienville Parish.
Bossier City	Bossier City in Bossier Parish.
Balance of Bossier Parish.	Bossier Parish less Bossier City Shreveport City.
Balance of Caddo Parish	Caddo Parish less Shreveport City.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1991 through September 30, 1992]

Eligible labor surplus areas	Civil jurisdictions included
Balance of Calcasieu Parish.	Calcasieu Parish less Lake Charles City.
Caldwell, Parish	Caldwell Parish.
Catahoula Parish	Catahoula Parish.
Claiborne Parish	Claiborne Parish.
Concordia Parish	Concordia Parish.
De Soto Parish	De Soto Parish.
East Carroll Parish	East Carroll Parish.
East Feliciana Parish	East Feliciana Parish.
Evangeline Parish	Evangeline Parish.
Franklin Parish	Franklin Parish.
Grant Parish	Grant Parish.
Houma City	Houma City in Terrebonne Parish.
Balance of Iberia Parish	Iberia Parish less New Iberia City.
Iberville Parish	Iberville Parish.
Jackson Parish	Jackson Parish.
Jefferson Davis Parish	Jefferson Davis Parish.
La Salle Parish	La Salle Parish.
Lafourche Parish	Lafourche Parish.
Lake Charles City	Lake Charles City in Calcasieu Parish.
Livingston Parish	Livingston Parish.
Madison Parish	Madison Parish.
Monroe City	Monroe City in Ouachita Parish.
Morehouse Parish	Morehouse Parish.
Natchitoches Parish	Natchitoches Parish.
New Iberia City	New Iberia City in Iberia Parish.
New Orleans City	New Orleans City in Orleans Parish.
Plaquemines Parish	Plaquemines Parish.
Pointe Coupee Parish	Pointe Coupee Parish.
Balance of Rapides Parish.	Rapides Parish Less Alexandria City.
Red River Parish	Red River Parish.
Richland Parish	Richland Parish.
Shreveport City	Shreveport City in Bossier Parish Caddo Parish.
St. Bernard Parish	St. Bernard Parish.
St. Helena Parish	St. Helena Parish.
St. James Parish	St. James Parish.
St. John Baptist Parish	St. John Baptist Parish.
St. Landry Parish	St. Landry Parish.
St. Martin Parish	St. Martin Parish.
St. Mary Parish	St. Mary Parish.
Tangipahoa Parish	Tangipahoa Parish.
Tensas Parish	Tensas Parish.
Union Parish	Union Parish.
Vermilion Parish	Vermilion Parish.
Vernon Parish	Vernon Parish.
Washington Parish	Washington Parish.
Webster Parish	Webster Parish.
West Baton Rouge Parish.	West Baton Rouge Parish.
West Carroll Parish	West Carroll Parish.
West Feliciana Parish	West Feliciana Parish.
Winn Parish	Winn Parish.
MAINE	
Aroostock County	Aroostock County.
Oxford County	Oxford County.
Somerset County	Somerset County.
Waldo County	Waldo County.
Washington County	Washington County.
MARYLAND	
Allegany County	Allegany County.
Baltimore City	Baltimore City.
Dorchester County	Dorchester County.
Garrett County	Garrett County.
Hagerstown City	Hagerstown City in Washington County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1991 through September 30, 1992]

Eligible labor surplus areas	Civil jurisdictions included
Somerset County	Somerset County.
Worcester County	Worcester County.Q03
MASSACHUSETTS	
Adams Town	Adams Town in Berkshire County.
Ashburnham Town	Ashburnham Town in Worcester County.
Athol Town	Athol Town in Worcester County.
Barnstable Town	Barnstable Town in Barnstable County.
Berkley Town	Berkley Town in Bristol County.
Blackstone Town	Blackstone Town in Worcester County.
Brockton City	Brockton City in Plymouth County.
Chelsea City	Chelsea City in Suffolk County.
Douglas Town	Douglas Town in Worcester County.
Fall River City	Fall River City in Bristol County.
Fitchburg City	Fitchburg City in Worcester County.
Florida Town	Florida Town in Berkshire County.
Gardner Town	Gardner Town in Worcester County.
Gloucester City	Gloucester City in Essex County.
Gosnold Town	Gosnold Town in Dukes County.
Hardwick Town	Hardwick Town in Worcester County.
Hinsdale Town	Hinsdale Town in Berkshire County.
Holyoke City	Holyoke City in Hampden County.
Hubbardston Town	Hubbardston Town in Worcester County.
Hull Town	Hull Town in Plymouth County.
Lawrence City	Lawrence City in Essex County.
Leominster City	Leominster City in Worcester County.
Lowell City	Lowell City in Middlesex County.
Middleborough Town	Middleborough Town in Plymouth County.
Monroe Town	Monroe Town in Franklin County.
New Bedford City	New Bedford City in Bristol County.
New Braintree Town	New Braintree Town in Worcester County.
North Adams Town	North Adams Town in Berkshire County.
Orange Town	Orange Town in Franklin County.
Otis Town	Otis Town in Berkshire County.
Phillipston Town	Phillipston Town in Worcester County.
Plainfield Town	Plainfield Town in Hampshire County.
Provincetown Town	Provincetown Town in Barnstable County.
Rowe Town	Rowe Town in Franklin County.
Savoy Town	Savoy Town in Berkshire County.
Shelburne Town	Shelburne Town in Franklin County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1991 through September 30, 1992]

Eligible labor surplus areas	Civil jurisdictions included
Southbridge Town	Southbridge Town in Worcester County.
Taunton City	Taunton City in Bristol County.
Templeton Town	Templeton Town in Worcester County.
Truro Town	Truro Town in Barnstable County.
Wales Town	Wales Town in Hampden County.
Ware Town	Ware Town in Hampshire County.
Wareham Town	Wareham Town in Plymouth County.
Warren Town	Warren Town in Worchester County.
Warwick Town	Warwick Town in Franklin County.
Webster Town	Webster Town in Worcester County.
Wellfleet Town	Wellfleet Town in Barnstable County.
Westminister Town	Westminister Town in Worcester County.
Winchendon Town	Winchendon Town in Worcester County
MICHIGAN	
Alcona County	Alcona County.
Alger County	Alger County.
Alpena County	Alpena County.
Antrim County	Antrim County.
Arenac County	Arenac County.
Baraga County	Baraga County.
Barry County	Barry County.
Battle Creek City	Battle Creek City in Calhoun County.
Bay City	Bay City in Bay County.
Balance of Bay County	Bay County less Bay City, Midland City.
Benzie County	Benzie County.
Berrien County	Berrien County.
Branch County	Branch County.
Burton City	Burton City in Genesee County.
Balance of Calhoun County.	Calhoun County less Battle Creek City.
Cass County	Cass County.
Charlevoix County	Charlevoix County.
Cheboygan County	Cheboygan County.
Chippewa County	Chippewa County.
Clare County	Clare County.
Clinton Township	Clinton Township in Macomb County.
Delta County	Delta County.
Detroit City	Detroit City in Wayne County.
Dickinson County	Dickinson County.
East Detroit City	East Detroit City in Macomb County.
Emmet County	Emmet County.
Ferndale City	Ferndale City in Oakland County.
Flint City	Flint City in Genesee County.
Flint Township	Flint Township in Genesee County.
Balance of Genesee County.	Genesee County less Burton City, Flint City, Flint Township, Mount Morris Township
Gladwin County	Gladwin County.
Gogebic County	Gogebic County.
Grand Rapids City	Grand Rapids City in Kent County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1991 through September 30, 1992]

Eligible labor surplus areas	Civil jurisdictions included
Grand Traverse County	Grand Traverse County.
Gratiot County	Gratiot County.
Highland Park City	Highland Park City in Wayne County.
Hillsdale County	Hillsdale County.
Houghton County	Houghton County.
Huron County	Huron County.
Inkster City	Inkster City in Wayne County.
Ionia County	Ionia County.
Iosco County	Iosco County.
Iron County	Iron County.
Jackson City	Jackson City in Jackson County.
Balance of Jackson County.	Jackson County less Jackson City.
Kalkaska County	Kalkaska County.
Keweenaw County	Keweenaw County.
Lake County	Lake County.
Lansing City	Lansing City in Eaton County, Ingham County.
Lapeer County	Lapeer County.
Leelanau County	Leelanau County.
Lenawee County	Lenawee County.
Lincoln Park City	Lincoln Park City in Wayne County.
Luce County	Luce County.
Mackinac County	MackinacCounty.
Balance of Macomb County.	Macomb County less Clinton Township, East Detroit City, Roseville City, Shelby Township, St. Clair Shores City, Sterling Heights City, Warren City.
Madison Heights City	Madison Heights City in Oakland County.
Manistee County	Manistee County.
Marquette County	Marquette County.
Mason County	Mason County.
Mecosta County	Mecosta County.
Menominee County	Menominee County.
Balance of Midland County.	Midland County less Midland City.
Missaukee County	Missaukee County.
Monroe County	Monroe County.
Montcalm County	Montcalm County.
Montmorency County	Montmorency County.
Mount Morris Township	Mount Morris Township in Genesee County.
Muskegon City	Muskegon City in Muskegon County.
Balance of Muskegon County.	Muskegon County less Muskegon City.
Newaygo County	Newaygo County.
Oceana County	Oceana County.
Ogemaw County	Ogemaw County.
Ontonagon County	Ontonagon County.
Osceola County	Osceola County.
Otsego County	Otsego County.
Pontiac City	Pontiac City in Oakland County.
Port Huron City	Port Huron City in St. Clair County.
Presque Isle County	Presque Isle County.
Roscommon County	Roscommon County.
Roseville City	Roseville City in Macomb County.
Saginaw City	Saginaw City in Saginaw County.
Balance of Saginaw County.	Saginaw County less Saginaw City, Saginaw Township.
Sanilac County	Sanilac County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1991 through September 30, 1992]

Eligible labor surplus areas	Civil jurisdictions included
Schoolcraft County	Schoolcraft County.
Shiawassee County	Shiawassee County.
Balance of St. Clair County.	St. Clair County less Port Huron City.
St. Joseph County	St. Joseph County.
Taylor City	Taylor City in Wayne County.
Tuscola County	Tuscola County.
Van Buren County	Van Buren County.
Warren City	Warren City in Macomb County.
Waterford Township	Waterford Township in Oakland County.
Wexford County	Wexford County.
Wyandotte City	Wyandotte City in Wayne County.
Ypsilanti Township	Ypsilanti Township in Washtenaw County.
MINNESOTA	
Aitkin County	Aitkin County.
Becker County	Becker County.
Carlton County	Carlton County.
Cass County	Cass County.
Chisago County	Chisago County.
Clearwater County	Clearwater County.
Freeborn County	Freeborn County.
Hubbard County	Hubbard County.
Itasca County	Itasca County.
Kanabec County	Kanabec County.
Kittson County	Kittson County.
Lake County	Lake County.
Mahnomen County	Mahnomen County.
Marshall County	Marshall County.
Meeker County	Meeker County.
Morrison County	Morrison County.
Pennington County	Pennington County.
Pine County	Pine County.
Polk County	Polk County.
Red Lake County	Red Lake County.
Todd County	Todd County.
Wadena County	Wadena County.
MISSISSIPPI	
Adams County	Adams County.
Alcorn County	Alcorn County.
Amite County	Amite County.
Attala County	Attala County.
Benton County	Benton County.
Biloxi City	Biloxi City in Harrison County.
Bolivar County	Bolivar County.
Calhoun County	Calhoun County.
Carroll County	Carroll County.
Chickasaw County	Chickasaw County.
Choctaw County	Choctaw County.
Claiborne County	Claiborne County.
Clarke County	Clarke County.
Clay County	Clay County.
Coahoma County	Coahoma County.
Columbus City	Columbus City in Lowndes County.
Copiah County	Copiah County.
Covington County	Covington County.
Franklin County	Franklin County.
George County	George County.
Greene County	Greene County.
Greenville City	Greenville City in Washington County.
Grenada County	Grenada County.
Gulfport City	Gulfport City in Harrison County.
Holmes County	Holmes County.
Humphreys County	Humphreys County.
Issaquena County	Issaquena County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1991 through September 30, 1992]

Eligible labor surplus areas	Civil jurisdictions included
Balance of Jackson County.	Jackson County less Pascagoula City.
Jasper County	Jasper County.
Jefferson County	Jefferson County.
Jefferson Davis County	Jefferson Davis County.
Jones County	Jones County.
Kemper County	Kemper County.
Balance of Lauderdale County.	Lauderdale County less Meridian City.
Lawrence County	Lawrence County.
Leake County	Leake County.
Leflore County	Leflore County.
Lincoln County	Lincoln County.
Marion County	Marion County.
Marshall County	Marshall County.
Monroe County	Monroe County.
Montgomery County	Montgomery County.
Neshoba County	Neshoba County.
Noxubee County	Noxubee County.
Panola County	Panola County.
Pascagoula City	Pascagola City in Jackson County.
Pearl River County	Pearl River County.
Perry County	Perry County.
Pike County	Pike County.
Prentiss County	Prentiss County.
Quitman County	Quitman County.
Sharkey County	Sharkey County.
Smith County	Smith County.
Stone County	Stone County.
Sunflower County	Sunflower County.
Tallahatchie County	Tallahatchie County.
Tate County	Tate County.
Tippah County	Tippah County.
Tishomingo County	Tishomingo County.
Tunica County	Tunica County.
Vicksburg City	Vicksburg City in Warren County.
Walthall County	Walthall County.
Balance of Warren County.	Warren County less Vicksburg City.
Balance of Washington County.	Washington County less Greenville City.
Wayne County	Wayne County.
Webster County	Webster County.
Wilkinson County	Wilkinson County.
Winston County	Winston County.
Yalobusha County	Yalobusha County.
Yazoo County	Yazoo County.
MISSOURI	
Bates County	Bates County.
Benton County	Benton County.
Bollinger County	Bollinger County.
Butler County	Butler County.
Caldwell County	Caldwell County.
Carroll County	Carroll County.
Carter County	Carter County.
Cedar County	Cedar County.
Crawford County	Crawford County.
Dallas County	Dallas County.
Dent County	Dent County.
Douglas County	Douglas County.
Dunklin County	Dunklin County.
Franklin County	Franklin County.
Gasconade County	Gasconade County.
Henry County	Henry County.
Hickory County	Hickory County.
Howell County	Howell County.
Iron County	Iron County.
Jefferson County	Jefferson County.
Laclede County	Laclede County.
Lincoln County	Lincoln County.
Linn County	Linn County.
Macon County	Macon County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1991 through September 30, 1992]

Eligible labor surplus areas	Civil jurisdictions included
Madison County	Madison County.
Maries County	Maries County.
Miller County	Miller County.
Mississippi County	Mississippi County.
Montgomery County	Montgomery County.
Morgan County	Morgan County.
New Madrid County	New Madrid County.
Oregon County	Oregon County.
Ozark County	Ozark County.
Pemiscot County	Pemiscot County.
Pettis County	Pettis County.
Pike County	Pike County.
Pulaski County	Pulaski County.
Ray County	Ray County.
Reynolds County	Reynolds County.
Ripley County	Ripley County.
Saline County	Saline County.
Scott County	Scott County.
Shannon County	Shannon County.
St. Louis City	St. Louis City.
St. Clair County	St. Clair County.
St. Francois County	St. Francois County.
Ste. Genevieve County	Ste. Genevieve County.
Stoddard County	Stoddard County.
Stone County	Stone County.
Taney County	Taney County.
Texas County	Texas County.
Warren County	Warren County.
Washington County	Washington County.
Wayne County	Wayne County.
Webster County	Webster County.
Wright County	Wright County.
MONTANA	
Big Horn County	Big Horn County.
Blaine County	Blaine County.
Broadwater County	Broadwater County.
Butte-Silver Bow City	Butte-Silver Bow City in Silver Bow County.
Deer Lodge County	Deer Lodge County.
Flathead County	Flathead County.
Glacier County	Glacier County.
Granite County	Granite County.
Lake County	Lake County.
Lincoln County	Lincoln County.
Mineral County	Mineral County.
Musselshell County	Musselshell County.
Park County	Park County.
Ravalli County	Ravalli County.
Richland County	Richland County.
Roosevelt County	Roosevelt County.
Rosebud County	Rosebud County.
Sanders County	Sanders County.
Balance of Silver Bow County.	Silver Bow County less Butte—Silver Bow City Wheatland County.
NEVADA	
North Las Vegas City	North Las Vegas City in Clark County.
NEW JERSEY	
Atlantic City	Atlantic City in Atlantic County.
Camden City	Camden City in Camden County.
Cape May County	Cape May County.
Balance of Cumberland County.	Cumberland County less Millville City Vineland City.
East Orange City	East Orange City in Essex County.
Elizabeth City	Elizabeth City In Union County.
Hoboken City	Hoboken City in Hudson County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1991 through September 30, 1992]

Eligible labor surplus areas	Civil jurisdictions included
Jersey City	Jersey City in Hudson County.
Millville City	Millville City in Cumberland County.
Newark City	Newark City in Essex County.
Passaic City	Passaic City in Passaic County.
Paterson City	Paterson City in Passaic County.
Perth Amboy City	Perth Amboy City in Middlesex County.
Plainfield City	Plainfield City in Union County.
Union City	Union city in Hudson County.
West New York Town	West New York Town in Hudson County.
NEW MEXICO	
Alamogordo Cty	Alamogordo City in Otero County.
Carlsbad City	Carlsbad City in Eddy County.
Catron County	Catron County.
Balance of Chaves County.	Chaves County less Roswell City.
Cibola County	Cibola County.
Clovis City	Clovis City in Curry County.
Colfac County	Colfax County.
De Baca County	De Baca County.
Balance of Dona Ana County.	Dona Ana County Less Las Cruces City.
Balance of Eddy County	Eddy County Less Carlsbad City.
Grant County	Grant County.
Guadalupe County	Guadalupe County.
Harding County	Harding County.
Hobbs City	Hobbs City in Lea County.
Luna County	Luna County.
Mc Kinley County	Mc Kinley County.
Mora County	Mora County.
Rio Arriba City	Rio Arriba County.
Roswell City	Roswell City in Chaves County.
Balance of San Juan County.	San Juan County less Farmington City
San Miguel County	San Miguel County.
Socorro County	Socorro County.
Taos County	Taos County.
Torrance County	Torrance County.
Valencia County	Valencia County.
NEW YORK	
Auburn City	Auburn City in Cayuga County.
Bronx County	Bronx County.
Buffalo City	Buffalo City in Erie County.
Cattaraugus County	Cattaraugus County.
Essex County	Essex County.
Franklin County	Franklin County.
Fulton County	Fulton County.
Hamilton County	Hamilton County.
Balance of Jefferson County.	Jefferson County less Watertown City
Kings County	Kings County.
Lewis County	Lewis County.
Lockport City	Lockport City in Niagara County.
Montgomery County	Montgomery County.
Niagara Falls City	Niagara Falls City in Niagara County.
Orleans County	Orleans County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1991 through September 30, 1992]

Eligible labor surplus areas	Civil jurisdictions included
Oswego County	Oswego County.
St. Lawrence County	St. Lawrence County.
Warren County	Warren County.
Watertown City	Watertown City in Jefferson County.
Wyoming County	Wyoming County.
NORTH CAROLINA	
Brunswick County	Brunswick County.
Cherokee County	Cherokee County.
Graham County	Graham County.
Hyde County	Hyde County.
Robeson County	Robeson County.
Scotland County	Scotland County.
Swain County	Swain County.
Tyrrell County	Tyrrell County.
Vance County	Vance County.
Wilson City	Wilson City in Wilson County.
NORTH DAKOTA	
Benson County	Benson County.
Dunn County	Dunn County.
Eddy County	Eddy County.
Kidder County	Kidder County.
Mc Henry County	Mc Henry County.
Mountrail County	Mountrail County.
Pembina County	Pembina County.
Rolette County	Rolette County.
Sioux County	Sioux County.
Slope County	Slope County.
OHIO	
Adams County	Adams County.
Akron City	Akron City in Summit County.
Ashtabula County	Ashtabula County.
Barberton City	Barberton City in Summit County.
Brown County	Brown County.
Canton City	Canton City in Stark County.
Cleveland City	Cleveland City in Cuyahoga County.
Crawford County	Crawford County.
Darke County	Darke County.
Dayton City	Dayton City in Montgomery County.
Defiance County	Defiance County.
East Cleveland City	East Cleveland City in Cuyahoga County.
Elyria City	Elyria City in Lorain County.
Fayette County	Fayette County.
Fulton County	Fulton County.
Gallia County	Gallia County.
Guernsey County	Guernsey County.
Hamilton City	Hamilton City in Butler County.
Hardin County	Hardin County.
Harrison County	Harrison County.
Henry County	Henry County.
Highland County	Highland County.
Hocking County	Hocking County.
Huron County	Huron County.
Jackson County	Jackson County.
Lima City	Lima City in Allen County.
Lorain City	Lorain City in Lorain County.
Mansfield City	Mansfield City in Richland County.
Marion City	Marion City in Marion County.
Massillon City	Massillon City in Stark County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1991 through September 30, 1992]

Eligible labor surplus areas	Civil jurisdictions included
Meigs County	Meigs County.
Middletown City	Middletown City in Butler County.
Monroe County	Monroe County.
Morgan County	Morgan County.
Morrow County	Morrow County.
Balance of Muskingum County.	Muskingum County less Zanesville City.
Newark City	Newark City in Licking County.
Noble County	Noble County.
Ottawa County	Ottawa County.
Perry County	Perry County.
Pike County	Pike County.
Putnam County	Putnam County.
Ross County	Ross County.
Sandusky County	Sandusky County.
Scioto County	Scioto County.
Seneca County	Seneca County.
Springfield City	Springfield City in Clark County.
Toledo City	Toledo City in Lucas County.
Balance of Trumbull County.	Trumbull County less Warren City.
Vinton County	Vinton County.
Warren City	Warren City in Trumbull County.
Wyandot County	Wyandot County.
Youngstown City	Youngstown City in Mahoning County.
Zanesville City	Zanesville City in Muskingum County.
OKLAHOMA	
Beckham County	Beckham County.
Caddo County	Caddo County.
Carter County	Carter County.
Choctaw County	Choctaw County.
Coal County	Coal County.
Cotton County	Cotton County.
Creek County	Creek County.
Garvin County	Garvin County.
Grady County	Grady County.
Haskell County	Haskell County.
Hughes County	Hughes County.
Latimer County	Latimer County.
Le Flore County	Le Flore County.
Mayes County	Mayes County.
Mc Curtain County	Mc Curtain County.
Murry County	Murry County.
Muskogee City	Muskogee City in Muskogee County.
Nowata County	Nowata County.
Okmulgee County	Okmulgee County.
Ottawa County	Ottawa County.
Pittsburg County	Pittsburg County.
Pushmataha County	Pushmataha County.
Rogers County	Rogers County.
Seminole County	Seminole County.
Sequoyah County	Sequoyah County.
Shawnee City	Shawnee City in Pottawatomie County.
Tillman County	Tillman County.
OREGON	
Baker County	Baker County.
Columbia County	Columbia County.
Coos County	Coos County.
Crook County	Crook County.
Douglas County	Douglas County.
Grant County	Grant County.
Harney County	Harney County.
Hood River County	Hood River County.
Balance of Jackson County	Jackson County less Medford City.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1991 through September 30, 1992]

Eligible labor surplus areas	Civil jurisdictions included
Josephine County	Josephine County.
Klamath County	Klamath County.
Lake County	Lake County.
Balance of Linn County	Linn County less Albany City.
Medford City	Medford City in Jackson County.
Morrow County	Morrow County.
Springfield City	Springfield City in Lane County.
Umatilla County	Umatilla County.
Union County	Union County.
Wallowa County	Wallowa County.
Wasco County	Wasco County.
Wheeler County	Wheeler County.
PENNSYLVANIA	
Altoona City	Altoona City in Blair County.
Armstrong County	Armstrong County.
Beaver County	Beaver County.
Bedford County	Bedford County.
Balance of Cambria County.	Cambria County less Johnston City.
Cameron County	Cameron County.
Carbon County	Carbon County.
Clarion County	Clarion County.
Clearfield County	Clearfield County.
Clinton County	Clinton County.
Fayette County	Fayette County.
Forest County	Forest County.
Fulton County	Fulton County.
Greene County	Greene County.
Huntingdon County	Huntingdon County.
Indiana County	Indiana County.
Jefferson County	Jefferson County.
Johnston City	Johnston City in Cambria County.
Juniata County	Juniata County.
Balance of Luzerne County.	Luzerne County less Hazleton City, Wilkes-Barre City.
Mifflin County	Mifflin County.
Northumberland County	Northumberland County.
Potter County	Potter County.
Schuylkill County	Schuylkill County.
Somerset County	Somerset County.
Susquehanna County	Susquehanna County.
Wilkes-Barre City	Wilkes-Barre City in Luzerne County.
Williamsport City	Williamsport City in Lycoming County.
PUERTO RICO	
Adjuntas Municipio	Adjuntas Municipio.
Aguada Municipio	Aguada Municipio.
Aguadilla Municipio	Aguadilla Municipio.
Aguas Buenas Municipio	Agues Buenas Municipio.
Aibonito Municipio	Aibonito Municipio.
Anasco Municipio	Anasco Municipio.
Arecibo Municipio	Arecibo Municipio.
Arroyo Municipio	Arroyo Municipio.
Barceloneta Municipio	Barceloneta Municipio.
Barranquitas Municipio	Barranquitas Municipio.
Bayamon Municipio	Bayamon Municipio.
Carbo Rojo Municipio	Carbo Rojo Municipio.
Caguas Municipio	Caguas Municipio.
Camuy Municipio	Camuy Municipio.
Canovanas Municipio	Canovanas Municipio.
Carolina Municipio	Carolina Municipio.
Catano Municipio	Catano Municipio.
Cayey Municipio	Cayey Municipio.
Ceiba Municipio	Ceiba Municipio.
Ciales Municipio	Ciales Municipio.
Cidra Municipio	Cidra Municipio.
Coamo Municipio	Coamo Municipio.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1991 through September 30, 1992]

Eligible labor surplus areas	Civil jurisdictions included
Comerio Municipio	Comerio Municipio.
Corozal Municipio	Corozal Municipio.
Culebra Municipio	Culebra Municipio.
Dorado Municipio	Dorado Municipio.
Fajardo Municipio	Fajardo Municipio.
Florida Municipio	Florida Municipio.
Guanica Municipio	Guanica Municipio.
Guayama Municipio	Guayama Municipio.
Guayanilla Municipio	Guayanilla Municipio.
Gurabo Municipio	Gurabo Municipio.
Hatillo Municipio	Hatillo Municipio.
Hormigueros Municipio	Hormigueros Municipio.
Humacao Municipio	Humacao Municipio.
Isabela Municipio	Isabela Municipio.
Jayuya Municipio	Jayuya Municipio.
Juana Diaz Municipio	Juana Diaz Municipio.
Juncos Municipio	Juncos Municipio.
Lajas Municipio	Lajas Municipio.
Lares Municipio	Lares Municipio.
Las Marias Municipio	Las Marias Municipio.
Las Piedras Municipio	Las Piedras Municipio.
Loiza Municipio	Loiza Municipio.
Luquillo Municipio	Luquillo Municipio.
Manati Municipio	Manati Municipio.
Maricao Municipio	Maricao Municipio.
Maunabo Municipio	Maunabo Municipio.
Mayaguez Municipio	Mayaguez Municipio.
Moca Municipio	Moca Municipio.
Morovis Municipio	Morovis Municipio.
Naguabo Municipio	Naguabo Municipio.
Naranjito Municipio	Naranjito Municipio.
Orocovis Municipio	Orocovis Municipio.
Patillas Municipio	Patillas Municipio.
Penuelas Municipio	Penuelas Municipio.
Ponce Municipio	Ponce Municipio.
Quebradillas Municipio	Quebradillas Municipio.
Rincon Municipio	Rincon Municipio.
Rio Grande Municipio	Rio Grande Municipio.
Sabana Grande Municipio.	Sabana Grande Municipio.
Salinas Municipio	Salinas Municipio.
San German Municipio	San German Municipio.
San Juan Municipio	San Juan Municipio.
San Lorenzo Municipio	San Lorenzo Municipio.
San Sebastian Municipio	San Sebastian Municipio.
Santa Isabel Municipio	Santa Isabel Municipio.
Toa Alta Municipio	Toa Alta Municipio.
Toa Baja Municipio	Toa Baja Municipio.
Utuado Municipio	Utuado Municipio.
Vega Alta Municipio	Vega Alta Municipio.
Vega Baja Municipio	Vega Baja Municipio.
Vieques Municipio	Vieques Municipio.
Villalba Municipio	Villalba Municipio.
Yabucoa Municipio	Yabucoa Municipio.
Yauco Municipio	Yauco Municipio.
RHODE ISLAND	
Bristol Town	Bristol Town.
Central Falls City	Central Falls City.
New Shoreham Town	New Shoreham Town.
Providence City	Providence City.
Tiverton Town	Tiverton Town.
Warren Town	Warren Town.
West Warwick Town	West Warwick Town.
Woonsocket City	Woonsocket City.
SOUTH CAROLINA	
Bamberg County	Bamberg County.
Barnwell County	Barnwell County.
Calhoun County	Calhoun County.
Chester County	Chester County.
Clarendon County	Clarendon County.
Dillon County	Dillon County.
Fairfield County	Fairfield County.
Georgetown County	Georgetown County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1991 through September 30, 1992]

Eligible labor surplus areas	Civil jurisdictions included
Balance of Horry County	Horry County less Myrtle Beach City.
Marion County	Marion County.
Marlboro County	Marlboro County.
Mc Cormick County	Mc Cormick County.
Orangeburg County	Orangeburg County.
Union County	Union County.
Williamsburg County	Williamsburg County.
SOUTH DAKOTA	
Buffalo County	Buffalo County.
Corson County	Corson County.
Dewey County	Dewey County.
Shannon County	Shanon County.
Todd County	Todd County.
TENNESSEE	
Campbell County	Campbell County.
Cannon County	Cannon County.
Carroll County	Carroll County.
Cocke County	Cocke County.
Cumberland County	Cumberland County.
Decatur County	Decatur County.
Fayette County	Fayette County.
Fentress County	Fentress County.
Gibson County	Gibson County.
Grainger County	Grainger County.
Greene County	Greene County.
Grundy County	Grundy County.
Hardin County	Hardin County.
Haywood County	Haywood County.
Henderson County	Henderson County.
Hickman County	Hickman County.
Houston County	Houston County.
Humphreys County	Humphreys County.
Jackson County	Jackson County.
Johnson County	Johnson County.
Lake County	Lake County.
Lauderdale County	Lauderale County.
Lawrence County	Lawrence County.
Lewis County	Lewis County.
Macon County	Macon County.
Marion County	Marion County.
Mc Minn County	Mc Minn County.
Mc Nairy County	Mc Nairy County.
Meigs County	Meigs County.
Monroe County	Monroe County.
Morgan County	Morgan County.
Overton County	Overton County.
Pickett County	Pickett County.
Polk County	Polk County.
Rhea County	Rhea County.
Balance of Roane County.	Roane County less Oak Ridge.
Scott County	Scott County.
Sevier County	Sevier County.
Unicoi County	Unicoi County.
Van Buren County	Van Buren County.
Warren County	Warren County.
Wayne County	Wayne County.
White County	White County.
TEXAS	
Abilene City	Abilene City in Jones County
	Taylor County.
Anderson County	Anderson County.
Balance of Angelina County.	Angelina County less Lufkin City.
Atascosa County	Atascosa County.
Baytown City	Baytown City in Harris County.
Beaumont City	Beaumont City in Jefferson County.
Bee County	Bee County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1991 through September 30, 1992]

Eligible labor surplus areas	Civil jurisdictions included
Big Spring City	Big Spring City in Howard County.
Brooks County	Brooks County.
Brown County	Brown County.
Brownsville City	Brownsville City in Cameron County.
Calhoun County	Calhoun County.
Balance of Cameron County.	Cameron County less Brownsville City, Harlingen City
Camp County	Camp County.
Cass County	Cass County.
Childress County	Childress County.
Coleman County	Coleman County.
Corpus Christi City	Corpus Christi City in Nueces County.
Coryell County	Coryell County.
Crockett County	Crockett County.
Dawson County	Dawson County.
Del Rio City	Del Rio City in Val Verde County.
Denton City	Denton City in Denton County.
Dimmit County	Dimmit County.
Duval County	Duvall County.
Eagle Pass City	Eagle Pass City in Maverick County.
Balance of Ector County	Ector County less Odessa City
Edinburg City	Edinburg City in Hidalgo County.
Edwards County	Edwards County.
El Paso City	EL Paso City in El Paso County.
Balance of El Paso County.	El Paso County less El Paso City
Freestone County	Freestone County.
Frio County	Frio County.
Ft Worth City	Ft Worth City in Tarrant County.
Galveston City	Galveston City in Galveston County.
Balance of Galveston County.	Galveston County less Galveston City, League City, Texas City.
Balance of Gregg County	Gregg County less Longview City.
Hall County	Hall County.
Hardin County	Hardin County.
Harlingen City	Harlingen City in Cameron County.
Balance of Harrison County.	Harrison County less Longview City.
Henderson County	Henderson County.
Balance of Hidalgo County.	Hidalgo County less Edinburg City, Mc Allen City, Mission City, Pharr City Weslaco City.
Hood County	Hood County.
Jasper County	Jasper County.
Jim Hogg County	Jim Hogg County.
Jim Wells County	Jim Wells County.
Killeen City	Killeen City in Bell County.
Kingsville City	Kingsville City in Kleberg County.
La Salle County	La Salle County.
Laredo City	Laredo City in Webb County.
Liberty County	Liberty County.
Longview City	Longview City in Gregg County
	Harrison County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1991 through September 30, 1992]

Eligible labor surplus areas	Civil jurisdictions included
Loving County	Loving County.
Marion County	Marion County.
Matagorda County	Matagorda County.
Balance of Maverick County.	Maverick County less Eagle Pass City.
Mc Allen City	Mc Allen City in Hidalgo County.
Mc Culloch County	Mc Culloch County.
Milam County	Milam County.
Mission City	Mission City in Hidalgo County.
Mitchell County	Mitchell County.
Morris County	Morris County.
Navarro County	Navarro County.
Newton County	Newton County.
Nolan County	Nolan County.
Balance of Nueces County.	Nueces County less Corpus Christi City.
Odessa City	Odessa City in Ector County.
Orange City	Orange City in Orange County.
Balance of Orange County.	Orange County less Orange City.
Paris City	Paris City in Lamar County.
Pecos County	Pecos County.
Pharr City County	Pharr City in Hidalgo County.
Polk County	Polk County.
Port Arthur City	Port Arthur City in Jefferson County.
Presidio County	Presidio County.
Red River County	Red River County.
Reeves County	Reeves County.
Robertson County	Robertson County.
Rusk County	Rusk County.
Sabine County	Sabine County.
San Antonio City	San Antonio City in Bexar County.
San Marcos City	San Marcos City in Hays County.
San Patricio County	San Patricio County.
Balance of Smith County	Smith County less Tyler City.
Somervell County	Somervell County.
Starr County	Starr County.
Texarkana City Tex	Texarkana City Tex in Bowie County.
Texas City	Texas City in Galveston County.
Titus County	Titus County.
Tyler County	Tyler County.
Uvalde County	Uvalde County.
Weslaco City	Weslaco City in Hidalgo County.
Willacy County	Willacy County.
Zapata County	Zapata County.
Zavala County	Zavala County.
UTAH	
Carbon County	Carbon County.
Duchesne County	Duchesne County.
Emery County	Emery County.
Garfield County	Garfield County.
Grand County	Grand County.
Juab County	Juab County.
Morgan County	Morgan County.
Ogden City	Ogden City in Weber County.
Piute County	Piute County.
San Juan County	San Juan County.
Sanpete County	Sanpete County.
Uintah County	Uintah County.
Wasatch County	Wasatch County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1991 through September 30, 1992]

Eligible labor surplus areas	Civil jurisdictions included
Wayne County	Wayne County.
VERMONT	
Essex County	Essex County.
Orleans County	Orleans County.
VIRGINIA	
Alleghany County	Alleghany County.
Bath County	Bath County.
Brunswick County	Brunswick County.
Buchanan County	Buchanan County.
Buena Vista County	Vuena Vista County.
Charlotte County	Charlotte County.
Covington City	Covington City.
Danville City	Danville City.
Dickenson County	Dickenson County.
Galax City	Galax City
Giles County	Giles County.
Grayson County	Grayson County.
Halifax County	Halifax County.
Henry County	Henry County.
Highland County	Highland County.
Lancaster County	Lancaster County.
Lee County	Lee County.
Lunenburg County	Lunenburg County.
Martinsville City	Martinsville City.
Northumberland County	Northumberland County.
Norton City	Norton City.
Page County	Page County.
Petersburg City	Petersburg City.
Pittsylvania County	Pittsylvania County.
Prince Edward County	Prince Edward County.
Pulaski County	Pulaski County.
Radford City	Radford City
Russell County	Russell County.
Smyth County	Smyth County.
South Boston City	South Boston City.
Surry County	Surry County.
Tazewell County	Tazewell County.
Westmoreland County	Westmoreland County.
Wise County	Wise County.
Wythe County	Wythe County.
WASHINGTON	
Adams County	Adams County.
Balance of Benton County.	Benton County less Kennewick City, Richland City.
Chelan County	Chelan County.
Clallam County	Clallam County.
Columbia County	Columbia County.
Balance of Cowlitz County.	Cowlitz County less Longview City.
Douglas County	Douglas County.
Ferry County	Ferry County.
Franklin County	Franklin County.
Grant County	Grant County.
Grays Harbor County	Grays Harbor County.
Kennewick City	Kennewick City in Benton County.
Kittitas County	Kittitas County.
Klickitat County	Klickitat County.
Lewis County	Lewis County.
Longview City	Longview City in Cowlitz County.
Mason County	Mason County.
Okanogan County	Okanogan County.
Pacific County	Pacific County.
Pend Oreille County	Pend Oreille County.
Skagit County	Skagit County.
Skamania County	Skamania County.
Stevens County	Stevens County.
Wahkiakum County	Wahkiakum County.
Walla Walla City	Walla Walla City in Walla Walla County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1991 through September 30, 1992]

Eligible labor surplus areas	Civil jurisdictions included
Yakima City	Yakima City in Yakima County.
Balance of Yakima County.	Yakima County less Yakima City.
WEST VIRGINIA	
Barbour County	Barbour County.
Berkeley County	Berkeley County.
Boone County	Boone County.
Braxton County	Braxton County.
Brooke County	Brooke County.
Balance of Cabell County.	Cabell County less Huntington City.
Calhoun County	Calhoun County.
Clay County	Clay County.
Doddridge County	Doddridge County.
Fayette County	Fayette County.
Gilmer County	Gilmer County.
Grant County	Grant County.
Greenbrier County	Greenbrier County.
Hampshire County	Hampshire County.
Hardy County	Hardy County.
Harrison County	Harrison County.
Jackson County	Jackson County.
Balance of Kanawha County.	Kanawha County less Charleston City.
Lewis County	Lewis County.
Lincoln County	Lincoln County.
Logan County	Logan County.
Marion County	Marion County.
Balance of Marshall County.	Marshall County less Wheeling City.
Mason County	Mason County.
Mc Dowell County	Mc Dowell County.
Mercer County	Mercer County.
Mingo County	Mingo County.
Monroe County	Monroe County.
Nicholas County	Nicholas County.
Parkersburg City	Parkersburg City in Wood County.
Pleasants County	Pleasants County.
Pocahontas County	Pocahontas County.
Preston County	Preston County.
Putnam County	Putnam County.
Raleigh County	Raleigh County.
Randolph County	Randolph County.
Ritchie County	Ritchie County.
Roane County	Roane County.
Summers County	Summers County.
Taylor County	Taylor County.
Tucker County	Tucker County.
Tyler County	Tyler County.
Upshur County	Upshur County.
Balance of Wayne County.	Wayne County less Huntington City.
Webster County	Webster County.
Wetzel County	Wetzel County.
Wirt County	Wirt County.
Balance of Wood County	Wood County less Parkersburg City.
Wyoming County	Wyoming County.
WISCONSIN	
Ashland County	Ashland County.
Balance of Calumet County.	Calumet County less Appleton City.
Clark County	Clark County.
Door County	Door County.
Green Lake County	Green Lake County.
Kenosha City	Kenosha City in Kenosha County.
Menominee County	Menominee County.
Racine City	Racine City in Racine County.
Rusk County	Rusk County.
Sawyer County	Sawyer County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1991 through September 30, 1992]

Eligible labor surplus areas	Civil jurisdictions included
Washburn County	Washburn County.
WYOMING	
Big Horn County	Big Horn County.
Campbell County	Campbell County.
Casper City	Casper City in Natrona County.
Converse County	Converse County.
Fremont County	Fremont County.
Lincoln County	Lincoln County.
Uinta County	Uinta County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE

[October 1, 1991 through September 30, 1992]

Eligible labor surplus metropolitan statistical areas (MSA's) and primary metropolitan statistical areas (PMSA's)	Definition of eligible geographic areas
MASSACHUSETTS	
Boston PMSA	Bristol County (part) Mansfield Town, Norton Town, Raynham Town. Essex County (part) Lynn City, Lynnfield Town, Nahant Town, Saugus Town. Middlesex County (part) Action Town, Arlington Town, Ashland Town, Ayer Town, Bedford Town, Belmont Town, Boxborough Town, Burlington Town, Cambridge City, Carlisle Town, Concord Town, Everett City, Framingham Town, Groton Town, Holliston Town, Hopkinton Town, Hudson Town, Lexington Town, Lincoln Town, Littleton Town, Malden City, Malborough City, Maynard Town, Medord Town, Melrose City, Natick Town, Newton City, North Reading Town, Reading Town, Sherborn Town, Shirley Town, Somerville City, Stoneham Town, Stow Town, Sudbury Town, Townsend Town, Wakefield Town, Waltham City, Watertown Town, Wayland Town, Weston Town, Wilmington Town, Winchester Town, Woburn City.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1991 through September 30, 1992]

Eligible labor surplus metropolitan statistical areas (MSA's) and primary metropolitan statistical areas (PMSA's)	Definition of eligible geographic areas
	Norfolk County (part) Bellingham Town, Braintree Town, Brookline Town, Canton Town, Cohasset Town, Dedham Town, Dover Town, Foxborough Town, Franklin Town, Holbrook Town, Medfield Town, Medway Town, Millis Town, Milton Town, Needham Town, Norfolk Town, Norwood Town, Quincy City, Randolph Town, Sharon Town, Stoughton Town, Walpole Town, Wellesley Town, Westwood Town, Weymouth Town, Wrentham Town.
	Plymouth County (part) Carver Town, Duxbury Town, Hanover Town, Hanson Town, Hingham Town, Hull Town, Kingston Town, Lakeville Town, Marshfield Town, Middleborough Town, Norwell Town, Pembroke Town, Plymouth Town, Plympton Town, Rockland Town, Scituate Town.
	Suffolk County, Boston City, Chelsea City, Revere City, Winthrop Town.
	Worcester County (part) Berlin Town, Bolton Town, Harvard Town, Hopedale Town, Lancaster Town, Mendon Town, Milford Town, Southborough Town, Upton Town.
Brockton PMSA	Bristol County (part) Easton Town.
	Norfolk County (part) Avon Town.
	Plymouth County (part) Abington Town, Bridgewater Town, Brockton City, East Bridgewater Town, Halifax Town, West Bridgewater Town, Whitman Town.
Fall River, MA-RI PMSA.	Bristol County MA (part) Fall River City, Somerset Town, Swansea Town, Westport Town.
	Newport County RI (part) Little Compton Town, Tiverton Town.
Fitchburg-Leominster MSA.	Middlesex County (part) Ashby Town.
	Worcester County (part) Ashburnham Town, Fitchburg City, Leominster City, Lunenburg Town, Westminster Town.
Lawrence-Haverhill MA-NH PMSA.	Essex County MA (part) Amesbury Town, Andover Town, Boxford Town, Georgetown Town, Groveland Town, Haverhill City, Lawrence City, Merrimac Town, Methuen Town, Newbury Town, Newburyport City, North Andover Town, Salisbury Town, West Newbury.
	Rockingham County NH (part) Atkinson Town, Brentwood Town, Danville Town, Derry Town, East Kingston Town, Hamstead Town, Kingston Town, Newton Town, Plaistow Town, Salem Town, Sandown Town, Seabrook Town, Windham Town.
Lowell MA-NH PMSA.	Middlesex County MA (part) Billerica Town, Chelmsford Town, Dracut Town, Dunstable Town, Lowell City, Pepperell Town, Tewksbury Town, Tyngsborough Town, Westford Town.
	Hillsborough County NH (part) Pelham Town.
New Bedford MSA	Bristol County (part) Acushnet Town, Dartmouth Town, Fairhaven Town, Freetown Town, Manchester Town, New Bedford City.
	Plymouth County (part) Marion Town, Mattapoisett Town, Rochester Town.
Pittsfield MSA	Berkshire County (part) Cheshire Town, Dalton Town, Hinsdale Town, Lanesborough Town, Lee Town, Lenox Town, Pittsfield City, Richmond Town, Stockbridge Town.
Salem-Gloucester PMSA.	Essex County (part) Beverly City, Danvers Town, Essex Town, Gloucester City, Hamilton Town, Ipswich Town, Marbelhead Town, Middletown Town, Peabody City, Rockport Town, Rowley Town, Salem Town, Swampscott Town, Topsfield Town, Wenham Town.
Springfield MSA	Hampden County (part) Agawam Town, Chicopee City, East Longmeadow Town, Hampden Town, Holyoke City, Longmeadow Town, Ludlow Town, Monson Town, Montgomery Town, Palmer Town, Russell Town, Southwick Town, Springfield City, Westfield City, West Springfield Town, Wilbraham Town.
Worcester MSA	Hampshire County (part) Belchertown Town, Easthampton Town, Granby Town, Huntington Town, Northhampton City, Southhampton Town, South Hadley Town.
	Worcester County (part) Auburn Town, Barre Town, Boylston Town, Brookfield Town, Charlton Town, Clinton Town, Douglas Town, Dudley Town, East Brookfield Town, Grafton Town, Holden Town, Leicester Town, Millbury Town, Northborough Town, Northbridge Town, North Brookfield Town, Oxford Town, Paxton Town, Princeton Town, Rutland Town, Shrewbury Town, Spencer Town, Sterling Town, Sutton Town, Uxbridge Town, Webster Town, Westborough Town, West Boylston Town, Worcester City.
RHODE ISLAND	
Pawtucket-Woonsocket-Attleboro RI-MA PMSA.	Bristol County MA (part) Attleboro City, North Attleborough Town, Rehoboth Town, Seekonk Town.
	Norfolk County MA (part) Plainville Town.
	Worcester County MA (part) Blackstone Town, Millville Town.
	Providence County RI (part) Burrillville Town, Central Falls City, Cumberland Town, Lincoln Town, North Smithfield Town, Pawtucket City, Smithfield Town, Woonsocket City.

[FR Doc. 91-25757 Filed 10-24-91; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made

available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page numbers.

Volume I

Tennessee, TN91-34 (OCT. 25, 1991).	p. 1232ss p. 1232tt
West Virginia:	
WV91-9 (OCT. 25, 1991)	p. 1469 p. 1470
WV91-10 (OCT. 25, 1991)	p. 1471 p. 1472
WV91-11 (OCT. 25, 1991)	p. 1473 p. 1474
WV91-12 (OCT. 25, 1991)	p. 1475 p. 1476

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Kentucky:	
KY91-26 (OCT. 25, 1991)	p. All.
KY91-27 (OCT. 25, 1991)	p. All.
KY91-28 (OCT. 25, 1991)	p. All.
New Hampshire, NH91-3 (FEB. 22, 1991).	p. 685 pp. 686-689
Pennsylvania:	
PA91-8 (FEB. 22, 1991)	p. 1029 p. 1030
PA91-10 (FEB. 22, 1991)	p. 1047 p. 1048
PA91-14 (FEB. 22, 1991)	p. 1063 p. 1065
PA91-23 (OCT. 18, 1991)	p. 1123 p. 1124
PA91-24 (OCT. 18, 1991)	p. 1129 p. 1130
Tennessee, TN91-19 (FEB. 22, 1991).	p. 1232e
Virginia, VA91-50 (FEB. 22, 1991).	p. 1357 pp. 1358-1359
West Virginia:	
WV91-2 (FEB. 22, 1991)	p. 1421 p. 1424
WV91-3 (FEB. 22, 1991)	p. 1445 p. 1446-1458b

Volume II

Illinois, IL91-1 (FEB. 22, 1991).	p. 69 p. 76
Oklahoma, OK91-18 (FEB. 22, 1991).	p. 1005 p. 1007
Wisconsin:	
WI91-2 (FEB. 22, 1991)	p. 1201 p. 1202
WI91-8 (FEB. 22, 1991)	p. 1225 p. 1231
WI91-10 (FEB. 22, 1991)	p. 1247 pp. 1252-1258b

Volume III

Alaska, AK91-1 (FEB. 22, 1991).	p. 1 pp. 3-4
Montana, MT91-6 (FEB. 22, 1991).	p. 273 pp. 274-276
Nevada, NV91-1 (FEB. 22, 1991).	p. 299 pp. 300-320d

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 18th day of October 1991.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 91-25557 Filed 10-24-91; 8:45 am]

BILLING CODE 4510-27-M

JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION

Fellowship Application and Related Forms

AGENCY: James Madison Memorial Fellowship Foundation.

ACTION: Request for information.

SUMMARY: The information sought on these proposed forms will help implement the James Madison Memorial Fellowship Act of 1986. The information gathered will enable the Foundation to select James Madison Fellows from among applicants in an annual national competition for fellowships. The information provided by applicants on application forms, by those whom they ask to evaluate their candidacies on evaluation forms, and by educational institutions on transcript request forms will be used by an independent review committee to select those candidates whom the committee will recommend for fellowships to the Foundation. The forms (except the voluntary survey form) will be used for no other purposes; the voluntary survey form will be used for statistical analysis only and will not be seen by the independent review committee nor used for selecting fellows..

DATES: Comments must be submitted in writing on or before November 1, 1991 in the **Federal Register**.

ADDRESSES: Send written comments to: James Madison Memorial Fellowship Foundation, 2000 K Street, NW., suite 303, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: James M. Banner, Jr., (202) 653-8700.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1980, the James Madison Memorial Fellowship Foundation has submitted a copy of the proposed forms to the Office of Management and Budget for its review (40 U.S.C. 3540(h)). Organizations and individuals desiring to submit comments on these information collection requirements should direct them to the Office of Information and Regulatory Affairs, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok. The annual public reporting burden for this collection of information is estimated to average 4 hours per response for an anticipated 1500 applicants.

For the reasons set forth in the preamble and under authority of 20 U.S.C. 4501 et seq., the following information will be solicited annually on application and related forms from fellowship applicants to the James Madison Memorial Fellowship Program. Applicants will be both experienced high school teachers of American history, American government, and social studies (senior fellow applicants) and graduating college seniors and recent college graduates who wish to become secondary school teachers of the same subjects (junior fellow applicants). To avoid duplication, in the text below unless other indicated the information is solicited from both senior and junior fellows. That information solicited only from applicants for senior fellowships is preceded by "SR:" (SR: thus); that information solicited only from applicants for junior fellowships is preceded by "JR:" (JR: thus).

Application Forms

Questions requiring factual information only:

Affirmation of wish to be considered for a James Madison Fellowship and agreement to abide by Foundation regulations governing a fellowship: signature and date

Legal name and residence

Current [JR: campus] address

How legal residence is established: place of registration to vote, in-state tuition eligibility, other

Congressional district of legal residence

Telephone numbers: home, SR: office, JR: campus

Date of birth

Social security number

Sex

Whether or not applicant is a U.S. citizen or U.S. national: yes or no

SR: School name and address

SR: Name of school principal or head

SR: School type (check one): public, private, parochial

SR: School location (check one): urban, suburban, rural

JR: Name, address, and name of president of the college from which you will receive or did receive your baccalaureate degree

JR: College type (check one): public, private

JR: College type (check one): college, university

JR: Cumulative grade point average as of December or upon graduation (if your institution determined class rank):

_____ on a scale of _____

JR: College major(s)

JR: Name of baccalaureate degree sought or held

JR: Date baccalaureate degree expected or received

JR: Credits required for graduation

_____

JR: Credits achieved as of December

_____

Questions requiring factual and explanatory information:

Beginning with the secondary school from which you graduated, list in chronological order all secondary schools and colleges you attended, including academic summer or special schools and courses. SR: If more than four months elapsed between any phase of your education or between your education and your initial full-time teaching position, indicate your main activities during that period. JR: If more than four months elapsed between high school and your entry into college, list your main activities and courses during that time. If you already hold a baccalaureate degree, indicate your main activities since its award.

SR: Beginning with your first full-time teaching position, list in chronological order all full-time teaching positions you have held, including summer or special positions. If more than three months elapsed between any phase of your professional career, explain the reasons for those breaks.

Indicate the courses or other aspects of your post secondary education which have prepared you to be a secondary school teacher of American history, American government, or social studies and explain why.

SR: List and describe briefly any civic, professional, or collegial activities in which you are involved that relate to your responsibilities as a teacher. Indicate the dates and degree of involvement, and explain the significance to your personal and professional aspirations.

JR: List and briefly describe the school, college, and community activities in which you have participated without compensation that may have influenced your decision to become a teacher or that may have contributed to your preparation for the teaching profession. Indicate the duration and degree of your involvement and explain the significance of these activities to your future teaching plans and your personal and professional aspirations.

List any awards, scholarships, fellowships, and appointments you have received in recognition of your achievements, activities, and leadership.

Why did you choose to become a secondary school teacher of American

history, American government, or social studies?

What do you hope to achieve as a secondary school teacher? How does secondary school teaching fit into your long-term career plans?

JR: Describe your long term career plans and their relationship to teaching American history, American government, or social studies at the secondary school level.

SR: Briefly describe and provide examples of your methods and approaches to classroom instruction.

SR: Briefly describe your school and/or school district. Explain any particular circumstances about your school or district that affect your teaching.

What strengths of character, intelligence, personality, and ability do you have that contribute [JR: will contribute] toward your success as a secondary school teacher of American history, American government, or social studies?

What limitations of character, intelligence, personality, and ability must you work to overcome to perform successfully as a secondary school teacher of American history, American government, or social studies?

If selected as a Madison Fellow, at what institution do you plan to pursue your master's degree? Why did you choose this institution?

Describe the course of graduate study you will pursue. Include a list of courses related to the history, principles, and interpretation of the Constitution you plan to take; additional electives that you may be permitted to take; and which electives you plan to take. Place an asterisk next to those courses you will take during your first year of study. The Foundation expects that your graduate education will closely approximate the course of study you describe here and that you will notify the Foundation and explain changes in this course of study that may be necessary or desirable.

Describe how the educational plans outlined above will enhance your career as a teacher of American history, American government, or social studies and how they relate to your professional plans.

Briefly describe one or two books that you have read in the last year that have most affected you and explain why. These books do not need to be related to the Constitution or to your professional plans.

What interesting, unusual, or significant information about you, your family, your beliefs, or your interests do you wish to bring to the attention of the fellowship review committee?

Applicant's Essay Form

In an essay of no more than 600 words, explain your beliefs about the importance of the study of the Constitution to young students, to your own career aspirations, to your contributions to public and professional service, and to citizenship in a constitutional republic.

Applicant's signature and date.

Request for evaluation form

Applicant's name

I hereby _____ waive _____ do not waive my right of future access to the contents of this evaluation: signature and date

This evaluator is (check one):

SR: A school superintendent, principal/head, department chair, or other supervisor who can evaluate the applicant's qualities as a teacher of American history, American government, or social studies

SR: A colleague or supervisor, preferably with a background in American history, American government, or social studies, who can attest to the applicant's depth of interest in those subjects.

SR: An individual other than a supervisor or teaching colleague who can attest to the applicant's commitment to civic, professional, and collegial activities.

JR: A dean, faculty member, or other college official who can attest to the applicant's potential for and commitment to a career of teaching American history, American government, or social studies in the secondary schools, and the applicant's potential for graduate studies.

JR: A faculty member who has taught the applicant in his or her major field of undergraduate study who can attest to the applicant's preparation and depth of interest in American history, American government, or social studies and to the applicant's quality as a student.

JR: An individual other than a dean, faculty member, or other college official who can evaluate the applicant's strengths and personal limitations (i.e., of character, intelligence, personality, and ability) and the applicant's commitment to civic and public service activities.

Evaluator should discuss the applicant's strengths and weaknesses, as well as knowledge of and efforts to overcome those weaknesses, in the following areas: Intellect, character, and vision; academic abilities and completion of a graduate school program; abilities and commitment as [JR: to become] a secondary school teacher of American history, American government, or social studies; ability to work with others.

Evaluator's name, title, affiliation, address, signature, date

How long and in what capacity have you known the applicant?

Please rate the applicant in relation to other individuals you have known under similar circumstances (approximately _____ individuals over approximately _____ years) on the following grounds—historical knowledge, intellectual curiosity, independence of thought, involvement in civic activities, oral and written communication skills, motivation and energy, interpersonal skills—and on the following scale: outstanding (top 5%), unusual (top 10%), very good (top 25%), above average (top 40%), average (middle 20%), below average (lowest 40%), no knowledge

Transcript Request Form:

Legal name and address

Fellowship applied for: senior or junior

Transcript(s) requested: undergraduate, graduate, date of undergraduate and/or graduate degree

Applicant transcript release permission: signature and date

Institution name, city, state, telephone number

Voluntary Survey Form

Check one box beside the category providing descriptions of the race or national origin with which you most closely identify yourself: American Indian or Alaskan Native; Asian or Pacific Islander; black, not of Hispanic origin; Hispanic; white, not of Hispanic origin; other (please specify)

Source(s) from which you learned about the James Madison Memorial Fellowship Program (check one): college/school coordinator; periodical or newsletter; colleague; other (please specify)

Fellowship applied for (check one): senior, junior

Name

Paul A. Yost, Jr.,

President.

[FR Doc. 91-25678 Filed 10-24-91; 8:45 am]

BILLING CODE 6320-05-M

NATIONAL COMMISSION ON AMERICAN INDIAN, ALASKA NATIVE, AND NATIVE HAWAIIAN HOUSING

Commission Meeting

AGENCY: The National Commission on American Indian, Alaska Native, and Native Hawaiian Housing.

ACTION: Notice of public hearings and meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Commission on American Indian, Alaska Native, and Native Hawaiian Housing announces the forthcoming public hearings and meeting of the Commission.

DATES: November 7 & 8, 1991, 9 a.m. to 5 p.m.

ADDRESSES: Sheraton Mesa Hotel, 200 N. Centennial Way, Mesa, AZ 85201, (602) 898–8300.

FOR FURTHER INFORMATION CONTACT: Lois V. Toliver, Administrative Officer (202) 275–0045.

TYPE OF MEETING: Open.

AGENDA: Call to Order, Roll Call, Chairman's Message, Introduction of Commissioners and Guests, Presentations from Invited Guests.

Lois V. Tolliver,

Administrative Officer.

[FR Doc. 91–25665 Filed 10–24–91; 8:45 am]

BILLING CODE 6820–07–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, of the ACNW, and the ACNW Working Groups the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings was published September 20, 1991 (56 FR 47817). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS full Committee and ACNW meetings designated by an asterisk (*) will be closed in whole or in part to the public. ACRS full Committee and ACNW meetings begin at 8:30 a.m. and ACRS Subcommittee and ACNW Working Group meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS full Committee and ACNW meetings, and when ACRS Subcommittee and ACNW Working Group meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the November 1991 ACRS and ACNW full Committee meetings can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committees (telephone: 301/492–4600 (recording) or 301/492–7288, Attn: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., Eastern Time.

ACRS Subcommittee Meetings

Advanced Boiling Water Reactors, October 23, 1991, Bethesda, MD. The Subcommittee will review draft safety evaluation reports related to Chapters 3, 9, 10, 11 and 13 of the GE/Standard Safety Analysis Report for the Advanced Boiling Water Reactor design.

Severe Accidents, October 24–25, 1991, Bethesda, MD. The Subcommittee will discuss elements of the Severe Accident Research Program.

Materials and Metallurgy, November 6, 1991, Bethesda, MD, 8:30 a.m.–12:00 Noon (tentative). The Subcommittee will discuss steam generator degradation concerns, the basis for the staff's acceptance criteria for steam generator tube plugging and its comparison with foreign experience and other related matters.

Ad Hoc ACRS Subcommittee on Yankee-Rowe Pressure Vessel Integrity, November 6, 1991, Bethesda, MD, 1:00 p.m. The Ad Hoc Subcommittee will review issues related to the Yankee-Rowe reactor pressure vessel integrity and its impact on plant operations.

Planning and Procedures, November 6, 1991, Bethesda, MD, 5:30 p.m. (tentative). The Subcommittee will discuss agenda for ACRS "retreat," mechanism to reply to EDO response regarding implementation of ACRS recommendations that are made to the Commission, revised procedures for ACRS review of SECY papers, and other items, as appropriate.

Improved Light Water Reactors, November 20, 1991, Bethesda, MD. The Subcommittee will review draft safety evaluation reports corresponding to Chapters 1 and 10 of the EPRI's Requirements Document for the Evolutionary Designs.

Joint Advanced Boiling Water Reactors/Computers in Nuclear Power Plant Operations, November 21, 1991, Bethesda, MD. The Subcommittees will review the draft safety evaluation report related to Chapter 7 of the Standard Safety Analysis Report for the GE/Advanced Boiling Water Reactor design.

Joint Computers in Nuclear Power Plant Operations/Advanced Pressurized Water Reactors, December 3–4, 1991, Bethesda, MD. The Subcommittee will hear Westinghouse and ABB Combustion Engineering presentations on their digital computer experiences in nuclear power plants.

Regional Programs, December 5, 1991, NRC Region V Office, Walnut Creek, CA. The Subcommittee will discuss the activities of the NRC Region V Office.

AC/DC Power Systems Reliability, December 10, 1991, Bethesda, MD, 8:30 a.m.-12 Noon (tentative). The Subcommittee will review the proposed Rule to address resolution of Generic Safety Issue B–56, "Diesel Generator Reliability."

Reliability Assurance, December 10, 1991, Bethesda, MD, 1 p.m. The Subcommittee will discuss, with the NRC staff and the industry, research and other matters regarding nuclear power plant aging phenomena.

Improved Light Water Reactors, December 11, 1991, Bethesda, MD. The Subcommittee will review draft safety evaluation reports pertaining to the EPRI's Requirements Document for the Evolutionary Designs.

Joint Safety Philosophy, Technology and Criteria/Severe Accidents/Regulatory Policies and Practices, January 7–8, 1992, Bethesda, MD. The Subcommittees will discuss a number of interrelated proposed NRC staff position papers as follows: (1) Proposed Definition of a Large Release for Safety Goal Policy Implementation, (2) Proposed Revision to TID–14844 to Update Source Term, (3) Proposed Revision to 10 CFR Part 100, Decoupling Siting from Design, and (4) Site Characteristics to be Used in Part 100 Revision and Large Release Determination.

Extreme External Phenomena, Date to be determined (December/January), Bethesda, MD. The Subcommittee will discuss the proposed revisions to 10 CFR part 100, appendix A, "Seismic and Geologic Siting Criteria for Nuclear Power Plants."

Joint Plant Operations/Probabilistic Risk Assessment, Date to be determined (December/January), Bethesda, MD. The Subcommittees will continue the review of the NRC staff's program to address the issue of risk from low power/shutdown operations.

Advanced Reactor Designs, Date and location to be determined (December/January). The Subcommittee will visit the ORNL facility and will discuss the testing program and experiments for the MHTGR design.

Advanced Pressurized Water Reactors, Date to be determined (December/January), Bethesda, MD. The Subcommittee will continue its review of the ABB CE System 80+ CESSAR for

Design Certification. Subject material being proposed for discussion includes consideration of safeguard systems and USIs/GSIs.

Safety Philosophy, Technology and Criteria, Date and location to be determined (January/February). The Subcommittee will discuss SECY-91-270, "Interim Guidance on Staff Implementation of the Commission's Safety Goal Policy."

Joint Individual Plant Examinations/Severe Accidents, Date to be determined (January/February), Bethesda, MD. The Subcommittees will discuss the status of the IPE program and the development of Severe Accident Management Guidelines.

Thermal Hydraulic Phenomena, Date to be determined (Winter, tentative), Bethesda, MD. The Subcommittee will continue its review of the NRC staff program to address the issue of interfacing systems LOCAs.

Joint Thermal Hydraulic Phenomena/Core Performance, Date to be determined, Bethesda, MD. The Subcommittees will continue the review of the issues pertaining to BWR core power stability.

Thermal Hydraulic Phenomena, Date to be determined, Bethesda, MD. The Subcommittee will review the status of the application of the Code Scaling, Applicability, and Uncertainty (CSAU) Evaluation Methodology to a small-break LOCA calculation for a B&W plant.

Thermal Hydraulic Phenomena, Date to be determined, Los Alamos, NM. The Subcommittee will review the documentation associated with the TRAC-PF1/MOD2 code version.

Structural Engineering, Date to be determined, Bethesda, MD. The Subcommittee will discuss with the NRC staff and the industry the status of Containment Structural Integrity programs, including foreign programs.

Joint Mechanical Components/Auxiliary and Secondary Systems, Date to be determined, Bethesda, MD (tentative). The Subcommittees will review the status of the industry check valve and MOV operability programs and the status of Generic Issue-57, "Effects of Fire Protection System Actuation on Safety Related Equipment."

ACRS Full Committee Meetings

379th ACRS Meeting, November 7-9, 1991, Bethesda, MD. Items are tentatively scheduled.

A. *Reactor Operating Experience (Open)*—Briefing and discussion of recent operating events and incidents at nuclear facilities, including the loss of power event that occurred (August 13, 1991) at the Nine Mile Point nuclear station. Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

B. *Level Of Design Detail*—Briefing and discussion of the level of design detail required to conduct regulatory reviews and evaluations of standardized nuclear power plant designs in accordance with 10 CFR part 52. Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

*C. *General Electric Advanced Boiling Water Reactor (ABWR) (Open/Closed)*—Discussion of Subcommittee activities related to review of the General Electric ABWR. Representatives of the NRC staff and the General Electric Company will participate, as appropriate. Portions of this session will be closed as necessary to discuss Proprietary Information applicable to this matter.

D. *Steam Generator Tube Degradation and Inspection*—Briefing and discussion regarding experience with steam generator tube performance and inspection methods. The bases for plugging/sleeving of individual tubes will be discussed and compared with foreign experience. Representatives of the NRC staff and nuclear industry will participate, as appropriate.

E. *Key Technical Issues for Future Nuclear Power Plants*—Discussion among members of key technical issues related to evolutionary, passive, and advanced reactor designs that are in need of early resolution. A mechanism for dealing with these issues will also be discussed. Representatives of the NRC staff will participate, as appropriate.

F. *Severe Accident Research Program*—Briefing and discussion regarding the NRC Severe Accident Research Program. Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

G. *Generic Issue 121, Hydrogen Control for PWR Dry Containments*—Briefing and discussion regarding the NRC staff's proposed resolution of this generic issue. Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

*H. *Westinghouse Standardized Nuclear Plant AP-600 (Open/Closed)*—Briefing and discussion of testing needs with respect to this passive PWR plant design. Representatives of the NRC staff will participate, as appropriate. Portions of this session will be closed as necessary to discuss Proprietary Information related to this matter.

I. *Control of Nuclear Power Plant Switchyard Activities*—Discussion of proposed ACRS action/comments regarding the impact of switchyard control on the initiation and/or course of nuclear power plant transients and incidents.

*J. *Yankee-Rowe Nuclear Power Station (Open/Closed)*—Briefing and discussion regarding issues related to the Yankee-Rowe reactor pressure vessel integrity and its impact on plant operations. Representatives of the NRC staff and the licensee will participate, as appropriate. Portions of this session may be closed as necessary to discuss Proprietary and Classified Information related to this matter.

K. *ACRS Subcommittee Activities*—Reports and discussion regarding the status of designated subcommittee activities including planning and procedures for conduct of Committee activities.

L. *Future Committee Activities*—Discuss anticipated subcommittee activities and items proposed for consideration by the full Committee.

M. *Preparation of ACRS Reports*—Discuss proposed Committee reports regarding matters considered during this meeting and items that were not completed at previous ACRS meetings as time and availability of information permit.

380th ACRS Meeting, December 12-14, 1991—Agenda to be announced.

ACNW Full Committee and Working Group Meetings

ACNW Working Group on Geologic Dating, November 19, 1991, Bethesda, MD. The Working Group will review the problems and limitations with various Quaternary dating methods to be used in the assessment of volcanic features and materials for the site characterization of a high-level waste repository.

37th ACNW Meeting, November 20-22, 1991, Bethesda, MD. Items are tentatively scheduled.

A. The Committee will continue work on a response to Chairman Selin on a systems analysis approach to the storage of spent fuel.

B. Complete a response to a request from Commissioner Rogers regarding whether the NRC staff has developed a suitable performance assessment program and whether the NRC staff has adequate equipment, expertise and training to conduct high- and low-level waste computer modeling.

C. Discuss a revision to NUREG-1200, Standard Review Plan for a Low-Level Waste Facility.

D. Review revisions to 10 CFR part 61, Licensing Requirements for Land Disposal of Radioactive Waste.

E. Review and discuss problems and limitations with various Quaternary

dating methods to be used in the assessment of volcanic features for site characterization of the proposed high-level waste repository at Yucca Mountain.

F. Hear a presentation and consider commenting on a number of issues in the field of low-level waste disposal including: steps to decrease low-level radioactive waste production, reporting mishaps in handling and the management of low-level wastes and protection of groundwater from low-level radioactive waste effluents.

G. Hear a briefing by NRC's Office of Research on planned research in the area of high-level radioactive waste.

H. Discuss anticipated and proposed Committee activities, future meeting agenda administrative, and organizational matters, as appropriate. Also, discuss matters and specific issues that were not completed during previous meetings as time and availability of information permit.

ACNW Working Group on Concerns Related to Seismic and Faulting Investigations for Characterization of an HLW Site, December 17, 1991, Bethesda, MD. The Working Group will hear the current thinking by DOE, the State of Nevada, American Society of Civil Engineers, and other interested parties regarding seismic and faulting investigations of an HLW site.

38th ACNW Meeting, December 18–19, 1991—Agenda to be announced.

ACNW Working Group on the Impact of Long-Range Climate Change in the Area of the Southern Basin and Range, January 15, 1992, Bethesda, MD. The Working Group will review the potential long-range climate changes and their impact on performance assessments of a proposed high-level waste repository.

ACNW Working Group on Methods for Assessing Natural Resources at a Proposed High-Level Waste Repository Site, Date to be determined, Bethesda, MD. The Working Group will discuss methodologies for the assessment of the potential for natural resources at the proposed high-level waste repository site at Yucca Mountain. The relationship between such resources and the potential for human intrusion will be emphasized.

Dated: October 21, 1991.

Samuel J. Chilk,

Acting Advisory Committee Management Officer.

[FR Doc. 91–25735 Filed 10–24–91; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29839; File Nos. SR-AMEX-91-26, SR-CBOE-91-34 and SR-PHLX-91-40]

Self-Regulatory Organizations; Notice of Filing and Order Granting Partial Accelerated Approval of Proposed Rule Changes by the American Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., and the Philadelphia Stock Exchange, Inc. Relating to Options on Preferred Stock

October 18, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that the American Stock Exchange, Inc. ("Amex"), the Chicago Board Options Exchange, Inc. ("CBOE"), and the Philadelphia Stock Exchange, Inc. ("Phlx") (collectively the "Exchanges"), on October 8, 1991, October 4, 1991, and October 18, 1991, respectively, filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organizations. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The Amex, CBOE, and Phlx request approval to list options on preferred stocks that meet established uniform options listing standards and guidelines.[1] Specifically, the Exchanges propose to amend their uniform options listing standards rules to provide that, if a preferred stock meets the Exchanges' current initial listing standards criteria, then the preferred stock is appropriate for options trading. The Exchanges also are requesting accelerated approval to list options on the preferred stock of R.J.R. Nabisco Holdings Corporation ("RJR Preferred").

The text of each proposed rule change is available at the respective Office of the Secretary of each exchange and at the Commission.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, the self-regulatory organizations included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organizations have prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchanges are filing their proposals to establish their policies that, like common stock, securities other than common stock will be required to meet the standards and guidelines set forth in the Exchanges' uniform options listing standards rules, in order to be approved for listing and trading on the Exchanges.[2] To that end, the Exchanges are proposing that their respective options listing standards rules be amended to include preferred stock as a security which is appropriate for options trading.

In addition, the Exchanges are seeking Commission approval to list options on RJR Preferred, which meets the established uniform options listing standards, in order to commence trading on October 21, 1991.

The Exchanges believe the proposed rule changes are consistent with section 6(b) of the Act, in general, and section 6(b)(5) in particular, in that they are designed to remove impediments to and perfect the mechanism of a free and open market and a national market system.

(B) Self-Regulatory Organizations' Statement on Burden on Competition

The Exchanges believes that the proposed rule changes will not impose a burden on competition.

(C) Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received From Members, Participants, or Others

Written comments on the proposed rule changes were neither solicited nor received.

[1] *See* Amex Rule 915, CBOE Rule 5.2, and Phlx Rule 1009.

[2] On August 29, 1991, the Commission approved uniform proposals by the options exchanges to lower the options listing standards. See Securities Exchange Act Release No. 29628 (August 29, 1991), 56 FR 43949 ("Options Listing Standards Approval Order"). In footnote eleven of that approval order, the Commission stated that the "Exchanges must file separate rule changes pursuant to Section 19(b) of the Act for options on securities other than common stock."

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The Exchanges have requested that those portions of the proposed rule changes dealing solely with the listing of options on RJR Preferred be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5). Specifically, the Commission believes that given that RJR Preferred meets the Exchanges' uniform options listing standards in all respects and that RJR Preferred has all the indicia of common stock ownership, coupled with the extremely high volume of trading in the security, it is appropriate to permit options to trade on RJR Preferred. Moreover, by allowing options to trade on RJR Preferred, among other things, investors will have a better means to hedge their positions in the security as well as enhanced market timing opportunities, the pricing of RJR Preferred may become more efficient, and market makers in RJR Preferred, by virtue of enhanced hedging opportunities, may be able to provide deeper and more liquid markets. In sum, options on RJR Preferred will engender the same benefits to investors and the marketplace that exist with respect to options on common stock.

The Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. By accelerating approval of the Exchanges' proposals, the Exchanges' will be able to commence listing options on RJR Preferred on October 21, 1991, the date the Options Listing Standards Approval Order becomes effective. When the Commission approved the lower options listing standards it found that options on the newly eligible securities would be beneficial to investors and the public interest. Accordingly, given the extremely active trading in RJR Preferred and the security's compliance with existing options listing standards, the Commission believes it is consistent with section 6 of the Act to allow options on RJR Preferred to trade as soon as possible after the effective date of the lower options listing standards.[3]

With respect to the Exchanges' proposals regarding the listing of options on other preferred stocks, within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule changes, or

(b) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filings will also be available for inspection and copying at the respective principal offices of the above-mentioned self-regulatory organizations. All submissions should refer to the respective file number in the caption above and should be submitted by November 15, 1991.

It Is Therefore Ordered, Pursuant to section 19(b)(2) of the Act,[4] that those portions of the proposed rule changes (SR-AMEX91-26, SR-CBOE-91-34, and SR-PHLX-91-40) that deal solely with the listing of options on RJR Preferred is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-25707 Filed 10-24-91; 8:45 am]

BILLING CODE 8010-01-M

[3] Even though the Commission is approving the authority of the Phlx to list options on RJR Preferred, the Phlx can not commence trading RJR Preferred options until it submits a certificate to the Commission pursuant to Rule 12d1-3 under the Act stating that RJR Preferred satisfies all the Phlx's requirements for options trading.

[4] 15 U.S.C. 78s(b)(2) (1988).

[5] 17 CFR 200.30-3(a)(12) (1990).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Incorporated

October 21, 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:

Broad, Inc.
Depository Share (Representing 1/5 Share Series A Mand. Conv. Prem. Div. Pfd. Stock) (File No. 7-7443)

National Health Investors, Inc.
Common Stock, $0.01 Par Value (File No. 7-7444)

Nuveen Florida Quality Income Municipal Fund, Inc.
Common Stock, $0.01 Par Value (File No. 7-7445)

Nuveen Michigan Quality Income Municipal Fund, Inc.
Common Stock, $0.01 Par Value (File No. 7-7446)

Nuveen New Jersey Quality Income Municipal Fund, Inc.
Common Stock, $0.01 Par Value (File No. 7-7447)

Nuveen Ohio Quality Income Municipal Fund, Inc.
Common Stock, $0.01 Par Value (File No. 7-7448)

Nuveen Pennsylvania Quality Income Municipal Fund, Inc.
Common Stock, $0.01 Par Value (File No. 7-7449)

Nuveen Texas Quality Income Municipal Fund, Inc.
Common Stock, $0.01 Par Value (File No. 7-7450)

United HealthCare Corp.
Common Stock, $0.01 Par Value (File No. 7-7451)

Carrington Laboratories, Inc.
Common Stock, $0.01 Par Value (File No. 7-7452)

Redwood Empire Bancorp
Common Stock, No Par Value (File No. 7-7453)

Sunbelt Nursery Group, Inc.
Common Stock, $0.01 par Value (File No. 7-7454)

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 November 12, 1991, written data, views and arguments concerning the above-referenced applications. 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 applications 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. 91-25708 Filed 10-24-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

October 21, 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-I thereunder for unlisted trading privileges in the following securities:

National Health Investors, Inc.
Common Stock, $.01 Par Value (File No. 7-7441)
Warnaco Group, Inc.
Common Stock, $.01 Par Value (File No. 7-7442)

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 November 12, 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. 91-25709 Filed 10-24-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

October 21, 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:

Damon Corporation
Common Stock, $.01 Par Value (File No. 7-7422)
Nuveen New York Municipal Income Fund
Common Stock, $.01 Par Value (File No. 7-7423)
Nuveen New York Municipal Market Opportunity Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-7424)
Belmac Corporation
Common Stock, $0.02 Par Value (File No. 7-7425)
Kirby Corporation
Common Stock, $.10 Par Value (File No. 7-7426)
NWNL Companies, Inc.
Common Stock, $1.25 Par Value (File No. 7-7427)
URCARCO, Inc.
Common Stock, $.01 Par Value (File No. 7-7428)
Global Natural Resources, Inc.
Common Stock, $1 Par Value (File No. 7-7429)
BP Prudhoe Bay Royalty Trust
Units of Beneficial Interest, No Par Value (File No. 7-7430)
Oppenheimer Capital L.P. Units
Units of Limited Partnership Interest, No Par Value (File No. 7-7431)
Aileen, Inc.
Common Stock, $1 Par Value (File No. 7-7432)
PS Group, Inc.
Common Stock, $1 Par Value (File No. 7-7433)
Mercury Finance Co.
Common Stock, $1 Par Value (File No. 7-7434)
Gemini II
Preferred Capital Stock $1 Par Value (File No. 7-7435)
Nuveen Texas Quality Income Municipal Fund, Inc.
Shares of Beneficial Interest, $.01 Par Value (File No. 7-7436)
Nuveen Michigan Quality Income Municipal Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-7437)
Nuveen Ohio Quality Income Municipal Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-7438)
Nuveen Pennsylvania Quality Income Municipal Fund, Inc.
Shares of Beneficial Interest, $.01 Par Value (File No. 7-7439)
Nuveen Florida Quality Income Municipal Fund, Inc.
Shares of Beneficial Interest, $.01 Par Value (File No. 7-7440)

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 November 12, 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. 91-25710 Filed 10-24-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18374; File No. 812-7778]

FBL Variable Insurance Series Fund, et al.; Application

October 18, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: FBL Variable Insurance Series Fund (the "Fund"), Farm Bureau Life Insurance Company ("FBL") and Farm Bureau Life Variable Account (the "Variable Account").

RELEVANT 1940 ACT SECTIONS: Order requested under section 17(b) for exemptions from section 17(a).

SUMMARY OF APPLICATION: Applicants seek an order exempting the merger of two investment portfolios of the Fund

and the consolidation of two sub-accounts of the Variable Account that invest in those portfolios, from the prohibitions of section 17(a) of the Act.

FILING DATE: The application was filed on August 21, 1991 and amended on October 9, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 12, 1991, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, FBL Investment Advisory Services, Inc., 5400 University Avenue, West Des Moines, Iowa 50265.

FOR FURTHER INFORMATION CONTACT: Wendell M. Faria, Senior Attorney, at (202) 272–3450, or Heidi Stam, Assistant Chief, at (202) 272–2060, Office of Insurance Products and Legal Compliance, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Fund was established as a Massachusetts Business Trust under a declaration of trust dated November 3, 1986. The Fund is registered under the Act as an open-end, diversified management investment company. The Fund is a series investment company, comprised of seven investment portfolios: Growth Common Stock Portfolio ("Growth"), Aggressive Growth Common Stock Portfolio ("Aggressive Growth"), High Quality Bond Portfolio, High Yield Bond Portfolio, Managed Portfolio, Money Market Portfolio and Blue Chip Portfolio.

2. To date, the Fund has sold shares only to FBL (as seed money investments) and to the Variable Account. The Fund sells each series of shares to a corresponding sub-account of the Variable Account to support assets for variable life insurance contracts (the "contracts") issued by FBL. The declaration of trust permits the Fund's trustees to issue an unlimited number of full and fractional shares of each series and to create additional series to which unissued shares may be assigned for issuance. Shares within each series have equal rights and privileges and represent an equal proportionate interest with all other shares of that series. Upon liquidation of the Fund or any portfolio of the Fund, each series' shareholders are entitled to share pro-rata in the net assets of that series' portfolio available for distribution. Shares of the Fund have no preemptive or conversion rights. The Fund's declaration of trust also provides the trustees with authority to combine the assets and liabilities belonging to any two or more series into assets and liabilities belonging to a single series or class.

3. FBL provided the initial capital for all seven portfolios of the Fund at their inception. As of May 1, 1991, the date of the Fund's most recent prospectus, FBL owned more than 25% of the outstanding voting securities of the Fund and therefore may be considered to control the Fund.

4. The Fund's investment adviser has agreed to annually reimburse each portfolio of the Fund to the extent that the portfolio's annual operating expenses (including the investment advisory fee but excluding brokerage, interest and extraordinary expenses and taxes) exceed 1.50% of the portfolio's average daily net assets for that year. This reimbursement agreement will remain in effect as long as the Fund's investment advisory agreement remains in effect and can be changed only with shareholder approval. The Fund's investment adviser has also agreed, on a purely voluntary basis, to waive its investment advisory fee for calendar year 1991.

5. The investment objective of Growth is long-term capital appreciation with current income as a secondary objective. Growth pursues these objectives by investing primarily in common stocks and securities convertible or exchangeable into common stock (including warrants and rights) which appear to the Fund's investment adviser to possess above-average potential for market value appreciation. The investment objective of Aggressive Growth is maximum capital appreciation. Aggressive Growth pursues this objective by investing in common stocks of companies with high growth potential and by utilizing aggressive strategies that may entail greater than ordinary market and financial risk for investors.

6. FBL is a stock life insurance company incorporated in Iowa on October 30, 1944. FBL is principally engaged in the offering of life insurance policies, disability income insurance policies and annuity contracts in Iowa, Nebraska, Minnesota, South Dakota and Utah. Iowa Farm Bureau Federation owns 90% of FBL's outstanding voting shares while the remaining 10% are owned by Farm Bureau Mutual Insurance Company, an Iowa property and casualty insurance company.

7. The Variable Account is a separate account of FBL established pursuant to section 508A.1 of the Iowa Insurance Code on March 3, 1987 and registered under the Act as a unit investment trust. The Variable Account consists of seven subaccounts, each of which invests in the shares of a particular series of the Fund.

8. FBL Investment Advisory Services, Inc. ("FBL Investment") serves as the Fund's investment adviser pursuant to an investment advisory and management services agreement entered into when the Fund began operations in 1987. FBL Investment is an indirect wholly-owned subsidiary of FBL.

9. At a meeting held on August 15, 1991, the Board of Trustees of the Fund, including a majority of those trustees who are not "interested persons" as defined in the Act of the Fund or FBL, adopted a series of resolutions that together constitute a Plan of Reorganization (the "Plan"). Pursuant to the Plan, on the date of the transaction (the "exchange date"), Growth will acquire all of the assets of Aggressive Growth, subject to Aggressive Growth's liabilities, in exchange for shares of Growth having an aggregate net asset value equal to the aggregate value of the net assets of Aggressive Growth exchanged therefor. The Fund will then distribute such Growth shares to Aggressive Growth shareholders on a pro-rata basis. The number of such full and fractional Growth shares will be determined by dividing the value of the assets of Aggressive Growth acquired by Growth, less any liabilities of Aggressive Growth, by the net asset value of one share of Growth on the exchange date. Thus, each Aggressive Growth shareholder will have its Aggressive Growth shares exchanged for the number of full and fractional shares of Growth which, when multiplied by the net asset value per share of Growth, will have an aggregate net asset value equal to the aggregate net asset value of that holder's shares in Aggressive Growth on the exchange date. The Fund will register the shares

of Growth issued in the exchange under the 1933 Act on Form N–14.

10. According to the Plan, the value of Aggressive Growth's assets to be acquired by Growth shall be computed as of 4 p.m. New York time on the exchange date using the valuation methods set forth in the Fund's current prospectus and statement of additional information, and the net asset value of one share of Growth shall be the net asset value per share of Growth computed as of the same time and by the same methods.

11. In addition to the transaction described in the Plan, the proposed reorganization also entails the consolidation of the Aggressive Growth sub-account with the Growth sub-account of the Variable Account. FBL will carry out this consolidation on the exchange date immediately after the completion of Growth's acquisition of Aggressive Growth, by issuing units of interest in the Growth sub-account on a pro-rata basis to owners of the contracts who, prior to the proposed reorganization, owned units in the Aggressive Growth sub-account, in exchange for their units of the disappearing Aggressive Growth sub-account. The number of full and fractional units of interest of Growth sub-account to be issued will be determined by dividing the aggregate value of Growth shares issued to the Aggressive Growth sub-account in the acquisition described in the Plan, by the unit value of the Growth sub-account computed as of 4 p.m. New York time on the exchange date using the valuation methods set forth in the Variable Account's current prospectus. Thus, the aggregate value of new units issued to each such contract owner will equal exactly the aggregate value of units owned by each such owner immediately prior to the proposed reorganization.

12. As provided in the declaration of trust, the Fund will submit the proposed Plan to the shareholders of Aggressive Growth for their approval at a meeting called for that purpose on November I3, 1991. A majority of the outstanding shares of Aggressive Growth must approve the Plan. Although FBL and the Variable Account are the only shareholders of Aggressive Growth, owners of the contracts issued by FBL through the Variable Account are entitled to instruct FBL how to vote (for, against or abstain) shares held in the Variable Account to support their contracts. Each such contract owner may instruct FBL as to the number of full or fractional shares of a portfolio equal to the cash value of the contract held in the sub-account of the Variable Account investing in shares of that portfolio divided by the net asset value per share. FBL will perform this calculation as of the record date selected by the Fund's Board of Trustees for the shareholder vote and will distribute proxy materials to all contract owners having cash values indirectly invested in shares of Aggressive Growth on that date. FBL will vote its own shares in Aggressive Growth as well as those held in the Variable Account as to which it does not receive properly executed voting instructions, in proportion (for, against or abstain) to the instructions it does receive from contract owners.

13. FBL Investment will pay all of the costs of the reorganization including costs associated with printing and distributing these proxy materials, counting contract owner instructions, legal and auditing fees, expenses of holding the shareholders' meeting, and liquidation expenses if FBL Investment considers any portfolio securities of Aggressive Growth unsuitable for the investment portfolio of Growth.

14. Apart from the fact that the future cash value of these contracts will reflect the investment performance of Growth rather than Aggressive Growth, the proposed reorganization will have no economic impact on contract values, fees or charges under these contracts or the rights or interests of these contract owners. The proposed reorganization also will have no economic impact on owners of contracts having cash values in the subaccount currently holding shares of Growth other than the effect on Growth's investment performance and expenses resulting from an increase in the size of Growth's assets. At the time the proposed reorganization is effected, shares of Aggressive Growth that FBL holds directly also will be exchanged for those of Growth.

15. Contract owners having cash values indirectly invested in shares of Aggressive Growth who do not want their investment transferred to Growth may, under the provisions of the contracts, transfer their cash values before or after the proposed reorganization to a sub-account of the Variable Account investing in one of the five other remaining portfolios of the Fund or to the General Account of FBL. For a 90-day period preceding the effective date of the proposed reorganization (currently scheduled for November 22, 1991) such contract owners may make such a transfer without it counting as the one free transfer per year permitted under the contracts.

16. In addition to shareholder approval, the consummation of the reorganization is conditioned upon receipt from the Commission of the order requested herein, receipt of any necessary approval from the Iowa Insurance Commissioner and receipt by the Fund of an opinion of tax counsel to the effect that the reorganization will not result in the recognition of any gain or loss to Growth, Aggressive Growth or any contract owner having cash value invested in the Variable Account.

Applicants' Legal Analysis and Conditions

1. The Fund requests that the Commission issue an order pursuant to section 17(b) of the Act exempting the proposed reorganization from the provisions of section 17(a) of the Act to the extent necessary to permit Growth to acquire substantially all of the assets of Aggressive Growth in exchange for shares of Growth. FBL and the Variable Account request that the Commission issue an order pursuant to section 17(b) of the Act exempting the proposed reorganization from the provisions of section 17(a) of the Act to the extent necessary to permit FBL to consolidate the Aggressive Growth sub-account with the Growth sub-account.[1]

2. Because FBL directly owns more than 5% of the outstanding voting securities of both Aggressive Growth and Growth, if each portfolio is treated as a separate entity then each is an affiliated person of an affiliated person (*i.e.* FBL) of the other. In addition, because FBL directly owns more than 25% of the outstanding voting securities of each portfolio and section 2(a)(9) of the Act establishes a presumption that a person owning 25% or more of another person's outstanding voting securities controls the latter person, each portfolio is under the common control of FBL and is therefore an affiliated person of the other.

FBL is an affiliated person of the Variable Account. If each sub-account of the Variable Account is treated as a separate entity, then each is an affiliated person of an affiliated person (*i.e.* FBL) of the other. In addition, because FBL is the depositor of the Variable Account, it controls the

[1] The Commission staff has on several occasions taken "no action" positions with regard to a life insurance company depositor of a unit investment trust separate account proceeding with a transaction substantially identical to the proposed reorganization without a section 26(b) order. *See, e.g.*, The Prudential Insurance Company of America (pub. avail. July 18, 1986); Connecticut General Life Insurance Company (pub. avail. Oct. 3, 1985). Applicants are relying on these letters and are not requesting the Commission to approve or disapprove their decision to proceed without an order pursuant to section 26(b).

Variable Account and each sub-account is under the common control of FBL and is therefore an affiliated person of the others.

3. Section 17(b) of the Act provides that the Commission may, upon application, grant an order exempting any transaction from the prohibitions of section 17(a) if the evidence establishes that:

(1) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned;

(2) The proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the Act; and

(3) The proposed transaction is consistent with the general purposes of the Act.

4. The Fund represents that the terms of the proposed reorganization as set forth in the Plan, including the consideration to be paid and received, as described in this application, are reasonable and fair and do not involve overreaching on the part of any person concerned. The Fund also represents that the proposed reorganization is consistent with the policies of Growth and Aggressive Growth, as recited in the Fund's current registration statement and reports filed under the Act, and with the general purposes of the Act.

5. The Board of Trustees of the Fund, including a majority of the disinterested trustees, has reviewed and approved the terms of the proposed reorganization as set forth in the Plan, including the consideration to be paid or received by all parties. The Board has also independently determined for Growth and Aggressive Growth that the proposed reorganization, as set forth in the Plan, will be in the best interests of the shareholders of each portfolio and of the contract owners indirectly invested in each portfolio and that the consummation of the proposed reorganization will not result in the dilution of the current interests of any such shareholder or contract owner.

6. If effectuated according to the Plan, the proposed reorganization will result in a substantial increase in the asset size of Growth. The size of Growth after the proposed reorganization would be substantially larger than the current size of Aggressive Growth. The Fund expects that, to the extent that certain expenses remain relatively fixed and do not vary with asset size, this increase in Growth's size will result in some economies of scale over those existing separately for either Growth or Aggressive Growth. Thus shareholders and contract owners of both portfolios may expect some decrease in relative expense levels as a result of the proposed reorganization.

In addition to some potential economies of scale from the proposed reorganization, investors in Aggressive Growth will benefit from the fact that Growth has lower investment advisory fees at each breakpoint than does Aggressive Growth. A more significant issue for investors in Aggressive Growth is the lack of popularity of this portfolio. As of August 9, 1991, only 287 contract owners had cash values allocated to the Aggressive Growth subaccount. Unfortunately, sales of the contracts are not occurring at a rate that would permit reasonable portfolio diversification and expense levels in the foreseeable future for two equity related investment portfolios. The prospects for Growth reaching such a size, however, appear better than those of Aggressive Growth because a far greater number of contract owners appear comfortable with a standard growth portfolio than appear comfortable with a more risky Aggressive Growth portfolio.

7. Although not exactly the same, the investment objectives of Growth and Aggressive Growth are very similar. Investors in Growth, of course, will not experience any change in their portfolio's objectives if the proposed reorganization occurs. For shareholders and contract owners in Aggressive Growth, the change in objectives upon moving to Growth will not be substantial and will be easily understood by them when they vote to approve or disapprove the change. To the extent that any portfolio investments of Aggressive Growth are not compatible with the investment objectives, policies or restrictions of Growth, FBL Investment will pay the costs of liquidating such investments.

8. The proposed reorganization will not in any way affect the price of outstanding shares of Growth nor will it in any way affect the contract values or interests of contract owners indirectly invested therein. Under the Plan, the transfer of Aggressive Growth's assets to Growth and the issuance of shares of Growth in exchange theerfor will be made on the basis of the aggregate value of the net assets of Agressive Growth and the aggregate net asset value of those shares on the exchange date in conformity with section 22(c) of the Act and rule 22c-1 thereunder. The aggregate value of shares to be issued to the Aggressive Growth sub-account under the Plan will exactly equal the aggregate value of shares held by that sub-acount immediately prior to the proposed reorganization. The aggregate value of outstanding units of interest of the Aggressive Growth sub-account will not change on the exchange date as a result of the share exchange phase of the proposed reorganization and the aggregate value of such units supporting the cash value of each contract owner invested in that sub-account immediately prior to the reorganization will remain unchanged immediately after the share exchange phase of the reorganization. The share exchange phase of the proposed reorganization will impose no tax liability upon shareholders or contract owners or the Fund. As a result of all of the above, the share exchange phase of the proposed reorganization will not dilute the interests of shareholders or contract owners currently invested in Aggressive Growth or Growth.

9. As indicated above, FBL Investment will pay all of the direct and indirect expenses of the proposed reorganization. Therefore, even though FBL and FBL Investment will derive some benefits as a result of the consolidation of Growth and Aggressive Growth, the expenses of the proposed reorganization will not dilute investors' interests.

10. The proposed reorganization more closely resembles the situations covered by rule 17a-8 than it does other situations involving 5% shareholders which the Rule deliberately excludes because FBL, the "controlling" shareholder, does not have voting control of the shares it owns. In order to utilize certain exemptions provided by rule 6e-3(T) under the Act in connection with the contracts, FBL must (as the Variable Account registration statement discloses) follow the instructions of contract owners when voting their interests in the Fund as well as its own interests in the Fund. As a practical matter, FBL controls no voting securities of the Fund and therefore the share exchange phase of the proposed reorganization is no more susceptible to overreaching or to the taking of unfair advantage of investors than is any transaction covered by rule 17a-8.

11. The Fund submits that the share exchange phase of the proposed transaction will comply with all of the conditions that Rule 17a-8 requires for the protection of investment companies and their shareholders and agrees to the grant of the order requested herein being specifically conditioned on the Fund's Board of Trustees having made the requisite determinations that the participation of Growth and Aggressive Growth in the proposed reorganization is in the best interests of each and that

such participation will not dilute the interests of shareholders or contract owners invested in either.

12. For the reasons stated above, the proposed reorganization, the share exchange phase of which must be approved by shareholders and contract owners invested in Aggressive Growth, will be consistent with the policy of Growth and Aggressive Growth as recited in the Fund's current registration statement and reports filed under the Act.

13. The proposed reorganization is consistent with the general purposes of the Act as stated in the Findings and Declaration of Policy in Section 1 of the Act. The proposed reorganization does not present any of the conditions or abuses that the Act was designed to mitigate or eliminate. In particular, section 1(b)(6) of the Act states that the national public interest and the interest of investors are adversely affected when investment companies are reorganized without the consent of their security holders. As described above, the Plan must receive the approval of a majority of the outstanding shares of Aggressive Growth (those shares being voted in proportion to the instructions received from variable life insurance contract interests in Aggressive Growth). Contract owners with cash value in the Aggressive Growth subaccount will receive a notice of the special meeting of the Fund's shareholders and a proxy statement containing all material disclosures, including a description of all material aspects of the Plan and a copy thereof. The share exchange phase of the proposed reorganization is therefore consistent with the general purposes of the Act.

14. FBL and the Variable Account represent that the terms of the proposed reorganization (encompassing, as it does, the consolidation of sub-accounts), including the consideration to be paid and received, as described in this application, are reasonable and fair and do not involve overreaching on the part of any person concerned. FBL and the Variable Account also represent that the proposed reorganization will be consistent with the policies of the Variable Account as these are recited in the Account's current registration statement and reports filed under the Act and with the general purposes of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-25737 Filed 10-24-91; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Declaration of Economic Injury Disaster Loan Areas #7436, #7437, & #7438; South Carolina (and Contiguous Counties in North Carolina and Georgia)

Bamberg, Berkeley, Chesterfield, Colleton, Darlington, Florence, Georgetown, Hampton, Marion, and Sumter, and the contiguous counties of Allendale, Barnwell, Beaufort, Calhoun, Charleston, Clarendon, Dillon, Dorchester, Horry, Jasper, Kershaw, Lancaster, Lee, Marlboro, Orangeburg, Richland, and Williamsburg in the State of South Carolina; Anson, Richmond, and Union Counties in North Carolina; and Effingham and Screven Counties in Georgia constitute an Economic Injury Disaster Loan Area due to excessive rainfall which occurred June 1 through August 25, 1991 and caused severe financial hardship to the timber industry. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on July 15, 1992 at the address listed below: Disaster Area 2 Office, Small Business Administration, One Baltimore Place, suite 300, Atlanta, GA 30308, or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

The numbers assigned to this declaration for economic injury are 743600 for South Carolina; 743700 for North Carolina; and 743800 for Georgia.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: October 15, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 91-25725 Filed 10-24-91; 8:45 am]

BILLING CODE 8025-01-M

[Delegation of Authority No. 13 (Revision 4)]

Redelegation of Procurement Assistance

Delegation of Authority No. 13 (Revision 3) (47 FR 5393) and delegation of Authority (Revision 3, Amendment 1) (49 FR 46852) are hereby superceded by Delegation of Authority No. 13 (Revision 4). This revision reflects organizational changes to the Procurement Assistance activities of the Small Business Administration, including a change of title from the Associate Administrator for Procurement and Technical Assistance to Associate Administrator for Procurement Assistance. Delegation of Authority No. 13 (Revision 4) reads as follows:

I. Pursuant to the authority vested in the Administrator of the Small Business Administration by the Small Business Act, 15 U.S.C. 631 *et seq.*, and the Small Business Investment Act of 1958, 15 U.S.C. 681 *et seq.*, the following authority is hereby delegated to the specific positions designated herein as follows:

To the Associate Administrator for Procurement Assistance as follows:

1. To (a) enter into, (b) negotiate, and (c) recommend approval of joint agreements and memoranda of understanding with other Government contracting, procurement, or disposal agencies;

2. To take any and all actions necessary to carry out of the provisions of joint agreements and memoranda of understanding with other Government contracting, procurement or disposal agencies;

3. To take any and all actions necessary to carry out SBA's authority to insure that a fair proportion of total Government procurements, including research and development procurements, be made from small businesses;

4. To take any and all actions necessary to carry out SBA's authority to encourage the letting of subcontracts by prime contractors to small business concerns;

5. To take any and all actions necessary to carry out SBA's authority to insure that a fair proportion of total sales of Government property and natural resources be made to small business concerns;

6. To appeal determinations made under joint agreements or memoranda of understanding by Government contracting, procurement or disposal agencies to the heads of such agencies;

7. To take any and all actions relating to SBA's prime contracting authority;

8. To take any and all actions necessary to carry out of Certificate of Competency provisions of the Small Business Act, including the issuance or denial of such certificates;

9. To take any and all actions necessary to carry out SBA's authority to make an inventory of productive facilities of small business concerns;

10. To take any and all actions necessary to carry out SBA's authority to utilize effectively the productive facilities of small business concerns;

11. To take any and all actions necessary to carry out SBA's authority

to enable small business to obtain materials from its normal sources;

12. To take any and all actions necessary to carry out SBA's authority for procurement assistance in surplus labor areas and area redevelopment areas in the implementation of procurement assistance programs in such areas;

II. The authority delegated herein may be redelegated to Central Office officials, with the exception of subsections I.1.a and I.6 above.

III. All authority delegated herein may be exercised by any Small Business Administration employee designated as the Acting Associate Administrator for Procurement Assistance.

Dated: October 15, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 91-25726 Filed 10-24-91; 8:45 am]

BILLING CODE 8025-01-M

UNITED STATES INFORMATION AGENCY

Democracy in Africa Program

AGENCY: United States Information Agency.

ACTION: Notice—request for proposals.

SUMMARY: The Bureau of Educational and Cultural Affairs of the United States Information Agency announces a program of support to contribute to mutual understanding between the U.S. and Nigeria and to foster the development of democracy and a market-guided economy in Nigeria.

Through the "Democracy in Africa" program, USIA seeks to promote bilateral relationships through institutional grants for the exchange of faculty and/or staff. Institutional grants are for a period of two years. Projects should begin in March 1992. Subject to availability of funding, support will be available for five institutional projects which are described below.

(A Request for Proposals for programs in the following project areas is being published separately: development of business interest organizations; activities to promote regulatory environment; professional development of Nigerian journalists; development of professional staff for Nigerian legislatures; development of lawyers' associations; the role of Nigerian women and the political process; development of local government administration)

Separate competitions will be held for the seven projects listed in the previous paragraph and for the five projects outlined in this announcement. These represent priority areas of USIA. Subject to the availability of funds, one or more grants will be awarded to U.S. institutions in each subject area.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. EST on Monday, December 16, 1991. Faxed documents will not be accepted, nor will documents postmarked on December 16 but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. Grants should begin by March 1992.

ADDRESSES: The original and fifteen copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, Bureau of Educational and Cultural Affairs, Ref.: Democracy in Africa Programs/AE, Project #_____, Office of the Executive Director, E/X, room 336, 301 4th Street SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations or institutions should contact Dr. Winnie D. Emoungu at the U.S. Information Agency, Academic Exchange Programs Division, E/AEA, room 232, 301 4th Street SW., Washington, DC 20547, telephone (202) 619-5355, to request detailed application packets. Packets include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

Eligibility

In both the U.S. and Nigeria, participation in the program is open to post-secondary colleges and universities, including university-affiliated research institutes, and consortia of institutions of higher education with recognized expertise in the subject area addressed. Nigerian government officials may participate through the Nigerian partner institutions, but governmental offices may not be partners in a grant agreement. Participants traveling under USIA grant support must be U.S. citizens (representing the U.S. partner) and Nigerian citizens (representing the Nigerian partner).

Proposed Budget

A comprehensive line item budget should be submitted with the proposal by the application deadline. Specific guidelines for budget preparation are available in the application packet.

Note: Grant requests from otherwise eligible organizations with less than four years' experience in conducting international exchange programs will be limited to $60,000, and budget submissions should reflect this limitation.

USIA funds can be used to defray expenses of international and domestic travel; per diem (not to exceed the federally established rate); publication in Nigeria of research results; educational materials for the Nigerian partner; short-term planning trips; administrative costs (not to exceed 22% of total requested from USIA) for salaries and benefits for institutional staff of grant recipient institutions, direct costs (communications expenses, office supplies, office space, and materials not directly developed for program participants), and indirect costs; and other expenses as noted in each project outlined below. Applicants are expected to cost-share through a combination of in-kind and direct contributions, and should refer to the application packet for allowable budget items.

SUPPLEMENTARY INFORMATION:

Overview

The purpose of the "Democracy in Africa" program for Nigeria is to examine the issues involved in successful transition to civilian rule. The establishment of collaborative linkages between eligible American institutions and Nigerian counterpart institutions will foster that goal.

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. The Agency expects to fund institutional partnerships between U.S. and Nigerian institutions in specified subject areas. Participating institutions should be prepared to exchange faculty, and/or staff for short-term teaching, consultation, and research assignments of one month or longer and receive visiting counterparts from the partner institution. Where applicable and for purposes of wide dissemination, seminars or workshops in Nigeria may be organized by the partner institutions. Such seminars or workshops may not exceed one quarter of the total program length. Institutional partnership proposals will be accepted either to establish new affiliations or to allow for innovations and strengthening of existing affiliations or projects. U.S. institutions are responsible for the submission of proposals and should collaborate with their Nigerian partners in planning and preparing proposals. Proposals from a consortium may be submitted by a member institution with authority to represent the consortium.

Proposals will be accepted in the following areas:

1. Affiliations Between University Departments of Mass Communications

This project is intended to establish an affiliation between a U.S. university department of mass communications/journalism and a Nigerian university department of mass communications/journalism to enhance teaching and research at both institutions and to further binational understanding.

Independent, professional, vigorous mass media are crucial to the functioning of democracy as they inform both the public and the government, facilitate openness and accountability in government, and encourage full and constructive deliberations on public issues. Through a series of balanced and purposeful exchanges, the project should assist the partner departments of mass communications and journalism in developing an environment to enhance teaching skills, examine professional standards, identify and energize talent, conduct research, and buttress the practice of journalism. Faculty and graduate students may participate in the exchanges for a minimum of one month and a maximum of one academic year. The program is not intended to provide multi-year degree training. (Up to approximately $200,000 will be available for this project.)

2. The American Experience of Democracy

The purpose of this project is to contribute to the development of American studies in Nigeria with specific reference to content relating to democratic values and traditions, building on the recent establishment of the American Studies Association in Nigeria and the commitment of various scholars and university departments and faculties to expanding these studies. Ideally, the project will be implemented through an affiliation between faculties or institutes at U.S. and Nigerian universities, which would provide for balanced exchanges of faculty and graduate students for teaching and research.

Attention should be given in this project to studies in American constitutionalism, pluralism, electoral processes, political parties and values, and other elements that will clarify the American experience. Efforts should be made to expand the teaching and research capabilities of the partner Nigerian institution(s), whether through professional development or provision of research opportunities or materials. (Up to approximately $200,000 will be available for this project.)

3. Political Participation and Electoral Behavior

The propose of this component is to enhance the study of Nigerian polity by developing joint research on political participation and electoral behavior in Nigeria. Universities or university-affiliated research institutes submitting proposals should demonstrate international experience in examining American and other political systems. Proposals should provide for an exchange of researchers, the enhancement of research skills in Nigeria, and the development of concepts and methods which would foster cross-national understanding of political participation and electoral behavior. Research should suggest improvement in electoral procedures and guidelines that would strengthen democratic processes. (Up to approximately $200,000 will be available for this project.)

4. Human, Civil and Political Rights

The purpose of this program is to support inquiry, research, and discussion of human, civil and political rights. The work should be carried out through American and Nigerian institutions of higher education that specialize in legal education and research.

Attention should be given to studying how the U.S. Constitution and the new Nigerian Constitution conceptualize and provide protection for individual rights, and how those constitutional guidelines are or may be interpreted or applied in a variety of situations. Provisions should be made for sessions in Nigeria which would bring together judges, lawyers, and other interested professionals to study the constitutional guidelines and guarantees and to discuss their applications in likely situations, and for the exchange of a limited number of institutional representatives. (Up to approximately $200,000 will be available for this project.)

5. Governance and Democratization in Nigeria

This project should focus on joint research, deliberations, and publication on issues of governance and democratization in Nigeria. Broad issues which link governance and democratization such as rule of law, political accountability, administrative efficiency, equity and effectiveness should be addressed. Special attention should be given to aspects of successful governance with democratic principles and the potential and actual role of voluntary and other private institutions to assist in this process.

Research should also focus on the impact on heterogeneity (social, cultural, and economic variables) on democratic governance, and should explore how popular participation is increased in politics. These issues should be approached from a comparative, cross-national perspective as much as possible so as to elucidate similarities and differences between the two countries and to facilitate understanding and communication between them. The project should provide for exchanges of lecturers/researchers in public administration from each participating institution. (Up to approximately $200,000 will be available for this project.)

Application Requirements (Refer to Application Packet): Proposals must be submitted within deadline and conform to the project areas described above. Applicants must submit a separate proposal for each project area and identify the theme number as indicated in the Request for Proposals. For organizations with less than four years' experience in conducting international exchange programs, grant requests are limited to $60,000.

The proposal package must include one original and fifteen copies. Each proposal must be presented as follows:

1. *A cover sheet* with names of both institutions, name of foreign country, project directors with their addresses and phone numbers, and project theme of the proposal.

2. *An abstract* of proposed project not to exceed two double-spaced pages.

3. *A narrative* not to exceed twenty double-spaced pages including descriptions of participating institutions or organizations; a detailed description of the proposed project, including names and qualifications of designated project directors; a roster of program participants (with qualifications including academic/professional background) for the entire duration of the project; a detailed description of proposed activities including when, where, and how they will occur; anticipated benefits of the program to participating institutions; a plan for institutional evaluation of the project; and a statement of what follow-up activities are proposed.

4. *A budget* in the prescribed format outlining specific expenditures. Refer to the application packet for format.

5. *Appendices* must include the following:

(a) Documentation of institutional support for the proposed project, including signed letters of endorsement from the U.S. and Nigerian institutions' or organizations' presidents,

chancellors, or directors, making specific reference to the Democracy in Africa Program and committing their participating institution(s) to the project.

(b) Academic/professional resumes of potential participants for both institutions (not to exceed two double-spaced pages for each), overseas experience, knowledge of Nigeria, relevant scholarly and non-scholarly travel, publications, and research activities.

6. *Completed forms* in support of the proposal. See application packet for the following forms: Bureau of Educational and Cultural Affairs Grant Application Cover Sheet; Assurance of Compliance; Certification Regarding Drug-Free Workplace Requirements; Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion; Disclosure of Lobbying Activities; and Designation of Congressional District).

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the Agency's Office of General Counsel, the appropriate geographic area office, and the budget and contracts offices. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's Contracting Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

1. Quality and scholarly rigor of program plan and adherence of the proposed activity to relevant project purposes.

2. Reasonable, feasible, and flexible objectives. Proposals should clearly demonstrate how the institution will meet the program's objectives and plans.

3. Multiplier effect/impact. Proposed programs should strengthen long-term mutual understanding, to include maximum sharing of information and establishment of long-term institutional and individual linkages.

4. Value to U.S.-Nigeria Relations. Assessments by USIA's geographic area desk and overseas officers of the need, potential impact, and significance in the U.S. and Nigeria.

5. Cost Effectiveness. Administrative components of grants should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector as well as institutional direct funding contributions.

6. Institutional Capacity. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program's or project's goals.

7. Proposals should demonstrate potential for program excellence and/or track record of applicant institution. The Agency will consider the past performance of prior grantees and the demonstrated potential of new applicants.

8. Follow-On Activities. Proposals should provide a plan for continued follow-on activity (without USIA support) that ensures that USIA-supported programs are not isolated events.

9. Evaluation Plan. Proposals should provide a plan for evaluation by the grantee institution.

Note: In awarding grants in the five identified subject areas, the Agency seeks to work with a diverse group of private section organizations.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

All proposals recommended for funding will be subject to Agency review for conformity to relevant and legal guidelines. Funding of any proposal is subject to the regular procedures, regulations and requirements for Bureau of Education and Cultural Affairs grants, including review by USIA's Office of General Counsel and submission for approval to the J. William Fulbright Foreign Scholarship Board.

Notification

All applicants will be notified of the results of the review process by March 1. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: October 10, 1991.

Warren Obluck,

Deputy Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 91-25763 Filed 10-24-91; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 207
Friday, October 25, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:08 p.m. on Tuesday, October 22, 1991, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the probable failure of certain insured banks.

Recommendations concerning administrative enforcement proceedings.

Recommendations regarding the liquidation of depository institutions' assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,751
Eliot Savings Bank, Boston, Massachusetts
Case No. 47,752
Eliot Savings Bank, Boston, Massachusetts
Case No. 47,754
Eliot Savings Bank, Boston, Massachusetts
Case No. 47,755
Firstsouth, FA, Pine Bluff, Arkansas
Case No. 47,756
Various Savings and Loan Associations, State of Texas
Case No. 47,759
Southeast Bank, National Association, Miami, Florida

Matters relating to a certain financial institutions.

Matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision) and Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(a)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Dated: October 23, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91–25867 Filed 10–23–91; 1:31 pm]

BILLING CODE 6714-0-M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 91–25803.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, October 31, 1991 10:00 a.m.

This Meeting Will Be Open to the Public.

The Following Item Was Added to the Agenda:

Title 26 Certification Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219–4155.

Delores Harris,

Administrative Assistant, Office of the Secretariat.

[FR Doc. 91–25904 Filed 10–23–91; 3:03 pm]

BILLING CODE 6715-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:30 a.m., Wednesday, October 30, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda:

Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that an item be moved to the discussion agenda.

1. Proposed 1992 Private Sector Adjustment Factor for Federal Reserve priced services.

2. Proposed modification to the price structure for the Federal Reserve's Interdistrict Transportation System. (Proposed earlier for public comment; Docket No. R–0705)

Discussion Agenda:

3. Proposed 1992 fee schedules for Federal Reserve priced services.

4. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: October 23, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–25839 Filed 10–23–91; 10:02 am]

BILLING CODE 6210-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11.30 a.m., Wednesday, October 30, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. 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: October 23, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–25840 Filed 10–23–91; 10:02 am]

BILLING CODE 6210-01-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:21 p.m. on Tuesday, October 22, 1991, the Board of Directors of the Resolution Trust Corporation met in

closed session to consider matters relating to the resolution of failed thrift institutions.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Acting Chairman Andrew C. Hove, Jr., and Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b).

The meeting was held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550—17th Street, NW., Washington, D.C.

Dated: October 23, 1991.

Resolution Trust Corporation.

John M. Buckley Jr.,

Executive Secretary.

[FR Doc. 91-25837 Filed 10-23-91; 8:45 am]

BILLING CODE 6714-01-M

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Friday
October 25, 1991

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter 1
Federal Acquisition Regulations; Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Federal Acquisition Circular 90-8]

Federal Acquisition Regulation; Introduction of Miscellaneous Amendments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rules and technical amendments.

SUMMARY: This document serves to introduce and relate together the documents and technical amendments which follow and which comprise Federal Acquisition Circular (FAC) 90-8. The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are issuing FAC 90-8 to amend the Federal Acquisition Regulation (FAR) to implement changes in the following subject areas:

Item	Subject	FAR case	DAR case	Analyst
I	Right of First Refusal of Employment	90-39	88-109	O'Neill.
II	Miscellaneous Federal Supply Schedule Revisions (Parts 8, 38, & 51)	91-40	90-461	Klein.
III	Safety and Occupational Health	88-64	86-02	Klein.
IV	Consultants—Conflict of Interest	90-18	90-03	O'Neill.
V	Quality and Contractor Responsibility	90-37	90-416A	Loeb.
VI	Surety Bond Waiver Authority	91-35	90-340	Scott.
VII	Revision to the Prescriptions to FAR 25.109 (a) and (d)	90-45	90-435(e)	Rosinski.
VIII	Temporary Services—Part 37	90-57	88-68	O'Neill.
IX	Technical Amendments and Corrections			

DATES: For effective dates, see separate documents which follow. Please cite FAC 90-8 and the appropriate FAR case number(s) in all correspondence related to this and the following documents.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in relation to each FAR case or subject area. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-8 and FAR case number(s).

SUPPLEMENTARY INFORMATION: Federal Acquisition Circular 90-8 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Right of First Refusal of Employment (FAR Case 90-39)

The clause at 52.207-3, Right of First Refusal of Employment, is revised to state that the Government will provide the contractor, within 10 days after date of contract award, a list of employees adversely affected or separated as a result of award of a contract under OMB Circular A-76 procedures. The clause will also require the contractor to report to the contracting officer the names of individuals on the list who are hired within 90 days after contract performance begins. The prescription at 7.305(c) is changed to permit variance of the 10 day period "up to a period of 90 days."

Item II—Miscellaneous Federal Supply Revisions (FAR Case 91-40)

The Councils have approved revisions of FAR sections 8.401(b) and 38.201(b) in order to update office symbols and address changes. In addition, they have approved an amendment to 51.103(b), which requires the contracting officer instead of the contracting agency to notify GSA when a Federal Supply Schedule contractor does not accept an order from an authorized Government contractor.

Item III—Safety and Occupational Health (FAR Case 88-64)

The FAR is being modified by revisions to FAR 9.104-1, 22.102-1, 22.102-2, 23.301, 23.302, 23.303, 36.513, and the clauses at 52.223-3, 52.236-7, and 52.236-13. In addition, revisions have added subpart 23.6, Notice of Radioactive Material, and a clause at 52.223-7 concerning radioactive material. The major changes (a) add "safety programs" to section 9.104-1 as an example of an element which may be applicable to responsibility determinations; (b) clarify the role of the Occupational Safety and Health Administration (OSHA) regulations at 22.102-2; (c) revise the requirements for submission of the Material Safety Data Sheets required by 29 CFR 1910.1200; (d) add coverage and contractual provisions on radioactive materials notification; and (e) clarify the accident prevention responsibilities of contractors.

Item IV—Consultants—Conflict of Interest (FAR Case 90-18)

The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are converting the interim rule on Consultants Conflict of Interest, published in the **Federal Register** (55 FR 42684) on October 22, 1990, to a final rule. The exclusions found in 9.502(d) of the interim rule were moved to 9.507-1(d) to more accurately reflect current policy. In addition, several editorial revisions were made to 9.504(e), 9.505(b), 9.505-4(a), and the provisions at 52.209-7 and 52.209-8.

Item V—Quality and Contractor Responsibility (FAR Case 90-37)

This rule emphasizes that the contracting officer shall consider a contractor's failure to meet quality standards in contracts in determining the contractor's responsibility.

Item VI—Surety Bond Waiver Authority (FAR Case 91-35)

FAR 19.808-1(b) is amended to extend the Small Business Administration authority to exempt section 8(a) contractors from Miller Act bonding requirements from October 1, 1992, to October 1, 1994.

Item VII—Revision to the Prescriptions to FAR 25.109 (a) and (d) (FAR Case 90-45)

FAR 25.109 (a) and (d) are amended to eliminate the unnecessary use of the provision at 52.225-1, Buy American Certificate, and the clause at 52.225-3, Buy American Act—Supplies. The change to FAR 25.109(a) limits the use of the certificate at 52.225-1 to when the clause at 52.225-3 is required. The change to FAR 25.109(d) modifies the exceptions to the use of the clause at 52.225-3, Buy American Act—Supplies.

Item VIII—Temporary Services (FAR Case 90-57)

FAR 37.112 is added to provide new coverage on Government use of private sector temporaries.

Item IX—Technical Amendments and Corrections

Technical amendments have been made to FAR sections 19.604-3 and 52.214-17 to correct inaccuracies.

Dated: October 10, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90-8 is effective November 25, 1991.

Dated: October 4, 1991.

Eleanor R. Spector,

Director of Defense Procurement (DOD).

Dated: September 23, 1991.

Richard H. Hopf III,

Associate Administrator for Acquisition Policy, GSA.

Dated: September 10, 1991.

Darleen A. Druyun,

Assistant Administrator for Procurement, NASA.

[FR Doc. 91-24988 Filed 10-24-91; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 7 and 52

[FAC 90-8; FAR Case 90-39; Item I]

Federal Acquisition Regulation; Right of First Refusal of Employment

AGENCIES: Department of Defense (DOD) General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulations Council (DARC) are issuing Federal Acquisition Circular (FAC) 90-8 to revise the Federal Acquisition Regulation (FAR) clause at 52.207-3, Right of First Refusal of Employment. The change requires the Government to provide a list of employees, displaced as a result of conversion to contract performance, to the successful contractor within 10 days after contract award. The contractor must report to the Government the names of those displaced employees hired within 90 days after contract performance begins, not later than 120 days after contract performance begins.

EFFECTIVE DATE: November 25, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501-3856 in reference to this case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-8, FAR case 90-39.

SUPPLEMENTARY INFORMATION:

A. Background

The current provision requires the contractor to give Government employees the right of first refusal to employment openings under a contract awarded as a result of conversion to contract under OMB Circular A-76 procedures, if the employees are otherwise qualified. There is no mechanism to ensure contractor compliance. Further, the Government has certain obligations to displaced employees that are imposed by statute and Office of Personnel Management regulations, but often has no way to collect the information. This revision will satisfy both of these requirements.

The proposed rule was published in the **Federal Register** (55 FR 38234) on September 17, 1990.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the revision to the clause at FAR 52.207-3 merely requires a one-time report of the names of displaced Government employees hired by the contractor in the first 90 days after beginning contract performance. The information would be readily available in existing personnel files.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) is deemed to apply because the final rule contains information collection requirements. Accordingly, a request for approval of a new information collection requirement concerning right of first refusal of employment has been submitted to the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* The OMB did not approve the original request for information collection because of inconsistencies between the **SUMMARY, BACKGROUND STATEMENT,** and paragraph (c) of the proposed rule. The inconsistency has been corrected by amending paragraph (c), and clearance has been approved under OMB Number 9000-0114.

List of Subjects in 48 CFR Parts 7 and 52

Government procurement.

Dated: October 10, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Federal Acquisition Circular (FAC) 90-8 amends the Federal Acquisition Regulation (FAR) as specified below:

Right of First Refusal of Employment

The clause at 52.207-3, Right of First Refusal of Employment, is revised to state that the Government will provide the contractor, within 10 days after date of contract award, a list of employees adversely affected or separated as a result of award of a contract under OMB Circular A-76 procedures. The clause also will require the contractor to report to the contracting officer the names of individuals on the list who are hired within 90 days after contract performance begins. The prescription at 7.305(c) is changed to permit variance of the 10 day period "up to a period of 90 days."

Therefore, 48 CFR parts 7 and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 7 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 7—ACQUISITION PLANNING

2. Section 7.305 is amended by adding a sentence at the end of paragraph (c) to read as follows:

7.305 Solicitation provisions and contract clause.

* * * * *

(c) * * * The 10-day period in the clause may be varied by the contracting officer up to a period of 90 days.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.207-3 is amended by revising the clause to read as follows:

52.207-3 Right of first refusal of employment.

* * * * *

Right of First Refusal of Employment (Nov. 1991)

(a) The Contractor shall give Government employees who have been or will be adversely affected or separated as a result of award of this contract the right of first refusal for employment openings under the contract in positions for which they are qualified, if that employment is consistent with post-Government employment conflict of interest standards.

(b) Within 10 days after contract award, the Contracting Officer will provide to the Contractor a list of all Government employees who have been or will be adversely affected or separated as a result of award of this contract.

(c) The Contractor shall report to the Contracting Officer the names of individuals identified on the list who are hired within 90 days after contract performance begins. This report shall be forwarded within 120 days after contract performance begins.

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GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 8, 38, and 51

[FAC 90-8; FAR Case 91-40; Item II]

Federal Acquisition Regulation; Miscellaneous Federal Supply Schedule Revisions

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulations Council (DARC) are revising the Federal Acquisition Regulation (FAR) at sections 8.401(b) and 38.201(b) to update information such as office symbols and address changes. In addition, because the contracting officer is in a better position to report such instances to GSA, the Councils have approved a change to 51.103(b), which will require the contracting officer instead of the contracting agency to notify GSA when a Federal Supply Schedule contractor does not accept an order from an authorized Government contractor.

EFFECTIVE DATE: November 25, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501-3775 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-8, FAR case 91-40.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577 and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite FAC 90-8, FAR case 91-40 in correspondence.

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because these final 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 8, 38, and 51

Government procurement.

Dated: October 10, 1991.

Albert Vicchiolla,

Director, Office of Federal Acquisition Policy.

Federal Acquisition Circular (FAC) 90-8 amends the Federal Acquisition Regulation (FAR) as specified below.

Miscellaneous Federal Supply Revisions

The Councils have approved revisions of FAR sections 8.401(b) and 38.201(b) to update office symbols and address changes. In addition, they have approved an amendment to 51.103(b), which will require the contracting officer instead of the contracting agency to notify GSA when a Federal Supply Schedule contractor does not accept an order from an authorized Government contractor.

Therefore, 48 CFR parts 8, 38, and 51 are amended as set forth below:

1. The authority citation for 48 CFR parts 8, 38, and 51 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 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2. Section 8.401 is amended by revising paragraph (b) to read as follows:

8.401 General.

* * * * *

(b) Ordering offices may request copies of schedules by completing GSA Form 457, FSS Publications Mailing List Application, and mailing it to the GSA Centralized Mailing List Service (7CAFL), P.O. Box 6477, Fort Worth, Texas 76115. Copies of GSA Form 457 and the GSA publication titled "Federal Supply Schedule Program Guide" may also be obtained from the above address. The Guide, a supplement to the GSA publication titled "GSA Supply Catalog," includes a listing of Federal Supply Schedules and information on the use of schedules.

PART 38—FEDERAL SUPPLY SCHEDULE CONTRACTING

38.201 [Amended]

3. Section 38.201 is amended in the second sentence of paragraph (b) by removing the acronym "FCO" and inserting "FCS" in its place.

PART 51—USE OF GOVERNMENT SOURCES BY CONTRACTORS

51.103 [Amended]

4. Section 51.103 is amended in paragraph (b) by removing the words "contracting agency" and inserting "contracting officer" in their place.

[FR Doc. 91-24990 Filed 10-24-91; 8:45 am]

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GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 9, 22, 23, 36, and 52

[FAC 90-8; FAR Case 88-64; Item III]

Federal Acquisition Regulation; Safety and Occupational Health

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: Federal Acquisition Circular (FAC) 90-8 amends the Federal

Acquisition Regulation (FAR) to implement changes to sections 9.104–1, 22.102–1, 22.102–2, 23.301, 23.302, 23.303, 36.513, and the clauses at 52.223–3, 52.236–7, and 52.236–13, and have added subpart 23.6, Notice of Radioactive Material, and a clause at 52.223–7 concerning radioactive material. The major changes: (a) Add "safety programs" to section 9.104–1 as an example of an element which may be applicable to responsibility determinations; (b) specify which agency is responsible for the administration and enforcement of the Occupational Safety and Health Act in 22.102–2; (c) revise the requirements for submission of Material Safety Data Sheets (MSDS's) required by 29 CFR 1910.1200; (d) add coverage and contractual provisions on radioactive materials notification; and (e) clarify the accident prevention responsibilities of contractors.

EFFECTIVE DATES: November 25, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–8; FAR case 88–64.

SUPPLEMENTARY INFORMATION:

A. Background

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council published the proposed rule on January 30, 1990. In response to the proposed rule and request for comments, twenty responses were received during the comment period, consisting of seven substantive comments. Issues included: (1) The submittal of the Material Safety Data Sheets (MSDS's) as a matter of responsibility; (2) the need for the safety program requirement in 9.104–1(e); (3) the requirements for submittal of the MSDS's by the apparently successful offeror; (4) the agency responsible for enforcement of the Occupational Safety and Health Act of 1970 in 22.102–2; and (5) the possibility of providing for mailed MSDS's in the Alternate I to the clause at 52.223–3. As a result of these concerns, changes have been made to the final rule.

Hazard Communication, 29 CFR 1910.1200, requires that employees in the manufacturing sector be advised of the hazards of chemicals with which they work. In order to achieve this purpose, the Hazard Communication Standard requires that employers obtain a MSDS for all hazardous chemicals they use (the Federal agencies are already required to do this). Chemical manufacturers and distributors in the private sector are required to provide MSDS's with the hazardous chemicals they ship to other distributors and purchasers. In a July 25, 1985, decision, the Department of Labor's Deputy Associate Solicitor for Occupational Safety and Health determined that "application of the standard to Federal agency heads may not, however, be construed as requiring private employers to take any action with respect to Federal agencies, including supplying MSDS's to the agencies." Therefore, while chemical manufacturers and distributors must develop or otherwise obtain MSDS's for their hazardous material products to satisfy the requirements of the standard in the private sector, they are not required to provide them to Federal agencies to enable the Federal agencies to satisfy their obligations under the standard. Consequently, Federal agencies can only comply with the requirements of the Hazard Communication Standard through obtaining the MSDS's as part of the contracts used to purchase the goods to which the MSDS's apply.

B. Regulatory Flexibility Act

Based on the seven substantive responses received during the comment period, the final rule does not appear to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Therefore, the following certification is provided:

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because it requires them merely to furnish before award and with their product a document which they are already required by 29 CFR 1910.1200 to generate. Therefore, the time and financial resources necessary to comply with the proposed requirement will have already been invested prior to any involvement in contracting with the Government. It is likely that most small entities affected by the changes will be distributors rather than manufacturers.

C. Paperwork Reduction Act

With the exception of the clause at 52.223–7, Notice of Radioactive Materials, the Paperwork Reduction Act (Pub. L. 96–511) does not apply because the rule does not contain any recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* The Material Safety Data Sheets being required of offerors and contractors in the FAR changes already must be generated by them to comply with 29 CFR 1910.1200, Hazard Communication, when selling their products within the private sector. Therefore, the time and financial resources necessary to comply with the proposed requirement will have already been invested prior to any involvement in contracting with the Government.

The clause at 52.223–7, Notice of Radioactive Materials, requires contractors to give written notice prior to delivery of or prior to completion of any servicing of items of radioactive materials. Such notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the contractor which will put users of the items on notice as to the hazards involved. Because of this burden, a request for an OMB clearance was submitted to OMB during the proposed rule stage. An approval was granted through February 29, 1993, for OMB Control No. 9000–0107.

List of Subjects in 48 CFR Parts 9, 22, 23, 36, and 52

Government procurement.

Dated: October 10, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Federal Acquisition Circular (FAC) 90–8 amends the Federal Acquisition Regulation (FAR) as specified below:

Safety and Occupational Health

The FAR is being modified by revisions to FAR 9.104–1, 22.102–1, 22.102–2, 23.301, 23.302, 23.303, 36.513, and the clauses at 52.223–3, 52.236–7, and 52.236–13. In addition, revisions have added subpart 23.6, Notice of Radioactive Material, and a clause at 52.223–7 concerning radioactive material. The major changes: (a) Add "safety programs" to section 9.104–1 as an example of an element which may be applicable to responsibility determinations; (b) specify which agency is responsible for the administration and enforcement of the Occupational Safety and Health Act of 1970 in 22.102–2; (c) revise the requirements for submission of the Material Safety Data Sheets (MSDS's) required by 29 CFR 1910.1200; (d) add coverage and contractual provisions on

radioactive materials notification; and (e) clarify the accident prevention responsibilities of contractors.

Therefore, 48 CFR parts 9, 22, 23, 36, and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 9, 22, 23, 36, 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 9—CONTRACTOR QUALIFICATIONS

2. Section 9.104–1 is amended by revising paragraph (e) to read as follows:

9.104–1 General standards.

* * * * *

(e) Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them (including, as appropriate, such elements as production control procedures, property control systems, quality assurance measures, and safety programs applicable to materials to be produced or services to be performed by the prospective contractor and subcontractors) (see 9.104–3(b));

* * * * *

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

3. Section 22.102–1 is amended by revising the introductory paragraph to read as follows:

22.102–1 Policy.

Agencies shall cooperate, and encourage contractors to cooperate with Federal and State agencies responsible for enforcing labor requirements such as—

* * * * *

4. Section 22.102–2 is amended by adding paragraph (c) to read as follows:

22.102–2 Administration.

* * * * *

(c) The U.S. Department of Labor is responsible for the administration and enforcement of the Occupational Safety and Health Act.

PART 23—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

5. Section 23.301 is revised to read as follows:

23.301 Definition.

Hazardous material is defined in the latest version of Federal Standard No. 313 (Federal Standards are sold to the public and Federal agencies through: General Services Administration, Specifications Unit (3FBP–W), 7th & D Sts., SW., Washington, DC 20407.

6. Section 23.302 is amended by revising the section heading, paragraphs (b) and (c), and adding paragraphs (d) and (e) to read as follows:

23.302 Policy.

* * * * *

(b) To accomplish this objective, it is necessary to obtain certain information relative to the hazards which may be introduced into the workplace by the supplies being acquired. Accordingly, offerors and contractors are required to submit hazardous materials data whenever the supplies being acquired are identified as hazardous materials. The latest version of Federal Standard No. 313 (Material Safety Data Sheet, Preparation and Submission of) includes criteria for identification of hazardous materials.

(c) Hazardous material data (Material Safety Data Sheets (MSDS's)) are required—

(1) As specified in the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract);

(2) For any other material designated by a Government technical representative as potentially hazardous and requiring safety controls.

(d) MSDS's must be submitted—

(1) By the apparently successful offeror prior to contract award, unless the offeror certifies that the supplies are not hazardous; and

(2) For agencies other than the Department of Defense, again by the contractor with the supplies at the time of delivery.

(e) The contracting officer shall provide a copy of all MSDS's received to the safety officer or other designated individual.

7. Section 23.303 is revised to read as follows:

23.303 Contract clause.

(a) The contracting officer shall insert the clause at 52.223–3, Hazardous Material Identification and Material Safety Data, in solicitations and contracts if the contract will require the delivery of hazardous materials as defined in 23.301.

(b) If the contract is awarded by an agency other than the Department of Defense, the contracting officer shall use the clause at 52.223–3 with its Alternate I.

8. The table of contents is amended by adding subpart 23.6, consisting of sections 23.601 and 23.602, to read as follows:

Subpart 23.6—Notice of Radioactiv Material

Sec.
23.601 Requirements.
23.602 Contract clause.

9. Subpart 23.6, consisting of sections 23.601 and 23.602, is added to read as follows:

Subpart 23.6—Notice of Radioactiv Material

23.601 Requirements.

(a) The clause at 52.223–7, Notice of Radioactive Materials, requires the contractor to notify the contracting officer prior to delivery of radioactive material.

(b) Upon receipt of the notice, the contracting officer shall notify receiving activities so that appropriate safeguards can be taken.

(c) The clause permits the contracting officer to waive the notification if the contractor certifies that a notification on prior deliveries is still accurate. The contracting officer may waive the notice only after consultation with cognizant technical representatives.

(d) The contracting officer is required to specify in the clause at 52.223–7, the number of days in advance of delivery that the contractor will provide notification. The determination of the number of days should be done in coordination with the installation/facility radiation protection officer (RPO). The RPO is responsible for insuring the proper license, authorization or permit is obtained prior to receipt of the radioactive material.

23.602 Contract clause.

The contracting officer shall insert the clause at 52.223–7, Notice of Radioactive Materials, in solicitations and contracts for supplies which are, or which contain— (a) radioactive material requiring specific licensing under regulations issued pursuant to the Atomic Energy Act of 1954; or (b) radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries. Such supplies include, but are not limited to, aircraft, ammunition, missiles, vehicles, electronic tubes, instrument panel gauges, compasses and identification markers.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

10. Section 36.513 is amended by designating the existing paragraph as

paragraph (a) and adding paragraphs (b) and (c) to read as follows:

* * * * *

(b) The contracting officer shall insert the clause or the clause with its Alternate I in solicitations and contracts when a contract for services to be performed at Government facilities (see FAR part 37) is contemplated, and technical representatives advise that special precautions are appropriate.

(c) The contracting officer should inform the Occupational Safety and Health Administration (OSHA), or other cognizant Federal, State, or local officials, of instances where the contractor has been notified to take immediate action to correct serious or imminent dangers.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

11. Section 52.223-3 is revised to read as follows:

52.223-3 Hazardous Material Identification and Material Safety Data.

As prescribed in 23.303, insert the following clause:

Hazardous material identification and material safety data (Nov 1991)

(a) *Hazardous material,* as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).

(b) The offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.

Material (If none, insert *None*)

_____

_____

_____

Identification No.

_____

_____

_____

(c) The apparently successful offeror, by acceptance of the contract, certifies that the list in paragraph (b) of this clause is complete. This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.

(d) The apparently successful offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered nonresponsible and ineligible for award.

(e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause or the certification submitted under paragraph (c) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.

(f) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.

(g) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

(h) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:

(1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to—

(i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;

(ii) Obtain medical treatment for those affected by the material; and

(iii) Have others use, duplicate, and disclose the data for the Government for these purposes.

(2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.

(3) The Government is not precluded from using similar or identical data acquired from other sources.

(End of clause)

Alternate I (Nov 1991). If the contract is awarded by an agency other than the Department of Defense, add the following paragraph (i) to the basic clause:

(i) Except as provided in paragraph (i)(2) the Contractor shall prepare and submit a sufficient number of Material Safety Data Sheets (MSDS's), meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous materials identified in paragraph (b) of this clause.

(1) For items shipped to consignees, the Contractor shall include a copy of the MSDS with the packing list or other suitable shipping document which accompanies each shipment. Alternatively, the Contractor is permitted to mail MSDS's to consignees in advance of receipt of shipments by consignees, if authorized in writing by the Contracting Officer.

(2) For items shipped to consignees identified by mailing address as agency depots, distribution centers or customer supply centers, the Contractor shall provide one copy of the MSDS's in or on each shipping container. If affixed to the outside of each container, the MSDS must be placed in a weather resistant envelope.

12. Section 52.223-7 is added to read as follows:

52.223-7 Notice of radioactive materials.

As prescribed in 23.602, insert the following clause:

Notice of Radioactive Materials (Nov 1991)

(a) The Contractor shall notify the Contracting Officer or designee, in writing, _____ * days prior to the delivery of, or prior to completion of any servicing required by this contract of, items containing either (1) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, as set forth in title 10 of the Code of Federal Regulations, in effect on the date of this contract, or (2) other radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries. Such notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the Contractor which will put users of the items on notice as to the hazards involved (OMB No. 9000-0107).

(b) If there has been no change affecting the quantity of activity, or the characteristics and composition of the radioactive material from deliveries under this contract or prior contracts, the Contractor may request that the Contracting Officer or designee waive the notice requirement in paragraph (a) of this clause. Any such request shall—

(1) Be submitted in writing;

(2) Contain a certification that the quantity of activity, characteristics, and composition of the radioactive material have not changed; and

(3) Cite the contract number on which the prior notification was submitted and the contracting office to which it was submitted.

(c) All items, parts, or subassemblies which contain radioactive materials in which the specific activity is greater than 0.002 microcuries per gram or activity per item equals or exceeds 0.01 microcuries, and all containers in which such items, parts or subassemblies are delivered to the Government shall be clearly marked and labeled as required by the latest revision of MIL-STD 129 in effect on the date of the contract.

(d) This clause, including this paragraph (d), shall be inserted in all subcontracts for radioactive materials meeting the criteria in paragraph (a) of this clause.

(End of clause)

* The Contracting Officer shall insert the number of days required in advance of delivery of the item or completion of the servicing to assure that required licenses are obtained and appropriate personnel are notified to institute any necessary safety and health precautions. See FAR 23.601(d).

13. Section 52.236-7 is amended by removing from the clause title the date "(Apr 1984)" and inserting in its place "(Nov 1991)"; by revising the second sentence of the clause; and by removing the derivation lines after "(End of clause)" to read as follows:

52.236-7 Permits and responsibilities.

* * * * *

Permits and Responsibilities (Nov 1991)

* * * The Contractor shall also be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence. * * *

(End of clause)

13. Section 52.236-13 is revised to read as follows:

52.236-13 Accident prevention.

As prescribed in 36.513, insert the following clause:

Accident Prevention (Nov 1991)

(a) The Contractor shall provide and maintain work environments and procedures which will (1) safeguard the public and Government personnel, property, materials, supplies, and equipment exposed to Contractor operations and activities; (2) avoid interruptions of Government operations and delays in project completion dates; and (3) control costs in the performance of this contract.

(b) For these purposes on contracts for construction or dismantling, demolition, or removal of improvements, the Contractor shall—

(1) Provide appropriate safety barricades, signs, and signal lights;

(2) Comply with the standards issued by the Secretary of Labor at 29 CFR part 1926 and 29 CFR part 1910; and

(3) Ensure that any additional measures the Contracting Officer determines to be reasonably necessary for the purposes are taken.

(c) If this contract is for construction or dismantling, demolition or removal of improvements with any Department of Defense agency or component, the Contractor shall comply with all pertinent provisions of the latest version of U.S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1, in effect on the date of the solicitation.

(d) Whenever the Contracting Officer becomes aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the public or Government personnel, the Contracting Officer shall notify the Contractor orally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to the Contractor or the Contractor's representative at the work site, shall be deemed sufficient notice of the noncompliance and that corrective action is required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to promptly take corrective action, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule on any stop work order issued under this clause.

(e) The Contractor shall insert this clause, including this paragraph (e), with appropriate changes in the designation of the parties, in subcontracts.

(End of clause)

Alternate I (Nov 1991). If the contract will involve (a) work of a long duration or hazardous nature, or (b) performance on a Government facility that on the advice of technical representatives involves hazardous materials or operations that might endanger the safety of the public and/or Government personnel or property, add the following paragraph (f) to the basic clause:

(f) Before commencing the work, the Contractor shall—

(1) Submit a written proposed plan for implementing this clause. The plan shall include an analysis of the significant hazards to life, limb, and property inherent in contract work performance and a plan for controlling these hazards; and

(2) Meet with representatives of the Contracting Officer to discuss and develop a mutual understanding relative to administration of the overall safety program.

[FR Doc. 91-24991 Filed 10-24-91; 8:45 am]

BILLING CODE 6820-34-M

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 9 and 52

[FAC 90-8; FAR Case 90-18; Item IV]

Federal Acquisition Regulation; Consultants-Conflict of Interest

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are converting the interim rule on Consultants-Conflict of Interest, published in the **Federal Register** (55 FR 42684) on October 22, 1990, to a final rule. The interim rule was published as required by OFPP Policy Letter 89-1, dated December 8, 1989. The final rule is intended to promote compliance with the conflict of interest standards established for persons who provide consulting services to the Government and its contractors.

EFFECTIVE DATE: November 25, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501-3856 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-8, FAR case 90-18.

SUPPLEMENTARY INFORMATION:

A. Background

A detailed background statement was prepared and published with the interim rule in the **Federal Register** on October 22, 1990. This final rule, with minor changes, continues the policies and procedures established in the interim rule.

All public comments received in response to the interim rule were considered in the formulation of this final rule. Nineteen letters were received in response to the interim rule. Eight of the letters concurred or had no comment. The remaining eleven letters contained twenty seven comments. Minor changes were made to the rule as a result of public comments.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* applies to this final rule and a Final Regulatory Flexibility Analysis (FRFA) has been performed. A copy of the FRFA may be obtained from the FAR Secretariat.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) is deemed to apply because the final rule contains information collection requirements. Accordingly, a request for approval of a new information collection requirement concerning Consultants-Conflict of Interest was requested and received from the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* The OMB control number is 9000-0111. Public comments concerning this request were invited at 55 FR 47374, November 13, 1990.

List of Subjects in 48 CFR Parts 9 and 52

Government procurement.

Dated: October 10, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Federal Acquisition Circular (FAC) 90-8 amends the Federal Acquisition Regulation (FAR) as specified below.

Consultants—Conflict of Interest

The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are converting the interim rule on Consultants-Conflict of Interest, published in the **Federal Register** (55 FR 42684) on October 22, 1990, to a final rule. The exclusions

found in 9.502(d) of the interim rule were moved to 9.507-1(d) to more accurately reflect current policy. In addition, several editorial amendments were made to 9.504(e), 9.505(b), 9.505-4(a), and the provisions at 52.209-7 and 52.209-8.

Therefore, 48 CFR parts 9 and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 9 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 9—CONTRACT QUALIFICATIONS

2. Section 9.502 is amended by revising paragraph (d) to read as follows:

9.502 Applicability.

* * * * *

(d) Acquisitions subject to unique agency organizational conflict of interest statutes are excluded from the requirements of this subpart.

3. Section 9.504 is amended by revising the second sentence in paragraph (e) to read as follows:

9.504 Contracting officer responsibilities.

(e) * * * Before determining to withhold award based on conflict of interest considerations, the contracting officer shall notify the contractor, provide the reasons therefor, and allow the contractor a reasonable opportunity to respond. * * *

4. Section 9.505 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

9.505 General rules.

* * * * *

(b) * * *

(1) Proprietary information (as defined in 3.104-4(j)) that was obtained from a Government official without proper authorization; or

(2) Source selection information (as defined in 3.104-4(k)) that is relevant to the contract but is not available to all competitors, and such information would assist that contractor in obtaining the contract.

5. Section 9.505-4 is amended by revising paragraph (a) to read as follows:

9.505-4 Obtaining access to proprietary information.

(a) When a contractor requires proprietary information from others to perform a Government contract and can use the leverage of the contract to obtain it, the contractor may gain an unfair competitive advantage unless restrictions are imposed. These restrictions protect the information and encourage companies to provide it when necessary for contract performance. They are not intended to protect information (1) furnished voluntarily without limitations on its use or (2) available to the Government or contractor from other sources without restriction.

* * * * *

6. Section 9.507-1 is amended by adding paragraph (d) to read as follows:

9.507-1 Solicitation provisions.

* * * * *

(d) The provisions required by paragraphs (b) and (c) of this subsection shall not be used in solicitations for—

(1) Services excluded in section 37.204;

(2) Routine engineering and technical services (such as installation, operation or maintenance of systems, equipment, software components, or facilities);

(3) Routine legal, actuarial, auditing and accounting services;

(4) Training services; and

(5) Services rendered in connection with intelligence activities defined in section 3.4(e) of Executive Order 12333 or a comparable definitional section in any successor order, or in connection with special access programs.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. Section 52.209-7 is amended by—

a. Removing the date of the clause "(Oct 1990)" and inserting in its place "(Nov 1991)";

b. Removing from paragraph (a)(1)(i) the reference "Subpart 37.2" and inserting in its place "FAR 37.204"; and

c. Revising paragraphs (b) and (e) to read as follows:

52.209-7 Organizational Conflicts of Interest Certificate-Marketing Consultants.

* * * * *

Organizational Conflicts of Interest Certificate-Marketing Consultants (Nov 1991)

* * * * *

(b) An individual or firm that employs, retains, or engages contractually one or more marketing consultants in connection with a contract, shall submit to the contracting officer, with respect to each marketing consultant, the certificates described below, if the individual or firm is notified that it is the apparent successful offeror.

* * * * *

(e) Failure of the offeror to provide the required certifications may result in the offeror being determined ineligible for award. Misrepresentation of any fact may result in the assessment of penalties associated with false certifications or such other provisions provided for by law or regulation.

(End of provision)

* * * * *

8. Section 52.209-8 is amended by removing from the provision the date "(Oct 1990)" and inserting in its place "(Nov 1991)", and revising paragraphs (b) and (d) to read as follows:

52.209-8 Organizational Conflicts of Interest Certificate-Advisory and Assistance Services.

* * * * *

Organizational Conflicts of Interest Certificate-Advisory and Assistance Services (Nov 1991)

* * * * *

(b) An offeror notified that it is the apparent successful offeror shall provide the certificate described in paragraph (c) of this provision.

* * * * *

(d) Failure of the offeror to provide the required certification may result in the offeror being determined ineligible for award. Misrepresentation of any fact may result in the assessment of penalties associated with false certifications or such other provisions provided for by law or regulation.

(End of provision)

* * * * *

[FR Doc. 91-24992 Filed 10-24-91; 8:45 am]

BILLING CODE 6820-34-M

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 9

[FAC 90-8; FAR Case 90-37; Item V]

Federal Acquisition Regulation; Quality and Contractor Responsibility

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulations Council (DARC) are issuing Federal Acquisition Circular (FAC) 90-8 to revise the Federal Acquisition Regulation (FAR) at section 9.104-3(c) to emphasize quality as a factor for consideration in determining contractor responsibility.

EFFECTIVE DATE: November 25, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb at (202) 501-4547 in reference to this case. For general information, contact the FAR

Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-8, FAR case 90-37.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law q8-577 and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply.

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final change to the FAR does not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 9

Government procurement.

Dated: October 10, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Federal Acquisition Circular (FAC) 90-8 amends the Federal Acquisition Regulation (FAR) as specified below.

Quality and Contractor Responsibility

The Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulations Council (DARC) are issuing Federal Acquisition Circular (FAC) 90-8 to revise the Federal Acquisition Regulation (FAR) at section 9.104-3(c) to emphasize quality as a factor for determining contractor responsibility.

Therefore, 48 CFR part 9 is amended as set forth below:

PART 9—CONTRACTOR QUALIFICATIONS

1. The authority citation for 48 CFR part 9 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 9.104-3 is amended by revising paragraph (c) to read as follows:

9.104-3 Application of standards.

* * * * *

(c) *Satisfactory performance record.* A prospective contractor that is or recently has been seriously deficient in contract performance shall be presumed to be nonresponsible, unless the contracting officer determines that the circumstances were properly beyond the contractor's control, or that the contractor has taken appropriate corrective action. Past failure to apply sufficient tenacity and perseverance to perform acceptably is strong evidence of nonresponsibility. Failure to meet the quality requirements of the contract is a significant factor to consider in determining satisfactory performance. The contracting officer shall consider the number of contracts involved and the extent of deficient performance in each contract when making this determination. If the pending contract requires a subcontracting plan pursuant to Subpart 19.7, Subcontracting with Small Business and Small Disadvantaged Business Concerns, the contracting officer shall also consider the prospective contractor's compliance with subcontracting plans under recent contracts.

* * * * *

[FR Doc. 91-24993 Filed 10-24-91; 8:45 am]

BILLING CODE 6820-34-M

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 19

[FAC 90-8; FAR Case 91-35; Item VI]

Federal Acquisition Regulation; Surety Bond Waiver Authority

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulations Council (DARC) are issuing Federal Acquisition Circular (FAC) 90-8 to amend the Federal Acquisition Regulation (FAR) at section 19.808-1(b) to extend the time period during which the Small Business Administration is authorized to exempt section 8(a) contractors from Miller Act requirements for performance and payment bonds.

EFFECTIVE DATE: November 25, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Scott at (202) 501-0168 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-8, FAR case 91-35.

SUPPLEMENTARY INFORMATION:

A. Background

Section 206 of Public Law 101-574, the Small Business Administration Reauthorization and Amendments Act of 1990, amended section 7(j)(13)(D)(iii) of the Small Business Act (15 U.S.C. 636(j)(13)(D)(iii)) by removing "October 1, 1992" and inserting "October 1, 1994" in its place. FAR 19.808-1(b) is amended to reflect the new date.

B. Regulatory Flexibility Act

This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577 and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and cite FAR case 91-35 (FAC 90-8) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 19

Government procurement.

Dated: October 10, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Federal Acquisition Circular (FAC) 90-8 amends the Federal Acquisition Regulation as specified below.

Surety Bond Waiver Authority

FAR 19.808-1(b) is amended to extend the Small Business Administration authority to exempt section 8(a) contractors from Miller Act bonding requirements from October 1, 1992, to October 1, 1994.

Therefore, 48 CFR part 19 is amended as set forth below:

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

1. The authority citation for 48 CFR part 19 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).

19.808-1 [Amended]

2. Section 19.808-1 is amended in paragraph (b) by removing from the fourth sentence the date "October 1,

1992" and inserting in its place "October 1, 1994".

[FR Doc. 91-24994 Filed 10-24-91; 8:45 am]

BILLING CODE 6820-34-M

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 25

[FAC 90-8; FAR Case 90-45; Item VII]

Federal Acquisition Regulation; Revision to the Buy American Act-Supplies Clause and Buy American Act Certificate Prescriptions in FAR 25.109

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: Federal Acquisition Circular 90-8 amends the Federal Acquisition Regulation (FAR) to eliminate the unnecessary use of the provision at 52.225-1, Buy American Certificate, and the clause at 52.225-3, Buy American Act-Supplies. The change limits the use of the certificate at 52.225-1 to when the clause at 52.225-3 is required and modifies the exceptions to the use of the clause at 52.225-3, Buy American Act-Supplies. The intended effect is to streamline the FAR by requiring the use of the Buy American Certificate and the clause at 52.225-3, Buy American Act-Supplies, only when applicable.

EFFECTIVE DATE: November 25, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Rosinski at (202) 501-0692 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-8, FAR case 90-45.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule arose as a result of the Defense Management Review Regulatory Relief initiative. It was found that the proposed coverage for inclusion in the FAR would eliminate supplementary component-level clauses. Therefore, the Defense Acquisition Regulations Council and the Civilian Agency Acquisition Council have revised FAR coverage accordingly.

The proposed rule was published in the **Federal Register** (55 FR 39856) on September 28, 1990.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the revisions merely implement in the FAR the procedures currently being followed by individual agencies.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final 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 Part 25

Government procurement.

Dated: October 10, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Federal Acquisition Circular (FAC) 90-8 amends the Federal Acquisition Regulation (FAR) as specified below.

Revision to the Prescriptions to FAR 25.109 (a) and (d)

FAR 25.109 (a) and (d) are amended to eliminate the unnecessary use of the provision at 52.225-1, Buy American Certificate, and the clause at 52.225-3, Buy American Act-Supplies. The change to FAR 25.109(a) limits the use of the certificate at 52.225-1 to when the clause at 52.225-3 is actually applicable. The change to FAR 25.109(d) modifies the exceptions to the use of the clause at 52.225-3, Buy American Act-Supplies.

Therefore, 48 CFR part 25 is amended as set forth below:

PART 25—FOREIGN ACQUISITION

1. The authority citation for 48 CFR part 25 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 25.109 is amended by revising paragraphs (a) and (d) to read as follows:

25.109 Solicitation provisions and contract clause.

(a) The contracting officer shall insert the provision at 52.225-1, Buy American Certificate, in solicitations where the clause at 52.225-3 is used.

* * * * *

(d) The contracting officer shall insert the clause at 52.225-3, Buy American Act-Supplies, in solicitations and contracts for the acquisition of supplies, or for services involving the furnishing of supplies, for use within the United States, unless—

(1) The solicitation is restricted to domestic end products under subpart 6.3; or

(2) The acquisition is made under the Trade Agreements Act (see subpart 25.4); or

(3) Another exception to the Buy American Act applies (e.g., nonavailability or public interest).

[FR Doc. 91-24995 Filed 10-24-91; 8:45 am]

BILLING CODE 6820-34-M

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR part 37

[FAC 90-8; FAR Case 90-57; Item VIII]

Federal Acquisition Regulation; Temporary Services

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulations Council (DARC) have agreed to add language to FAR Part 37, Service Contracting, which will provide guidance on Government use of private sector temporaries.

EFFECTIVE DATE: November 25, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501-3856 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-8, FAR case 90-57.

SUPPLEMENTARY INFORMATION:

A. Background

The Government is authorized in 5 CFR part 300, subpart E, to enter into contracts with temporary help service firms for the brief or intermittent use of the skills of private sector temporaries. However, there is currently no guidance in the Federal Acquisition Regulation. Coverage is necessary to inform contracting personnel that such contracts are permitted. The proposed rule was published in the **Federal**

Register (55 FR 1076) on January 10, 1991.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that the final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the change to FAR part 37 merely informs contracting personnel that they may contract with temporary help service firms.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final 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 Part 37

Government procurement; Temporary services.

Dated: October 10, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Federal Acquisition Circular (FAC) 90–8 amends the Federal Acquisition Regulation (FAR) as specified below.

Temporary Services

FAR 37.112 is added to provide new coverage on Government use of private sector temporaries.

Therefore, 48 CFR part 37 is amended as set forth below:

PART 37—SERVICE CONTRACTING

1. The authority citation for 48 CFR part 37 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 37.112 is added to read as follows:

37.112 Government use of private sector temporaries.

Contracting officers may enter into contracts with temporary help service firms for the brief or intermittent use of the skills of private sector temporaries. Services furnished by temporary help firms shall not be regarded or treated as personal services. These services shall not be used in lieu of regular recruitment under civil service laws or to displace a Federal employee. Acquisition of these services shall comply with the authority, criteria, and conditions of 5 CFR part 300, subpart E, Use of Private Sector Temporaries, and agency procedures.

[FR Doc. 91–24996 Filed 10–24–91; 8:45 am]

BILLING CODE 6820–34–M

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 19 and 52

[Federal Acquisition Circular 90–8; Item IX]

Federal Acquisition Regulation; Technical Corrections

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Technical corrections.

SUMMARY: The following technical corrections have been made to FAR parts 19 and 52 to correct references and terms.

EFFECTIVE DATE: October 25, 1991.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–8; Technical Corrections.

Dated: October 10, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

List of Subjects in 48 CFR Parts 19 and 52

Government procurement.

Therefore, 48 CFR parts 19 and 52 are amended as set forth in the technical corrections appearing below:

1. The authority citation for 48 CFR parts 19 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 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

19.804–3 [Technical correction]

2. Section 19.804–3 is amended in paragraph (c) (2) by removing the reference 5.205(e) and inserting 5.205(f) in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.214–17 [Technical correction]

3. Section 52.214–17 is amended at the end of the provision by removing "(End of clause)" and inserting in its place "(End of provision)".

[FR Doc. 91–24997 Filed 10–24–91; 8:45 am]

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Friday
October 25, 1991

Part III

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 400 et al.

Medicare Program; Essential Access Community Hospitals (EACHs) and Rural Primary Care Hospitals (RPCHs); Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 400, 409, 410, 411, 412, 413, 424, 440, 485, 488, 489

[BPD-713-P]

RIN 0938-AF21

Medicare Program; Essential Access Community Hospitals (EACHs) and Rural Primary Care Hospitals (RPCHs)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: These proposed rules set forth—

- The requirements for designating certain hospitals as Essential Access Community Hospitals (EACHs) or Rural Primary Care Hospitals (RPCHs);
- The conditions that an RPCH must meet to participate in Medicare; and
- The rules for Medicare payment for services furnished by EACHs and RPCHs.

These rules are necessary to implement sections 6003(g) and 6116 of the Omnibus Budget Reconciliation Act of 1989 and section 4008(d) of the Omnibus Budget Reconciliation Act of 1990.

The purpose of the amendments is to make it possible for rural hospitals or hospitals located in urban counties whose service area is characteristic of service areas of counties in rural areas, that might otherwise be forced to close to continue to operate on a reduced scale, and to improve the coordination of the limited health care resources available in rural areas.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later that 5 p.m. on December 24, 1991.

ADDRESSES: Mail written comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD-713-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your written comments to one of the following addresses: Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave. SW, Washington, DC, or Room 132, East High Rise Building, 6235 Security Boulevard, Baltimore, Maryland.

Due to staffing and resource limitations, we cannot accept audio, visual or facsimile (FAX) copies of comments. If comments concern information collection, please address a copy of comments to: Office of Management and Budget, Office of Information and Regulatory Affairs, room 3206, New Executive Office Building, Washington, DC 20503, Attention: Allison Herron.

In commenting, please refer to file code BPD-713-P. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of a document, in room 309-G of the Department's offices at 200 Independence Ave. SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION, CONTACT: Thomas Hoyer, (301) 966-4607.

SUPPLEMENTARY INFORMATION:

I. Background

A. Current Law

To participate in Medicare as a hospital, a facility must meet the statutory definition of "hospital" in section 1861(e) of the Social Security Act (the Act). This means that the facility must be operated primarily for inpatients, provide 24-hour nursing services furnished or supervised by a registered nurse (RN), and meet other health and safety requirements. A special provision of section 1861(e) of the Act allows for waiver of the 24-hour RN coverage requirement for certain hospitals in rural areas where there are shortages of nursing personnel. However, even hospitals that qualify for this waiver are required to have an RN on the premises for the day shift. There is no provision allowing participation as a hospital by a freestanding facility that provides primarily outpatient care, or that does not have full-time nursing services.

With the exception of certain specialty institutions and units (psychiatric, rehabilitation, long-term care, children's hospitals, and psychiatric and rehabilitation units), participating hospitals are paid for their services to inpatients under the Medicare prospective payment system (PPS) authorized by section 1883(d) of the Act. However, payment is made on a reasonable cost basis, under sections 1814(b) and 1861(v)(1)(A) of the Act, for services to hospital outpatients and for inpatient services furnished by PPS-excluded hospitals and units.

Section 1883 of the Act allows rural hospitals having fewer than 100 beds to offer skilled nursing facility services (SNFs) by having beds that "swing" between hospital and SNF levels of care. These hospitals are thus permitted to vary the level of care they provide in response to changing patient needs by using the same bed to furnish hospital services at one time and SNF services at another. Nonetheless, a special provision of section 1883 of the Act prohibits hospitals with a nursing services waiver under section 1861(e) of the Act from being designated as swing-bed hospitals.

Section 1886(d)(5)(C)(i) of the Act provides special payment rules for rural hospitals which are designated as regional referral centers or as sole community hospitals. However, these rural hospitals usually do not have the volume of utilization to allow them to be classified as referral centers. Moreover, even the relatively more generous payment provisions made for sole community hospitals do not allow some small rural hospitals to meet the high fixed costs attributable to their low utilization.

B. Recent Legislation

Section 6003(g) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239) added a new section 1820 to the Act. This new section authorizes a grant program for the development of rural health care plans and health care networks, establishes two new designations for hospitals and facilities (EACHs and RPCHs), sets forth the conditions under which a hospital or facility will be designated as an EACH or an RPCH, provides rules for Medicare coverage and payment for inpatient RPCH services, authorizes HCFA to waive such provisions of part A of title XVIII as necessary to conduct the EACH program, and directs HCFA to develop and implement a PPS for determining payments for inpatient RPCH services not later than January 1, 1993. Section 6116 of Public Law 101-239 amended sections 1861(mm), 1832(a) (2), 1833(a), and 1834 of the Act to provide for coverage and payment for outpatient RPCH services, and to direct that HCFA develop and implement, not later than January 1, 1993, a PPS for outpatient RPCH services.

The legislation is effective on December 19, 1989, the date of enactment of Pubic Law 101-239. Fiscal year (FY) 1990 funding for the EACH program was authorized but not appropriated, thus precluding selection of the participating States, designation of EACHs and RPCHs or actual payments to them during FY 1990. The fiscal year 1991 appropriation for the EACH program is approximately $9.8 million.

On November 5, 1990, Congress enacted the Omnibus Budget Reconciliation Act of 1990 (Public Law

101–508). Section 4008 of this legislation made several technical amendments to section 1820 of the Act. In particular, section 4008(d) (1) of Public Law 101–508 amended section 1820(i)(2)(C) of the Act to require that HCFA, in designating as RPCHs up to 15 hospitals in States not receiving grants for EACH/RPCH activities under section 1820(a) (1) of the Act, give preference to hospitals that have entered into agreements as described in section 1820(g) (2) of the Act with rural health networks in grant States. Section 4008(d) (2) of Public Law 101–508 amended section 1820(f)(1)(B) of the Act to extend RPCH eligibility to hospitals that had closed within the 12 months prior to their application for designation as RPCHs, provided that the hospital was not in violation of any hospital participation requirement at the time it closed. Section 4008(d) (3) of Public Law 101–508 amended section 1820(f)(1)(A) of the Act to allow a hospital located in an urban county to be designated as an RPCH if the county has a geographic area which is substantially larger than the average geographic area for urban counties in the United States and a hospital service area that is characteristic of the service areas of hospitals located in rural areas.

In addition, section 4008(m)(2)(B)(iii) of Public Law 101–508 added, to section 1820(j) of the Act, the authority to waive part C of the Act, which contains various definitions and other provisions, as necessary to conduct the EACH program.

1. Grant Program

Under the grant program authorized by section 1820 of the Act (the EACH program), HCFA is directed to make grants to not more than seven States to carry out specified activities related to planning and implementing a rural health plan and rural health networks, designating hospitals or facilities in the State as EACHs or RPCHs, and developing and supporting communication and emergency transportation systems. HCFA is also directed to make grants to hospitals and facilities, or consortia of hospitals and facilities, to meet the costs of converting a hospital or facility to an EACH or RPCH, or of becoming part of a rural health network in the State. The purposes for which grants may be used include meeting capital costs, costs of developing necessary communications systems, and costs of developing an emergency transportation system. The amount of the grant to each hospital or facility is restricted by section 1820(h) of the Act to $200,000.

The grants program described above is being implemented through a separate grants solicitation process, not through the proposed regulations that follow. Questions about the grants program should be directed to the Health Care Financing Administration, Office of Research and Demonstrations, 2230 Oak Meadows Building, 6340 Security Boulevard, Baltimore, Maryland 21207 (301–966–6507).

2. Designation of EACHs and RPCHs

Section 6003(g) of Public Law 101–239 added sections 1820(e) and (i)(1) of the Act which describe the circumstances under which a State which has received a grant for the EACH program or HCFA may designate a hospital as an EACH. These conditions for participation are explained in more detail in Section II.B. of this preamble. Section 6003(g)(2) of Public Law 101–239 amended section 1886(d)(5)(D) of the Act to provide that EACHs are to be treated as sole community hospitals for purposes of payment for their inpatient hospital services.

This section also was amended to provide that if an EACH incurs increases in reasonable costs during a cost reporting period as a result of becoming a member of a rural health network in its State, and because of these increases will increase its costs for later cost reporting periods, the hospital's target amount under section 1886(b)(3)(C) will be adjusted upward to account for these increases.

Section 6003(g)(1) of Public Law 101–239 added section 1820(f) and (i)(2) of the Act to specify the requirements a hospital must meet in order to be designated an RPCH by the State. Section 4008(d) (1), (2), and (3) of Public Law 101–508 made technical changes to section 1820(f) of the Act to extend eligibility requirements for RPCHs to a broader range of hospitals, and increase HCFA's discretion to waive other parts of the Medicare law in order to implement the EACH/RPCH provisions. These requirements are also explained in more detail in Section II of this preamble.

Section 6003(g)(3)(A) of Public Law 101–239 also adds new paragraphs (mm) (1) and (2) to section 1861 of the Act to define the terms "RPCH" and "inpatient RPCH services".

Section 6003(g)(3)(B) of Public Law 101–239 amended section 1812(a)(1) of the Act to include inpatient RPCH services in the scope of part A benefits, and section 1814(a) to permit payment to be made for inpatient RPCH services only where a physician certifies that such services were required to be immediately furnished on a temporary, inpatient basis. It further amended section 1814 of the Act by adding new paragraph (l)(1) to establish the method of payment for inpatient RPCH services, and by adding a new paragraph (l)(2) to require HCFA to develop a PPS for determining payment amounts for inpatient RPCH services furnished on or after January 1, 1993.

Section 6003(g)(3) (C) and (D) of Public Law 101–239 makes conforming changes to other provisions of the Act.

Section 6003(g)(4) of Public Law 101–239 added a new subsection (i) to section 1886 of the Act to prevent duplication of payments to hospitals participating in the Rural Health Transition Grant programs.

Section 6116(a) of Public Law 101–239 adds a new paragraph (mm)(3) to section 1861 of the Act to define outpatient RPCH services, and amends section 1832(a)(2) of the Act by including payment for outpatient RPCH services among the benefits available under part B of Medicare. Section 6116(b) of Public Law 101–239 also amends sections 1833 and 1834 of the Act to provide for payment for outpatient RPCH services. As amended, section 1834(f) of the Act allows the RPCH to choose to be paid under one of two alternative methods for its services to outpatients. These methods are described in more detail in section II of this preamble.

Section 6116(b)(2) of Public Law 101–239 further requires that HCFA develop and implement, not later than January 1, 1993, a PPS for outpatient RPCH services that represents payment for both facility and professional services.

C. Legislative Reports

The conference report to accompany H.R. 3299 (H.R. Rep. No. 101–386, 101st Cong., 1st Sess. 719, 722–725, 728–729 (1989)) for sections 6003 and 6116 of Public Law 101–239 and the conference report to accompany H.R. 5835 (H.R. Rep. No. 101–964, 101st Cong., 2d Sess. 706, 708, 711 (1990)) for sections 4008 (d) and (m) of Public Law 101–508 were consulted in preparing these proposed regulations. However, the conference reports only summarized the provisions of the statutes and did not provide any further direction regarding implementation.

D. Program Changes

The Medicare law in effect before Public Law 101–239 did not allow for participation by hospitals that were not operated primarily for the care of inpatients, and provided only a limited exception to the requirement for 24-hour registered nurse coverage. Amendments enacted by Public Law 101–239 are designed to offer assistance to States in assuring the availability of emergency

treatment services in rural areas where it is not financially feasible to maintain full-service hospitals. The legislation directs HCFA to award grants to as many as seven States for the purpose of planning or implementing of EACH/RPCH networks in their rural areas. Once the States are selected, grants are also to be given to individual hospitals, other facilities, and consortia to finance the costs they incur in converting themselves to an RPCH or an EACH or in becoming part of a rural health network.

We do not expect to complete the award of State grants until late in fiscal year 1991; consequently, only State-designated facilities will be designated by HCFA in FY 1991. Designation of EACHs or RPCHs outside grant States will not occur before FY 1992.

The legislation establishes a new designation for certain hospitals in rural areas that serve bona fide inpatient care needs (EACHs), and also creates a new category of providers known as RPCHs. As described in the legislation, RPCHs are in effect freestanding hospital outpatient departments that are permitted to maintain up to 6 inpatient beds and to keep inpatients for up to 72 hours. To be designated an RPCH, an institution must first be a hospital which is in compliance with all requirements for participation when it requests designation as an RPCH, but agrees to stop providing inpatient care except as needed to permit a patient's condition to be stabilized before he or she is discharged, or transferred to an EACH. (As explained in section IB. above, recently enacted legislation allows hospitals which closed no earlier than 12 months before their application for RPCH status to qualify if they were in compliance with the conditions when they closed.) An RPCH is required to provide 24-hour emergency care and to meet the conditions of participation for rural health clinics concerning the health and safety of its patients as described in section 1861(aa)(2) (C) through (J). However, it is explicitly excluded from the definition of "hospital" in section 1861(e) of the Act and therefore is not subject to the hospital conditions of participation established under the authority of that section.

The statute explicitly authorizes operation of an RPCH on a part-time basis (except with respect to emergency services) and use of part-time or off-site dietitians', pharmacists', laboratory technicians', and medical or radiological technologists' services. HCFA also is authorized to designate an unspecified number of hospitals in grant States as RPCHs that are ineligible for State designation as an RPCH because the hospital does not meet the criteria that it cease (or agree to cease) providing inpatient care except on an emergency basis, limit its bed size or the length of time it keeps patients under the 6-bed, 72-hour rule, or does not meet the staffing requirements that would otherwise apply to RPCHs.

In addition, HCFA is authorized to designate as RPCHs up to 15 hospitals located in States other than those receiving grants and to give preference to hospitals that are members of a rural health network, as defined in section 1820(g) of the Act. Preference may also be given to hospitals that are members of a network located in a grant State even though the hospitals themselves are not located in a grant State. Under section 1820(i)(2)(B), HCFA will not deny designation as an RPCH under this paragraph to an otherwise eligible hospital solely because the hospital has entered into an agreement to provide posthospital SNF care.

A special provision of the law, section 1820(j) of the Act, authorizes HCFA to waive such provisions of parts A and C of title XVIII as necessary to conduct the EACH program.

II. Provisions of the Rule

A. "General Approach"

In developing the proposed regulations set forth below, we have followed the design and, where possible, the specific language of Public Law 101-239 and 101-508 provisions cited in section I.B. above. We have also developed specific conditions of participation for RPCHs which are similar to the conditions for certification of rural health clinics (RHCs) in 42 CFR part 491, subpart A. We believe this is appropriate because section 1820(f)(1)(H) of the Act requires RPCHs to meet certain parts of the statutory definition of RHCs in section 1861(aa) of the Act. Furthermore, there are certain inherent similarities between RHCs and RPCHs, in that both categories of facility are designed to function in rural areas, to treat primarily ambulatory patients, and to rely heavily on the services of nonphysician practitioners to deliver basic primary care services. We have also made various technical and conforming changes.

B. "Specific Proposals"

In 42 CFR part 400, subpart B, we would amend § 400.202 by revising the definitions for "Provider" and "Services" to include RPCHs. We would also add new acronyms and definitions for an EACH and an RPCH. We propose to define an EACH as a hospital designated by HCFA as meeting the applicable requirements of section 1820 of the Act and of subpart G of part 412. We would define an RPCH as a hospital designated by HCFA as meeting the applicable requirements of section 1820 of the Act and of subpart F of part 485.

In part 409, subpart A, which contains the general provisions on hospital insurance benefits related to Medicare Part A, we would amend § 409.5 concerning description of benefits to include inpatient RPCH services as a covered service under hospital insurance (Part A of Medicare).

In subpart B of part 409, concerning hospital insurance benefits, we would amend the title of subpart B to include inpatient RPCH services as well as inpatient hospital services as a covered service under hospital insurance (Part A of Medicare). We are also proposing to revise the introductory paragraph of § 409.10(a), which concerns services included as inpatient hospital services. We state that inpatient RPCH services furnished to an inpatient of an RPCH by an RPCH that are of the same type as inpatient hospital services listed in paragraphs (a)(1) through (a)(7) of that section would be included services under Part A of Medicare. Section 409.10(a)(3) would be revised to include the use of an RPCH facility as well as a hospital facility in the listing of services furnished to inpatients. The section would also be amended to make it clear that inpatient RPCH services do not include skilled nursing facility (SNF)-type or nursing facility (NF)-type services furnished by an RPCH. This provision is needed to allow clear identification of the services that can be furnished and paid for as inpatient RPCH services and to implement section 1861(mm)(1) of the Act, which defines inpatient RPCH services as services that would be inpatient hospital services if furnished by a hospital to its inpatient.

In the remainder of subpart B we are proposing to make a number of conforming changes to the following sections to clarify that the scope of benefits for inpatient RPCH services is the same as for inpatient hospital services:

- Section 409.11 regarding bed and board.
- Section 409.12 regarding nursing and medical social services and use of hospital facilities.
- Section 409.13 regarding drugs and biologicals.
- Section 409.14 regarding supplies, appliances and equipment.

• Section 409.15 regarding services furnished by an intern or a resident-in-training.

• Section 409.16 regarding other diagnostic or therapeutic services.

In subpart C concerning posthospital SNF care, we would revise § 409.20 concerning coverage of services and § 409.27 concerning diagnostic and therapeutic services to indicate that Part A benefits for posthospital SNF care include care furnished by an RPCH with a swing-bed agreement, as described in § 485.645. Section 485.645 allows a small rural hospital to use its inpatient facilities to furnish SNF services to Medicare beneficiaries and nursing facility services to Medicaid recipients. Current regulations only include services of a participating SNF and/or hospital.

In subpart D concerning requirements for coverage of posthospital SNF care, we are proposing conforming changes to § 409.30 regarding the basic requirements for coverage of posthospital SNF care and § 409.31 which lists the level of care requirements to indicate that RPCHs with swing-bed approval must meet certain requirements for coverage of posthospital SNF-type care. Current regulations apply only to hospitals that have swing-bed approval.

In 42 CFR part 409, subpart F regarding the scope of hospital insurance benefits, we would revise § 409.60 to define the beginning and ending of benefit periods for inpatient RPCH services. We would also revise § 409.61 regarding benefit limitations to reflect that inpatient RPCH services are subject to the same limitations and conditions (for example, those regarding the days of care in a benefit period) as inpatient hospital services, and that posthospital SNF care furnished by an RPCH with swing-bed approval is subject to the same limitations and conditions as posthospital SNF care furnished in other settings. In addition, we are proposing the following conforming changes in subpart F to provide for treatment of inpatient RPCH services on the same basis as inpatient hospital services:

• Section 409.64 regarding services counted toward allowable amounts.

• Section 409.65 regarding lifetime reserve day.

• Section 409.66 regarding revocation of election not to use lifetime reserve days.

• Section 409.68 regarding guarantee of payment for inpatient hospital services furnished before notification of exhaustion of benefits.

We propose to revise 42 CFR part 409, subpart G, regarding deductibles and coinsurance. Although the deductible and coinsurance provisions of section 1813 of the Act were not amended by Public Law 101-239, we believe it would be inappropriate to apply these provisions to hospitals and not to RPCHs, nor do we believe it was Congress' intent. Our rationale for these changes is discussed in greater detail in the discussion of § 485.645 "Special Requirement for RPCH Providers of Long-Term Care Services ('Swing-Beds')."

We propose to revise the following sections of part 409 as follows:

• Section 409.80 concerning inpatient deductible and coinsurance.

• Section 409.82 concerning inpatient hospital deductible.

• Section 409.83 concerning inpatient hospital coinsurance.

• Section 409.87 concerning the blood deductible.

In 42 CFR part 410 regarding supplementary medical insurance benefits, we would propose to revise § 410.2 to include an RPCH in the definitions for "participating" and "nonparticipating" facilities. We would also propose to revise § 410.3 concerning benefits and § 410.10 concerning covered medical services explicitly to include outpatient RPCH services in the scope of benefits available under Part B. In § 410.150 concerning to whom payment is made, we would specify that Medicare Part B pays an RPCH on the individual's behalf for outpatient RPCH services furnished by the RPCH.

In accordance with section 1834(g) of the Act, we would add a new § 410.152(k) concerning the amounts of payment made to RPCHs for outpatient RPCH services. Medicare Part B would pay for services furnished before 1993 by an RPCH to its outpatients under one of the following two methods elected by the RPCH.

1. Cost-based facility payment plus professional services method. Under this method, Medicare Part B would pay for outpatient RPCH facility services as hospital outpatient services as provided under section 1833 of the Act, which are furnished by or under arrangements made by a provider as described in §§ 410.152(b) (1) and (2). Payment would be made for professional medical services on a reasonable charge or other fee basis as described in § 410.152(b) (4) and with other provisions of the regulations that would apply for payment for the services if they were not included in outpatient RPCH services.

2. All-inclusive method. If the RPCH elects payment under this method, a combined payment including both RPCH facility services and professional medical services would be made at an all-inclusive rate per visit. This rate would be subject to applicable Part B deductible and coinsurance amounts, as described in § 413.70(b) (3). The election of the all-inclusive method by the RPCH will represent a two-year election since we anticipate implementation of a prospective payment system at that time. However, if there is a delay in prospective payment, we will allow RPCHs to change their election.

The all-inclusive rate would be an average rate based on the lower of cost or charges of RPCH facility services and professional medical services, as defined in the principles of cost reimbursement, divided by the number of outpatient RPCH visits. In determining the reasonable cost for professional medical services, all health professionals will be required to be paid under a compensation arrangement with the RPCH, and their services will not be subject to a reasonable charge determination. If the health professionals provide services to inpatients and outpatients, their compensation should be divided based on actual time spent. (No breakdown is required for physician professional services versus technical services.)

We considered alternatives to the calculation of payment under the all-inclusive method. We considered making separate payment for facility services determined under the special payment methodologies otherwise applicable to hospital outpatient services. As an example, we considered applying the special payment methodologies contained in section 1833(a)(2)(D) of the Act for clinical diagnostic laboratory services and section 1833(a)(2)(E) of the Act for outpatient radiology services. However, we believe that the application of these special payment methodologies would defeat the purpose and simplicity intended by the all-inclusive method. We also considered a modified alternative to the all-inclusive method. This modified alternative method would exclude professional medical services from the computation and would allow those services to be paid on the basis of reasonable charges or fee schedule amounts. This would permit the RPCH to use this method in situations where it is unable to develop cost-incurred arrangements with the medical professionals. We invite comments on the modified alternative to the all-inclusive method.

Conforming changes to include outpatient services furnished in RPCH's were also made to the following sections:

• Section 410.28 concerning diagnostic services to hospital outpatients.

• Section 410.32 concerning various diagnostic x-rays and tests.

• Section 410.38 concerning durable medical equipment.

• Section 410.40 concerning ambulance services.

• Section 410.60 concerning outpatient physical therapy services.

• Section 410.62 concerning outpatient speech pathology services.

• Section 410.150 concerning the individual or organization to whom payment is made.

• Section 410.152 concerning amounts of payment.

• Section 410.155 concerning psychiatric services limitations.

• Section 410.161 concerning the Part B blood deductible.

In 42 CFR part 411, subpart A, concerning recovery of overpayments and suspension of payment, we would amend § 411.15(m)(1) by adding a parenthetical statement at the end of this paragraph to make services to RPCH inpatients subject to rebundling on the same basis as services to hospital inpatients. This means that the services are covered under Medicare only if they are furnished either by the RPCH directly (that is, through the use of services of RPCH employees) or under an arrangement that requires that the services be billed for by the RPCH. Section 1862(a)(14) of the Act requires that inpatient and outpatient RPCH services be treated as if they were hospital services for purposes of rebundling. The proposed change to § 411.15(m)(1) would implement this requirement with respect to services to RPCH inpatients. At this time, we are not proposing to amend the regulations at § 411.15 to require rebundling of services to RPCH outpatients. In a separate proposed rule published on August 8, 1988 (53 FR 29486), we proposed to require that services to hospital outpatients as well as inpatients be rebundled. Subsequently, as noted above, Congress enacted the legislation establishing the EACH program and included in it the requirement that RPCHs be treated as hospitals for purposes of rebundling. We are continuing to develop final regulations on rebundling of services to hospital outpatients and plan to include, in those final regulations, any changes needed to implement the requirement for rebundling of services to RPCH outpatients.

We also propose to amend § 411.15(m)(2) to reflect changes in the list of services that are excluded from the rebundling requirements and, thus, may be billed for separately even when furnished to hospital or RPCH inpatients. These changes were made by section 4157 of Public Law 101–508.

In 42 CFR part 412, subpart G concerning the special treatment of certain facilities under the PPS for inpatient hospital services, we would revise § 412.90 containing the general rules by adding a new paragraph (i) to state that a hospital designated by HCFA as an EACH will be treated as a sole community hospital, as required by amendments to section 1886(d)(5)(D)(iii)(III) of the Act made by section 6003(g)(2) of Public Law 101–239. Those amendments provide that EACHs are to be treated as sole community hospitals for purposes of payment for their inpatient hospital services. In addition, we are proposing to add a new § 412.109 to set forth the conditions under which HCFA and the State designates a hospital as an EACH.

Under this provision, we propose HCFA would designate a hospital as an EACH if the hospital is located in a State receiving a grant under section 1820(a)(1) of the Act and is designated as an EACH by the State in which it is located. In addition, we propose that HCFA may designate a hospital as an EACH if the hospital is not eligible for State designation solely because the hospital has fewer than 75 beds or the hospital is located 35 miles or less from any other hospital.

The proposed regulation would also provide that a State receiving a grant under section 1820(a)(1) of the Act may designate a hospital as an EACH if the hospital meets the following criteria:

1. The hospital is located outside any area that is a Metropolitan Statistical Area as defined by the Office of Management and Budget or has been recognized as urban under the regulations at § 412.62, is not deemed to be located in an urban area under § 412.63, has not been classified as an urban hospital by the Medicare Geographical Classification Review Board, and meets one of the following requirements:

(a) The hospital is located more than 35 miles away from any hospital that meets any of the following criteria:

(i) The hospital has been designated by HCFA as an EACH.

(ii) The hospital is classified as a rural referral center under 42 CFR 412.96.

(iii) The hospital is located in an urban area and meets the criteria for classification as a regional referral center under 42 CFR 412.96.

(b) The hospital meets other geographic criteria the State may impose with HCFA's approval.

2. The hospital has at least 75 beds or more or is located more than 35 miles from any other hospital.

3. The hospital has in effect an agreement to provide emergency and medical backup services to an RPCH participating in the same rural health network (as defined in proposed § 485.603) in which the hospital is also a member and throughout its service area.

4. The hospital agrees to accept transfers of patients from RPCHs in its network, to provide staff privileges to physicians working at RPCHs in its network, and to exchange data with the RPCHs.

5. The hospital must meet any other requirements that are imposed by the State with the approval of HCFA.

In accordance with section 1886(d)(5)(D) of the Act, we would provide in § 412.109(d) that HCFA will increase an EACH's applicable hospital-specific rate if, during a cost reporting period, the hospital experiences increases in its Medicare inpatient operating costs that are directly attributable to its membership in a rural health network. (We use the term "hospital-specific rate" rather than "target amount" which is used in the statute, in order to avoid confusion between the rate paid sole community hospitals and the Tax Equity and Fiscal Responsibility Act of 1982 rate of increase limits, which the statute also notes as "target amount.")

We also propose that in order for a hospital to qualify for an increase in its hospital-specific rate, it must meet the following requirements:

• The hospital must submit its request to its intermediary no later than 180 days after the date on the intermediary's notice of program reimbursement.

• The request must include documentation specifically identifying the increased costs resulting from the hospital's participation in a rural health network and show that the increased costs during the cost reporting period will result in increased costs in subsequent cost reporting periods. We would limit adjustments to covering only those cost increases that are not already accounted for under the PPS. That is, we would not expect a hospital to request an adjustment because of an increase in patient case-mix that occurs because it is the referral site for RPCHs. Increases in patient case-mix are accounted for by a corresponding increase in the DRG relative weight used to calculate payment. In addition, EACHs receive the benefit of a special payment rate under the PPS. They are paid on the same basis as are sole community hospitals; that is, they

receive payment on the basis of whichever of the following rates results in the greatest total aggregate payment: the Federal national rate applicable to the hospital, the updated hospital-specific rate based on fiscal year 1982 cost per discharge, or the updated hospital-specific rate based on fiscal year 1987 cost per discharge.

We believe that the types of costs this adjustment is intended to cover are those costs directly associated with a hospital's maintenance of the rural health network. We would expect these to be administrative costs, such as the maintenance of a communications system that links the EACH and its member RPCHs, or the costs of maintaining an emergency transportation system that is necessary to connect the member facilities.

• The hospital must show that the cost increases are incremental costs that would not have been incurred in the absence of the hospital's membership in a rural health network.

• The hospital must show that the cost increases do not include amounts for startup and one-time, nonrecurring costs attributable to its membership in a rural health network. We would expect these costs to be covered by any grant given to the hospital to help it convert to an EACH.

We would require the intermediary to forward to HCFA within 60 days of receipt from the hospital, the hospital's documentation and the intermediary's verification of the documentation, the intermediary's analysis and recommendation of the request, and the hospital's Medicare cost report for the year in which the increase occurred and the prior year.

We propose that, within 120 days of receiving all necessary information from the intermediary, HCFA would determine whether an increase in the hospital-specific rate is warranted and, if so, the amount of the increase. As is our current policy concerning adjustments to a hospital's rate-of-increase limit (for hospitals and units excluded from the PPS) and volume adjustments for sole community hospitals and Medicare dependent hospitals, the proposed regulation states that HCFA would not grant an adjustment to an EACH's hospital-specific rate if that hospital is receiving Medicare inpatient operating payments that are equal to or in excess of that hospital's inpatient operating costs. We believe that the intention of any adjustment is to compensate a hospital for special cost increases that are related to the services they provide to Medicare beneficiaries. We do not believe that hospitals should receive additional payments for cost increases that have been fully accounted for in the payment system. An EACH that is dissatisfied with the determination of its hospital-specific rate has the same appeal rights as a sole community hospital and may appeal to the Provider Reimbursement Review Board (PRRB) in accordance with § 405.1835 concerning a hospital's right to a PRRB hearing.

In 42 CFR part 413, subpart E, regarding payment to providers, we would add § 413.70 concerning payment of services furnished by RPCHs. In accordance with section 1814 of the Act, as amended by section 6003(g)(3)(B)(iii) of Public Law 101.239, payment for inpatient RPCH services in the first full cost reporting period of operation is to be the reasonable cost of the RPCH in providing the services, determined on a per diem basis. Payment for later periods is to be the per diem payment for the preceding 12-month cost reporting period, increased by the PPS update factor for rural hospitals. This payment would not include physician and other practitioner services paid on a charge or fee basis and is subject to the principles of cost reimbursement in 42 CFR part 413 and in 42 CFR part 405, subpart B concerning principles of reimbursement for services by hospital-based physicians. The payment amounts otherwise determined for inpatient services of an RPCH for the base period and later periods are to be reduced by two types of grants, to avoid any duplication of payment. One category is the grants made under section 1820(a)(2) of the Act to carry out activities related to converting the hospital to an RPCH. The other category is defined as grants under section 4005(e) of the Omnibus Budget Reconciliation Act of 1987, Public Law 100-200. These "Rural Health Care Transition" grants are designed to demonstrate appropriate methods of strengthening the financial and managerial ability of isolated and financially distressed rural hospitals to provide high quality care. Such methods could include cooperative arrangements with other providers, diversification, physician recruitment, and improved management systems.

Paragraph (b) in § 413.70 also describes the payment methodology for outpatient RPCH services. In accordance with section 1834(f)(1) of the Act, as enacted by section 6116(a)(2) of Public Law 101-239, regarding payment for outpatient RPCH services, an RPCH may choose to be paid under one of two alternative methods for their services to outpatients:

• Under the first method, the RPCH would be paid for its outpatient services on the same "reasonable cost" basis used to pay hospitals for their outpatient services. Payment under this method is subject to the reasonable cost payment principles in 42 CFR part 413 and 42 CFR part 405, subpart D, concerning payment for services furnished by hospital-based physicians, and does not include payment for physicians' services or services of other practitioners which, if furnished to a hospital outpatient, could be separately billed under Part B. These latter services would be paid for under Part B on a reasonable charge basis or, where applicable, on the basis of a fee schedule.

• Under the second method, payment would be made through an all-inclusive rate for both RPCH services and professional services. The amount of payment for the services would be the costs that are reasonable and related to the costs of furnishing the services or are based on tests of reasonableness as may be prescribed in regulations, less Part B deductible and coinsurance amounts. However, in no case may the payments (other than for items and services described in section 1861(s)(10)(A) of the Act (pneumococcal vaccine) or for a second opinion under section 1164(c)(2) of the Act or a third opinion that does not agree with the second opinion) exceed 80 percent of costs.

Furthermore, in subpart F, regarding payment for extended care services, we would revise the definition of "swing-bed hospital" under § 413.114 to consider RPCHs with swing-bed agreements, as proposed in § 485.645 concerning requirements for RPCH providing long term care services, as swing-bed hospitals. This change would allow RPCHs with swing-bed approval to be paid on the same basis as swing-bed hospitals for their posthospital SNF services to inpatients.

In 42 CFR part 424, subpart B, concerning physician certification and treatment plan requirements, we propose to add a new § 424.15 to state that Medicare Part A would pay for inpatient RPCH services only if a physician certifies that such services were required to be immediately furnished on a temporary, inpatient basis. We would also require that the certification be submitted no later than the day before the date on which the claim for services is billed. This change would implement section 1814(a)(8) of the Act, which was added by section 6003(g)(3)(B) of Public Law 101-239. In addition, we propose to revise § 424.20, concerning requirements for posthospital SNF care, to require certifications for posthospital SNF care

in RPCHs with swing-bed approval that are the same as those in swing-bed hospitals.

We would also propose to revise Medicaid coverage regulations at 42 CFR 440.170 concerning any other medical or remedial care recognized under State law and specified by the Secretary. We would create RPCH services as an optional Medicaid benefit. We are proposing this so that States in which RPCHs are designated for Medicare purposes can also elect to pay these same RPCHs under Medicaid. We are not specifying a specific payment methodology for these services because we believe States should be free, within the parameters of current Medicaid payment regulations, to establish payment rates for these RPCHs.

In 42 CFR part 485 concerning conditions of participation and coverage for specialized providers, we are proposing to add a new subpart F that would set forth the circumstances under which HCFA and States would designate a hospital as an RPCH, and the conditions of participation for RPCHs. The proposed regulations in §§ 485.606, 485.610, 485.612, 485.614, 485.616, 485.618, 485.620 and 485.645 are based on Public Law 101-239 as amended by Public Law 101-508, as summarized in part I.B. of this preamble. Proposed §§ 485.603, 485.604, 485.608, 485.623, 485.627, 485.631, 485.635, 485.638 and 485.641 are based on specific provisions of the RHC regulations (42 CFR 491.2, 491.4, and 491.6 through 491.11, respectively). The justification for using the RHC regulations may be found in section II.A. of this preamble. The following is a discussion of each section of this new Subpart F.

Section 485.601—Basis and Scope

In § 485.601, we would indicate the statutory basis for the provisions of the proposed subpart F is section 1820 of the Act. We also would specify the scope of this subpart which is to set forth the conditions a hospital must meet to be designated as an RPCH and to participate in Medicare as an RPCH.

Section 485.603—Definitions

In § 485.603, we would define terms whose meanings may not be clear from their context or where we apply an interpretation that may not be commonly used. This section would contain definitions that are applicable to RPCHs.

- We propose to define "direct services" as services provided by the staff of the RPCH.
- We propose to define a "rural health network" as an organization consisting of at least one hospital that the State has designated or plans to designate as an RPCH; and at least one hospital that meets one of the following conditions:

(a) The State has designated or plans to designate the hospital as an EACH under § 412.109(c).

(b) HCFA has classified the hospital as a referral center under § 412.96.

(c) The hospital is located in an urban area and meets the criteria for classification as a regional referral center under § 412.96.

Further, the members of the organization have entered into agreements regarding—

(a) Patient referral and transfer;

(b) The development and use of communications systems, including, where feasible, telemetry systems and systems for electronic sharing of patient data; and

(c) The provision of emergency and nonemergency transportation among members.

Section 485.604—Personnel Qualifications

In § 485.604, we would propose using the same qualifications for nurse practitioner and physician assistant as used in the RHC regulations at § 491.2. The proposed qualifications are as follows:

- Nurse Practitioner—Must be a registered professional nurse who is currently licensed to practice in the State, who meets the State's requirements governing the qualification of nurse practitioners, and who meets one of the following conditions:

(1) Is currently certified as a primary care nurse practitioner by the American Nurses' Association or by the National Board of Pediatric Nurse Practitioners and Associates.

(2) Has successfully completed a 1 academic year program that:

(i) Prepares registered nurses to perform an expanded role in the delivery of primary care;

(ii) Includes at least 4 months (in the aggregate) of classroom instruction and a component of supervised clinical practice; and

(iii) Awards a degree, diploma, or certificate to persons who successfully complete the program.

(3) Has successfully completed a formal educational program (for preparing registered nurses to perform an expanded role in the delivery of primary care) that does not meet the requirements of paragraph (2) of this qualification, and has been performing an expanded role in the delivery of primary care for a total of 12 months during the 18-month period immediately preceding the effective date of this regulation.

- Physician Assistant—Must be a person who meets the applicable State requirements governing the qualifications for assistants to primary care physicians, and who meets at least one of the following conditions:

(1) Is currently certified by the National Commission on Certification of Physician Assistants to assist primary care physicians.

(2) Has satisfactorily completed a program for preparing physician assistants that:

(i) Was at least one academic year in length;

(ii) Consisted of supervised clinical practice and at least 4 months (in the aggregate) of classroom instruction directed toward preparing students to deliver health care; and

(iii) Was accredited by the American Medical Association's committee on Allied Health Education and Accreditation.

(3) Has satisfactorily completed a formal educational program (for preparing physician assistants) that does not meet the requirements of paragraph (2) of this qualification and has been assisting primary care physicians for a total of 12 months during the 18-month period immediately preceding the effective date of this regulation.

Section 485.606—Designation of RPCHs

In § 485.606 we would specify the requirements a hospital must meet to be designated an RPCH by the State or HCFA. These requirements are in accordance with section 1820(f) of the Act that states that in order to qualify for this designation, a hospital must—

- Be located in a rural area, as defined in section 1886(d)(2)(D) of the Act, or in an urban county if the county is substantially larger than the average geographic area of urban counties in the United States and the county's hospital service area is characteristic of the service areas of counties located in rural areas (the proposed regulations text concerning location of RPCHs at § 485.610 refers specifically to the various bases on which a hospital can be considered "rural" under section 1886(d)(2) of the Act);
- At the time the hospital applies to the State for designation as an RPCH, be a hospital with a Medicare participation agreement in effect in accordance with part 482 of this chapter and not have been found on the basis of a survey under part 488 of this chapter, to be in violation of any requirement for participation as a hospital under title

XVIII, or in the case of a facility that closed within the 12 months before its application for RPCH designation, the facility must have been in compliance with the participation requirements at the time the hospital closed;

• Have ceased providing inpatient care, or agree upon approval of its application to cease providing inpatient care, except within the limitations described below for patients requiring stabilization before discharge or transfer to a hospital;

• If the hospital is a member of a rural health network, have in effect an agreement to participate with other facilities in the network's communications system, including, if applicable, the network's systems for the electronic sharing of patient data, including telemetry and the sharing of patient records;

• Make 24-hour emergency care available;

• Except for swing-bed RPCHs, have no more than 6 inpatient beds;

• Discharge or transfer each inpatient within 72 hours after admission, unless a longer period is required in particular cases because of inclement weather or other emergency conditions, for patients who require stabilization before they are discharged or transferred to a hospital, or begin receiving posthospital SNF care in an RPCH having a swing-bed agreement;

• Meet the staffing requirements that would apply under section 1861(e) of the Act to hospitals in rural areas, except that the RPCH need not maintain any minimum hours of operation (except as needed to provide emergency care), may provide services of a dietitian, pharmacist, laboratory technician, medical technologist, and radiological technologist on a part-time, off-site basis, and may have inpatient care provided by a physician assistant or nurse practitioner, subject to physician oversight; and

• Meet certain conditions of certification for an RHC in part 491.

We propose that a State receiving a grant under section 1820(a)(1) of the Act may designate as an RPCH any hospital in the State that meets the RPCH conditions of participation and that applies to the State for designation as an RPCH. The State would be required in designating hospitals as RPCHs, to give preference to hospitals participating in rural health networks as defined in this preamble in "§ 485.603 Definitions". The State must not deny designation of a hospital as an RPCH solely because the hospital has entered into a swing-bed agreement to provide posthospital SNF care as described in § 482.66 of the CFR.

We propose that HCFA would be authorized to designate a hospital as an RPCH if the hospital is designated as an RPCH by the State in which it is located.

We would specify that HCFA would designate up to 15 hospitals outside the States receiving grants as RPCHs if each hospital meets the following criteria:

• Is located in a rural area (as defined in § 412.62 of the CFR) or in a county whose geographic area is substantially larger than the average geographic area for urban counties in the United States and whose hospital service area is characteristic of service areas of hospitals located in rural areas.

• Is a hospital with a participation agreement (or a hospital that has closed in the 12 months preceding its application) that has not been found in violation of any requirements as a result of a survey.

• Makes available 24-hour emergency care.

In designating a hospital as an RPCH under this paragraph, HCFA would give preference to a hospital that has entered into an agreement with a rural health network located in a State receiving a grant under section 1820(a)(1) of the Act. HCFA would also not deny RPCH designation to a hospital that is otherwise eligible for this designation solely because the hospital has entered into an agreement to provide posthospital SNF care as described in § 482.66. We wish to request comments on what, if any, additional requirements should be imposed on RPCHs designated under this paragraph. We also request comments on the specific issue of whether additional emergency services requirements are needed for these facilities if they are not members of networks.

In accordance with section 1820(i)(2) of the Act, we propose that HCFA will designate a hospital as an RPCH if the hospital is located in a State receiving a grant under section 1820(a)(1) of the Act, has been designated as an RPCH by the State in which it is located and meets any other criteria HCFA may require. HCFA would be authorized to designate individual hospitals in States receiving grants as RPCHs if the only reason they are not so designated by the State is that they have not stopped, or agreed to stop, providing inpatient care, that they provide inpatient care beyond the 6-bed, 72-hour restrictions in section 1820(f)(1)(F) of the Act, or that they do not meet the staffing requirements for designation as RPCHs by the State.

Section 485.608 Compliance With Federal, State, and Local Laws and Regulations

Section 485.608 is based on the RHC provisions in § 491.4. We propose that an RPCH be in compliance with applicable Federal laws and regulations related to health and safety of patients. We would also require that all patient care services be furnished in accordance with applicable State and local laws and regulations. We would specify that an RPCH be licensed in accordance with applicable State and local laws and regulations. In addition, we would require that the staff of the RPCH be licensed, certified or registered in accordance with applicable State and local laws and regulations.

Section 485.610 Location

Section 485.610 is based on section 1820(f)(1)(A) of the Act. In order for an RPCH to meet this condition of participation, we would require that the RPCH be located outside any area that is a Metropolitan Statistical Area as defined by the Office of Management and Budget, or that is a similar area that has been recognized by regulations in § 412.62. An RPCH would also meet this condition if the RPCH is located in a county whose geographic area is substantially larger than the average geographic area for urban counties in the United States; and the RPCH service area is characteristic of the service areas of hospitals located in rural areas. We have not proposed further, more specific criteria for determining whether these requirements are met, but would welcome public comment on which criteria regarding size of county and type of service area should be used.

Section 485.612 Compliance With Hospital Requirements at the Time of Application

We propose to base § 485.612 on section 1820(f)(1)(B) of the Act concerning Medicare provider agreements. We propose to require that a hospital have a provider agreement to participate in the Medicare program as a hospital at the time the hospital applies for designation as an RPCH, or at the time the hospital closed during the 12-month period prior to the hospital's application for RPCH designation. In addition, we would specify that the hospital must not be found, on the basis of a survey under part 489 concerning Medicare provider agreements, in violation of any of the provisions of its provider agreement either at the time the hospital applies for designation as an RPCH or at the time the hospital closed.

Section 485.614 Termination of Inpatient Care Services

In § 485.614, we would propose that an RPCH must cease or agree to cease providing inpatient care upon approval of its application for RPCH designation. We propose three exceptions as follows:

- The RPCH may provide posthospital SNF care under an agreement described in this preamble in § 485.645–"Special requirements for RPCH providers of long-term care services ('swing-beds')".
- The RPCH may provide not more than six inpatient beds for providing inpatient care for a period not to exceed 72 hours if needed to stabilize a patient's condition before discharge or transfer to a hospital. This 72-hour period may be extended if transfer to a hospital is precluded because of inclement weather or other emergency conditions.
- The RPCH has been designated by HCFA under the special rule criteria in § 485.606(c)(2)(i) which specifies that HCFA may designate a hospital as an RPCH if the hospital is located in a State receiving a grant under section 1820(a)(1) of the Act and is not eligible for State designation solely because the hospital has not ceased providing inpatient care services.

These regulations are based upon section 1820(f)(1) of the Act, except for the condition relating to swing-beds, which is discussed in more detail in "§ 486.645–Special Requirements for RPCH providers of long-term care services ('swing-beds')."

Section 485.616 Agreement to Participate in Network Communications System

In § 485.616 we would require in accordance with section 1820(f)(1)(D) of the Act, for an RPCH that is a member of a rural health network to have in effect an agreement to participate with other hospitals and facilities in the communications system of the network, including the network's system for the electronic sharing of patient data, including telemetry and medical records, if the network has in operation such a system.

Section 485.618 Emergency Services

In § 485.618 in order to implement the requirement for provisions of 24-hour emergency services by RPCHs, we would specify requirements for equipment, supplies, medication, tests and personnel. Under this proposal, we would require an RPCH to keep equipment, supplies, and medication used in treating emergency cases and to have them readily available for treating emergency cases. We would specify that the items available must include the following:

(1) Drugs and biologicals commonly used in life-saving procedures, including analgesics, local anesthetics, antibiotics, anticonvulsants, antidotes and emetics, serums and toxoids, antiarrythmics, cardiac glycosides, antihypertensives, diuretics, and electrolytes and replacement solutions.

(2) Equipment and supplies commonly used in lifesaving procedures, including airways, endotracheal tubes, ambu bag/valve/mask, oxygen, tourniquets, immobilization devices, nasogastric tubes, splints, IV therapy supplies, suction machine, defibrillator, cardiac monitor, chest tubes, and indwelling urinary catheters.

We propose that a RPCH would not have to have a trained emergency care practitioner on site at all times, but would have to have a doctor of medicine or osteopathy, physician assistant, or nurse practitioner with training or experience in emergency care on call and immediately available by telephone or radio, and available onsite within 30 minutes, on a 24-hour-a-day basis.

In addition, we would require the RPCH, in coordination with emergency response systems in the area, to establish procedures under which a doctor of medicine or osteopathy, physician assistant, nurse practitioner, or emergency medical technician is immediately available by telephone or radio contact on a 24-hour-a-day basis to receive emergency calls, provide information on treatment of emergency patients, and refer patients to the RPCH or other appropriate locations for treatment. We expect that the availability of these personnel for triage procedures would allow for appropriate handling of emergency cases that arise when the RPCH is closed. We are interested in having comments on the specific issues of whether this requirement would help improve the timeliness or quality of emergency care in rural areas or would unnecessarily duplicate existing emergency response procedures, and on the general issue of how 24-hour emergency care can be provided without imposing staffing costs and burdens that RPCHs cannot meet.

In the context of this discussion of emergency services, we would note that section 6003(g)(3)(D)(xiv) of Public Law 101–239 includes RPCHs in the definition of the term "hospital" for purposes of the provisions for examination and treatment for emergency medical conditions and women in active labor in section 1867 of the Act. The effect of this provision is to make RPCHs subject to the same statutory requirements for examination, treatment, and transfer of emergency room patients as apply to Medicare participating hospitals.

A proposed rule addressing the section 1867 provisions of the Act was published in the **Federal Register** on June 16, 1988 (53 FR 22513). We received extensive comments on the proposal and a final rule was developed. However, before publication of that rule, Congress enacted Public Law 101–239 and Public Law 101–508 that added new requirements to the original provisions. We have been developing a final regulation to incorporate these new statutory requirements and address public comments, and expect to publish the regulation with the opportunity for further public comment later this year.

Because RPCHs will be subject to the same requirements as hospitals, we have included the RPCH requirements in the final regulations to be published later, and have not included any requirements of this type in this proposed rule. If the final regulations have not yet been published by the time RPCHs are designated and operational, we will investigate complaints dealing with violation of the section 1867 requirements based on the plain language of the law, and will be as flexible as possible in following those provisions.

Section 485.620 Bed Size and Length of Stay

In § 485.620 we would require, in accordance with section 1820(f)(1)(F) of the Act, that an RPCH provide not more than 6 inpatient beds for providing inpatient care for a period not to exceed 72-hours (unless a longer period is required because transfer to a hospital is precluded due to inclement weather or other emergency conditions) to patients requiring stabilization before discharge or transfer to a hospital. We would also specify that the six-bed and 72-hour period for inpatient care may be increased in RPCHs having swing-bed agreements.

Section 485.623 Physical Plant and Environment

In § 485.623, we would adopt the RHC regulations contained in § 491.6 regarding the standards for construction and maintenance. We propose that an RPCH be constructed, arranged, and maintained to ensure access to and safety of patients, and provides adequate space for the provision of direct services.

We would require that the RPCH have housekeeping and preventive maintenance programs to ensure the following:

• All essential mechanical, electrical, and patient-care equipment is maintained in safe operating condition.

• There is proper routine storage and prompt disposal of trash.

• Drugs and biologicals are appropriately stored.

• The premises are clean and orderly.

• There is proper ventilation, lighting, and temperature control in all pharmaceutical, patient care, and food preparation areas.

We also propose a standard for emergency procedures in § 485.623(c) that is based in part upon the RHC regulations in § 491.6. Specifically, the RPCH would assure the safety of patients in non-medical emergencies by—

• Training staff in handling emergencies, including prompt reporting of fires, extinguishing of fires, protection and, where necessary, evacuation of patients, personnel, and guests, and cooperation with fire fighting and disaster authorities;

• Placing exit signs in appropriate locations;

• Providing for emergency power and lighting in the emergency room and for battery lamps and flashlights in other areas;

• Providing for an emergency water supply; and

• Taking other appropriate measures that are consistent with the particular conditions of the area in which the RPCH is located.

Since the RPCH would provide inpatient care up to 72-hours or longer if the RPCH has a swing-bed agreement, in § 485.603(d) we would require the RPCH to be in compliance with the edition of the Life Safety Code of the National Fire Association with which it was in compliance at the time it was designated as an RPCH. However, HCFA may waive specific provisions of the Life Safety Code after consideration of State survey agency findings, which, if rigidly applied, would result in unreasonable hardship on the RPCH, but only if the waiver does not adversely affect the health and safety of patients. We would also require the RPCH to maintain written evidence of regular inspection and approval by State or local fire control agencies.

Section 485.627 Organizational Structure

Section 485.627 is based upon the RHC organizational structure regulation in § 491.7. We propose than an RPCH disclose the names and addresses of its owners, or those with a controlling interest in the RPCH or in any subcontractor in which the RPCH directly or indirectly has a 5 percent or more ownership interest; the person principally responsible for the operation of the RPCH; and the person responsible for medical direction.

Section 485.631 Staffing and Staffing Requirements

In § 485.631(a), we would specify the staffing requirements of an RPCH as follows:

• The RPCH has a health care staff that includes one or more doctors of medicine or osteopathy and one or more physician assistants or nurse practitioners.

• Any ancillary personnel are supervised by the professional staff.

• The staff is sufficient to provide the services essential to the operation of the RPCH.

• A doctor of medicine or osteopathy, nurse practitioner, or physician assistant is available to furnish patient care services at all times the RPCH operates.

• A registered nurse or licensed practical nurse is on duty whenever the RPCH has one or more inpatients.

In § 485.631(b), we would specify that a doctor of medicine or osteopathy would have the following responsibilities:

• Provide medical direction for the RPCH's health care activities and consultation for, and medical supervision of, the health care staff.

• In conjunction with the physician assistant and/or nurse practitioner member(s), participate in developing, executing, and periodically reviewing the RPCH's written policies governing the services it furnishes.

• In conjunction with the physician assistant and/or nurse practitioner members, periodically review the RPCH's patient records, provide medical orders and medical care services to the patients of the RPCH.

• Periodically review and sign the records of patients cared for by nurse practitioners or physician assistants.

• Be present for sufficient periods of time, at least once in every 2-week period (except in extraordinary circumstances) to provide the medical direction, medical care services, consultation, and supervision of the RPCH health care staff, and be available through direct radio or telephone communication for consultation, assistance with medical emergencies, or patient referral. The extraordinary circumstances are documented in the records of the RPCH. A site visit is not required if no patients have been treated since the latest site visit.

We also propose in § 485.631(c) that a physician assistant, a nurse practitioner, or both, participate in the development, execution and periodic review of the written policies governing the services the RPCH furnishes, participate with a doctor of medicine or osteopathy in a periodic review of the patients' health records, and notify the RPCH staff doctor of medicine or osteopathy whenever a patient is admitted to the RPCH.

The physician assistant or nurse practitioner would provide services in accordance with the RPCH's policies; arrange for, or refer patients to, needed services that cannot be furnished at the RPCH; and assure that adequate patient health records are maintained and transferred as required when patients are referred. These functions would be performed to the extent that they are not being performed by a doctor of medicine or osteopathy.

Although these staffing requirements are based upon the RHC staffing requirements in § 491.8, we have not included the provision that a doctor of medicine or osteopathy, who is a member of the RPCH staff, may be the owner of the RPCH or have an agreement with the RPCH to carry out his or her staffing responsibilities. Neither have we included the provision that the physician assistant or nurse practitioner member of the staff may be the owner of the RPCH or an employee of the RPCH. This would not be a substantive change and would not impose any prohibition on a doctor of medicine or osteopathy, physician assistant, or nurse practitioner from being an owner of an RPCH. Nor would it prohibit a doctor of medicine or osteopathy from having an agreement with the RPCH.

In addition, in many rural areas, shortages of doctors of medicine and doctors of osteopathy make it impractical for facilities such as RHCs to have a doctor of medicine and doctor of osteopathy on site at all times the facility operates. Although it can be argued that only these practitioners are qualified to treat the full range of emergencies that may present themselves at an RPCH and that allowing staffing by other practitioners does not meet the emergency care expectation in the law, the availability of a doctor of medicine or doctor of osteopathy is likely to be a problem in the rural areas served by RPCHs. Further, we believe allowing emergency services to be furnished by a physician assistant or nurse practitioner would result in an adequate level of emergency care, and that imposing a higher requirement would only disqualify many RPCHs and deny patients access to their services. We welcome public comments on doctor of medicine or doctor of

osteopathy staffing levels in relation to the availability of these practitioners in rural areas. We also would like comment on whether it would be appropriate to require that a doctor of medicine or doctor of osteopathy review the records of discharged patients and attest to the appropriateness of the discharge decisions and whether this requirement could be imposed without undue burden on facilities. We also request comment on whether and, if so, under what circumstances it would be appropriate to require doctor of medicine or doctor of osteopathy review of certain cases before discharge. For example, should we require doctor of medicine or doctor of osteopathy review of some or all long stays (for instance, stays of 72 hours) that are expected to end with the patient being discharged to his or her home?

If we were to require RPCHs to meet the full-time nursing services requirement that applies to most hospitals, this could contribute to their having the same problem of high fixed costs as those hospitals. To avoid these problems while still assuring that the staffing levels of primary care practitioners and nurses are adequate to protect patient health and safety, we are proposing to require that there be a registered nurse or licensed practical nurse on duty whenever the RPCH has inpatients as proposed at § 485.631(a)(5). There is no specific requirement for nursing staff availability when there are no inpatients in the RPCH, and an RPCH staffed by a nurse practitioner could meet the requirement through the services of a single individual. We welcome specific comments on the nurse staffing levels that would be appropriate.

We are not proposing to adopt the provision of the RHC regulations under which certain practitioners must be available to furnish patient care services for a specified percentage of the time the RPCH operates (see § 491.8(a)(6) regarding RHC staffing requirements). We believe that the requirements we are proposing will assure adequate staffing levels, and that if the operators of some RPCHs choose to have them staffed with physicians at all times, it would be neither necessary nor appropriate to require the RPCHs to have other practitioners on staff.

We note that section 1820(f)(1)(H) of the Act provides that a facility must meet the requirements of section 1861(aa)(2)(J) of the Act in order to be eligible for designation as an RPCH. Section 1861(aa)(2)(J) of the Act requires that a rural health clinic have a nurse practitioner, physician assistant, or certified nurse-midwife available to furnish care at least 50 percent of the time the clinic operates. When section 6003(g) of Public Law 101-239 added section 1820 to the Act, the provision currently designated as section 1861(aa)(2)(J) was not in the Act. That provision was added and designated as subparagraph (J) by section 6213(a)(2) concerning the staffing requirements of rural health clinics of Public Law 101-239, the same legislation that added section 1820 to the Act. The previous subparagraph (J) specifying that rural health clinics meet other requirements deemed necessary by the Secretary in the interest of public health and safety was redesignated as subparagraph (K). Because of this, we do not believe there is any legal requirement that RPCHs meet the staffing requirements in current section 1861(aa)(2)(J).

With regard to the issue of staffing, we wish to note that the staffing levels we are proposing are those we believe are appropriate to an RPCH that offers only limited inpatient services and is not open on a full-time basis. If we make changes in the final rule which allow RPCHs to provide more intensive levels of service, we will also adopt more rigorous staffing requirements that are better suited to the more intensive levels of service to be offered.

Section 485.635 Provision of Services

This section is based on the RHC regulations in § 491.9 of the CFR concerning RHC services. In § 485.635, we propose that the RPCH's health care services are furnished in accordance with appropriate written policies that are consistent with applicable State law. The policies would be developed with the advice of, and reviewed at least annually by, a group of professional personnel that includes one or more doctors of medicine or osteopathy and one or more physician assistants or nurse practitioners, at least one member is not a member of the RPCH staff.

We would require these policies to include the following:

(1) A description of the services the RPCH furnishes directly and those furnished through agreement or arrangement.

(2) Policies and procedures for emergency medical services.

(3) Guidelines for the medical management of health problems that would include the conditions requiring medical consultation and/or patient referral, the maintenance of health care records, and procedures for the periodic review and evaluation of the services furnished by the RPCH.

(4) Rules for the storage, handling, dispensation, and administration of drugs and biologicals. These rules would provide for a drug storage area administered in accordance with accepted professional principles, that current and accurate records would be kept of the receipt and disposition of all scheduled drugs, and that outdated, mislabeled, or otherwise unusable drugs would not be available for patient use.

(5) Procedures for reporting adverse drug reactions and errors in the administration of drugs.

(6) A system for identifying, reporting, investigating and controlling infections and communicable diseases of patients and personnel.

(7) If the RPCH furnishes inpatient services, procedures that would ensure that the nutritional needs of inpatients would be met in accordance with recognized dietary practices and the orders of the practitioner responsible for the care of the patients, and that the nutritional requirement of § 483.25(i) would be met with respect to inpatients receiving posthospital SNF care.

We propose that § 485.635(b) be based on § 491.9(c) concerning RHC direct services. We would require that RPCH direct services include the following:

• General services.—Those diagnostic and therapeutic services and supplies that are commonly furnished in a physician's office or at another entry point into the health care delivery system, such as a low intensity outpatient department or emergency department. These would include medical history, physical examination, assessment of health status, and treatment for a variety of medical conditions.

• Laboratory services.—Basic laboratory services that are essential to the immediate diagnosis and treatment of the patient that meet the standards imposed under section 353 of the Public Health Service Act (Clinical Laboratories Improvement Act (CLIA)). The services would include the following:

—Chemical examination of urine by stick or tablet methods or both (including urine ketones).
—Microscopic examinations of urine sediment.
—Complete blood count with differential.
—Blood glucose.
—Gram stain.
—Examination of stool specimens for occult blood.
—Pregnancy tests.
—Primary culturing for transmittal to a laboratory certified under the provisions of CLIA.
—Test for pinworm.
—Erythrocyte sedimentation rate.

—Electrolytes.
—Arteria blood gases.

• Radiology services—Radiology services that are provided by staff qualified under State law and do not expose RPCH patients or staff to radiation hazards.

• Emergency procedures—Medical emergency procedures that are provided as a first response to common life-threatening injuries and acute illness in accordance with the requirements of proposed § 485.618.

We would require an RPCH to have agreements or arrangements with one or more providers or suppliers participating under Medicare to furnish other services to its patients. These services would include inpatient hospital care, services of doctors of medicine or osteopathy, and additional or specialized diagnostic and clinical laboratory services that are not available at the RPCH. If the agreements are not in writing, we would require the RPCH to maintain evidence that patients referred by the RPCH are being accepted and treated. The RPCH would maintain a list of all services furnished under arrangements or agreements and the list would describe the nature and scope of the services provided.

Under the standard for nursing services, we would require a registered nurse to provide (or assign to other personnel) for the nursing care of each patient, including patients at a SNF level of care in a swing-bed RPCH. The care must be provided in accordance with the patient's needs and the specialized qualifications and competence of the staff available. The registered nurse would supervise and evaluate the nursing care for each patient, including patients at a SNF level of care in a swing-bed RPCH.

In addition, we would specify that all drugs, biologicals, and intravenous medications would be administered by or under the supervision of a registered nurse, a doctor of medicine or osteopathy, or, where permitted by State law, a physician assistant, in accordance with written and signed orders, accepted standards of practice, and Federal and State laws. A nursing care plan would be developed and kept current for each inpatient.

Section 485.638 Clinical Records

In § 485.638(a), we would require that an RPCH maintain a clinical records system in accordance with written policies and procedures. We would specify that the records must be legible, complete, accurately documented, readily accessible, and systematically organized and that a member of the professional staff is responsible for overseeing that the records are maintained in this fashion.

For each patient receiving health care services, we would require that the RPCH maintains a record that includes, as applicable—

• Identification and social data, evidence of properly executed informed consent forms, pertinent medical history, assessment of the health status and health care needs of the patient, and a brief summary of the episode, disposition, and instructions to the patient;

• Reports of physical examinations, diagnostic and laboratory test results, including clinical laboratory services, and consultive findings;

• All orders of doctors of medicine or osteopathy or other practitioners, reports of treatments and medications, nursing notes and documentation of complications, and other pertinent information necessary to monitor the patient's progress, such as temperature graphics, progress notes describing the patient's response to treatment; and

• Dated signatures of the doctor of medicine or osteopathy or other health care professional.

The proposed requirements for the content of clinical records closely parallel the patient health records requirements for RHCs in § 491.10, but differ from them in two important ways. First, RPCH records would have to include nursing notes and documentation of complications. These requirements also apply under the hospital conditions of participation at § 482.24(c)(2) (vi) and (iv). We believe these requirements are appropriate to RPCHs because they will help to protect the health and safety of patients, especially inpatients. In addition, while both the RPCH requirements and those for RHCs require the patient records to contain "other pertinent information necessary to monitor the patient's progress", the RHC requirements specify that examples of this information include temperature graphics and progress notes describing the patient's response to treatment. The specific references are not being included to impose additional requirements, but merely to illustrate what is meant by "other pertinent information". We specifically welcome comments on the appropriateness of requiring this information in RPCH clinical records.

Under the proposed standard for protection of record information in § 485.638(b), we would require an RPCH to maintain the confidentiality of record information and provide safeguards against loss, destruction, or unauthorized use. We would specify that written policies and procedures govern the use and removal of records from the RPCH and the conditions for the release of information. The patient's written consent would be required for release of information not required by law.

We would require that the RPCH retain the records for at least 6 years from the date of last entry, and longer if required by State statute.

Section 485.641 Periodic Evaluation and Quality Assurance Review

In § 485.641, we would specify a standard for periodic evaluation of the RPCH. This standard would be based on the RHC standard on program evaluation in § 491.11 of the CFR. We would require that the RPCH carries out or arranges for a periodic evaluation of its total program. The evaluation would be performed at least once a year and include a review of the utilization of RPCH services, including at least the number of patients served and the volume of services. It would also include a representative sample of both active and closed clinical records (that is, records of both current and former patients) and the RPCH's health care policies. The purpose of the evaluation would be to determine whether the utilization of services was appropriate, the established policies were followed, and if any changes are needed.

In § 485.641(b), we would require that the RPCH have an effective quality assurance program to evaluate the quality and appropriateness of the diagnosis and treatment furnished in the RPCH and of the treatment outcomes. The program would require that—

• All patient care services and other services affecting patient health and safety be evaluated;

• Nosocomial infections and mediation therapy be evaluated;

• The quality and appropriateness of the diagnosis and treatment furnished by nurse practitioners and physician assistants at the RPCH be evaluated by a member of the RPCH staff who is a doctor of medicine or osteopathy or by another doctor of medicine or osteopathy under contract with the RPCHs; and

• The quality and appropriateness of the diagnosis and treatment furnished by a doctor of medicine or osteopathy at the RPCH be evaluated by the Peer Review Organization (PRO) for the State in which the RPCH is located.

We would require that the RPCH staff considers the findings of the evaluations, including any findings or recommendations of the PRO, and takes corrective action if necessary. The

RPCH would also take appropriate remedial action to address deficiencies found through the quality assurance program and would document the outcome of all remedial action.

Section 485.645 Special Requirement for RPCH Providers of Long-Term Care Services ("Swing-Beds")

In § 485.645, the proposed regulations are needed to allow RPCHs to enter into swing-bed agreements and to keep inpatients for posthospital SNF care. As amended by section 6003(g)(3)(D)(x)(I) of Public Law 101-239, section 1861(e) of the Act states that "the term 'hospital', does not include, unless the context otherwise requires, a rural primary care hospital * * *." While it seems clear from this provision that RPCHs are not to be considered hospitals under the Medicare law for most purposes, we also believe the reference to context in this provision indicates that RPCHs may be classified as hospitals where, in specific contexts, it is consistent with the purpose of the legislation to do so.

In our view, considering an RPCH to be a hospital is consistent with the provisions of the law (sections 1812(a)(2)(A), 1861(i), and 1883 of the Act) which allow coverage of posthospital SNF care furnished following a 3-day inpatient hospital stay and which allow hospitals to enter into swing-bed agreements for the provision of posthospital SNF care. We are basing this conclusion on several considerations. First, many RPCHs may treat patients who would need continued care at an SNF level following emergency treatment in the RPCH to stabilize their condition. In the absence of a provision allowing swing-bed participation by RPCHs, these patients might have to be transferred out of their communities to receive covered SNF care. Allowing RPCHs to be considered hospitals in the context of these provisions would likely improve the continuity (and therefore the quality) of their inpatient care and thus serves a legitimate program purpose. Moreover, section 1820(f)(3) of the Act (permitting RPCHs to maintain swing-beds) states that nothing in the subsection will be construed to prohibit a State from designating a hospital as an RPCH solely because it has entered into a swing-bed agreement. If we were to adopt a reading of sections 1812(a)(2)(A), 1861(i), and 1883 of the Act that prohibited RPCHs from being considered hospitals for the purposes of those sections, it would make section 1820(f)(3) of the Act, which allows swing-bed hospitals to be designated as RPCHs, meaningless.

We recognize that patients admitted to RPCHs for posthospital SNF care could need care for longer than the 72-hour time period allowed by the new legislation for the provision of care to an inpatient. However, because of the considerations cited above, we believe we would be justified in allowing hospitals that provide posthospital SNF care lasting longer than 72 hours to be designated as RPCHs, and note that the regulations at proposed § 485.645 represent our sole implementation of the section 1820(i)(2)(B) authority. Our intention is to allow additional flexibility with respect to the bed-size and length of stay limitations to RPCHs that wish to furnish both RPCH and posthospital SNF care. We emphasize we would not designate a hospital as an RPCH if it keeps patients at an inpatient RPCH level of care for more than 72 hours unless a longer stay is required because of inclement weather or other emergency conditions. We also would not permit a hospital with more than 12 beds to be designated as an RPCH, or allow an RPCH with a swing-bed agreement to have more than 10 beds concurrently in use for the delivery of SNF care, since nurse staffing levels in RPCHs would probably not permit a higher number of SNF patients to be cared for adequately.

We are also proposing in § 485.645(a)(2) in order for an RPCH to be granted swing-bed approval from HCFA, the RPCH must be granted a certification of need for the provision of long-term care services from the State health planning and development agency when required by the State in which the RPCH is located. In addition in § 485.645(a)(3), we propose that an RPCH must not have had its swing-bed approval terminated within the 2 years previous to its application for RPCH. These requirements are based upon the hospital conditions of participation appearing in § 482.66 concerning special requirements for hospital providers of long-term care services ("swing-beds").

We also have concluded that the context of the statutory reference to "hospitals" in certain provisions of the statute requires us to apply those provisions to RPCHs even though the law was not explicitly amended by Congress to require this. The Part A deductible and coinsurance provisions of sections 1813 and 1861(a) of the Act, respectively, have not been amended to include reference to RPCHs, and section 1812(a), which provides coverage under Medicare Part A for 90-150 days of inpatient hospital care in a spell of illness, has not been amended to require application of those provisions to RPCH days. Under one interpretation, these provisions would not be applicable to RPCHs and RPCH days of care since the law does not explicitly require this. However, we believe the Part A deductible and coinsurance, spell of illness and scope of benefits provisions could not be administered in a consistent fashion if we were to apply them to hospitals and hospital days of care but not to essentially similar facilities and services such as RPCHs and RPCH days. Therefore, we are proposing to amend the regulations on Part A deductible and coinsurance (§§ 409.82, 409.83 and 409.87(a)(3)), benefit periods (the regulatory designation for spells of illness, § 409.60) and on limitations on amount of benefits (§ 409.61) to provide that RPCHs and RPCH days of care are to be treated as if they had been furnished by a hospital. We plan to seek a change in the law to confirm this interpretation.

To help protect the health and safety of patients being kept at an SNF level of care in an RPCH with a swing-bed agreement, we are proposing that such an RPCH be required to comply with some but not all of the SNF conditions of participation. Since RPCHs are not operated solely for the treatment of SNF patients, we do not believe it would be either necessary or appropriate to require them to meet all the conditions of participation that apply to facilities certified as SNFs. The SNF conditions of participation that we believe are most important to require compliance with are those that must be met by swing-bed hospitals; that is, patients' rights (§ 483.10(a)(1) and (a)(2)), notice of rights and services (§ 483.10(b)(1), (b)(3), (b)(4), (b)(5), (b)(6), (b)(7), (b)(9), and (b)(10)), specialized rehabilitative services (§ 483.45), dental services (§ 483.55), social services (§ 483.15(g)), patient activities (§ 483.15(f)), and discharge planning (§ 483.20(e)).

Because RPCHs are to be limited service facilities not primarily concerned with the treatment of inpatients, we also are proposing to require that an RN deliver or supervise nursing care for SNF-level patients in an RPCH and that, with respect to its SNF-level inpatients, the RPCH meet the provision of the SNF conditions of participation having to do with nutrition (§ 483.25(i)). We have selected these requirements because they deal with the categories and services which would be received by all inpatients at a SNF level of care.

Although our current view is that the health and safety of SNF-level patients in RPCHs can be protected by requiring compliance with the requirements cited

above, we wish to state that we may require RPCHs to meet any or all of the conditions of participation that apply to SNFs. Other combinations of requirements may be more effective in protecting the health and safety of SNF-level patients in an RPCH. To help us consider these issues, we wish to invite comments on which, if any, of the SNF conditions should be applied to swing-bed RPCHs. Depending on the issues and concerns raised in these comments, the final rule may require swing-bed RPCHs to meet other SNF conditions of participation.

In 42 CFR part 488 regarding survey and certification procedures, we are proposing to revise the definition for "provider of services or provider" in § 488.1 to include RPCHs among the types of facilities or entities that can participate in Medicare as providers of services. The effect of this change would be to permit RPCHs to be surveyed by State agencies for compliance with the conditions of participation in the same way as other providers, and to be subject to the same requirements (for example, compliance with civil rights requirements) as other providers.

In 42 CFR part 489, which contains the regulations for Medicare provider agreements, we are proposing to revise § 489.2 to include RPCHs as providers that may enter into provider agreements under Medicare. We also are proposing to revise § 489.20(d) concerning bundling of services to require RPCHs to comply with the requirements for bundling of inpatient services on the same basis as hospitals. We would also revise § 489.20(d) to reflect changes in the list of services that are excluded from the rebundling requirement and, thus, may be billed for separately even if furnished to hospital or RPCH inpatients. These changes were made by section 4157 of Public Law 101-508.

At this time, we are not proposing to amend the regulations in § 489.20 to require rebundling of services to RPCH outpatients. As explained earlier in this preamble, we published a proposed rule on August 8, 1988 (53 FR 29486) to require that services to hospital outpatients, as well as inpatients, be rebundled. Subsequently, Congress enacted the legislation establishing the EACH program and included in it the requirement that RPCHs be treated as hospitals for purposes of rebundling. We are continuing to develop final regulations on rebundling of services to hospital outpatients and plan to include, in those final regulations, any changes needed to implement the requirement for rebundling of services to RPCH outpatients.

We also would revise § 489.20(e) to require an RPCH to maintain, just as an EACH is required to do, an agreement with the area PRO to review the admissions, quality, and appropriateness of services, as required by section 1866(a)(1)(F)(ii) of the Act, as amended by section 6003(g)(3)(C)(xii) of Public Law 101-239. We are not proposing to include any specific provisions for appeals by facilities that are denied RPCH status. These facilities would have the same appeal rights under part 489 as any institution or agency dissatisfied with the decision that it is not a provider.

III. Regulatory Impact Statement and Flexibility Analysis

A. Executive Order 12291 and the Regulatory Flexibility Act

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, that would likely result in—

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

In addition, we generally prepare and publish a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all hospitals and suppliers of medical services to be small entities. States and individuals are not considered small entities under the RFA.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory flexibility analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This proposed rule would not meet the $100 million criterion, nor do we believe it meets the other E.O. 12291 criteria. Therefore, this proposed rule is not a major rule under E.O. 12291, and an initial regulatory impact analysis is not required.

We are preparing a regulatory flexibility analysis because we believe some rural hospitals would be significantly affected by this proposed rule. The following discussion describes the anticipated impact on providers and rural hospitals.

B. Objectives of Proposed Regulations

The objective of the proposed regulations, like that of the legislation on which they are based, is to enhance the availability of outpatient and emergency care for Medicare patients in rural areas where maintenance of a full-service hospital is not financially feasible. The regulations would do this by providing criteria for the designation of certain facilities as RPCHs and by restating the legislative provisions which require the designation of hospitals as EACHs if they meet certain bed size or location criteria and agree to provide essential emergency and medical backup services for RPCHs. The regulations also are intended to ensure that the services furnished in RPCHs are of acceptable quality and do not endanger patient health and safety. (EACH services are subject to the health and safety rules in the hospital conditions of participation at 42 CFR part 482.)

C. Alternatives Considered

1. EACHs

The proposed regulations reflect the provisions of section 1820(i)(1)(B) of the Act, under which HCFA can designate certain hospitals as EACHs even though they were not so designated by the State, if the only reason for their nondesignation is that the hospitals have fewer than 75 inpatient beds or are located within 35 miles of another hospital. We are requesting comment on which factors or criteria should be used in making these designations.

2. RPCHs

a. Qualifications of emergency care personnel. As noted above, the emergency care requirements state that a physician, physician's assistant, or nurse practitioner with training or experience in emergency care must be on call and immediately available by telephone or radio contact, and available on site at the RPCH within 30 minutes, on a 24-hour-a-day basis. We believe the option of emergency staffing by a physician's assistant or nurse

practitioner should be allowed because physician availability is likely to be a problem in the rural areas served by RPCHs. However, it can be argued that only physicians are qualified to treat the full range of emergencies that may present themselves at an RPCH, and that allowing staffing by other practitioners does not meet the emergency care expectation in the law.

We believe allowing emergency services to be furnished by a physician assistant or nurse practitioner would result in an adequate level of emergency care, and that imposing a higher requirement would only disqualify many facilities and deny patients access to their services. The requirement that a physician be available by radio or telephone would help ensure quality care by providing backup for the practitioner treating the patient.

b. Keeping facility open for emergency care. The proposed regulations do not require that an RPCH have any medical or paramedical personnel on site unless it has inpatients. One alternative view is that personnel should be at the RPCH at all times to provide emergency care for "walk-in" patients.

We rejected this option, and are proposing to allow the RPCH to close when it does not have inpatients.

While full-time staffing would improve response time for certain "walk-in" cases, we believe many hospitals that would apply to be RPCHs could not afford to remain open at all times on a standby basis, and that imposing such a requirement would discourage many hospitals from applying for RPCH status. Instead of full-time staffing, we propose to require each RPCH, in coordination with emergency response systems in the area, to establish procedures for 24-hour a day telephone triage of emergency cases by a doctor of medicine or osteopathy or other qualified practitioner. The practitioner would have to be qualified to receive emergency calls, provide information on treatment of emergency patients, and refer patients to the RPCH or other appropriate locations for treatment. We expect that this triage capacity would allow for appropriate handling of emergency cases that arise when the RPCH is closed, but will not impose unacceptably high staffing burdens on the RPCH.

c. Allowing RPCHs to have swing beds. As one way of permitting flexibility in bed size and length of stay for RPCHs, we are proposing to allow swing-bed participation by an RPCH that has no more than 12 beds, provided that the RPCH otherwise meets the RPCH requirements.

This option would allow RPCHs greater flexibility to treat certain medical conditions, such as pneumonia, which can be adequately managed in a limited-service RPCH but require more than a 72-hour recovery period.

We plan to limit the number of beds that can "swing" to 10, because the nurse staffing levels in RPCHs would probably not provide adequate care for more patients. We are requesting comment on the general issue of bed size and staffing levels. Even for swing-bed RPCHs, however, we would not allow stays of more than 72 hours by patients at an RPCH level of care, unless required because of inclement weather or other emergency conditions.

In making this proposal, we recognize that one possible alternative interpretation of the EACH/RPCH legislation is that RPCHs are a separate provider category from hospitals under the law, and that they thus are not eligible to enter into swing-bed agreements. We did not adopt this alternative, however, because we believe it is inconsistent with the overall objectives of the legislation and with the specific provision allowing swing-bed hospitals to be designated as RPCHs (section 1820(f)(3) of the Act).

D. Projected Costs and Anticipated Benefits and Impact on Small Entities

We do not now have sufficient data to estimate the dollar amounts of the changes in facility costs or federal expenditures which would result from the adoption of these proposed regulations. However, it is possible to assess in qualitative terms the projected costs and benefits of the proposed rules. Since all hospitals which could be eligible for RPCH status, and many hospitals eligible to be designated as EACHs, would have fewer than 50 beds, a description of projected cost/benefit changes also explains the anticipated effect the proposed regulation would have on small entities.

1. EACH Provisions

Under existing criteria for the designation of sole community hospitals (SCHs) (42 CFR 412.92(a)), hospitals which meet one of the requirements for EACH designation (location more than 35 miles from another like hospital) can be designated as SCHs. Since EACHs are treated as SCHs for payment purposes, the proposed regulations would have the effect of extending SCH status to other hospitals, specifically those that have more than 75 beds and enter into network agreements with RPCHs. This means that instead of being paid on the same basis as PPS hospitals generally, these hospitals would receive a more favorable rate of payment. In addition, if an EACH incurs increases in reasonable costs as a result of becoming a member of a rural health network in its State, and because of these increases would increase its costs for later cost reporting periods, the hospital-specific rate under section 1886(b)(3)(C) of the Act would be increased to account for these increases. If the EACHs do incur these additional costs, this provision also would increase payments to the hospitals. As provided in section 1886(d)(5)(D)(i) of the Act, hospitals classified as SCHs beginning with cost reporting periods starting on or after April 1, 1990, will be paid based on whichever of the three following rates yields the greatest aggregate payment for the cost reporting period: the federal national rate applicable to the hospital, the updated hospital-specific rate based on FY 1982 cost per discharge, or the updated hospital-specific rate cost per discharge based on FY 1987 cost per discharge.

The more favorable PPS payment rates would benefit hospitals designated as EACHs by increasing their revenues. To the extent the services would have been furnished in the hospitals that would not have qualified as SCHs in the absence of the EACH designation, Medicare program costs of inpatient hospital care could increase, although for some facilities that Federal rate would be the highest of the choices available. To the extent the network arrangements result in the EACHs' receiving referrals of patients who otherwise would be treated in larger urban facilities, Medicare costs could remain substantially the same or even diminish. If EACHs replace urban facilities as referral hospitals, some hospitals in small- or mid-sized cities could experience higher utilization and hospitals in the urban areas could have corresponding decreases in patient volume. Patients and their families would likely benefit from more convenient access to kinds of medical care not available in their home communities.

2. RPCH Provisions

As envisioned in the legislation and the proposed regulations, an RPCH is in effect a freestanding hospital emergency department which offers limited inpatient services as needed to allow patients to be kept long enough for their conditions to be stabilized before they are discharged or referred on to an EACH for more extensive treatment. The payment mechanism for RPCH services to outpatients allows the RPCH to choose between being paid for its

RPCH services on the same basis as an hospital outpatient department (that is, a reasonable cost or fee schedule), with physicians' and other practitioners' professional services being billed for separately, or being paid an all-inclusive rate that reflects both the RPCH facility and professional service costs. Inpatient services are to be paid on a reasonable cost per day basis for the RPCH's first year of operation, with payments for later years calculated on the basis of the base year costs, inflated by the PPS update factor for rural hospitals.

In general, it appears that RPCHs should benefit from a level of payment for their outpatient services which is at least as high as they would have received if they had continued to function as hospitals. To the extent that the RPCHs can avoid costs by not being open on a full-time basis or by negotiating favorable compensation arrangements with practitioners under an all-inclusive rate approach, the benefits of this payment method for the RPCH may occur without any corresponding increase in Medicare costs for the outpatient services.

Since the payment method for inpatient hospital services is based on the RPCH's costs, the RPCH should experience increased revenues relative to hospital payment under the PPS, with correspondingly higher Medicare expenditures. If the care at the RPCH avoids the need for subsequent hospitalization or reduces the length of a subsequent hospital stay, however, the costs of care in the RPCH could be partly or entirely offset by lower spending for hospital care.

For beneficiaries and their families, the principal benefit should be improved access to emergency care and more convenient access to limited-scope inpatient care. Beneficiary liability for deductible and coinsurance payments should be largely unchanged relative to the current situation.

The cost effects of the swing-bed option are difficult to predict, since we do not know how many RPCHs would select this option or how lengthy the stays for posthospital extended care services would be. For beneficiaries, the principal effect is likely to be more convenient access to care.

E. Summary and Net Benefits

In general, the proposed regulations can be expected to benefit rural hospitals that may be experiencing financial problems under the PPS by allowing them more flexibility to reduce their costs and a more generous level of payment for the services they choose to continue to provide. This benefit would likely be accompanied by increased Medicare program costs since beneficiaries requiring inpatient treatment may choose to be treated in RPCHs near their home, which would be reimbursed on a cost-based system, rather than in larger, but more distant hospitals which are paid under the PPS. The level of cost increases may be higher than would otherwise be expected because recently closed hospitals would be able to reopen as RPCHs and could receive payment at higher rates than would have applied if they had continued to function as hospitals under the PPS. As the program continues, there may be offsetting savings resulting from shorter stays in referral hospitals and from the possible avoidance of some inpatient hospital admissions entirely. It is not clear whether the Medicare program savings realized in this way will be great enough to offset the higher costs.

For Medicare patients and their families, there should be a net benefit in that emergency and certain types of inpatient care would continue to be available in their local areas, allowing for earlier treatment of emergency cases and avoiding the need to travel to more distant hospitals for inpatient care. The level of deductible and coinsurance liability should remain the same, since the services of RPCHs are subject to the same deductible and coinsurance rules as hospital services. For outpatient services, to the extent RPCHs pass along any operating savings in reduced charges, there may be a net saving to beneficiaries for these charges, through reduced copayments.

IV. Information Collection Requirements

Proposed regulations at §§ 485.602, 485.623(d)(4), 485.635(a), (c), and (d), 485.638, and 485.641(b)(5)(iii) contain information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Specifically, a hospital that wishes to be designated as an EACH must furnish certain information regarding its agreements with RPCHs and an RPCH must submit an application when seeking RPCH designation. Public reporting burden for this collection of information is estimated to be 10 hours per EACH for the hospital's first year of operation as an EACH, and 2 hours for each later year. Public reporting burden for this collection of information for an RPCH is estimated to be 67 hours per year for the facility's first year as an RPCH, and 57 hours for each later year. A notice will be published in the **Federal Register** after approval is obtained. Organizations and individuals desiring to submit comments on the information collection and recordkeeping requirements should direct them to the OMB official whose name appears in the "**ADDRESSES**" section of this preamble.

V. Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Dates" section of this preamble and, if we proceed with a final rule, we will respond to the comments in the preamble of that rule.

List of Subjects

42 CFR Part 400

Grant programs-health, Health facilities, Health maintenance organizations (HMO), Medicaid, Medicare, Reporting and recordkeeeping requirements.

42 CFR Part 409

Health facilities, Medicare.

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

42 CFR Part 411

Medicare, Recovery against third parties, Secondary payments.

42 CFR Part 412

Health facilities, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 424

Assignment of benefits, Physician certification, Claims for payment, Emergency services, Plan of treatment.

42 CFR Part 440

Grant programs-health, Medicaid.

42 CFR Part 485

Health facilities, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 488

Health facilities, Survey and certification, Forms and guidelines.

42 CFR Part 489

Health facilities, Medicare.

42 CFR chapter IV would be amended as follows:

PART 400—INTRODUCTION

I. Part 400 is amended as set forth below:

A. The authority citation for part 400 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and 44 U.S.C. Chapter 35.

Subpart B—Definitions

B. In § 400.202 the introductory language is republished, the definitions for *Provider* and *Services* are amended by inserting "RPCH," immediately after "hospital," and the following definitions are added in alphabetical order to read as follows:

§ 400.202 Definitions specific to Medicare.

As used in connection with the Medicare program, unless the context indicates otherwise—

* * * * *

Essential access community hospital (EACH) means a hospital designated by HCFA as meeting the applicable requirements of section 1820 of the Act and of subpart G of part 412 of this chapter.

* * * * *

Rural primary care hospital (RPCH) means a facility designated by HCFA as meeting the applicable requirements of section 1820 of the Act and of subpart F of part 485 of this chapter.

* * * * *

PART 409—HOSPITAL INSURANCE BENEFITS

II. Part 409 is amended as follows:

A. The authority citation for part 409 continues to read as follows:

Authority: Secs. 1102, 1812, 1813, 1861, 1362(h), 1871, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395d, 1395e, 1395x, 1395y(h), 1395hh, and 1395rr).

B. In part 409, the following changes are made:

§§ 409.10, 409.11, 409.12, 409.13, 409.14, 409.16, 409.30, 409.65, 409.66, 409.68, 409.80, 409.82, 409.87 [Amended]

1. In the following locations, "hospital" is removed and "hospital or RPCH" is added:

§ 409.10(a)(3)
§ 409.11(b)(1)(ii), (b)(3) introductory text
§ 409.12(b)
§ 409.13(a)(1), (a)(2), (a)(3), (b)
§ 409.14(a)(1), (a)(2), (b) introductory text, (b)(1), (b)(2)
§ 409.16(a), (b), (c)
§ 409.30 introductory text, (a)(2), (b)(1), (b)(2)
§ 409.65(a)(1), (a)(3), (a)(4), (d)(1), (d)(2), (e)(1), (e)(2)(i), (e)(2)(ii)
§ 409.66(b), (c)(2)
§ 409.68(a)(1), (a)(2), (a)(3), (a)(4), (b)(2), (c)
§ 409.80(a)(1), (a)(2)
§ 409.82(a)(1), (c)
§ 409.87(a)(3)

§§ 409.13, 409.14, 409.15, 409.16, 409.31, 409.60, 409.61, 409.65, 409.68, 409.83 [Amended]

2. In the following locations, "inpatient hospital" is removed and "inpatient hospital or inpatient RPCH" is added:

§ 409.13(a) introductory text
§ 409.14(a) introductory text
§ 409.15 introductory text
§ 409.16 introductory text
§ 409.31(b)(2)(i), (b)(2)(ii)
§ 409.60(a)
§ 409.61(a)(2), (c)
§ 409.65(e)(2) introductory text
§ 409.68 heading, (a) introductory text
§ 409.83(c)(1)

Subpart A—Hospital Insurance Benefits: General Provisions

C. In § 409.5 the first sentence is revised to read as follows:

§ 409.5 General description of benefits.

Hospital insurance (Part A of Medicare) helps pay for inpatient hospital or inpatient RPCH services and posthospital SNF care. * * *

Subpart B—Inpatient Hospital Services

D. Subpart B is amended as follows:

1. The heading of subpart B is revised to read as follows:

Subpart B—Inpatient Hospital and Rural Primary Care Hospital Services

2. Section 409.10 is amended by revising the introductory text of paragraph (a) and paragraph (b) to read as follows:

§ 409.10 Included services.

(a) Subject to the conditions, limitations, and exceptions set forth in this subpart, the term "inpatient hospital or inpatient RPCH services" means the following services furnished to an inpatient of a participating hospital or of a participating RPCH or, in the case of emergency services or services in foreign hospitals, to an inpatient of a qualified hospital or participating RPCH:

* * * * *

(b) "Inpatient hospital services" does not include SNF-type care furnished by a hospital or an RPCH that has a swing-bed approval or any NF-type care that may be furnished as a Medicaid service under title XIX.

3. In § 409.11(b), paragraph (b)(1)(iii) and (b)(3)(ii) are revised to read as follows:

§ 409.11 Bed and board.

* * * * *

(b) *Private accommodations.*—(1) *Conditions for payment in full.*

* * * * *

(iii) The hospital's or RPCH's semiprivate and ward accommodations are fully occupied by other patients, were so occupied at the time the patient was admitted to the hospital or RPCH, respectively for treatment of a condition that required immediate inpatient hospital or impatient RPCH care, and have been so occupied during the interval.

* * * * *

(3) *Conditions for patient's liability.*

* * * * *

(ii) The private room was requested by the patient or a member of the family, who, at the time of the request, was informed what the hospital's or RPCH's charge would be.

4. In § 409.12, the heading and paragraph (a) are revised to read as follows:

§ 409.12 Nursing and related services, medical social services; use of hospital or RPCH facilities.

(a) Except as provided in paragraph (b) of this section, Medicare pays for nursing and related services, use of hospital or RPCH facilities, and medical social services as inpatient hospital or inpatient RPCH services only if those services are ordinarily furnished by the hospital or RPCH, respectively for the care and treatment of inpatients.

* * * * *

Subpart C—Posthospital SNF Care

D. Subpart C is amended as follows:

1. In § 409.20, the introductory text of paragraph (a) is revised, the introductory text of paragraph (c) is republished and paragraph (c)(3) is added to read as follows:

§ 409.20 Coverage of services.

(a) *Included services.* Subject to the conditions and limitations set forth in this subpart and Subpart D of this part, "posthospital SNF care" means the following services furnished to an inpatient of a participating SNF or of a hospital or an RPCH that has a swing-bed approval.

* * * * *

(c) *Terminology.* In §§ 409.22 through 409.36—

* * * * *

(3) The term "swing-bed hospital" includes an RPCH with swing-bed approval under subpart F of part 485 of this chapter.

2. Section 409.27 is revised as follows:

§ 409.27 Other diagnostic or therapeutic services.

Medicare pays for other diagnostic or therapeutic services as posthospital SNF care if they are provided by a participating hospital with which the SNF has in effect an agreement for the transfer of patients and exchange of clinical records, or by a hospital or an RPCH that has a swing-bed approval.

Subpart D—Requirements for Coverage of Posthospital SNF Care

E. Subpart D is amended as follows: In § 409.30, the introductory text of paragraph (a) is republished and paragraph (a)(1) is revised to read as follows:

§ 409.30 Basic requirements.

* * * * *

(a) *Pre-admission requirements.* The beneficiary must—(1) Have been hospitalized in a participating or qualified hospital or participating RPCH, for medically necessary inpatient hospital or inpatient RPCH care, for at least 3 consecutive calendar days, not counting the day of discharge; and

* * * * *

Subpart F—Scope of Hospital Insurance Benefits

F. Subpart F is amended as follows:

1. In § 409.60, paragraph (b)(1) is revised to read as follows:

§ 409.60 Benefit periods.

* * * * *

(b) *When benefit periods end.* (1) A benefit period ends when a beneficiary has, for at least 60 consecutive days not been an inpatient in any of the following:

(i) A hospital that meets the requirements of section 1861(e)(1) of the Act.

(ii) An RPCH that meets the requirements of section 1820 of the Act.

(iii) A SNF that meets the requirements of sections 1819(a)(1) or 1861(y) of the Act.

* * * * *

2. In § 409.61, the heading of paragraph (a), the first sentence of paragraph (a)(1)(i), the headings of paragraphs (a)(3) and (b) and the first sentence of paragraph (b) are revised to read as follows:

§ 409.61 General hospital or inpatient RPCH services.

(a) *Inpatient hospital or inpatient RPCH services.*

(1) * * *

(i) For the first 60 days (referred to in this subpart as *full benefit days*), Medicare pays the hospital or RPCH for all covered services furnished the beneficiary, except for a deductible which is the beneficiary's responsibility.

(2) * * *

* * * * *

(3) *Order of payment for inpatient hospital or inpatient RPCH services.*

* * *

(b) *Posthospital SNF care furnished by a SNF or by a hospital or an RPCH with a swing-bed approval.* Up to 100 days are available in each benefit period after discharge from a hospital or RPCH. * * *

* * * * *

§ 409.64 [Amended]

3. In § 409.64(a)(2)(ii), "hospital, SNF, or home health agency" is removed and "hospital, RPCH, SNF, or home health agency" is added in its place.

4. In § 409.65, paragraph (d)(3) is revised to read as follows:

§ 409.65 Lifetime reserve days.

* * * * *

(d) *Filing the election.*

* * * * *

(3) A retroactive election (that is, one made after lifetime reserve days have been used because the regular days were exhausted), is not acceptable unless it is approved by the hospital or RPCH.

* * * * *

Subpart G—Hospital Insurance Deductibles and Coinsurance

G. Subpart G is amended as follows:

1. In § 409.83, paragraph (a)(1) is revised to read as follows:

§ 409.83 Inpatient hospital coinsurance.

(a) *General provisions.* (1) Inpatient hospital coinsurance is the amount chargeable to a beneficiary for each day after the first 60 days of inpatient hospital care or inpatient RPCH care or both in a benefit period.

* * * * *

§ 409.87 [Amended]

2. In § 409.87(b)(1), "or RPCH's" is added immediately after "hospital's".

PART 410—SUPPLEMENT MEDICAL INSURANCE (SMI) BENEFITS

IV. Part 410 is amended as follows:

a. The authority citation for part 410 is revised to read as follows:

Authority: Secs. 1102, 1832, 1833, 1834, 1835, 1861(r), (s), (cc), and (mm), 1971, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395k, 1395l, 1395m, 1395n, 1395x(r), (s), (cc), and (mm), 1395hh, and 1395rr).

§§ 410.10, 410,28, 410.40, 410.60, 410.62, 410.155, 410.161 [Amended]

B. In part 410 of this chapter, "hospital" is removed and "hospital or RPCH" is added in the following locations:

§ 410.10(d)
§ 410.28 heading, (a) introductory text, (a)(2), (a)(4)
§ 410.40(a) *Locality* and *Outside Supplier*,
(b)(3) introductory text, (b)(3)(i), (c)(1), (c)(2), (c)(3), (e)(1), (e)(2), (e)(3)
§ 410.60(d)
§ 410.62(c)
§ 410.155(b)
§ 410.161(b)(2)

Subpart A—General Provisions

C. Subpart A is amended as follows.

1. In § 410.2, the introductory text is republished, the definitions are rearranged in alphabetical order, and the definitions for "nominal charge provider", "participating" and "nonparticipating" are revised to read as follows:

§ 410.2 Definitions.

As used in this part—*Nominal charge provider* means a provider that furnishes services free of charge or at a nominal charge, and is either a public provider, or another provider that (1) demonstrates to HCFA's satisfaction that a significant portion of its patients are low income; and (2) requests that payment for its services be determined accordingly.

* * * * *

Participating refers to a hospital, RPCH, SNF, HHA, CORF, or hospice that has in effect a provider agreement to participate in Medicare, and *nonparticipating* refers to a hospital, RPCH, SNF, HHA, CORF, or hospice that does not have in effect a provider agreement to participate in Medicare.

2. In § 410.3, paragraph (a)(1) is revised to read as follows:

§ 410.3 Scope of benefits.

(a) Covered services. * * *

(1) Medical and other health services such as physicians' services, outpatient services furnished by a hospital or an RPCH, diagnostic tests, outpatient physical therapy and speech pathology services, rural health clinic services and outpatient renal dialysis services.

* * * * *

Subpart B—Medical and Other Health Services

D. Subpart B is amended as follows:

§ 410.10 [Amended]

1. In § 410.10, paragraph (c) is amended by removing "by a hospital" and adding "by a hospital or an RPCH."

§ 410.28 [Amended]

2. In § 410.28, paragraph (a)(1) is amended by removing "participating hospital." and adding "participating hospital or participating RPCH." in its place and paragraph (a)(3) is amended by adding "or inpatient RPCH" immediately after "inpatient hospital".

§ 410.32 [Amended]

3. In § 410.32, paragraph (b)(1) is amended by removing "participating hospital." and adding "participating hospital or participating RPCL." in its place and paragraph (b)(5) is amended by removing "subpart M of Part 405" and adding "part 493" in its place.

4. In § 410.38, paragraph (b) is revised to read as follows:

§ 410.38 Durable medical equipment: Scope and conditions.

(b) An institution that is used as a home may not be a hospital or an RPCH or a SNF as defined in sections 1861(e)(1), 1861(mm)(1) and 1819(a)(1) of the Act, respectively.

* * * * *

§ 410.40 [Amended]

5. In § 410.40, the introductory text of paragraph (a) is republished, the definitions for *Appropriate hospital or SNF* and *Hospital inpatient* in paragraph (a) are revised to read as follows and the introductory text of paragraph (b)(3) is amended by removing *inpatient*—and adding *inpatient and RPCH inpatient*—in its place.

§ 410.40 Ambulance services: Limitations.

(a) *Definitions.* As used in this section—

* * * * *

"Appropriate hospital, RPCH or SNF" refers to a hospital, RPCH or SNF that is capable of providing the required level and type of care for the patient's illness or injury and, in the case of a hospital, has available the type of physician or physician specialist needed to treat the patient's condition.

"Hospital inpatient or RPCH inpatient" means a beneficiary who has been formally admitted to a hospital or RPCH and has not been formally discharged.

* * * * *

5. In § 410.60, paragraph (b) is revised to read as follows:

§ 410.60 Outpatient physical therapy services: Conditions.

* * * * *

(b) *Outpatient physical therapy services to certain inpatients of a hospital or an RPCH or SNF.* Medicare Part B pays for outpatient physical therapy services furnished to an inpatient of a hospital or an RPCH or a SNF who requires them but who has exhausted or is otherwise ineligible for benefit days under Medicare Part A.

* * * * *

6. Section 410.62(b) is revised to read as follows:

§ 410.62 Outpatient speech pathology services: Conditions and exclusions.

* * * * *

(b) *Outpatient speech pathology services to certain inpatients of a hospital, RPCH or SNF.* Medicare Part B pays for outpatient speech pathology services furnished to an inpatient of a hospital, RPCH or SNF who requires them but has exhausted or is otherwise ineligible for benefit days under Medicare part A.

* * * * *

Subpart E—Payment of SMI Benefits

E. Subpart E is amended as follows:

1. In § 410.150(b), the introductory text is republished and a new paragraph (b)(12) is added to read as follows:

§ 410.150 To whom payment is made.

* * * * *

(b) *Specific rules.* Subject to the conditions set forth in paragraph (a) of this section, Medicare Part B pays as follows:

* * * * *

(12) To a rural primary care hospital (RPCH) on the individual's behalf for outpatient RPCH services furnished by the RPCH.

2. In § 410.152, a new paragraph (k) is added to read as follows:

§ 410.152 Amounts of payment.

* * * * *

(k) *Amount of payment: Outpatient RPCH services.*

(1) *General.* For services furnished before 1993 by an RPCH to its outpatients, Medicare Part B payment is made under either one of the following methods elected by the RPCH.

(2) *Cost-based RPCH facility fee plus professional services method.* Payment for RPCH facility services is made in accordance with paragraphs (b)(1) and (b)(2) of this section, and payment for professional medical services is made on a reasonable charge or other fee basis in accordance with paragraph (b)(4) of this section and with other provisions of this chapter that would apply to payment for the services if they were not included in outpatient RPCH services.

(3) *All-inclusive rate method.* Payment for both RPCH facility services and professional medical services is made at a single all-inclusive rate per visit, subject to the applicable Part B deductible and coinsurance amounts, as described in § 413.70(b)(3) of this chapter.

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

IV. Part 411 is amended as follows:

A. The authority citation continues to read as follows:

Authority: Secs. 1102, 1834, 1842(1), 1861, 1862, 1866, 1871, and 1879 of the Social Security Act (42 U.S.C. 1302, 1395m, 1395u(1), 1395x, 1395y, 1395cc, 1395hh, and 1395pp).

Subpart A—General Exclusions and Exclusion of Particular Services

B. In § 411.15, the introductory text for the section is republished, a parenthetical sentence is added at the end of paragraph (m)(1), and paragraph (m)(2) is revised to read as follows:

§ 411.15 Particular services excluded from coverage.

The following services are excluded from coverage.

(m) *Services to hospital inpatients.*

(1) * * * (As used in this paragraph (m)(1), the term "hospital" includes an RPCH.)

(2) *Exceptions.* The following services are not excluded from coverage:

(i) Physicians' services that meet the criteria of § 405.550(b) of this chapter for payment on a reasonable charge basis.

(ii) Physician assistant services, as defined in section 1861(s)(2)(K)(i) of the Act, that are furnished after December 31, 1990.

(iii) Certified nurse-midwife services, as defined in section 1861(ff) of the Act, that are furnished after December 31, 1990.

(iv) Qualified psychologist services, as defined in section 1861(ii) of the Act, that are furnished after December 31, 1990.

(v) Services of a certified registered nurse anesthetist, as defined in section 1861(bb) of the Act.

* * * *

PART 412—PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES

V. Part 412 is amended as follows:

A. The authority citation for part 412 is revised to read as follows:

Authority: Secs. 1102, 1815(e), 1820, 1871, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395g(e), 1395i–4, 1395hh, and 1395ww).

Subpart G—Special Treatment of Certain Facilities

B. Subpart G is amended as follows:

1. In § 412.90, a new paragraph (i) is added to read as follows:

§ 412.90 General rules.

* * * * *

(i) *Essential access community hospitals (EACH).* If a hospital meets the criteria of § 412.109 for designation as an EACH, HCFA determines the prospective payment rate for that hospital, as it does for sole community hospitals, under § 412.92(d).

2. A new § 412.109 is added to Subpart G to read as follows:

§ 412.109 Special treatment: Essential access community hospitals (EACHs).

(a) *General rule.* For payment purposes, HCFA treats as a sole community hospital any hospital that HCFA designates as an EACH. The payment methodology for sole community hospitals is set forth at § 412.92(d).

(b) *Criteria for HCFA designation.* (1) HCFA designates a hospital as an EACH if the hospital is located in a State receiving a grant under section 1820(a)(1) of the Act and is designated as an EACH by the State in which it is located.

(2) HCFA may designate a hopital as an EACH if the hospital is not eligible for State designation solely because the hospital—

(i) Has fewer than 75 beds; or

(ii) Is located 35 miles or less from any other hospital.

(c) *Criteria for State designation.* A State receiving a grant under section 1820(a)(1) of the Act may designate as an EACH any hospital in the State that meets the criteria of this paragraph (c).

(1) *Geographic location.* The hospital is located outside any area that is a Metropolitan Statistical Area as defined by the Office of Management and Budget or that has been recognized as urban under § 412.62, is not deemed to be located in an urban area under § 412.63, has not been classified as an urban hospital by the Medicare Geographical Classification Review Board, and meets one of the following requirements:

(i) The hospital is located more than 35 miles from any hospital that meets any of the following conditions:

(A) Has been designated as an EACH.

(B) Has been classified as a rural referral center under § 412.96.

(C) Is located in an urban area and meets the criteria for classification as a regional referral center under § 412.96.

(ii) The hospital meets other criteria relating to geographic location, imposed by the State with HCFA's approval.

(2) *Bed capacity and location.* The hospital has at least 75 inpatient beds or is located more than 35 miles from any other hospital.

(3) *Agreements with RPCHs.* The hospital has in effect agreements with the RPCHs that participate in the rural health network (as defined in § 485.603 of this chapter) of which the hospital is a member, to—

(i) Provide emergency and medical backup services to RPCHs participating in the rural health network of which it is a member and throughout its service area;

(ii) Accept patients transferred from an RPCH;

(iii) Receive data from, and transmit data to, the RPCHs; and

(iv) Grant staff privileges to physicians who furnish care at the RPCHs.

(4) *Other requirements.* The hospital meets any other requirements imposed by the State with HCFA's approval.

(d) *Adjustment to the hospital-specific rate for EACH's experiencing increased costs*— (1) *General rule.* HCFA increases an EACH's applicable hospital-specific rate if, during a cost reporting period, the hospital experiences increases in its Medicare inpatient operating costs that are directly attributable to activities related to its membership in a rural health network.

(2) *Request and documentation.* In order for a hospital to qualify for an increase in its hospital-specific rate, it must meet the following criteria:

(i) The hospital must submit its request to its intermediary no later than 180 days after the date on the intermediary's notice of program reimbursement.

(ii) The request must include documentation specifically identifying the increased costs resulting from the hospital's participation in a rural health network and show that the increased costs during the cost reporting period will result in increased costs in subsequent cost reporting periods that are not already accounted for under the PPS payment.

(iii) The hospital must show that the cost increases are incremental costs that would not have been incurred in the absence of the hospital's membership in a rural health network.

(iv) The hospital must show that the cost increases do not include amounts for start-up and one-time, nonrecurring costs attributable to its membership in a rural health network.

(3) *Intermediary recommendation.* The intermediary forwards the following material to HCFA within 60 days of receipt from the hospital:

(i) The hospital's documentation and the intermediary's verification of that documentation.

(ii) Its analysis and recommendation of the request.

(iii) The hospital's Medicare cost report for the year in which the increase in costs occurred and the prior year.

(4) *HCFA determination.* HCFA determines, within 120 days of receiving all necessary information from the intermediary, whether an increase in the hospital-specific rate is warranted and, if it is, the amount of the increase. HCFA grants an adjustment only if a hospital's Medicare operating costs exceed the hospital's Medicare inpatient operating payments.

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

VI. Part 413 is amended as follows:

A. The authority citation for part 413 is revised to read as follows:

Authority: Secs. 1102, 1814(b), 1815, 1833(a), (i) and (n), 1834(e), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395g, 1395l(a), (i) and (n), 1395m(e), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww).

Subpart E—Payments to Providers

B. Section 413.70 is added to subpart E to read as follows:

§ 413.70 Payment for services of an RPCH.

(a) *Payment for inpatient services furnished by an RPCH*—(1) *Initial 12-month period of operation.* Payment for the first 12-month cost reporting period for which the RPCH operates as an RPCH is made on a per diem basis for the reasonable costs of the RPCH for inpatient services. This payment does not include physician and other practitioner services paid on a charge or fee basis and is subject to the principles of cost reimbursement in this part and in part 405, subpart D of this chapter.

(2) *Subsequent periods.* Payment for a cost reporting period subsequent to the

initial 12-month period for which the RPCH operates as an RPCH is made on the basis of adjusting the amount determined in paragraph (a)(1) of this section. The adjustment added to the per diem amount is the market basket percentage increase under section 1886(b)(3)(B)(i) of the Act for the subsequent cost reporting period applicable to hospitals located in rural areas.

(3) *Reduction for grants.* The payment amounts otherwise determined under this paragraph are reduced to the extent necessary to avoid any duplication of any grant payments made under section 1820(a)(2) of the Act or under section 4005(e) of the Omnibus Reconciliation Act of 1987, Grant Program for Rural Health Care Transition, to cover the provision of inpatient RPCH services.

(b) *Payment for outpatient services furnished by an RPCH—(1) General.* An RPCH may elect either the method in paragraph (b)(2) of this section or the method in paragraph (b)(3) of this section for payment for outpatient services provided during a year before 1993. The method of payment elected by the RPCH constitutes a two-year election.

(2) *Cost-based RPCH payment plus professional services method—(i) RPCH services.* Payment under this method for RPCH services is equal to the amounts described in section 1833 of the Act (which describes amounts paid for hospital outpatient services) and subject to the principles of cost reimbursement in this part and in part 405, subpart D of this chapter, as applicable. This payment does not include payment for physician services or other professional services paid on a charge or other fee basis.

(ii) *Professional services.* Payment for professional medical services otherwise included in RPCH services is made on a charge or other fee basis under the provisions of this chapter that would apply to payment for the services if they were not included in outpatient RPCH services.

(3) *All-inclusive method.* If the RPCH elects payment under this method, a combined payment including both RPCH facility services and professional medical services is made at an all-inclusive rate per visit. This rate is subject to applicable Part B deductible and coinsurance amounts, as described in § 413.70(b)(3) of this chapter. The all-inclusive rate is an average rate based on the lower of cost or charges of RPCH facility services and professional services, as defined in the principles of cost reimbursement, divided by the number of outpatient RPCH visits.

(ii) All health professionals must have a compensation arrangement with the RPCH. The health professionals' actual time is divided between inpatient and outpatient services; the percentage of actual time applicable to outpatient services is applied to total compensation. The resulting amount is included with the RPCHs for outpatient facility costs for determination of the outpatient facility average cost per visit. (No breakdown is required for physician professional services versus technical services.)

(iii) A RPCH outpatient visit represents a face-to-face encounter between the patient and a health professional during which the RPCH outpatient services are furnished. Encounters with more than one health professional and multiple encounters with the same health professionals which take place on the same day constitute a single visit, except for cases in which subsequent encounters occur on the same day for an injury or illness requiring additional diagnosis or treatment different from the injury or illness associated with the initial encounters. These subsequent encounters would be counted as a separate visit.

(iv) Final reimbursement to the RPCH will be based on a year-end cost report that provides for the average per visit amount methodology.

Subpart F—Specific Categories of Costs

C. In § 413.114, the section heading is revised, the introductory text of paragraph (b) is republished, and the definition of "swing-bed hospital" is revised to read as follows:

§ 413.114 Payment for posthospital SNF care furnished by a swing-bed hospital.

* * * * *

(b) *Definitions.* For purposes of this section—

* * * * *

"Swing-bed hospital" means a hospital or RPCH participating in Medicare that has an approval from HCFA to provide posthospital SNF care as defined in § 409.20 of this chapter, and meets the requirements specified in § 482.66 or § 485.645 of this chapter, respectively.

* * * * *

PART 424—CONDITIONS FOR MEDICARE PAYMENT

VII. Part 424 is amended as follows:

A. The authority citation for part 424 continues to read as follows:

Authority: Secs. 216(j), 1102, 1814, 1815(c), 1835, 1842(b), 1861, 1866(d), 1870(e) and (f), 1871 and 1872 of the Social Security Act (42 U.S.C. 416(j), 1302, 1395f, 1395g(c), 1395n, 1395u(b), 1395x, 1395cc(d), 1395gg(e) and (f), 1395hh, and 1395ii).

Subpart B—Physician Certification and Plan of Treatment Requirements

B. Subpart B is amended as follows:

1. A new § 424.15 is added to read as follows:

§ 424.15 Requirement for inpatient RPCH services.

(a) *Content of certification.* Medicare Part A pays for inpatient RPCH services only if a physician certifies that the services were required to be furnished immediately on a temporary, inpatient basis.

(b) *Timing of certification.* Certification is required no later than 1 day before the date on which the claim for payment for the inpatient RPCH services is submitted.

§ 424.20 [Amended]

2. In § 424.20, in the undesignated introductory text, "or RPCH" is added immediately after "hospital".

PART 440—SERVICES: GENERAL PROVISIONS

VIII. Part 440 is amended as follows:

A. The authority citation for part 440 continues to read as follows:

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

B. In § 440.170, a new paragraph (g) is added to read as follows:

§ 440.170 Any other medical care or remedial care recognized under State law and specified by the Secretary.

* * * * *

(g) *Rural primary care hospital (RPCH) services.* RPCH services means services provided in a Medicare RPCH certified in accordance with the conditions of participation under part 485, subpart F of this chapter.

PART 485—CONDITIONS OF PARTICIPATION AND CONDITIONS OF COVERAGE: SPECIALIZED PROVIDERS

IX. Part 485 is amended as follows:

A. The authority citation for part 485 is revised to read as follows:

Authority: Secs. 1102, 1820, 1861(aa) and (cc) and 1871 of the Social Security Act; (42 U.S.C. 1302, 1395i–4, 1395x (aa) and (cc), and 1395hh).

B. Subpart E is reserved and a new subpart F is added, as follows:

Subpart E—[Reserved]

Subpart F—Conditions of Participation: RPCHs

Sec.
485.601 Basis and scope.
485.603 Definitions.
485.604 Personnel qualifications.
485.606 Designation of RPCHs.
485.608 Condition of participation: Compliance with Federal, State, and local laws and regulations.
485.610 Condition of participation: Location.
485.612 Condition of participation: Compliance with hospital requirements at time of application.
485.614 Condition of participation: Termination of inpatient care services.
485.616 Condition of participation: Agreement to participate in network communications systems.
485.618 Condition of participation: Emergency services.
485.620 Condition of participation: Bed size and length of stay.
485.623 Condition of participation: Physical plant and environment.
485.627 Condition of participation: Organizational structure.
485.631 Condition of participation: Staffing and staff responsibilities.
485.635 Condition of participation: Provision of services.
485.638 Condition of participation: Clinical records.
485.641 Condition of participation: Periodic evaluation and quality assurance review.
485.645 Special requirements for RPCH providers of longterm care services ("swing-beds").

§ 485.601 Basis and scope.

(a) *Statutory basis.* This subpart is based on section 1820 of the Act which sets forth the conditions for designating certain hospitals as RPCHs.

(b) *Scope.* This subpart sets forth the conditions that a hospital must meet to be designated as an RPCH.

§ 485.603 Definitions.

As used in this subpart, unless the context indicates otherwise:

Direct services means services provided by the staff of the RPCH.

Rural health network means an organization that meets the following specifications:

(1) It includes—

(i) At least one hospital that the State has designated or plans to designate as an RPCH; and

(ii) At least one hospital that meets one of the following conditions:

(A) The State has designated or plans to designate the hospital as an EACH under § 412.109(c) of this chapter.

(B) HCFA has classified the hospital as a referral center under § 412.96 of this chapter.

(C) The hospital is located in an urban area and meets the criteria for classification as a regional referral center under § 412.96 of this chapter.

(2) The members of the organization have entered into agreements regarding—

(i) Patient referral and transfer;

(ii) The development and use of communications systems, including, where feasible, telemetry systems and systems for electronic sharing of patient data; and

(iii) The provision of emergency and nonemergency transportation among members.

§ 485.604 Personnel qualifications.

Staff that furnish services in an RPCH must meet the applicable requirements of this section.

(a) *Nurse Practitioner.* A nurse practitioner must be a registered professional nurse who is currently licensed to practice in the State, who meets the State's requirements governing the qualification of nurse practitioners, and who meets one of the following conditions:

(1) Is currently certified as a primary care nurse practitioner by the American Nurses' Association or by the National Board of Pediatric Nurse Practitioners and Associates.

(2) Has successfully completed a 1 academic year program that—

(i) Prepares registered nurses to perform an expanded role in the delivery of primary care;

(ii) Includes at least 4 months (in the aggregate) of classroom instruction and a component of supervised clinical practice; and

(iii) Awards a degree, diploma, or certificate to persons who successfully complete the program.

(3) Has successfully completed a formal educational program (for preparing registered nurses to perform an expanded role in the delivery of primary care) that does not meet the requirements of paragraph (a)(2) of this section, and has been performing an expanded role in the delivery of primary care for a total of 12 months during the 18-month period immediately preceding the effective date of this part.

(b) *Physician Assistant.* A physician assistant must be a person who meets the applicable State requirements governing the qualifications for assistants to primary care physicians, and who meets at least one of the following conditions:

(1) Is currently certified by the National Commission on Certification of Physician Assistants to assist primary care physicians.

(2) Has satisfactorily completed a program for preparing physician assistants that—

(i) Was at least one academic year in length;

(ii) Consisted of supervised clinical practice and at least 4 months (in the aggregate) of classroom instruction directed toward preparing students to deliver health care; and

(iii) Was accredited by the American Medical Association's Committee on Allied Health Education and Accreditation.

(3) Has satisfactorily completed a formal educational program (for preparing physician assistants) that does not meet the requirements of paragraph (c)(2) of this section and has been assisting primary care physicians for a total of 12 months during the 18-month period immediately preceding the effective date of this part.

§ 485.606 Designation of RPCHs.

(a) *Criteria for State designation.* (1) A State receiving a grant under section 1820(a)(1) of the Act may designate as an RPCH any hospital in the State that meets the RPCH conditions of participation in this subpart F and applies to the State for designation as an RPCH.

(2) The State gives preference to hospitals participating in a rural health network, as defined in § 485.603.

(3) The State must not deny any hospital that is otherwise eligible for designation as an RPCH under this paragraph (a) solely because the hospital has entered into an agreement under which the hospital may provide posthospital SNF care as described in § 482.66 of this chapter.

(b) *Criteria for HCFA designation.* (1) HCFA designates a hospital as an RPCH if the hospital is designated as an RPCH by the State in which it is located.

(2) HCFA also designates not more than 15 hospitals as RPCHs if the hospitals are not located in States receiving grants under section 1820(a)(1) of the Act and meet the requirements of paragraph (c)(1) of this section.

(3) HCFA may designate a hospital as an RPCH if the hospital is not eligible for State designation and meets all the requirements in paragraph (c)(2) of this section.

(c) *Special rule: Hospitals not eligible for State designation as RPCHs.* (1) HCFA may designate not more than 15 hospitals as RPCHs under this paragraph. These hospitals must not be located in a State receiving a grant under section 1820(a)(1) of the Act but must meet the requirements with regard to location, participation in the Medicare program, and emergency services as defined in §§ 485.610, 485.612 and 485.618, respectively. In designating

a hospital as an RPCH under this paragraph (c)(1), HCFA—

(i) Gives preference to a hospital that has entered into an agreement with a rural health network as defined in § 485.603 that is located in a State receiving a grant under section 1820(a)(1) of the Act; and

(ii) Does not deny this designation to a hospital that otherwise is eligible for this designation solely because the hospital has entered into an agreement as described in § 482.66 of this chapter under which the hospital provides posthospital SNF care.

(2) HCFA may designate a hospital as an RPCH if the hospital is located in a State receiving a grant under section 1820(a)(1) of the Act and is not eligible for State designation under paragraph (a) of this section solely because the hospital—

(i) Has not ceased, or agreed to cease, providing inpatient care services, as described in § 485.614;

(ii) Has more than six inpatient beds or does not transfer or discharge patients within 72 hours after admission, as described in § 485.620; or

(iii) Has not met the staffing requirements as described in § 485.631.

§ 485.608 Condition of participation: Compliance with Federal, State, and local laws and regulations.

The RPCH and its staff are in compliance with applicable Federal, State and local laws and regulations.

(a) *Standard: Compliance with Federal laws and regulations.* The RPCH is in compliance with applicable Federal laws and regulations related to the health and safety of patients.

(b) *Standard: Compliance with State and local laws and regulations.* All patient care services are furnished in accordance with applicable State and local laws and regulations.

(c) *Standard: Licensure of RPCH.* The RPCH is licensed in accordance with applicable Federal, State and local laws and regulations.

(d) *Standard: Licensure, certification or registration of personnel.* Staff of the RPCH are licensed, certified, or registered in accordance with applicable State and local laws and regulations.

§ 485.610 Condition of participation: Location.

(a) *General rule.* The RPCH meets the following requirements:

(1) The RPCH is located outside any area that is a Metropolitan Statistical Area, as defined by the Office of Management and Budget, or that has been recognized as urban under the regulations in § 412.62 of this chapter.

(2) The RPCH is not deemed to be located in an urban area under § 412.63 of this chapter.

(3) The RPCH has not been classified as an urban hospital by the Medicare Geographic Classification Review Board.

(b) *Exception.* An RPCH located in an Metropolitan Statistical Area or similar area as defined in § 412.62 of this chapter is deemed to meet the requirements of paragraph (a) of this section if—

(1) The RPCH is located in a county whose geographic area is substantially larger than the average geographic area for urban counties in the United States; and

(2) The RPCH's service area is characteristic of the service areas of hospitals located in rural areas.

§ 485.612 Conditions of participation: Compliance with hospital requirements at time of application.

(a) The hospital has a provider agreement to participate in the Medicare program as a hospital at one of the following times—

(1) At the time the hospital applies for designation as an RPCH; or

(2) At the time the hospital closed if that time was within the 12 months prior to the hospital's application for RPCH designation.

(b) The hospital is not found, on the basis of a survey under part 489 of this chapter, to be in violation of any of the provisions of its provider agreement either at the time the hospital applies for designation as an RPCH or at the time the hospital closed.

§ 485.614 Condition of participation: Termination of inpatient care services.

(a) *General rule.* The hospital has ceased providing inpatient hospital care or has agreed to cease providing inpatient hospital care upon approval of its application for designation as an RPCH.

(b) *Exceptions.* (1) The RPCH may provide posthospital SNF care under an agreement as described in § 485.645.

(2) The RPCH may provide not more than six inpatient beds for providing inpatient care for a period not to exceed 72 hours if needed to stabilize a patient's condition before discharge or transfer to a hospital. This 72-hour period may be extended if transfer to a hospital is precluded because of inclement weather or other emergency conditions.

(3) The RPCH is designated by HCFA as an RPCH under the special rule criteria in § 485.606(c)(2)(i).

§ 485.616 Condition of participation: Agreement to participate in network communications system.

In the case of an RPCH that is a member of a rural health network as defined in § 485.603, the RPCH has in effect an agreement to participate with other hospitals and facilities in the communications system of the network, including the network's system for the electronic sharing of patient data, including telemetry and medical records, if the network has in operation such a system.

§ 485.618 Condition of participation: Emergency services.

The RPCH provides emergency care necessary to meet the needs of its inpatients and outpatients.

(a) *Standard: Availability.* Emergency services are available on a 24-hour-a-day basis.

(b) *Standard: Equipment, supplies, and medication.* Equipment, supplies, and medication used in treating emergency cases are kept at the RPCH and are readily available for treating emergency cases. The items available must include the following:

(1) *Drugs and biologicals* commonly used in lifesaving procedures, including analgesics, local anesthetics, antibiotics, anticonvulsants, antidotes and emetics, serums and toxoids, antiarrythmics, cardiac glycosides, antihypertensives, diuretics, and electrolytes and replacement solutions.

(2) *Equipment and supplies* commonly used in lifesaving procedures, including airways, endotracheal tubes, ambu bag/valve/mask, oxygen, tourniquets, immobilization devices, nasogastric tubes, splints, IV therapy supplies, suction machine, defibrillator, cardiac monitor, chest tubes, and indwelling urinary catheters.

(c) *Standard: Personnel.* A doctor of medicine or osteopathy, physician assistant, or nurse practitioner with training or experience in emergency is on call and immediately available by telephone or radio contact, and available on site within 30 minutes, on a 24-hour-a-day basis.

(d) *Standard: Coordination with emergency response systems.* The RPCH must, in coordination with emergency response systems in the area, establish procedures under which a doctor of medicine or osteopathy, physician assistant, nurse practitioner, or emergency medical technician is immediately available by telephone or radio contact on a 24-hour-a-day basis to receive emergency calls, provide information on treatment of emergency patients, and refer patients to the RPCH

or other appropriate locations for treatment.

§ 485.620 Condition of participation: Bed size and length of stay.

(a) *Standard: Bed size.* Except as permitted for RPCHs having swing-bed agreements under § 485.645, the RPCH maintains no more than six inpatient beds.

(b) *Standard: Length of stay.* The RPCH discharges or transfers each inpatient within 72 hours after admission, unless transfer to a hospital is precluded because of inclement weather or other emergency conditions or the patient begins receiving posthospital SNF care in an RPCH having a swing-bed agreement under § 485.645.

§ 485.623 Condition of participation: Physical plant and environment.

(a) *Standard: Construction.* The RPCH is constructed, arranged, and maintained to ensure access to and safety of patients, and provides adequate space for the provision of direct services.

(b) *Standard: Maintenance.* The RPCH has housekeeping and preventive maintenance programs to ensure that—

(1) All essential mechanical, electrical, and patient-care equipment is maintained in safe operating condition;

(2) There is proper routine storage and prompt disposal of trash;

(3) Drugs and biologicals are appropriately stored;

(4) The premises are clean and orderly; and

(5) There is proper ventilation, lighting, and temperature control in all pharmaceutical, patient care, and food preparation areas.

(c) *Standard: Emergency procedures.* The RPCH assures the safety of patients in non-medical emergencies by—

(1) Training staff in handling emergencies, including prompt reporting of fires, extinguishing of fires, protection and, where necessary, evacuation of patients, personnel, and guests, and cooperation with fire fighting and disaster authorities;

(2) Placing exit signs in appropriate locations;

(3) Providing for emergency power and lighting in the emergency room and for battery lamps and flashlights in other areas;

(4) Providing for an emergency water supply; and

(5) Taking other appropriate measures that are consistent with the particular conditions of the area in which the RPCH is located.

(d) *Standard: Life safety from fire.* (1) Except as provided in paragraphs (d)(2) and (d)(3) of this section, the RPCH must meet the applicable provisions of the 1985 edition of the Life Safety Code of the National Fire Protection Association (which is incorporated by reference). Incorporation of the 1985 edition of the National Fire Protection Association's Life Safety Code (published February 7, 1985; ANSI/NFPA) was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51 that govern the use of incorporations by reference. The Code is available for inspection at the Office of the Federal Register Information Center, Room 8301, 1110 L Street NW., Washington, DC. Copies may be obtained from the National Fire Protection Association, Batterymarch Park, Quincy, Mass. 02209. If any changes in this code are also to be incorporated by reference, a notice to that effect will be published in the Federal Register.

(2) Any RPCH that as a hospital on November 26, 1982, complied, with or without waivers, with the requirements of the 1967 edition of the Life Safety Code, or on May 9, 1988, complied with the 1981 edition of the Life Safety Code, is considered to be in compliance with this standard as long as the RPCH continues to remain in compliance with that edition of the Code.

(3) After consideration of State survey agency findings, HCFA may waive specific provisions of the Life Safety Code that, if rigidly applied, would result in unreasonable hardship on the RPCH, but only if the waiver does not adversely affect the health and safety of patients.

(4) The RPCH maintains written evidence of regular inspection and approval by State or local fire control agencies.

§ 485.627 Condition of participation: Organizational structure.

The RPCH discloses the names and addresses of—

(a) Its owners, or those with a controlling interest in the RPCH or in any subcontractor in which the RPCH directly or indirectly has a 5 percent or more ownership interest, in accordance with subpart C of part 420 of this chapter;

(b) The person principally responsible for the operation of the RPCH; and

(c) The person responsible for medical direction.

§ 485.631 Condition of participation: Staffing and staff responsibilities.

(a) *Standard: Staffing.* (1) The RPCH has a health care staff that includes one or more doctors of medicine or osteopathy and one or more physician assistants or nurse practitioners.

(2) Any ancillary personnel are supervised by the professional staff.

(3) The staff is sufficient to provide the services essential to the operation of the RPCH.

(4) A doctor of medicine or osteopathy, nurse practitioner, or physician assistant is available to furnish patient care services at all times the RPCH operates.

(5) A registered nurse or licensed practical nurse is on duty whenever the RPCH has one or more inpatients.

(b) *Standard: Responsibilities of the doctor of medicine or osteopathy.* (1) The doctor of medicine or osteopathy—

(i) Provides medical direction for the RPCH's health care activities and consultation for, and medical supervision of, the health care staff;

(ii) In conjunction with the physician assistant and/or nurse practitioner member(s), participates in developing, executing, and periodically reviewing the RPCH's written policies governing the services it furnishes.

(iii) In conjunction with the physician assistant and/or nurse practitioner members, periodically reviews the RPCH's patient records, provides medical orders, and provides medical care services to the patients of the RPCH; and

(iv) Periodically reviews and signs the records of patients cared for by nurse practitioners or physician assistants.

(2) A doctor of medicine or osteopathy is present for sufficient periods of time, at least once in every 2 week period (except in extraordinary circumstances) to provide the medical direction, medical care services, consultation, and supervision described in this paragraph, and is available through direct radio or telephone communication for consultation, assistance with medical emergencies, or patient referral. The extraordinary circumstances are documented in the records of the RPCH. A site visit is not required if no patients have been treated since the latest site visit.

(c) *Standard: Physician assistant and nurse practitioner responsibilities.* (1) The physician assistant and the nurse practitioner members of the RPCH's staff—

(i) Participate in the development, execution and periodic review of the written policies governing the services the RPCH furnishes; and

(ii) Participate with a doctor of medicine or osteopathy in a periodic review of the patients' health records.

(2) The physician assistant or nurse practitioner performs the following

functions to the extent they are not being performed by a doctor of medicine or osteopathy:

(i) Provides services in accordance with the RPCH's policies.

(ii) Arranges for, or refers patients to, needed services that cannot be furnished at the RPCH, and assures that adequate patient health records are maintained and transferred as required when patients are referred.

(3) Whenever a patient is admitted to the RPCH by a nurse practitioner or a physician assistant, a doctor of medicine or osteopathy on the staff of the RPCH is notified of the admission.

§ 485.635 Condition of participation: Provision of services.

(a) *Standard: Patient care policies.* (1) The RPCH's health care services are furnished in accordance with appropriate written policies that are consistent with applicable State law.

(2) The policies are developed with the advice of a group of professional personnel that includes one or more doctors of medicine or osteopathy and one or more physician assistants or nurse practitioners, at least one member who is not a member of the RPCH staff.

(3) The policies include the following:

(i) A description of the services the RPCH furnishes directly and those furnished through agreement or arrangement.

(ii) Policies and procedures for emergency medical services.

(iii) Guidelines for the medical management of health problems that include the conditions requiring medical consultation and/or patient referral, the maintenance of health care records, and procedures for the periodic review and evaluation of the services furnished by the RPCH.

(iv) Rules for the storage, handling, dispensation, and administration of drugs and biologicals. These rules must provide that there is a drug storage area that is administered in accordance with accepted professional principles, that current and accurate records are kept of the receipt and disposition of all schedules drugs, and that outdated, mislabeled, or otherwise unusable drugs are not available for patient use.

(v) Procedures for reporting adverse drug reactions and errors in the administration of drugs.

(vi) A system for identifying, reporting, investigating and controlling infections and communicable diseases of patients and personnel.

(vii) If the RPCH furnishes inpatient services, procedures that ensure that the nutritional needs of inpatients are met in accordance with recognized dietary practices and the orders of the practitioner responsible for the care of the patients, and that the requirement of § 483.25(i) is met with respect to inpatients receiving posthospital SNF care.

(4) These policies are reviewed at least annually by the group of professional personnel required under paragraph (a)(2) of this section, and reviewed as necessary by the RPCH.

(b) *Standard: Direct services*—(1) *General.* The RPCH staff furnishes those diagnostic and therapeutic services and supplies that are commonly furnished in a physician's office or at another entry point into the health care delivery system, such as a low intensity outpatient department or emergency department. These include medical history, physical examination, assessment of health status, and treatment for a variety of medical conditions.

(2) *Laboratory services.* The RPCH provides basic laboratory services essential to the immediate diagnosis and treatment of the patient that meet the standards imposed under section 353 of the Public Health Service Act. The services provided include:

(i) Chemical examination of urine by stick or tablet methods or both (including urine ketones);

(ii) Microscopic examinations of urine sediment;

(iii) Complete blood count with differential;

(iv) Blood glucose;

(v) Gram stain;

(vi) Examination of stool specimens for occult blood;

(vii) Pregnancy tests;

(viii) Primary culturing for transmittal to a laboratory certified under the provisions of the Clinical Laboratory Improvement Act;

(ix) Test for pinworm;

(x) Erythrocyte sedimentation rate;

(xi) Electrolytes; and

(xii) Arterial blood gases.

(3) *Radiology services.* Radiology services furnished at the RPCH are provided by staff qualified under State law, and do not expose RPCH patients or staff to radiation hazards.

(4) *Emergency procedures.* In accordance with the requirements of § 485.618, the RPCH provides medical emergency procedures as a first response to common life-threatening injuries and acute illness.

(c) *Standard: Services provided through agreements or arrangements.* (1) The RPCH has agreements or arrangements with one or more providers or suppliers participating under Medicare to furnish other services to its patients, including—

(i) Inpatient hospital care;

(ii) Services of doctors of medicine or osteopathy; and

(iii) Additional or specialized diagnostic and clinical laboratory services that are not available at the RPCH.

(2) If the agreements are not in writing, the RPCH is able to present evidence that patients referred by the RPCH are being accepted and treated.

(3) The RPCH maintains a list of all services furnished under arrangements or agreements. The list describes the nature and scope of the services provided.

(d) *Standard: Nursing services.* Nursing services must meet the needs of patients — (1) A registered nurse must provide (or assign to other personnel) the nursing care of each patient, including patients at a SNF level of care in a swing-bed RPCH. The care must be provided in accordance with the patient's needs and the specialized qualifications and competence of the staff available.

(2) A registered nurse must supervise and evaluate the nursing care for each patient, including patients at a SNF level of care in a swing-bed RPCH.

(3) All drugs, biologicals, and intravenous medications must be administered by or under the supervision of a registered nurse, a doctor of medicine or osteopathy, or, where permitted by State law, a physician assistant, in accordance with written and signed orders, accepted standards of practice, and Federal and State laws.

(4) A nursing care plan must be developed and kept current for each inpatient.

§ 485.638 Conditions of participation: Clinical records.

(a) *Standard: Records system.* (1) The RPCH maintains a clinical records system in accordance with written policies and procedures.

(2) A designated member of the professional staff is responsible for maintaining the records and for ensuring that they are completely and accurately documented, readily accessible, and systematically organized.

(3) The records are legible, complete, accurately documented, readily accessible, and systematically organized.

(4) For each patient receiving health care services, the RPCH maintains a record that includes, as applicable—

(i) Identification and social data, evidence of properly executed informed consent forms, pertinent medical history, assessment of the health status and health care needs of the patient,

and a brief summary of the episode, disposition, and instructions to the patient;

(ii) Reports of physical examinations, diagnostic and laboratory test results, including clinical laboratory services, and consultative findings;

(iii) All orders of doctors of medicine or osteopathy or other practitioners, reports of treatments and medications, nursing notes and documentation of complications, and other pertinent information necessary to monitor the patient's progress, such as temperature graphics, progress notes describing the patient's response to treatment; and

(iv) Dated signatures of the doctor of medicine or osteopathy or other health care professional.

(b) *Standard: Protection of record information.* (1) The RPCH maintains the confidentiality of record information and provides safeguards against loss, destruction, or unauthorized use.

(2) Written policies and procedures govern the use and removal of records from the RPCH and the conditions for the release of information.

(3) The patient's written consent is required for release of information not required by law.

(c) *Standard: Retention of records.* The records are retained for at least 6 years from date of last entry, and longer if required by State statute.

§ 485.641 Condition of participation: Periodic evaluation and quality assurance review.

(a) *Standard: Periodic evaluation.* (1) The RPCH carries out or arranges for a periodic evaluation of its total program. The evaluation is done at least once a year and includes review of—

(i) The utilization of RPCH services, including at least the number of patients served and the volume of services;

(ii) A representative sample of both active and closed clinical records; and

(iii) The RPCH's health care policies.

(2) The purpose of the evaluation is to determine whether the utilization of services was appropriate, the established policies were followed, and any changes are needed.

(b) *Standard: Quality assurance.* The RPCH has an effective quality assurance program to evaluate the quality and appropriateness of the diagnosis and treatment furnished in the RPCH and of the treatment outcomes. The program requires that—

(1) All patient care services and other services affecting patient health and safety, are evaluated;

(2) Nosocomial infections and medication therapy are evaluated;

(3) The quality and appropriateness of the diagnosis and treatment furnished by nurse practitioners and physician assistants at the RPCH are evaluated by a member of the RPCH staff who is a doctor of medicine or osteopathy or by another doctor of medicine or osteopathy under contract with the RPCH; and

(4) The quality and appropriateness of the diagnosis and treatment furnished by doctors of medicine or osteopathy at the RPCH are evaluated by the Peer Review Organization (PRO) for the State in which the RPCH is located.

(5) (i) The RPCH staff considers the findings of the evaluations, including any findings or recommendations of the PRO, and takes corrective action if necessary.

(ii) The RPCH also takes appropriate remedial action to address deficiencies found through the quality assurance program.

(iii) The RPCH documents the outcome of all remedial action.

§ 485.645 Special requirements for RPCH providers of longterm care services ("swing-beds").

An RPCH that has a Medicare provider agreement to participate in Medicare as an RPCH must meet the following requirements in order to be granted an approval from HCFA to provide posthospital SNF care, as specified in § 409.30 of this chapter, and be paid as a swing-bed hospital, as specified in § 413.114 of this chapter.

(a) *Eligibility.* An RPCH must meet the following eligibility requirements:

(1) The RPCH has no more than 12 beds for the use of inpatients, and not more than 10 of those beds are used concurrently for the provision of posthospital SNF care.

(2) When required by the State in which it is located, the RPCH has been granted a certification of need for the provision of long-term care services from the State health planning and development agency (designated under section 1521 of the Public Health Service Act).

(3) The RPCH has not had a swing-bed approval terminated within the 2 years previous to application.

(b) *SNF services.* The RPCH is substantially in compliance with the following SNF requirements contained in subpart B of part 483 of this chapter.

(1) Patients rights (§ 483.10 (a)(1) and (a)(2) of this chapter) and Notice of Rights and Services (§ 483.10 (b)(1), (b)(3), (b)(4), (b)(5), (b)(6), (b)(7), (b)(9), and (b)(10) of this chapter);

(2) Specialized rehabilitative services (§ 483.45 of this chapter);

(3) Dental services (§ 483.55 of this chapter);

(4) Social services (§ 483.15(g) of this chapter);

(5) Patient activities (§ 483.15(f) of this chapter);

(6) Discharge planning (§ 483.20(e) of this chapter); and

(7) Nutrition (§ 483.25(i) of this chapter).

PART 488—SURVEY AND CERTIFICATION PROCEDURES

X. Part 488 is amended as follows:

A. The authority citation for part 488 continues to read as follows:

Authority: Secs. 1102, 1814, 1861, 1865, 1866, 1871, 1880, 1881, and 1883 of the Social Security Act (42 U.S.C. 1302, 1395f, 1395x, 1395bb, 1395cc, 1395hh, 1395qq, 1395rr and 1395tt).

Subpart A—General Provisions

§ 488.1 [Amended]

B. In § 488.1, the definition for *Provider of services* or *provider* is amended by adding "rural primary care hospital," immediately after "hospital,".

PART 489—PROVIDER AGREEMENTS UNDER MEDICARE

XI. Part 489 is amended as follows:

A. The authority citation for part 489 continues to read as follows:

Authority: Secs. 1102, 1861, 1864(m), 1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395aa(m), 1395cc, and 1395hh).

Subpart A—General Provisions

B. In § 489.2, the introductory text of paragraph (b) is republished and a new paragraph (b)(7) is added to read as follows:

§ 489.2 Scope of part.

* * * * *

(b) The following providers are subject to the provisions of this part:

* * * * *

(7) Rural primary care hospitals (RPCHs).

* * * * *

Subpart B—Essentials of Provider Agreements

C. In § 489.20, the undesignated introductory text is republished and paragraphs (d) and (e) are revised to read as follows:

§ 489.20 Basic commitments.

The provider agrees to the following:

* * * * *

(d) In the case of a hospital or an RPCH that furnishes services to Medicare beneficiaries, either to furnish directly or to make arrangements (as

defined in § 409.3 of this chapter) for all Medicare-covered services to inpatients of a hospital or an RPCH except the following:

(1) Physicians' services that meet the criteria of § 405.550(b) of this chapter for payment on a reasonable charge basis.

(2) Physician assistant services, as defined in section 1861(s)(2)(K)(i) of the Act, that are furnished after December 31, 1990.

(3) Certified nurse-midwife services, as defined in section 1861(ff) of the Act, that are furnished after December 31, 1990.

(4) Qualified psychologist services, as defined in section 1861(ii) of the Act, that are furnished after December 31, 1990.

(5) Services of a certified registered nurse anesthetist, as defined in section 1861(bb) of the Act.

(e) In the case of a hospital or RPCH that furnishes inpatient hospital services for which payment may be made under Medicare, to maintain an agreement with a PRO for that organization to review the admissions, quality, appropriateness, and diagnostic information related to those inpatient services. The requirement of this paragraph (e) applies only if, for the area in which the hospital or RPCH is located, there is a PRO that has a contract with HCFA under part B of title XI of the Act.

(Catalog of Federal Domestic Assistance Programs No. 93-773, Medicare—Hospital Insurance Program and No. 93-774, Medicare—Supplementary Medical Insurance)

Dated: April 1, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: June 12, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91-24864 Filed 10-24-91; 8:45 am]

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federal register

Friday
October 25, 1991

Part IV

Environmental Protection Agency

40 CFR Part 136

Guidelines Establishing Test Procedures for the Analysis of Pollutants; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 136

[FRL-4016-8]

Guidelines Establishing Test Procedures for the Analysis of Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: This proposed rule would amend 40 CFR part 136 by adding an alternate procedure for preparation of domestic and industrial wastewater samples for the analysis of certain elemental pollutants under section 304(h) of the Clean Water Act (CWA). This amendment would approve the use of an additional procedure, microwave heating, for digestion of samples prior to the determination of 13 inorganic chemicals. The precision and bias of analyses using this technique are not substantially different from that obtained using digestion techniques already approved. Approved analytical techniques are required for determining compliance with limitations, guidelines, and standards and pretreatment standards set forth at 40 CFR parts 402 through 699 (unless otherwise specially noted or defined in those parts).

This action would add Footnote 35 to Table IB—List of Approved Inorganic Test Procedures, update Table IB and amend the Incorporation by Reference section of the regulation accordingly.

DATES: Comments on this proposal will be accepted until December 24, 1991.

ADDRESSES: Comments on this proposal should be labeled as "Guidelines Establishing Test Procedures for the Analyses of Pollutants Under the Clean Water Act—Microwave Digestion". Send comments to: James J. Lichtenberg, Environmental Monitoring Systems Laboratory—Cincinnati, U.S. Environmental Protection Agency, 26 W. Martin Luther King Drive, Cincinnati, OH 42268-0592.

The record and all supporting information on this proposal is available to the public for inspection or copying during normal business hours at the Cincinnati Laboratory. The public should contact James J. Lichtenberg at (513-569-7306) for access. An additional copy of the record and supporting information is also available to the public for inspection and copying at the EPA Public Information Reference Unit, room 2402. Materials in the public docket include the following:

- Technical reviews of the proposed analytical techniques.
- Report with recommendations for the Director, Environmental Monitoring Systems Laboratory—Cincinnati.
- Copies of the proposed digestion technique and performance data.

FOR FURTHER INFORMATION CONTACT: Mr. James J. Lichtenberg, Office of Research and Development, Environmental Monitoring Systems Laboratory, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268. Telephone number: (513) 569-7306.

SUPPLEMENTARY INFORMATION:

I. Authority

This proposed regulation is issued under the authority of sections 304(h) and 501(a) of the Clean Water Act, 33 U.S.C. 1251*et seq.* (the Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977) (the "Act"). Section 304(h) of the Act requires the Administrator of the EPA to "promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification pursuant to section 401 of this Act or permit application pursuant to section 402 of this Act". Section 501(a) of the Act authorizes the Administrator to "prescribe such regulations as are necessary to carry out his functions under this Act".

II. Regulatory Background

The CWA establishes two principal bases for effluent limitations. First, existing discharges are required to meet technology-based effluent limitations. New source discharges must meet new source performance standards based on the best demonstrated technology-based controls. Second, where necessary, additional requirements are imposed to assure attainment and maintenance of water quality standards established by the States under section 303 of the CWA. In establishing or reviewing NPDES permit limits, EPA must ensure that permitted discharges will not cause or contribute to a violation of water quality standards, including designated water uses.

To ensure compliance with these effluent limitations, EPA has promulgated regulations providing nationally-approved testing procedures in 40 CFR part 136. Test procedures have previously been approved for 262 different parameters. Those procedures apply to the analysis of inorganic (metal, non-metal, mineral) and organic chemical, radiological, bacteriological, nutrient, demand, residue, and physical parameters.

Additionally, there may be discharges from some particular industries which need to be regulated on the basis of parameters or test procedures which have not been proposed and approved within the scope of the text procedures guidelines under 40 CFR part 136. Under 40 CFR part 122.41 permit writers may impose minitoring methods through permit proceedings, where there is not an appropriate part 136 method. EPA may also include such parameters in accordance with the provisions prescribed at 40 CFR 401.13, "Test Procedures for measurements."

An Alternate Test Procedure (ATP) Program is also provided in 40 CFR part 136. Under this program the Administrator may approve alternate test procedures for nationwide use developed and proposed by dischargers or other persons. Persons wishing to use such alternate procedures, must apply to the State or Regional EPA permitting office (for limited approval) and to the Director of the Environmental Monitoring Systems Laboratory in Cincinnati (for nationwide approval). Today's proposed rule would approve an optional nationwide alternate procedure for digestion of certain metals prior to measurement.

III. The Microwave Digestion Procedure

The CEM Corporation, in accordance with the guidelines published at 40 CFR § 136.5, applied for nationwide approval of their "Closed Vessel Microwave Digestion of Wastewater Samples for Metals Determination." Digestion is a sample preparation step that is required prior to the measurement of total metals by one or more determinative techniques: Flame atomic absorption spectroscopy (AAS), inductively-coupled plasma (ICP) atomic emission spectroscopy (AES), or direct current plasma (DCP) AES. This proposal would approve the microwave digestion procedure for the following metals: Aluminum, antimony, arsenic, barium, cadmium, chromium, copper, iron, lead, manganese, nickel, selenium, and zinc.

A. Scope of Proposed Method

The proposed procedure utilizes closed-vessel microwave heating of samples as an alternative to the conventional open-beaker hot plate digestion. The proposed procedure is specifically limited to the preparation of domestic and industrial wastewater samples for elemental determinations, as follows:

i. Thirteen elements: Aluminum, antimony, arsenic, barium, cadmium, chromium, copper, iron, lead, manganese, nickel, selenium, and zinc by ICP/AES.

ii. Eleven elements: Aluminum, antimony, barium, cadmium, chromium, copper, iron, lead, manganese, nickel, and zinc for determination by direct aspiration AAS.

iii. Ten elements: Aluminum, barium, cadmium, chromium, copper, iron, lead, manganese, nickel, and zinc by DCP/AES.

The proposed procedure is also specifically limited to the preparation of domestic and industrial wastewater samples for the determination of the 13 specified elements when present at concentrations less than or equal to those listed below:

Element	Maximum applicable concentration [a] (mg/L)
Aluminum	50.0
Antimony	50.0
Arsenic	50.0
Barium	0.5
Cadmium	0.5
Chromium	10.0
Copper	6.0
Iron	50.0
Lead	0.4
Manganese	5.0
Nickel	40.0
Selenium	80.0
Zinc	10.0

[a] Samples may be diluted, before digestion, to bring the concentration below the maximum concentration.

B. Summary of the Proposed Method

A 50-mL aliquot of a wastewater sample is acid-digested in a closed Teflon™ PFA (perfluoro-alkoxy) vessel using microwave heating. The closed vessel configuration allows the samples to be digested at a temperature and pressure that are significantly higher than those used for open-beaker digestions. The filtrate or supernatant of each digestate can be analyzed by direct aspiration AAS, by ICP/AES, or by DCP/AES, as specified above.

C. Technical Justification for Recommendation

This recommendation is based on a data package submitted by the applicant, CEM Corporation. The method description, sampling, analyses by the proposed and approved procedures, and data requirements have been fulfilled, to the satisfaction of the Agency.

The Agency judged the open beaker hot plate digestion procedure utilized as the approved method by the applicant to be applicable for the determination of the 13 specified metals by inductively-coupled plasma atomic emission spectro-scopy. The hot plate digestion procedure, utilized as the approved method was judged applicable for the preparation of samples when determining the previously specified elements: 13 by ICP, 11 by AAS, and 10 by DCP. Additionally, the open-beaker digestion procedure was judged applicable for the determination of only 11 of the 13 elements (arsenic and selenium omitted) by direct aspiration atomic absorption technology.

The CEM Corporation provided test data comparing the proposed procedure (microwave digestion) to the approved procedure (open beaker hot plate digestion) for preparation of test samples used with ICP. EPA statisticians and chemists conducted an independent review of the data. The accuracy and precision of all the submitted data (for both methods) was also compared to the accuracy and precision acceptance criteria derived from an interlaboratory study of the ICP method for these elements.

The comparability reviews indicated that the analyses afforded comparably accurate and precise observations for aluminum, antimony, arsenic, chromium, copper, iron, manganese, nickel, selenium, and zinc in the evaluated concentration ranges. The reviews, however, revealed that the proposed method only afforded comparably accurate and precise observations for barium (Ba), cadmium (Ca), and lead (Pb) in the lower levels of the evaluated concentration ranges. The recommendation for approval of the proposed method for these three elements is, therefore, limited to concentrations < 0.5 mg Ba/L, < 0.5 mg Cd/L, and < 0.4 mg Pb/L.

EPA's Environmental Monitoring Systems Laboratory in Cincinnati, Ohio (EMSL–Cincinnati) thoroughly reviewed and evaluated the supporting data submitted by the CEM Corporation. The administrative record is on file at EMSL–Cincinnati, 26 West Martin Luther King Dr., Cincinnati, Ohio 45268. The record is available for public inspection, to the extent consistent with 40 CFR part 2 (EPA's "Public Information" regulations). The approved procedure description is also available from CEM Corporation, P.O. Box 200, Matthews, North Carolina 28106.

Based on EMSL–Cincinnati's review, and pursuant to 40 CFR 136.5, EPA is proposing to approve the CEM microwave digestion procedure as an acceptable procedure for nationwide use. Specifically, the procedure carries sufficient precision and bias data to make it acceptable under part 136 and to show its comparability to other approved procedures for analysis of the 13 listed metals. As a proposed approved alternate test procedure, the procedure would be acceptable for use by any person required to use procedures approved under section 304(h) of the CWA.

Public comment is requested concerning the suitability of this microwave digestion technique as an alternate procedure for use in the determination of the thirteen metals.

V. Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, requires a regulatory impact analysis. EPA has determined that this proposed regulation is not major as it will not result in an effect on the economy of $100 million or more, a significant increase in cost or prices, or any of the adverse effects described in the Executive Order. This proposed rule simply specifies an analytical technique which may be used by laboratories to measure concentrations of certain metals and, therefore, has no adverse economic impacts. This action was submitted to OMB for review under the Executive Order.

B. Regulatory Flexibility Act

This proposed amendment is consistent with the objectives of the Regulatory Flexibility Act (5 U.S.C. 602 et seq.) because it will not have a significant economic impact on a substantial number of small entities. The method included in this proposed rule gives all laboratories the flexibility to use this alternate method.

C. Paperwork Reduction Act

This rule contains no requests for information activities and, therefore, no information collection request (ICR) will be submitted to the Office of Management and Budget (OMB) for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 136

Incorporation by reference, Water pollution control.

Dated: October 10, 1991.

William K. Reilly,

Administrator.

In consideration of the preceding, EPA proposes to amend part 136 of title 40 of the Code of Federal Regulations as follows:

1. The authority citation for 40 CFR part 136 continues to read as follows:

Authority: Secs. 301, 304(h), 307, and 501(a) Public Law 95–217, Stat. 1566, *et seq.* (33 U.S.C. 1251 *et seq.*) (The Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977).

2. Section 136.3 is amended by revising the entries 3, Aluminum; 5, Antimony; 6, Arsenic; 7, Barium; 12, Cadmium; 19, Chromium; 22, Copper; 30, Iron; 32, Lead; 34, Manganese; 37, Nickel; 60, Selenium, and 75, Zinc in table IB of paragraph (a); and by adding a new footnote 35; and paragraph (b) is amended by adding a new paragraph (33) to read as follows:

§ 136.3 Identification of test procedures.

* * *

TABLE 1B.—LIST OF APPROVED INORGANIC TEST PROCEDURES

Parameter, units and method	Reference (method No. or page)				Other
	EPA[1]	Std. methods 17th Ed.	ASTM	USGS[2]	
* * * *		*	*	*	
3. Aluminum—Total[4], mg/L;					
Digestion[4 35] followed by:					
AA direct aspiration,	202.1	3111D		I-3051-85	
AA furnace,	202.2	3113B			
Inductively coupled plasma (ICP)	200.7[5]				
Direct current plasma (DCP), or			D4190-88		Note 34.
Colorimetric (Eriochrome cyanine R)		3500-Al D			
* * * *		*	*	*	
5. Antimony-Total[4], mg/L;					
Digestion[4] followed by:					
AA direct aspiration	204.1	3111 B			
AA furnace, or	204.2	3111 B			
ICP[35]	200.7[5]	3120 B			
6. Arsenic-Total[4], mg/L;					
Digestion[4] followed by:	206.5				
AA gaseous hydride	206.3	3114	D2972-84(B)	I-3062.85	
AA furnace	206.2	3113-4d			
ICP, or	200.7[5]				
Colorimetric (SDDC)	206.4	3500-As	2972-84(A)	I-3060-85	
7. Barium—Total[4], mg/L;					
Digestion[4 35] followed by:					
AA direct aspiration	208.1	3111 D		I-3084-85	
AA furnace,	208.2	3113 B			
ICP, or	200.7[5]	3120 B			
DCP					Note 34.
* * * *		*	*	*	
12. Cadmium—Total[4], mg/L;					
Digestion[4 35] following by:					
AA direct aspiration,	213.1	3111 B or C	D3557-90 (A or B).	I-3135-85 or I-3136-85.	974.27[3] p.37[9]
AA furnace,	213.2	3113 B			
ICP,	200.7[5]	3120 B		I-1472-85	
DCP			D4190-90		Note 34.
Voltametry[11], or			D3557-90(C)		
Colorimetric (Dithizone)		3500-Cd D			
* * * *		*	*	*	
19. Chromium—Total[4], mg/L;					
Digestion[4 35] followed by:					
AA direct aspiration.	218.1	3111 B	D1687-86(D)	I-3236-85	974.27[3]
AA chelation-extraction	218.3	3111 C			
AA furnace,	218.2	3113 B			
ICP,	200.7[5]	3120 B			
DCP, or			D4190-88		Note 34.
Colorimetric (Diphenylcarbazide)		3500-Cr D	D1687-86(A)		
* * * *		*	*	*	
22. Copper—Total[4], mg/L;					
Digestion[4 35] followed by:					
AA direct aspiration,	220.1	3111 B or C	D1688-90 (A or B).	I3270-85 or I-3271-85.	974.27[3] p.37[9]
AA furnace,	220.2	3113 B			
ICP,	200.7[5]	3120 B			
DCP, or			D4190-88		Note 34.
Colorimetric (Neccuproine), or (Bicinchoninate)		3500-Cu D or E	D1688-84 (88)(A).		Note 19.
* * * *		*	*	*	
30. Iron—Total[4], mg/L;					
Digestion[4 35] followed by:					
AA direct aspiration,	236.1	3111 B or C	D1068-90 (A or B).	I-3381-85	973.27[2]
AA furnace,	236.2	3113 B			
ICP,	200.7[5]	3120 B			
DCP, or					Note 34.
Colorimetric (Phenanthroline)		3500-Fe D	D1068-90(D)		Note 22.
* * * *		*	*	*	

TABLE 1B.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter, units and method	Reference (method No. or page)				Other
	EPA[1]	Std. methods 17th Ed.	ASTM	USGS[2]	
32. Lead—Total[4], mg/L;					
Digestion[4] [35] followed by:					
AA Direct aspiration,	239.1	3111 B or C	D3559-90 (A or B).	I-3399-85	974.27[3]
AA furnace,	239.2	3113 B			
ICP,	200.7[5]	3120 B			
DCP,			D4190-88		Note 34.
Voltametry[11], or			D3559-90(C)		
Colorimetric (Dithizone).		3500-Pb D			
* * * * * * *					
34. Manganese—Total[4], mg/L;					
Digestion[4] [35] followed by:					
AA direct aspiration,	243.1	3111 B	D858-90	I-3454-85	974.27[3]
AA furnace,	243.2	3113 B			
ICP,	200.7[5]	3120 B			
DCP, or			D4190-88		Note 34.
Colorimetric (Persulfate), or		3500-Mn D	D858-84 (A) (1988).		920.203[3]
(Periodate)					Note 23.
* * * * * * *					
37. Nickel—Total[4], mg/L;					
Digestion[4] [35] followed by:					
AA direct aspiration,	249.1	3113 B or C	D1886-90 (A or B).	I-3499-85	
AA furnace,	249.2	3113 B			
ICP,	200.7[5]	3120 B			
DCP, or			D4190-88		Note 34.
Colorimetric (Heptoxime)		3500-Ni			
60. Selenium—Total[4], mg/L;					
Digestion[4] followed by:					
AA furnace	270.2	3113 B			
ICP[35], or	200.7[5]				
AA gaseous hydride	270.3	3114 B	D3859-88(A)	I-3667-85	
* * * * * * *					
75. Zinc—Total[4], mg/L;					
Digestion[4] [35] followed by:					
AA direct aspiration,	289.1	3111 (B or C)	D1691-90 (A or B).	(-I3900-85	974.27[3] p. 37[9]
AA furnace,	289.2				
ICP,	200.7[5]	3120 B			
DCP, or			D4190-88		Note 34.
Colorimetric (Dithizone) or (Zincon).		3500-Zn E 3500-Zn F			Note 33.

Table IB Notes:

[1] "Methods for Chemical Analysis of Water and Wastes", Environmental Protection Agency, Environmental Monitoring Systems Laboratory-Cincinnati (EMSL-CI), EPA-600/4-79-020, Revised March 1983 and 1979 where applicable.

[2] Fishman, M.J., et al, "methods for Analysis of Inorganic Substances in Water and Fluvial Sediments," U.S. Department of the Interior, Techniques of Water-Resource Investigations of the U.S. Geological Survey, Denver, CO, Revised 1989, unless otherwise stated.

[3] "Official Methods of Analysis of the Association of Official Analytical Chemists," methods manual, 15th ed. (1990).

[4] For the determination of total metals the sample is not filtered before processing. A digestion procedure is required to solubilize suspended material and to destroy possible organic-metal complexes. Two digestion procedures are given in "Methods for Chemical Analysis of Water and Wastes, 1979 and 1983." One (section 4.1.3), is a vigorous digestion using nitric acid. A less vigorous digestion using nitric and hydrochloric acids (section 4.1.4) is preferred; however, the analyst should be cautioned that this mild digestion may not suffice for all samples types. Particularly, if a colorimetric procedure is to be employed, it is necessary to ensure that all organo-metallic bonds be broken so that the metal is in a reactive state. In those situations, the vigorous digestion is to be preferred making certain that at no time does the sample go to dryness. Samples containing large amounts of organic materials would also benefit by this vigorous digestion. Use of the graphite furnace technique, inductively coupled plasma, as well as determinations for certain elements such as arsenic, the noble metals, mercury, selenium, and titanium require a modified digestion and in all cases the method write-up should be consulted for specific instruction and/or cautions.

NOTE: If the digestion included in one of the other approved references is different than the above, the EPA procedure must be used.

Dissolved metals are defined as those constituents which will pass through a 0.45 micron membrane filter. Following filtration of the sample, the referenced procedure for total metals must be followed. Sample digestion for dissolved metals may be omitted for AA (direct aspiration or graphite furnace) and ICP analyses provided the sample solution to be analyzed meets the following criteria:

a. Has a low COD (<20)
b. Is visibly transparent with a turbidity measurement of 1 NTU or less
c. Is colorless with no perceptible odor, and
d. Is of one liquid phase and free of particulate or suspended matter following acidification.

[5] The full text of Method 200.7, "Inductively Coupled Plasma Atomic Emission Spectrometric Method for Trace Element Analysis of Water and Wastes," is given at appendix C of this part 136.

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[9] American National Standard on Photographic Processing Effluents, Apr. 2, 1975. Available from ANSI, 1430 Broadway, New York, NY 10018.

* * * * * * *

[11] The use of normal and differential pulse voltage ramps to increase sensitivity and resolution is acceptable.

* * * * * * *

[19] Cooper, Biocinchoinate Method, Method 8506, Hach Handbook of Water Analysis, 1979, Hach Chemical Company, P.O. Box 389, Loveland, CO 80537. AutoAnalyzer II. Bran & Luebb Analyzing Technologies, Inc., Elmsford, N.Y. 10523.

* * * * * * *

[22] Iron, 1,10-Phenanthroline Method, Method 8008, 1980, Hach Chemical Company, P.O. Box 389, Loveland, Co 80537.

[23] Manganese, Periodate Oxidation Method, Method 8034, Hach Handbook of Wastewater Analysis, 1979, pages 2-113 and 2-117, Hach Chemical Company, Loveland, Co 80537.

* * * * * * *

[33] Zinc, Zincon Method, Method 8009, Hach Handbook of Water Analysis 1979, pages 2-231 and 2-333, Hach Chemical Company, Loveland, CO 80537.

[34] "Direct Current Plasma (DCP) Optical Emission Spectrometric Method for Trace Elemental Analysis of Water and Wastes, method AES0029," 1986—Revised 1991, Applied Research Laboratories, Inc., 24911 Stanford Avenue, Valencia, CA 91355.

[35] "Closed Vessel Microwave Digestion of Wastewater Samples for Metals Determination", CEM Corporation, Matthews, North Carolina 28106, November 26, 1990, Available from the CEM Corporation or U.S. EPA, EMSL-Cincinnati where applicable.

(b) * * *

References, Sources, Costs, and table Citations:

* * * * * * *

(33) "Closed Vessel Microwave Digestion of Wastewater Samples for Metals Determination". CEM Corporation, P.O. Box 200, Matthews, North Carolina 28106, November 26, 1990. Available from the CEM Corporation or USEPA, EMSL-Cincinnati.

[FR Doc. 91-25536 Filed 10-24-91; 8:45 am]

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federal register

Friday
October 25, 1991

Part V

Enforcement of Nondiscrimination on the Basis of Handicap in Federally Conducted Programs; Proposed Rules

Federal Retirement Thrift Investment Board
5 CFR Part 1636

Department of Agriculture
7 CFR Part 15e

Farm Credit System Assistance Board
12 CFR Part 1301

United States Institute of Peace
22 CFR Part 1701

National Council on Disability
34 CFR Part 1200

United States Holocaust Memorial Council
36 CFR Part 1300

Commission on the Bicentennial of the United States Constitution
45 CFR Part 2017

Arctic Research Commission
45 CFR Part 2301

James Madison Memorial Fellowship Foundation
45 CFR Part 2490

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1636

DEPARTMENT OF AGRICULTURE

7 CFR Part 15e

FARM CREDIT SYSTEM ASSISTANCE BOARD

12 CFR Part 1301

UNITED STATES INSTITUTE OF PEACE

22 CFR Part 1701

NATIONAL COUNCIL ON DISABILITY

34 CFR Part 1200

UNITED STATES HOLOCAUST MEMORIAL COUNCIL

36 CFR Part 1300

COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

45 CFR Part 2017

ARCTIC RESEARCH COMMISSION

45 CFR Part 2301

JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION

45 CFR Part 2490

Enforcement of Nondiscrimination on the Basis of Handicap in Federally Conducted Programs

AGENCIES: Federal Retirement Thrift Investment Board; United States Department of Agriculture; Farm Credit System Assistance Board; United States Institute of Peace; National Council on Disability; United States Holocaust Memorial Council; Commission on the Bicentennial of the United States Constitution; Arctic Research Commission; James Madison Memorial Fellowship Foundation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation requires that the agencies listed above operate all of their programs and activities to ensure nondiscrimination against qualified individuals with handicaps. It sets forth standards for what constitutes discrimination on the basis of mental or physical handicap, provides a definition for individual with handicaps and qualified individual with handicaps, and establishes a complaint mechanism for resolving allegations of discrimination. This regulation is issued under the authority of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap in programs or activities conducted by Federal Executive agencies.

DATES: To be assured of consideration, comments must be in writing and must be received on or before December 24, 1991.

ADDRESSES: See individual agencies below. Copies of this notice will be made available on tape for persons with impaired vision who request them. They will be provided by the Coordination and Review Section, Civil Rights Division, Department of Justice, Washington, DC 20530, (202) 724-2222 (voice) or (202) 724-7678 (TDD).

FOR FURTHER INFORMATION CONTACT: See individual agencies below.

SUPPLEMENTARY INFORMATION:

Background

The purpose of this proposed rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by the following agencies (hereinafter "the agencies"): Federal Retirement Thrift Investment Board, United States Department of Agriculture, Farm Credit System Assistance Board, United States Institute of Peace, National Council on Disability, United States Holocaust Memorial Council, Commission on the Bicentennial of the United States Constitution, Arctic Research Commission, James Madison Memorial Fellowship Foundation. Section 504 states, in pertinent part, that

> No otherwise qualified individual with handicaps in the United States, * * * shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance *or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.*

(29 U.S.C. 794 (1978 amendment italicized).)

Because the agencies are required by this amendment to promulgate implementing regulations, and because the proposed standards and procedures to be established are the same for all of the agencies, the agencies are publishing this notice of proposed rulemaking jointly. The final rule adopted by each agency will be codified in that agency's portion of the Code of Federal Regulations as indicated in the information provided for individual agencies below. The agencies agreed to joint publication of the preamble and the text of the regulation in order to expedite its issuance and minimize costs, in view of the identity in proposed standards among the agencies. If, following the public comment period, one or more of the agencies desires to promulgate a final regulation with different substantive provisions in order to account for its particular needs identified in response to public comments, it will, of course, do so.

The substantive nondiscrimination obligations of the agency, as set forth in this proposed rule, are identical, for the most part, to those established by Federal regulations for programs or activities receiving Federal financial assistance. (See 28 CFR part 41 (section 504 coordination regulation for federally assisted programs).) This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal Government should have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1978) *id.*; 124 Cong. Rec. 13,897 (remarks of Rep. Brademas); *id.* at 38,552 (remarks of Rep. Sarasin).

There are, however, some language differences between this proposed rule and the Federal Government's section 504 regulations for federally assisted programs. These changes are based on the Supreme Court's decision in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), and the subsequent circuit court decisions interpreting Davis and section 504. See *Dopico* v. *Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association* v. *Lewis*, 655 F.2d 1272 (D.C. Cir. 1981) (APTA); see also *Rhode Island Handicapped Action Committee* v. *Rhode Island Public Transit Authority*, 718 F.2d 490 (1st Cir. 1983).

These language differences are also supported by the decision of the Supreme Court in *Alexander* v. *Choate*, 469 U.S. 287 (1985), where the Court held

that the regulations for federally assisted programs did not require a recipient to modify its durational limitation on Medicaid coverage of inpatient hospital care for handicapped persons. Clarifying its *Davis* decision, the Court explained that section 504 requires only "reasonable modifications," *id.* at 300, and explicitly noted that "[t]he regulations implementing § 504 [for federally assisted programs] are consistent with the view that *reasonable* adjustments in the nature of the benefit offered must at times be made to assure meaningful access." *Id.* at 301 n.21 (emphasis added).

Incorporation of these changes, therefore, makes this regulation implementing section 504 for federally conducted programs consistent with the Federal Government's regulations implementing section 504 for federally assisted programs as they have been interpreted by the Supreme Court. Many of these federally assisted regulations were issued prior to the interpretations of section 504 by the Supreme Court in *Davis*, by lower courts interpreting *Davis*, and by the Supreme Court in *Alexander*; therefore their language does not reflect the interpretation of section 504 provided by the Supreme Court and by the various circuit courts. Of course, these federally assisted regulations must be interpreted to reflect the holdings of the Federal judiciary. Hence the agencies believe that there are no significant differences between this proposed rule for federally conducted programs and the Federal Government's interpretation of section 504 regulations for federally assisted programs.

This proposed regulation has been reviewed by the Department of Justice. It is an adaptation of a prototype prepared by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298). This regulation has also been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206). It is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127) and, therefore, a regulatory impact analysis has not been prepared. This regulation does not have an impact on small entities. It is not, therefore, subject to the Regulatory Flexibility Act (5 U.S.C. 601–612).

Section-By-Section Analysis

Section _____. 101 Purpose

Section _____. 101 states the purpose of the proposed rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

Section _____.102 Application

The proposed regulation applies to all programs or activities conducted by the agencies. Under this section, a federally conducted program or activity is, in simple terms, anything a Federal agency does. Aside from employment, there are two major categories of federally conducted programs or activities covered by this regulation: those involving general public contact as part of ongoing agency operations and those directly administered by the agencies for program beneficiaries and participants. Activities in the first category include communication with the public (telephone contacts, office walk-ins, or interviews) and the public's use of the agency's facilities. Activities in the second category include programs that provide Federal services or benefits. This regulation does not, however, apply to programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

Section _____.103 Definitions

"Assistant Attorney General." "Assistant Attorney General" refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids." "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of the agency's programs or activities. The definition provides examples of commonly used auxiliary aids. Although auxiliary aids are required explicitly only by § _____.160(a)(1), they may also be necessary to meet other requirements of the regulation.

"Complete complaint." "Complete complaint" is defined to include all the information necessary to enable the agency to investigate the complaint. The definition is necessary, because the 180 day period for the agency's investigation (see § _____.170(g)) begins when the agency receives a complete complaint.

"Facility." The definition of "facility" is similar to that in the section 504 coordination regulation for federally assisted programs (28 CFR 41.3(f)) except that the term "rolling stock or other conveyances" has been added and the phrase "or interest in such property" has been deleted because the term "facility," as used in this regulation, refers to structures and not to intangible property rights. It should, however, be noted that the regulation applies to all programs and activities conducted by the agency regardless of whether the facility in which they are conducted is owned, leased, or used on some other basis by the agency.

"Historic preservation programs," "Historic properties," and "Substantial impairment." These terms are defined in order to aid in the interpretation of § _____.150 (a)(2) and (b)(2) which relate to accessibility of historic preservation programs.

"Individual with handicaps." The definition of "individual with handicaps" is identical to the definition of "handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31). Although section 103(d) of the Rehabilitation Act Amendments of 1986 changed the statutory term "handicapped individual" to "individual with handicaps," the legislative history of this amendment indicates that no substantive change was intended. Thus, although the term has been changed in this regulation to be consistent with the statute as amended, the definition is unchanged. In particular, although the term as revised refers to "handicaps" in the plural, it does not exclude persons who have only one handicap.

"Qualified individual with handicaps." The definition of "qualified individual with handicaps" is a revised version of the definition of "qualified handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.32).

Paragraph (1) is an adaptation of existing definitions of "qualified handicapped person" for purposes of federally assisted preschool, elementary, and secondary education programs (see, *e.g.*, 45 CFR 84.3(k)(2)). It provides that an individual with handicaps is qualified for preschool, elementary, or secondary education programs conducted by the agency if he or she is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive these services from the agency. In other words, an individual with handicaps is qualified if, considering all factors other than the handicapping condition, he or she is entitled to receive education services from the agency.

Paragraph (2) deviates from existing regulations for federally assisted

programs because of intervening court decisions. It defines "qualified individual with handicaps" with regard to any program other than those covered by paragraph (1) under which a person is required to perform services or to achieve a level of accomplishment. In such programs a qualified individual with handicaps is one who can achieve the purpose of the program without modifications in the program that the agency can demonstrate would result in a fundamental alteration in its nature. This definition reflects the decision of the Supreme Court in *Davis*. In that case, the Court ruled that a hearing-impaired applicant to a nursing school was not a "qualified handicapped person" because her hearing impairment would prevent her from participating in the clinical training portion of the program. The Court found that, if the program were modified so as to enable the respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program normally gives." *Id.* at 410. It also found that "the purpose of [the] program was to train persons who could serve the nursing profession in all customary ways," *id.* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It therefore concluded that the school was not required by section 504 to make such modifications that would result in "a fundamental alteration in the nature of the program." *Id.* at 410.

We have incorporated the Court's language in the definition of "qualified individual with handicaps" in order to make clear that such a person must be able to participate in the program offered by the agency. The agency is required to make modifications in order to enable an applicant with handicaps to participate, but is not required to offer a program of a fundamentally different nature. The test is whether, with appropriate modifications, the applicant can achieve the purpose of the program offered; not whether the applicant could benefit or obtain results from some other program that the agency does not offer. Although the revised definition allows exclusion of some individuals with handicaps from some programs, it requires that an individual with handicaps who is capable of achieving the purpose of the program must be accommodated, provided that the modifications do not fundamentally alter the nature of the program.

The agency has the burden of demonstrating that a proposed modification would constitute a fundamental alteration in the nature of its program or activity. Furthermore, in demonstrating that a modification would result in such an alteration, the agency must follow the procedures established in § _____.150(a) and § _____.160(d), which are discussed below, for demonstrating that an action would result in undue financial and administrative burdens. That is, the decision must be made by the agency head or his or her designee in writing after consideration of all resources available for the program or activity and must be accompanied by an explanation of the reasons for the decision. If the agency head determines that an action would result in a fundamental alteration, the agency must consider options that would enable the individual with handicaps to achieve the purpose of the program but would not result in such an alteration.

For programs or activities that do not fall under either of the first two paragraphs, paragraph (3) adopts the existing definition of "qualified handicapped person" with respect to services (28 CFR 41.32(b)) in the coordination regulation for programs receiving Federal financial assistance. Under this definition, a qualified individual with handicaps is an individual with handicaps who meets the essential eligibility requirements for participation in the program or activity.

Paragraph (4) explains that "qualified individual with handicaps" means "qualified handicapped person" as that term is defined for purposes of employment in the Equal Employment Opportunity Commission's regulation at 29 CFR 1613.702(f), which is made applicable to this regulation by § _____.140. Nothing in this regulation changes existing regulations applicable to employment.

"Section 504." This definition makes clear that, as used in this regulation, "section 504" applies only to programs or activities conducted by the agency and not to programs or activities to which it provides Federal financial assistance.

Section _____.110 Self-Evaluation

The agency shall conduct a self-evaluation of its compliance with section 504 within one year of the effective date of this regulation. The self-evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)). Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with individuals with handicaps that promotes both effective and efficient implementation of section 504.

Section _____.111 Notice

Section § _____.111 requires the agency to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of rights and protections afforded by section 504 and this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the agency's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

Section _____.130 General Prohibitions Against Discrimination

Section § _____.130 is an adaptation of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51).

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § _____.130 establish the general principles for analyzing whether any particular action of the agency violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. If the agency violates a provision in any of the subsequent sections, it will also violate one of the general prohibitions found in § _____.130. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b) prohibits overt denials of equal treatment of individuals with handicaps. The agency may not refuse to provide an individual with handicaps with an equal opportunity to participate in or benefit from its program simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutely exclude certain classes of disabled persons (*e.g.*, epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Use of an irrebuttable presumption is permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligibility requirements for participation in the activity in question. It would be permissible, therefore, to exclude without an individual

evaluation all persons who are blind in both eyes from eligibility for a license to operate a commercial vehicle in interstate commerce; but it may not be permissible to automatically disqualify all those who are blind in just one eye.

In addition, section 504 prohibits more than just the most obvious denials of equal treatment. It is not enough to admit persons in wheelchairs to a program if the facilities in which the program is conducted are inaccessible. Paragraph (b)(1)(iii), therefore, requires that the opportunity to participate or benefit afforded to an individual with handicaps be as effective as that afforded to others. The later sections on program accessibility (§§ _____.149–_____.151) and communications (§ _____.160) are specific applications of this principle.

Despite the mandate of paragraph (d) that the agency administer its programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, paragraph (b)(1)(iv), in conjunction with paragraph (d), permits the agency to develop separate or different aids, benefits, or services when necessary to provide individuals with handicaps with an equal opportunity to participate in or benefit from the agency's programs or activities. Paragraph (b)(1)(iv) requires that different or separate aids, benefits, or services be provided only when necessary to ensure that the aids, benefits, or services are as effective as those provided to others. Even when separate or different aids, benefits, or services would be more effective, paragraph (b)(2) provides that a qualified individual with handicaps still has the right to choose to participate in the program that is not designed to accommodate individuals with handicaps.

Paragraph (b)(1)(v) prohibits the agency from denying a qualified individual with handicaps the opportunity to participate as a member of a planning or advisory board.

Paragraph (b)(1)(vi) prohibits the agency from limiting a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

Paragraph (b)(3) prohibits the agency from utilizing criteria or methods of administration that deny individuals with handicaps access to the agency's orograms and activities. The phrase "criteria or methods of administration" refers to official written agency policies and to the actual practices of the agency. This paragraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny individuals with handicaps an effective opportunity to participate.

Paragraph (b)(4) specifically applies the prohibition enunciated in § _____.130(b)(3) to the process of selecting sites for construction of new facilities or selecting existing facilities to be used by the agency. Paragraph (b)(4) does not apply to construction of additional buildings at an existing site.

Paragraph (b)(5) prohibits the agency, in the selection of procurement contractors, from using criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

Paragraph (b)(6) prohibits the agency from discriminating against qualified individuals with handicaps on the basis of handicap in the granting of licenses or certification. A person is a "qualified individual with handicaps" with respect to licensing or certification if he or she can meet the essential eligibility requirements for receiving the license or certification (See § _____.103).

In addition, the agency may not establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. For example, the agency must comply with this requirement when establishing safety standards for the operations of licensees. In that case the agency must ensure that standards that it promulgates do not discriminate against the employment of qualified individuals with handicaps in an impermissible manner.

Paragraph (b)(6) does not extend section 504 directly to the programs or activities of licensees or certified entities themselves. The programs or activities of Federal licensees or certified entities are not themselves federally conducted programs or activities nor are they programs or activities receiving Federal financial assistance merely by virtue of the Federal license or certificate. However, as noted above, section 504 may affect the content of the rules established by the agency for the operation of the program or activity of the licensee or certified entity, and thereby indirectly affect limited aspects of their operations.

Paragraph (c) provides that programs conducted pursuant to Federal statute or Executive order that are designed to benefit only individuals with handicaps or a given class of individuals with handicaps may be limited to those individuals with handicaps.

Paragraph (d), discussed above, provides that the agency must administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, *i.e.*, in a setting that enables individuals with handicaps to interact with nonhandicapped persons to the fullest extent possible.

Section _____.140 Employment

Section _____.140 prohibits discrimination on the basis of handicap in employment by the agency. Courts have held that section 504, as amended in 1978, covers the employment practices of Executive agencies. *Gardner* v. *Morris*, 752 F.2d 1271, 1277 (8th Cir. 1985); *Smith* v. *United States Postal Service*, 742 F.2d 257, 259–260 (6th Cir. 1984); *Prewitt* v. *United States Postal Service*, 662 F.2d 292, 302–04 (5th Cir. 1981). *Contra McGuiness* v. *United States Postal Service*, 752 F.2d 410, 413–14 (9th Cir. 1985).

Courts uniformly have held that, in order to give effect to section 501 of the Rehabilitation Act, which covers Federal employment, the administrative procedures of section 501 must be followed in processing complaints of employment discrimination under section 504. *Morgan* v. *United States Postal Service*, 798 F.2d 1162, 1164–65 (8th Cir. 1986); *Smith*, 742 F.2d at 262; *Prewitt*, 662 F.2d at 304. Accordingly, $_____.140 (Employment) of this rule adopts the definitions, requirements, and procedures of section 501 as established in regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR part 1613. Responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (3 CFR, 1978 Comp., p. 206). Under this authority, the EEOC establishes government-wide standards on nondiscrimination in employment on the basis of handicap. In addition to this section, § _____.170(b) specifies that the agency will use the existing EEOC procedures to resolve allegations of employment discrimination.

Section _____.149 Program Accessibility: Discrimination Prohibited.

Section _____.149 states the general nondiscrimination principle underlying the program accessibility requirements of §§ _____.150 and _____.151.

Section _____.150 Program Accessibility: Existing Facilities

This proposed regulation adopts the program accessibility concept found in

the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.57), with certain modifications. Thus, § _____.150 requires that each agency program or activity, when viewed in its entirety, be readily accessible to and usable by individuals with handicaps. The regulation also makes clear that the agency is not required to make each of its existing facilities accessible (§ _____.150(a)(1)). However, § _____.150, unlike 28 CFR 41.57, places explicit limits on the agency's obligation to ensure program accessibility (§ _____.150(a)(2), (a)(3)).

Paragraph (a)(2), which establishes a special limitation on the obligation to ensure program accessibility in historic preservation programs, is discussed below in connection with paragraph (b).

Paragraph (a)(3) generally codifies recent case law that defines the scope of the agency's obligation to ensure program accessibility. This paragraph provides that in meeting the program accessibility requirement the agency is not required to take any action that would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. A similar limitation is provided in § _____.160(d). This provision is based on the Supreme Court's holding in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis*, circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modification sought to be imposed under section 504. See, *e.g.*, *Dopico* v. *Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association* v. *Lewis*, (*APTA*), 655 F. 2d 1272 (D.C. Cir. 1981).

Paragraphs (a)(3) and _____.160(d) are also supported by the Supreme Court's decision in *Alexander* v. *Choate*, 469 U.S. 287 (1985). *Alexander* involved a challenge to the State of Tennessee's reduction of inpatient hospital care coverage under Medicaid from 20 to 14 days per year. Plaintiffs argued that this reduction violated section 504 because it had an adverse impact on handicapped persons. The Court assumed without deciding that section 504 reaches at least some conduct that has an unjustifiable disparate impact on handicapped people, but held that the reduction was not "the sort of disparate impact" discrimination that might be prohibited by section 504 or its implementing regulation. *Id.* at 299.

Relying on *Davis*, the Court said that section 504 guarantees qualified handicapped persons "meaningful access to the benefits that the grantee offers," *id.* at 301, and that "*reasonable adjustments* in the nature of the benefit being offered must at times be made to assure meaningful access." *Id.* at n.21 (emphasis added). However, section 504 does not require " 'changes,' 'adjustments,' or 'modifications' to existing programs that would be 'substantial' * * * or that would constitute 'fundamental alteration(s) in the nature of a program.' " *Id.* at n.20 (citations omitted). *Alexander* supports the position, based on *Davis* and the earlier, lower court decisions, that in some situations, certain accommodations for a handicapped person may so alter an agency's program or activity, or entail such extensive costs and administrative burdens that the refusal to undertake the accommodations is not discriminatory. Thus failure to include such an "undue burdens" provision could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation.

This paragraph, however, does not establish an absolute defense; it does not relieve the agency of all obligations to individuals with handicaps. Although the agency is not required to take actions that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens, it nevertheless must take any other steps necessary to ensure that individuals with handicaps receive the benefits and services of the federally conducted program or activity.

It is our view that compliance with § _____.150(a) would in most cases not result in undue financial and administrative burdens on the agency. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity should be considered. The burden of proving that compliance with § _____.150(a) would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the agency head's decision or failure to make a decision may file a complaint under the compliance procedures established in § _____.170.

Paragraph (b)(1) sets forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides. In choosing among methods, the agency shall give priority consideration to those that will be consistent with provision of services in the most integrated setting appropriate to the needs of individuals with handicaps. Structural changes in existing facilities are required only when there is no other feasible way to make the agency's program accessible. (It should be noted that "structural changes" include all physical changes to a facility; the term does not refer only to changes to structural features, such as removal of or alteration to a load-bearing structural member.) The agency may comply with the program accessibility requirement by delivering services at alternate accessible sites or making home visits as appropriate.

Paragraph _____.150(a)(2) provides an additional limitation on the obligation to ensure program accessibility that is applicable only to historic preservation programs. In order to avoid possible conflict between the congressional mandates to preserve historic properties on the one hand and to eliminate discrimination against individuals with handicaps on the other, § _____.150(a)(2) provides that in historic preservation programs the agency is not required to take any action that would result in substantial impairment of significant historic features of an historic property.

Nevertheless, because the primary benefit of an historic preservation program is uniquely the experience of the historic property itself, § _____.150(b)(2) requires the agency to give priority to methods of providing program accessibility that permit individuals with handicaps to have physical access to the historic property. This priority on physical access may also be viewed as a specific application of the general requirement that the agency administer programs in the most integrated setting appropriate to the needs of qualified individuals with handicaps (§ _____.130(d)). Only when providing physical access would result in a substantial impairment of

significant historic features, a fundamental alteration in the nature of the program, or in undue financial and administrative burdens, may the agency adopt alternative methods for providing program accessibility that do not ensure physical access. Examples of some alternative methods are provided in § _____.150(b)(2).

The special limitation on program accessibility set forth in § _____.150(a)(2) is applicable only to programs that have preservation of historic properties as a primary purpose (see *supra* discussion of definition of "historic preservation program," § _____.103). Narrow application of the special limitation is justified because of the inherent flexibility of the program accessibility requirement. Where historic preservation is not a primary purpose of the program the agency is not bound to a particular facility. It can relocate all or part of its program to an accessible facility, make home visits, or use other standard methods of achieving program accessibility without making structural alterations that might impair significant historic features of the historic property.

Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), the agency must make any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of this regulation. Where structural modifications are required, a transition plan shall be developed within six months of the effective date of this regulation. Aside from structural changes, all other necessary steps to achieve compliance shall be taken within sixty days.

Section _____.151 Program Accessibility: New construction and alterations

Overlapping coverage exists with respect to new construction and alterations under section 504 and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). Section _____.151 provides that those buildings that are constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered to be readily accessible to and usable by individuals with handicaps in accordance with 41 CFR 101–19.600 to 101–19.607. This standard was promulgated pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). We believe that it is appropriate to adopt the existing Architectural Barriers Act standard for section 504 compliance because new and altered buildings subject to this regulation are also subject to the Architectural Barriers Act and because adoption of the standard will avoid duplicative and possibly inconsistent standards.

Existing buildings leased by the agency after the effective date of this regulation are not required by the regulation to meet accessibility standards simply by virtue of being leased. They are subject, however, to the program accessibility standard for existing facilities in § _____.150. To the extent the buildings are newly constructed or altered, they must also meet the new construction and alteration requirements of § _____.151.

Federal practice under section 504 has always treated newly leased buildings as subject to the existing facility program accessibility standard. Unlike the construction of new buildings where architectural barriers can be avoided at little or no cost, the application of new construction standards to an existing building being leased raises the same prospect of retrofitting buildings as the use of an existing Federal facility, and the agency believes the same program accessibility standard should apply to both owned and leased existing buildings.

In *Rose* v. *United States Postal Service*, 774 F.2d 1355 (9th Cir. 1985), the Ninth Circuit held that the Architectural Barriers Act requires accessibility at the time of lease. The *Rose* court did not address the issue of whether section 504 likewise requires accessibility as a condition of lease, and the case was remanded to the District Court for, among other things, consideration of that issue. The agency may provide more specific guidance on section 504 requirements for leased buildings after the litigation is completed.

Section _____.160 Communications

Section _____.160 requires the agency to take appropriate steps to ensure effective communication with personnel of other Federal entities, applicants, participants, and members of the public. These steps shall include procedures for determining when auxiliary aids are necessary under § _____.160(a)(1) to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, the agency's program or activity. They shall also include an opportunity for individuals with handicaps to request the auxiliary aids of their choice. This expressed choice shall be given primary consideration by the agency (§ _____.160(a)(1)(i)). The agency shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § _____.160(d). That paragraph limits the obligation of the agency to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (see supra preamble discussion of § _____.150(a)(3)). Unless not required by § _____.160(d), the agency shall provide auxiliary aids at no cost to the individual with handicaps.

The discussion of § _____.150(a), Program accessibility: Existing facilities, regarding the determination of undue financial and administrative burdens also applies to this section and should be referred to for a complete understanding of the agency's obligation to comply with § _____.160.

In some circumstances, a notepad and written materials may be sufficient to permit effective communication with a hearing-impaired person. In many circumstances, however, they may not be, particularly when the information being communicated is complex or exchanged for a lengthy period of time (*e.g.*, a meeting) or where the hearing-impaired applicant or participant is not skilled in spoken or written language. In these cases, a sign language interpreter may be appropriate. For vision-impaired persons, effective communication might be achieved by several means, including readers and audio recordings. In general, the agency intends to inform the public of (1) the communications services it offers to afford individuals with handicaps an equal opportunity to participate in or benefit from its programs or activities, (2) the opportunity to request a particular mode of communication, and (3) the agency's preferences regarding auxiliary aids if it can demonstrate that several different modes are effective.

The agency shall ensure effective communication with vision-impaired and hearing-impaired persons involved in hearings conducted by the agency. Auxiliary aids must be afforded where necessary to ensure effective communication at the proceedings. If sign language interpreters are necessary, the agency may require that it be given reasonable notice prior to the proceeding of the need for an interpreter. Moreover, the agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature (§ _____.160(a)(1)(ii)). For example, the agency need not provide eyeglasses or hearing aids to applicants or participants in its programs. Similarly, the regulation does not require the agency to provide

wheelchairs to persons with mobility impairments.

Paragraph (b) requires the agency to provide information to individuals with handicaps concerning accessible services, activities, and facilities. Paragraph (c) requires the agency to provide signage at inaccessible facilities that directs users to locations with information about accessible facilities.

Section ____.170 Compliance Procedures

Paragraph (a) specifies that paragraphs (c) through (1) of this section establish the procedures for processing complaints other than employment complaints. Paragraph (b) provides that the agency will process employment complaints according to procedures established in existing regulations of the EEOC (29 CFR part 1613) pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

Paragraph (c) is amended by each individual agency. It designates the official responsible for coordinating implementation of § ____.170 and provides an address to which complaints may be sent.

The agency is required to accept and investigate all complete complaints (§ ____.170(d)). If it determines that it does not have jurisdiction over a complaint, it shall promptly notify the complainant and make reasonable efforts to refer the complaint to the appropriate entity of the Federal Government (§ ____.170(e)).

Paragraph (f) requires the agency to notify the Architectural and Transportation Barriers Compliance Board upon receipt of a complaint alleging that a building or facility subject to the Architectural Barriers Act was designed, constructed, or altered in a manner that does not provide ready access to and use by individuals with handicaps.

Paragraph (g) requires the agency to provide to the complainant, in writing, findings of fact and conclusions of law, the relief granted if noncompliance is found, and notice of the right to appeal (§ ____.170(g)). One appeal within the agency shall be provided (§ ____.170(i)). The appeal will not be heard by the same person who made the initial determination of compliance or noncompliance.

Paragraph (1) permits the agency to delegate its authority for investigating complaints to other Federal agencies. However, the statutory obligation of the agency to make a final determination of compliance or noncompliance may not be delegated.

Proposed Adoption of the Common Rule

The agency specific proposed adoptions of the text of the common rule appear below:

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1636

ADDRESSES: Comments should be sent to: John J. O'Meara, Federal Retirement Thrift Investment Board, 805 Fifteenth Street NW., Washington, DC 20005.

Comments received will be available for public inspection at: Public Reading Room, suite 500, 805 Fifteenth Street, NW., Washington, DC 20005, from 9 a.m. to 4 p.m. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: John J. O'Meara—(202) 523–6367.

List of Subjects in 5 CFR Part 1636

Blind, Buildings, Civil rights, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped, Historic places, Historic preservation.

Title 5, chapter VI of the Code of Federal Regulations is proposed to be amended as follows:

1. Part 1636 is added as set forth at the end of this document.

PART 1636—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sec.
1636.101 Purpose.
1636.102 Application.
1636.103 Definitions.
1636.104–1636.109 [Reserved]
1636.110 Self-evaluation.
1636.111 Notice.
1636.112–1636.129 [Reserved]
1636.130 General prohibitions against discrimination.
1636.131–1636.139 [Reserved]
1636.140 Employment.
1636.141–1636.148 [Reserved]
1636.149 Program accessibility: Discrimination prohibited.
1636.150 Program accessibility: Existing facilities.
1636.151 Program accessibility: New construction and alterations.
1636.152–1636.159 [Reserved]
1636.160 Communications.
1636.161–1636.169 [Reserved]
1636.170 Compliance procedures.

Authority: 29 U.S.C. 794.

2. Part 1636 is further amended by revising paragraph (c) in § 1636.170 to read as follows:

§ 1636.170 Compliance procedures.

* * * * *

(c) The Assistant General Counsel (Administration) shall be responsible for coordinating implementation of this section. Complaints may be sent to the Executive Director.

* * * * *

Francis X. Cavanaugh,
Executive Director.

UNITED STATES DEPARTMENT OF AGRICULTURE

7 CFR Part 15e

ADDRESSES: Comments should be sent to: Director, Office of Advocacy and Enterprise, U.S. Department of Agriculture, Washington, DC 20250.

Comments received will be available for public inspection at: Office of Advocacy and Enterprise, Compliance, Complaints and Adjudication Division, U.S. Department of Agriculture, Room 1371 South Building, Washington, DC 20250 from 8:30 a.m. to 5 p.m. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: Judith A. Demont, Supervisory Equal Opportunity Specialist, Compliance, Complaints and Adjudication Division, Office of Advocacy and Enterprise, U.S. Department of Agriculture, Washington, DC 20250 (202) 382–9200. TDD available at (202) 447–7327.

List of Subjects in 7 CFR Part 15e

Blind, Buildings, Civil rights, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped, Historic places, Historic preservation.

Title 7, subtitle A of the Code of Federal Regulations is proposed to be amended as follows:

1. Part 15e is added as set forth at the end of this document.

PART 15e—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE UNITED STATES DEPARTMENT OF AGRICULTURE

Sec.
15e.101 Purpose.
15e.102 Application.
15e.103 Definitions.
15e.104–15e.109 [Reserved]
15e.110 Self-evaluation.
15e.111 Notice.
15e.112–15e.129 [Reserved]

Sec.
15e.130 General prohibitions against discrimination.
15e.131–15e.139 [Reserved]
15e.140 Employment.
15e.141–15e.148 [Reserved]
15e.149 Program accessibility: Discrimination prohibited.
15e.150 Program accessibility: Existing facilities.
15e.151 Program accessibility: New construction and alterations.
15e.152–15e.159 [Reserved]
15e.160 Communications.
15e.161–15e.169 [Reserved]
15e.170 Compliance procedures.

Authority: 29 U.S.C. 794.

2. Part 15e is further amended by revising paragraph (c) in § 15e.170 to read as follows:

§ 15e.170 Compliance procedures.

* * * * *

(c) The Chief, Compliance, Complaints and Adjudication Division, Office of Advocacy and Enterprise, Equal Opportunity, shall be responsible for coordinating implementation of this section. Complaints may be sent to: Office of Advocacy and Enterprise, U.S. Department of Agriculture, Washington, DC 20250.

* * * * *

Dated: June 14, 1991.

Edward Madigan,

Secretary of Agriculture.

FARM CREDIT SYSTEM ASSISTANCE BOARD

12 CFR Part 1301

ADDRESSES: Comments should be sent to: Kathleen M. Mullarkey, General Council, Farm Credit System Assistance Board, 1301 Pennsylvania Avenue NW., suite 702, Washington, DC 20004.

Comments received will be available for public inspection at: Suite 702, 1301 Pennsylvania Avenue NW., Washington, DC 20004, from 9 a.m. to 4 p.m. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: Office of General Council, (202) 737–9255, Farm Credit System Assistance Board, 1301 Penn Avenue NW., suite 702, Washington, DC 20004, Isabella W. Sammons, Senior Attorney.

List of Subjects in 12 CFR Part 1301

Blind, Buildings, Civil rights, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped, Historic places, Historic preservation.

Title 12. of the Code of Federal Regulations is proposed to be amended as follows:

1. Part 1301, Chapter XIII is added as set forth at the end of this document.

PART 1301—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE FARM CREDIT SYSTEM ASSISTANCE BOARD

Sec.
1301.101 Purpose.
1301.102 Application.
1301.103 Definitions.
1301.104–1301.109 [Reserved]
1301.110 Self-evaluation.
1301.111 Notice.
1301.112–*1301*.129 [Reserved]
1301.130 General prohibitions against discrimination.
1301.131–*1301*.139 [Reserved]
1301.140 Employment.
1301.141–*1301*.148 [Reserved]
1301.149 Program accessibility: Discrimination prohibited.
1301.150 Program accessibility: Existing facilities.
1301.151 Program accessibility: New construction and alterations.
1301.152–*1301*.159 [Reserved]
1301.160 Communications.
1301.161–*1301*.169 [Reserved]
1301.170 Compliance procedures.

Authority: 29 U.S.C. 794.

2. Part *1301* is further amended by revising paragraph (c) in section *1301*.170 to read as follows:

§ 1301.170 Compliance procedures.

* * * * *

(c) The Director of Administration shall be responsible for coordinating implementation of this section. Complaints may be sent to Director of Administration, Farm Credit System Assistance Board, 1301 Pennsylvania Avenue NW., suite 702, Washington, DC 20004.

* * * * *

Kenneth L. Peoples,

President and Chief Executive Officer.

UNITED STATES INSTITUTE OF PEACE

22 CFR Part 1701

ADDRESSES: Comments should be sent to: Charles Duryea Smith, General Counsel, United States Institute of Peace, 1550 M Street, NW., suite 700, Washington, DC 20005.

Comments received will be available for public inspection at: 1550 M Street, NW., suite 700, Washington, DC 20005 from 9 a.m. to 5 p.m. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Bernice Carney, United States Institute of Peace, 1550 M Street, NW., Washington, DC 20005–1708 (202) 457–1700 (Voice) (202) 457–1719 (TDD).

ADDITIONAL SUPPLEMENTARY INFORMATION: This proposed regulation, which implements the spirit of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, defines the scope of the USIP's obligation to insure that, to the extent practicable, handicapped individuals are provided with equal access to USIP programs and activities.

This regulation implements the spirit of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to programs and activities conducted by various agencies. Although the USIP does not believe that Congress contemplated coverage of independent Federal institutions such as the USIP, it has voluntarily chosen to promulgate this regulation pursuant to section 504.

List of Subjects in 22 CFR Part 1701

Blind, Buildings, Civil rights, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped, Historic places, Historic preservation.

Title 22 of the Code of Federal Regulations is proposed to be amended as follows:

1. Chapter XVII, consisting of part 1701, is added to read as follows:

CHAPTER XVII—UNITED STATES INSTITUTE OF PEACE

Part 1701—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the United States Institute of Peace

2. Part 1701 is added as set forth at the end of this document.

PART 1701—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE UNITED STATES INSTITUTE OF PEACE

Sec.
1701.101 Purpose.
1701.102 Application.
1701.103 Definitions.
1701.104–1701.109 [Reserved]
1701.110 Self-evaluation.
1701.111 Notice.
1701.112–1701.129 [Reserved]
1701.130 General prohibitions against discrimination.
1701.131–1701.139 [Reserved]
1701.140 Employment.
1701.141–1701.148 [Reserved]
1701.149 Program accessibility: Discrimination prohibited.

Sec.
1701.150 Program accessibility: Existing facilities.
1701.151 Program accessibility: New construction and alterations.
1701.152–1701.159 [Reserved]
1701.160 Communications.
1701.161–1701.169 [Reserved]
1701.170 Compliance procedures.

Authority: 29 U.S.C. 794.

3. Part 1701 is further amended by revising § 1701.101 to read as follows:

§ 1701.101 Purpose.

The purpose of this part is to implement the spirit of section 119 of the Rehabilitation, Comprehensive Services and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by various Executive agencies. Although the USIP does not believe that Congress contemplated coverage of independent Federal institutions, such as the USIP, it has chosen to promulgate this part.

4. Part 1701 is further amended by revising paragraph (c) in § 1701.170 to read as follows:

§ 1701.170 Compliance procedures.

* * * * *

(c) The Director of Administration, United States Institute of Peace, shall be responsible for coordinating implementation of this section. Complaints may be sent to Director of Administration at the following address: 1550 M Street, NW., suite 700, Washington, DC 20005.

* * * * *

Charles Duryea Smith,
General Counsel.

NATIONAL COUNCIL ON DISABILITY

34 CFR Part 1200

ADDRESSES: Comments should be sent to: Ethel D. Briggs, Executive Director, 800 Independence Avenue, SW., suite 814, Washington, DC 20591.

Comments received will be available for public inspection at the above address from 9 a.m. to 5 p.m. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Harold Snider, National Council on Disability, 800 Independence Avenue, SW., suite 814, Washington, DC 20591, 202–267–3846.

List of Subjects in 34 CFR Part 1200

Blind, Buildings, Civil rights, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped, Historic places, Historic preservation.

Title 34 of the Code of Federal Regulations is proposed to be amended as follows:

1. Chapter XII, consisting of part 1200, is added to read as follows:

CHAPTER XII—NATIONAL COUNCIL ON DISABILITY

Part 1200—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by National Council on Disability

2. Part 1200 is added as set forth at the end of this document.

PART 1200—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY NATIONAL COUNCIL ON DISABILITY

Sec.
1200.101 Purpose.
1200.102 Application.
1200.103 Definitions.
1200.104–1200.109 [Reserved]
1200.110 Self-evaluation.
1200.111 Notice.
1200.112–1200.129 [Reserved]
1200.130 General prohibitions against discrimination.
1200.131–1200.139 [Reserved]
1200.140 Employment.
1200.141–1200.148 [Reserved]
1200.149 Program accessibility: Discrimination prohibited.
1200.150 Program accessibility: Existing facilities.
1200.151 Program accessibility: New construction and alterations.
1200.152–1200.159 [Reserved]
1200.160 Communications.
1200.161–1200.169 [Reserved]
1200.170 Compliance procedures.

Authority: 29 U.S.C. 794.

3. Part 1200 is further amended by revising paragraph (c) in § 1200.170 to read as follows:

§ 1200.170 Compliance procedures.

* * * * *

(c) The Executive Director shall be responsible for coordinating implementation of this section. Complaints may be sent to the National Council on Disability, 800 Independence Avenue, SW., suite 814, Washington, DC 20591.

* * * * *

Ethel D. Briggs,
Executive Director.

UNITED STATES HOLOCAUST MEMORIAL COUNCIL

36 CFR Part 1300

ADDRESSES: Comments should be sent to: United States Holocaust Memorial Council, 2000 L Street, NW., suite 598, Washington, DC 20036.

Comments received will be available for public inspection at the above address from 8 a.m. to 4 p.m. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: David E. Linderman, Program Officer (202) 653–9878.

List of Subjects in 36 CFR Part 1300

Blind, Buildings, Civil rights, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped, Historic places, Historic preservation.

Title 36 of the Code of Federal Regulations is proposed to be amended as follows:

1. Chapter XIII, consisting of part 1300, is added to read as follows:

CHAPTER XIII—UNITED STATES HOLOCAUST MEMORIAL COUNCIL

Part 1300—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the United States Holocaust Memorial Council

2. Part 1300 is added as set forth at the end of this document.

PART 1300—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE UNITED STATES HOLOCAUST MEMORIAL COUNCIL

Sec.
1300.101 Purpose.
1300.102 Application.
1300.103 Definitions.
1300.104–1300.109 [Reserved]
1300.110 Self-evaluation.
1300.111 Notice.
1300.112–1300.129 [Reserved]
1300.130 General prohibitions against discrimination.
1300.131–1300.139 [Reserved]
1300.140 Employment.
1300.141–1300.148 [Reserved]
1300.149 Program accessibility: Discrimination prohibited.
1300.150 Program accessibility: Existing facilities.
1300.151 Program accessibility: New construction and alterations.
1300.152–1300.159 [Reserved]
1300.160 Communications.
1300.161–1300.169 [Reserved]
1300.170 Compliance procedures.

Authority: 29 U.S.C. 794.

3. Part 1300 is further amended by revising paragraph (c) in section 1300.170 to read as follows:

§ 1300.170 Compliance procedures.

* * * * *

(c) The Executive Director shall be responsible for coordinating

implementation of this section. Complaints may be sent to the Executive Director, 2000 L Street, NW., suite 588, Washington, DC 20036.

* * * * *

Sara Bloomfield,
Executive Director.

COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

45 CFR Part 2017

ADDRESSES: Comments should be sent to: Commission on the Bicentennial of the United States Constitution, 808 17th Street, NW., Washington, DC 20006.

Comments received will be available for public inspection at: room 863, 807 17th Street, NW., Washington, DC, from 9 a.m. to 5 p.m. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: Thomas Simon, Director of Administration, Commission on the Bicentennial of the United States Constitution, 808 17th Street NW., Washington, DC 20006 (202) 653-5406.

List of Subjects in 45 CFR Part 2017

Blind, Buildings, Civil rights, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped, Historic places, Historic preservation.

Title 45, chapter XX of the Code of Federal Regulations is proposed to be amended as follows:

1. Part 2017 is added as set forth at the end of this document.

PART 2017—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

Sec.
2017.101 Purpose.
2017.102 Application.
2017.103 Definitions.
2017.104–2017.109 [Reserved]
2017.110 Self-evaluation.
2017.111 Notice.
2017.112–2017.129 [Reserved]
2017.130 General prohibitions against discrimination.
2017.131–2017.139 [Reserved]
2017.140 Employment.
2017.141–2017.148 [Reserved]
2017.149 Program accessibility: Discrimination prohibited.
2017.150 Program accessibility: Existing facilities.
2017.151 Program accessibility: New construction and alterations.
2017.152–2017.159 [Reserved]
2017.160 Communications.
2017.161–2017.169 [Reserved]
2017.170 Compliance procedures.

Authority: 29 U.S.C. 794.

2. Part 2017 is further amended by revising paragraph (c) in 2017.170 to read as follows:

§ 2017.170 Compliance procedures.

* * * * *

(c) The Director of Administration shall be responsible for coordinating implementation of this section. Complaints may be sent to the Commission on the Bicentennial of the United States Constitution, room 863, 808 17th Street, NW., Washington, DC 20006.

* * * * *

Herbert M. Atherton,
Staff Director.

ARCTIC RESEARCH COMMISSION

45 CFR Part 2301

ADDRESSES: Comments should be sent to: Dr. Phillip L. Johnson, Executive Director, Arctic Research Commission, ICC Building, room 6333, 12th & Constitution Avenue, NW., Washington, DC 20423. Comments received will be available for public inspection at the above address from 9 a.m. to 5 p.m. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Phillip L. Johnson, Executive Director, Arctic Research Commission, ICC Building, room 6333, 12th & Constitution Avenue, NW., Washington, DC 20423. Voice (202) 371-9631. TDD (202) 357-9867.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Arctic Research Commission is responsible for conducting public meetings annually; at least one of these must be held in Alaska pursuant to the Arctic Research and Policy Act. 15 U.S.C. section 4102. When determining where such meeting will be held, the Commission must consider the public, industries and government agencies from which opinions are sought, and the extent to which delay or expense can be minimized. In order to maximize participation by arctic residents, some meetings are held in rural Alaska.

Meetings held in the Commission's offices shall be accessible in accordance with this regulation. As to meetings held outside of the Commission's offices, the Commission will attempt to locate accessible facilities that conform to the requirements of this regulation. In such instances the Commission will include in the notice of the meeting a request that persons desiring to attend should inform the Commission in advance of any accessibility features they may require. If the Commission receives a request in advance for an accessible meeting site in response to this notice, the Commission will arrange access or move the meeting to an accessible meeting site, even though this accessible site may be farther from the population that the Commission needs to reach, so long as such move would not exceed the "undue burdens" and "fundamental alterations" limitations set forth at § 2301.150(a)(3). Thus, the Commission will, subject only to the limitations of § 2301.150(a)(3), ensure access for any individual with handicaps who gives reasonable advance notice.

The notice regarding all Commission meetings, including both meetings held in and outside of the Commission's offices, will also ask individuals with handicaps to inform the Commission in advance of any auxiliary aids, such as sign language interpreters, that may be necessary. In such instances also, the Commission will, subject only to the limitations of § 2301.160(d), ensure that any individual with handicaps who provides the Commission with reasonable advance notice that he or she needs auxiliary aids in order to participate is provided with such auxiliary aids.

List of Subjects in 45 CFR Part 2301

Blind, Buildings, Civil rights, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped, Historic places, Historic preservation.

Title 45 of the Code of Federal Regulations is proposed to be amended as follows:

1. Chapter XXIII, consisting of part 2301, is added to read as follows:

CHAPTER XXIII—ARCTIC RESEARCH COMMISSION

Part
2301 Enforcement of nondiscrimination on the basis of handicap in programs or activities conducted by United States Arctic Research Commission.

2. Part 2301 is added as set forth at the end of this document.

PART 2301—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY UNITED STATES ARCTIC RESEARCH COMMISSION

Sec.
2301.101 Purpose.
2301.102 Application.

Sec.
2301.103 Definitions.
2301.104–2301.109 [Reserved]
2301.110 Self-evaluation.
2301.111 Notice.
2301.112–2301.129 [Reserved]
2301.130 General prohibitions against discrimination.
2301.131–2301.139 [Reserved]
2301.140 Employment.
2301.141–2301.148 [Reserved]
2301.149 Program accessibility: Discrimination prohibited.
2301.150 Program accessibility: Existing facilities.
2301.151 Program accessibility: New construction and alterations.
2301.152–2301.159 [Reserved]
2301.160 Communications.
2301.161–2301.169 [Reserved]
2301.170 Compliance procedures.

Authority: 29 U.S.C. 794.

3. Part 2301 is further amended by revising paragraph (c) in § 2301.170 to read as follows:

§ 2301.170 Compliance procedures.

* * * * *

(c) The Executive Director shall be responsible for coordinating implementation of this section. Complaints may be sent to the Executive Director, United States Arctic Research Commission, ICC Building, room 6333, 12th Constitution Avenue, NW., Washington, DC 20423.

* * * * *

Dr. Phillip L. Johnson,
Executive Director.

JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION

45 CFR Part 2490

ADDRESSES: Comments should be sent to: James Madison Memorial Fellowship Foundation; Attn: Mr. Gary S. Foy, 2000 K Street, NW., suite 303, Washington, DC 20006. Comments received will be available for public inspection at the above address from 8 a.m. to 5 p.m. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Gary S. Foy (202) 653–8700.

List of Subjects of 45 CFR Part 2490

Blind, Buildings, Civil rights, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped, Historic places, Historic preservation.

Title 45, chapter XXIV of the Code of Federal Regulations is proposed to be amended as follows:

1 Part 2490 is added as set forth at the end of this document.

PART 2490—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE JAMES MADISON FELLOWSHIP FOUNDATION

Sec.
2490.101 Purpose.
2490.102 Application.
2490.103 Definitions.
2490.104–2490.109 [Reserved]
2490.110 Self-evaluation.
2490.111 Notice.
2490.112–2490.129 [Reserved]
2490.130 General prohibitions against discrimination.
2490.131–2490.139 [Reserved]
2490.140 Employment.
2490.141–2490.148 [Reserved]
2490.149 Program accessibility: Discrimination prohibited.
2490.150 Program accessibility: Existing facilities.
2490.151 Program accessibility: New construction and alterations.
2490.152–2490.159 [Reserved]
2490.160 Communications.
2490.161–2490.169 [Reserved]
2490.170 Compliance procedures.

Authority: 29 U.S.C. 794.

2. Part 2490 is further amended by revising paragraph (c) in § 2490.170 to read as follows:

§ 2490.170 Compliance procedures.

* * * * *

(c) The Director of Fund Management shall be responsible for coordinating implementation of this section. Complaints may be sent to the James Madison Memorial Fellowship Foundation, 2000 K Street, NW., suite, 303, Washington, DC 20006.

* * * * *

Paul A. Yost, Jr.,
Admiral, USCG (Ret.), President.

Text of Proposed Common Rule

The text of the proposed common rule, as proposed to be adopted by the agencies in this document, appears below.

PART _____ ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY _____

Sec.
_____.101 Purpose.
_____.102 Application.
_____.103 Definitions.
_____.104–_____.109 [Reserved]
_____.110 Self-evaluation.
_____.111 Notice.
_____.112–_____.129 [Reserved]
_____.130 General prohibitions against discrimination.
_____.131–_____.139 [Reserved]
_____.140 Employment.
_____.141–_____.148 [Reserved]
_____.149 Program accessibility: Discrimination prohibited.
_____.150 Program accessibility: Existing facilities.
_____.151 Program accessibility: New construction and alterations.
_____.152–_____.159 [Reserved]
_____.160 Communications.
_____.161–_____.169 [Reserved]
_____.170 Compliance procedures.

Authority: 29 U.S.C. 794.

§ _____.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ _____.102 Application.

This part (§§ _____.101–_____.170) applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

§ _____.103 Definitions.

For purposes of this part, the term—

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints

filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Historic preservation programs means programs conducted by the agency that have preservation of historic properties as primary purpose.

Historic properties means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local govenment body.

Individual with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially lim t major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

Qualified individual with handicaps means—

(1) With respect to preschool, elementary, or secondary education services provided by the agency, an individual with handicaps who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency;

(2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(3) With respect to any other program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(4) *Qualified handicapped person* as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § _____.140.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955); the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810); and the Civil Rights Restoration Act of 1987 (Pub. L. 100–259, 102 Stat. 28). As used in this regulation, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

Substantial impairment means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§§ _____.104–_____.109 [Reserved]

§ _____.110 Self-evaluation.

(a) The agency shall, within one year of the effective date of this regulation, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this regulation and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

§ _____.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this regulation and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this part.

§§ _____.112–_____.129 [Reserved]

§ _____.130 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards;

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§§ _____.131–_____.139 [Reserved]

§ _____.140 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§§ _____.141–_____.148 [Reserved]

§ _____.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § _____.150, no qualified individual with handicaps shall, because the agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ _____.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with handicaps;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § _____.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods*—(1) *General.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps, in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of § _____.150(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to individuals with handicaps. In cases where a physical alteration to an historic property is not required because of § _____.150(a)(2) or (a)(3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide individuals with handicaps into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section within sixty days of [insert the effective date of the final regulation] except that where structural changes in facilities are undertaken, such changes shall be made within three years of [insert the effective date of the final regulation,] but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, within six months of [insert the effective date of the final regulation,] a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ _____.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§§ _____.152–_____.159 [Reserved]

§ _____.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with handicaps.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § _____.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ _____.161–_____.169 [Reserved]

§ _____.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs and activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The head of the agency shall designate an official to be responsible for coordinating implementation of this section.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not

readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § _____.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

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federal register

Friday
October 25 1991

Part VI

Environmental Protection Agency

40 CFR Part 61

National Emission Standards for Hazardous Air Pollutants; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL-4025-9]

National Emission Standards for Hazardous Air Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is today proposing a rule to stay the effectiveness of 40 CFR part 61, subpart T, as it applies to owners and operators of uranium mill tailings disposal sites that are licensed by the Nuclear Regulatory Commission (NRC). Today's proposal does not concern subpart T sites that are under the control of the Department of Energy (DOE). Subpart T, which regulates radon emissions into ambient air, is one of the Agency's National Emissions Standards for Hazardous Air Pollutants (NESHAPs) for Radionuclides, which were promulgated on December 15, 1989 (54 FR 51654) pursuant to Clean Air Act (CAA) section 112, as it existed prior to the 1990 amendments. When subpart T was promulgated, the Agency utilized its authority under section 112 of the CAA as it existed at that time to grant a two-year waiver of compliance until December 15, 1991.

This proposed stay is pursuant to EPA's general rulemaking authority under CAA section 301(a), as well as the authority of section 112(d)(9), as amended in 1990, which more particularly addresses NRC-licensed facilities. Supporting this proposal is a Memorandum of Understanding (MOU) between EPA, NRC, and the affected NRC Agreement States, as signed by EPA on October 18, 1991. The MOU is reprinted at the end of this notice.

If finalized, this proposal will stay the ffectiveness of subpart T as applied to NRC-licensed uranium mill tailings disposal sites until EPA concludes related rulemaking under section 112(d)(9) of the Clean Air Act, as amended, and the Atomic Energy Act, as amended, as described in the MOU. These rulemakings are designed to reduce duplication of regulatory effort between EPA, NRC, and the affected Agreement States, while also assuring that public health is protected with an ample margin of safety.The stay will expire at the conclusion of this rulemaking or on June 30, 1994, whichever first occurs.The Agency intends to take final action on this proposal by December 15, 1991.

DATES: Comments concerning this proposed rule must be received by EPA on or before November 25, 1991, unless a hearing is requested by November 4, 1991. In that event a hearing concerning this proposed rule will be held on November 7, 1991 and comments will be accepted for an additional thirty days. For the location of the hearing, please contact Jamie Burnett at (703) 308-8787.

ADDRESSES: Comments should be submitted (in duplicate if possible) to: Central Docket Section LE-131, Environmental Protection Agency, Attn: Docket No. A-91-67, Washington, DC 20460. Requests to participate in the hearing should be made in writing to the Director, Criteria and Standards Division, ANR-460W, Office of Radiation Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Comments and requests to participate in the hearing may also be faxed to EPA at (703) 308-8763.

FOR FURTHER INFORMATION CONTACT: Jamie Burnett, Environmental Standards Branch, Criteria and Standards Division, ANR-460W, Office of Radiation Programs, Environmental Protection Agency, Washington, DC 20460 (703) 308-8787.

SUPPLEMENTARY INFORMATION:

A. Background

1. Regulatory History

On December 15, 1989, EPA promulgated national standards regulating radionuclide emissions to the ambient air from several source categories, including from non-operational sites used for the disposal of uranium mill tailings. 54 FR 51654. These sites are either under the control of the DOE pursuant to title I of the Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978, or the sites are under the control of NRC-licensees pursuant to title II of UMTRCA. These standards—subpart T of 40 CFR part 61—were promulgated pursuant to the authority of Clean Air Act (CAA or Act) section 112 as it existed in 1989, and were part of a larger promulgation of National Emission Standards for Hazardous Air Pollutants (NESHAPs) for Radionuclides.

Subpart T requires compliance by owners and operators of uranium mill tailings disposal sites within two years of becoming non-operational. 40 CFR 61.222(b). Pursuant to its authority under then-existing CAA section 112(C)(1)(B)(ii) EPA waived compliance for two years for sites that were non-operational at the time of promulgation. *Id.* Thus, the earliest date by which sites must comply with the subpart T standard is December 15, 1991. Even so, EPA recognized at the time of promulgation that many sources subject to subpart T might not be able to achieve compliance by December 15, 1991. Because EPA felt constrained by the CAA as it existed at that time, EPA stated that for those sites the Agency would negotiate expeditious compliance schedules pursuant to its enforcement authority under CAA section 113. See 54 FR 51683.

Subpart T requires that radon-222 emissions not exceed a flux of 20 pCi/m²/s. By so doing, it in effect also mandates that final site closure through emplacement of an earthen cover to meet that emissions level occur as expeditiously as practicable. In its 1989 action, EPA recognized that even though NRC implements general EPA standards (promulgated under UMTRCA) which also regulate these sites and call for compliance with 20 pCi/m²/s flux standard (see 40 CFR part 192), the UMTRCA regulatory program does not answer the critical timing concern addressed by subpart T:

> The existing UMTRCA regulations set no time limits for disposal of the piles. Some piles have remained uncovered for decades emitting radon. Although recent action has been taken to move toward disposal of these piles, some of them may still remain uncovered for years.

54 FR at 51683.

In addition to regulating radon emissions, Subpart T also requires specific testing and record keeping. See 40 CFR 61.223 and 61.224. The UMTRCA regulations as currently implemented by NRC, while ultimately limiting emissions to the same level as Subpart T, are supported by a variety of design-based substantive and procedural requirements that speak to UMTRCA's unique concern that final site closure occur in a manner that will last up to 1,000 years. See generally 10 CFR Part 40, appendix A.

Together, these programs complement, duplicate and complicate each other. They complement each other to the extent subpart T ensures that sites will proceed expeditiously towards closure. They duplicate to the extent they create dual regulatory oversight, including independent procedural requirements, while nevertheless both seeking to ensure compliance with the identical 20 pCi/m²/s flux standard. And they complicate to the extent that reporting is to different federal agencies, and compliance schedules under the two regulatory schemes vary, with subpart T requiring the impossible of some sites—compliance by December 15, 1991.

Concern over the above-described duplication and complication created by the dual regulations several petitions for reconsideration, most notably from NRC and the American Mining Congress (AMC). While these petitions remain pending before EPA, this proposal marks EPA's first step towards addressing the issues they raise.

2. Clean Air Act Amendments of 1990

After promulgation of subpart T (and receipt of reconsideration petitions), in November 1990, the Clean Air Act was substantially amended. Included in this overhaul was an amendment that speaks directly to the duplication issue. Newly enacted section 112(d)(9) of the amendments provides:

> No standard for radionuclide emissions from any category or subcategory of facilities licensed by the Nuclear Regulatory Commission (or an Agreement State) is required to be promulgated under this section if the Administrator determines, by rule, and after consultation with the Nuclear Regulatory Commission, that the regulatory program established by the Nuclear Regulatory Commission pursuant to the Atomic Energy Act for such category or subcategory provides an ample margin of safety to protect the public health.

This provision strives to eliminate duplication of effort between EPA and NRC, so long as public health is adequately protected.

Moreover, Congress expressed sensitivity to the special compliance problems of uranium mill tailings sites through new section 112(i)(3). This provision provides an additional 3-year extension to mining waste operations (i.e., uranium mill tailings) if the 4 years allowed (including a one year extension) for compliance with standards promulgated under the amended Section 112 is insufficient to dry and cover mining waste emissions.

In light of these provisions, and given the express authority of section 112(d)(9), as amended, EPA, NRC and the affected Agreement States, have been meeting to discuss the dual regulatory programs under UMTRCA and the CAA. As part of this effort, EPA has carefully reviewed NRC's program implementing EPA's UMTRCA standards as applied to uranium mill tailings disposal sites.

3. Memorandum of Understanding (MOU) Between EPA, NRC and the Affected Agreement States

The result of this inter-agency consultation and review has been the execution of a Memorandum of Understanding (MOU), a copy of which is printed at the end of this notice. The purpose of this MOU is to ensure that owners and operators of existing uranium mill tailings piles licensed by NRC or an affected Agreement State, or those that will in the future become nonoperational, effect final site closure—emplacement of an earthen cover to permanently limit radon emissions to a flux of no more than 20 $pCi/m^2/s$—as expeditiously as practicable considering technological feasibility. A guiding objective is that this occur as to all current disposal sites by the end of 1997, or within seven years of when the existing operating and standby sites enter disposal status. This objective comports with Congress' concern over timing as reflected in CAA section 112(i)(3), as amended.

In accordance with the MOU, EPA tentatively concludes that with appropriate modifications to the general UMTRCA regulations (at 40 CFR part 192) to ensure specific, enforceable closure deadlines and monitoring requirements, and with the performance by NRC and the affected Agreement States of their other commitments contained in the MOU, the NRC's regulatory program for non-operational uranium mil tailings piles would protect public health with an ample margin of safety. This is because while both programs (subpart T and 40 CFR part 192) impose a 20 $pCi/m^2/s$ flux standard, the timing issue was the principle reason justifying the additional CAA (i.e., Subpart T) regulation. The changes to UMTRCA and other actions contemplated by the MOU would alleviate this concern by committing NRC and the affected Agreement States to a course of action that ensures that all sites finally close (and thereby comply) as expeditiously as practicable.

The MOU sets forth a series of actions and rulemaking by NRC, EPA, and the affected Agreement States that will ensure expeditious compliance, eliminate duplication of regulation, and avoid having any site in violation so long as its owner or operator is making all efforts to expeditiously and finally close its uranium mill tailings disposal site. In skeletal from, the MOU contains the agreement by NRC and the affected Agreement States to immediately solicit from their licensees reclamation plans and final closure schedules, for incorporation into enforceable licenses. NRC and the affected Agreement States have also agreed to utilize their authority to order the necessary license amendments (to effect expeditious closure and compliance with the 20 $pCi/m^2/s$ flux standard) to the extent not agreed to by the licensee, and defend against any challenge to those orders. For its part, EPA agrees to engage this rulemaking to propose a stay of subpart T that, if finalized, will take affect on or about December 15, 1991 (the deadline for compliance under subpart T). Also on or about December 15, 1991, EPA agrees to commence two additional rulemakings; the first to modify its general UMTRCA standards to include generic performance obligations designed to ensure final site closure and compliance with the standard as expeditiously as practicable, and the second to rescind subpart T pursuant to CAA section 112(d)(9), as amended, as unnecessarily duplicative of UMTRACA provided those regulations are in fact amended, and all other aspects of the MOU are proceeding as contemplated.

The MOU, of which this proposed stay is an integral part, marks the first step in a comprehensive scheme to ensure that all uranium mill tailings disposal piles are finally closed and in compliance with the 20 $pCi/m^2/s$ flux standard as expeditiously as practicable, thereby protecting public health with an ample margin of safety. At the same time, the MOU responds to other important concerns. The MOU responds to Congress' dual goal to minimize the burdens created by regulatory duplication, while also assuring that the regulated sites have the time they need to comply, but without jeopardizing public health. The MOU addresses the related concern that this occur without holding a site owner or operator in violation for failing to meet what may be an impossible deadline, while also ensuring that compliance will occur as quickly as technologically feasible. This latter provision is essential in that it responds to the timing concern that was the basis for EPA's 1989 decision to promulgate subpart T in the first place. In total, the MOU represents a commitment by EPA, NRC and the affected Agreement States to a course of conduct designed to finally, efficiently and comprehensively resolve the public health threats presented by the disposal of uranium mill tailings.

B. Proposed Stay of Subpart T for Non-Operational NRC-Licensed Uranium Mill Tailings Disposal Sites

EPA is today proposing to stay subpart T of 40 CFT part 61 as it pertains to owners and operators of NRC-licensed uranium mill tailings disposal sites. The stay, if finalized, would remain in place pending a related rulemaking proposing, pursuant to the authority of CAA section 112(d)(9), as amended, to rescind subpart T as it pertains to NRC-licensees. The stay will expire at the conclusion of this related rulemaking or on June 30, 1994,

whichever first occurs. The rulemaking to rescind subpart T will be proposed at the time the stay is finalized, which is scheduled for on or about December 15, 1991. The authority for this proposal is provided by the general rulemaking provision at CAA section 301(a), as well as by section 112(d)(9), as amended (the rescission provision). This entire action is in the context of, and pursuant to the agreements and commitments contained in the MOU entered into by EPA, NRC and the affected Agreement States. The MOU is designed to comprehensively and finally ensure that all non-operational uranium mill tailings disposal sites achieve final closure, including compliance with the 20 pCi/m^2/s flux standard, as expeditiously as practicable considering technological feasibility.

In section 112(d)(9), Congress authorized EPA to decline to regulate NRC licensees under section 112 in those instances where NRC regulation is sufficient to provide an ample margin of safety. Congress clearly intended to give EPA the discretion to relieve affected facilities from the burdens associated with parallel regulation when this would not adversely affect public health. Since EPA has tentatively concluded that a rulemaking under section 112(d)(9) to rescind subpart T for NRC-licensed sites is warranted, it would frustrate the clear purpose of section 112(d)(9) for EPA to permit subpart T to take effect for this subcategory during the pendency of the rulemaking concerning rescission. Accordingly, EPA is proposing to stay the effectiveness of subpart T for NRC-licensed sites while the rulemaking concerning rescission of subpart T for this category is pending, or until June 30, 1994, whichever occurs first. EPA will take final action on this proposed stay at the same time as it issues a proposed rule to rescind subpart T for NRC-licensed sites, and a proposed rule, or an advanced notice of intent to propose a rule, to amend the UMTRCA regulations at 40 CFR part 192. EPA intends to take these actions on or about December 15, 1991.

List of Subjects in 40 CFR Part 61

Air pollution control, Hazardous materials, Asbestos, Beryllium, Mercury, Vinyl Chloride, Benzene, Arsenic, and Radionuclides.

Dated: October 22, 1991.

William K. Reilly,

Administrator.

Memorandum of Understanding Between EPA, NRC and The State of Colorado, Texas, and Washington Concerning Clean Air Act Standards for Radon Releases From Uranium Mill Tailings, Subparts T and W, 40 CFR Part 61

In accordance with sections 112 (d)(9) and 122 (c)(2) of the Clean Air Act, as amended in 1990, and in order to minimize regulatory duplication and conserve resources in the control of radionuclide emissions to air from uranium mill tailings sites licensed by the Nuclear Regulatory Commission (NRC) or its Agreement States under the Atomic Energy Act of 1954, as amended, NRC, the Environmental Protection Agency (EPA), and the States of Colorado, Texas, and Washington (the affected Agreement States) agree as follows:

General Goal of Agreement

EPA, NRC and affected Agreement States are entering into this MOU to ensure that owners and operators of existing uranium mill tailings disposal sites licensed by the NRC, or the affected Agreement States, who have ceased operations and those owners and operators that will in the future cease operation, effect emplacement of a final earthern cover to limit radon emissions to a flux of no more than 20 pCi/m^2/s, as expeditiously as practicable considering technological feasibility. A guiding objective is that this occur to all current disposal sites (see attachment A) by the end of 1997, and within seven years of when the existing operating and standby sites cease operation. The final closure requirement shall be enforceable by NRC or the affected Agreement States.

NRC and Affected Agreement State Lead Actions

1. NRC or the affected Agreement States will complete review and approval of detailed reclamation (i.e., final closure) plans, including schedules for emplacement of earthern covers on non-operational tailing impoundments such that radon emissions will not exceed a flux of 20 pCmi/m^2/s, as soon as practicable but in any event not later than September of 1993. NRC or the affected Agreement States will immediately solicit voluntary requests by uranium mill tailings disposal site licensees to amend their licenses to set forth, or incorporate by reference, the schedule for reclamation. Once approved by NRC or the Agreement States, these reclamation schedules will be enforceable. If any licensee fails to voluntarily have a firm reclamation schedule (consistent with this MOU) incorporated into its license, NRC or the Agreement States will impose the appropriate license amendments by order (in accordance with applicable regulatory procedures).

NRC or the affected Agreement States will ensure that the schedules and conditions for effecting final closure are flexible enough to contemplate technological feasibility and that cover emplacement on the tailings impoundments occurs as expeditiously as practicable considering both short-term reductions in radon releases and long-term stability of the uranium tailings.

2. NRC agrees to provide for public notice and comment by publishing in the **Federal Register** receipt of requests, intent to issue amendments, or intent to issue orders which (1) incorporate reclamation plans or other schedules for effecting final closure into licenses, and (2) amend reclamation schedules as necessary for reasons of technological feasibility (including inclement weather, litigation which compels delays to emplacement, or other factors beyond control of the licensee) after the reclamation plans have been incorporated into the licenses. The affected Agreement States agree to provide comparable public notice and comment.

3. NRC will conduct enforcement actions in accordance with 10 CFR part 2, appendix C, to compel licensee adherence to reclamation schedules, except when the licensee both demonstrates that compliance was not technologically feasible and has made written application to NRC for a license amendment to reflect that concern. The affected Agreement States shall act pursuant to their authority to similarly enforce. NRC and the affected Agreement States will consider and act within a reasonable time period upon requests from EPA or other interested parties to institute a proceeding to modify, suspend, or revoke a license or other enforcement action as may be proper. NRC will consider such requests in accordance with the procedures in 10 CFR 2.206; the affected Agreement States will consider such requests in accordance with State law and existing State procedures.

EPA Lead Actions

4. In or about October 1991, EPA will develop and publish in the **Federal Register** a Notice of Proposed Rulemaking to stay existing 40 CFR part

61, subpart T pending implementation of this agreement, including the rulemaking initiatives described in paragraphs 5 and 6, below, and the license amendments described in paragraphs 1 and 2, above. Final action will be taken on or about December 15, 1991.

5. On or about December 15, 1991, EPA will develop and publish in the **Federal Register** a Notice of Proposed Rulemaking or an Advance Notice of Proposed Rulemaking, pursuant to its authority under atomic energy action section 275, to make specific amendments to 40 CFR part 192 that would require emplacement of a final earthern cover on non-operations tailing impoundments such that radon emissions will not exceed a flux of 20 $pCi/m^2/s$, as expeditiously as practicable, but with a goal that such occur no later than December 31, 1997 or seven years after the date on which the impoundment ceased operations, whichever is later. This proposal will include generic performance obligations towards closure. NRC and the affected Agreement States will assist EPA in developing the technical basis to support this rulemaking. Final action will be taken as soon as practicable.

6. On or about December 15, 1991, EPA will develop and publish in the **Federal Register** a Notice of Proposed Rulemaking, pursuant to its authority under Clean Air Action section 112(d)(9), to rescind its existing uranium mill tailings disposal regulations at 40 CFR part 61, subpart T. This proposal, which will occur only if the purposes and provisions of this MOU are proceeding expeditiously, requires that the Administrator find that the regulatory program implemented by NRC and the affected Agreement States will protect public health with an ample margin of safety. It is expected, subject to public notice and comment, that the basis for this finding will ultimately be provided through compliance by NRC, the affected Agreement States, and EPA with all aspects of this agreement, including finalized, enforceable reclamation plans and expeditious closure schedules for all affected facilities. Final action will be taken as soon as practicable after completion of the rulemaking described in paragraph 5 and the licensing described in paragraphs 1 and 2.

7. During or after performance of the actions described in paragraphs 1, 4, 5 and 6, EPA, NRC and the affected Agreement States will cooperate in addressing pursuant to CAA section 112(d)(9) duplication of regulation presented by 40 CFR part 61, subpart W, which relates to radionuclide emissions from uranium mill tailings piles that are operational or in standby status.

Effective Date, Revision, and Termination

This memorandum shall be effective immediately and shall continue in effect until revised by mutual agreement, unless terminated by any party after 120 days notice in writing.

Nuclear Regulatory Commission,

October _____, 1991.

Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards.

Environmental Protection Agency,

October _____, 1991.

William G. Rosenberg,

Assistant Administrator for Air and Radiation.

State of Colorado,

October _____, 1991.

Joel Kohn, Interim Executive,

Director, Department of Health.

State of Texas,

October _____, 1991.

Robert A. MacLean, MD,

Acting Commissioner of Health.

State of Washington,

October _____, 1991.

Kristine Gebbie,

Secretary, Department of Health.

Attachment A—Non-Operational Tailings Impoundments

Facility	Target date [1]
ANC, Gas Hills, WY	1995
-1 impoundment operational for in-situ waste disposal	
-1 non-operational impoundment	
ARCO Coal, Bluewater, NM	1995
Atlas, Moab, UT	1996
Conoco, Conquista, TX	1996
Ford-Dawn Mining, Ford, WA	2010
-1 operational impoundments	
-3 non-operational impoundment	
Hecla Mining, Durita, CO	1997
Homestake, Milan, NM:	
Large impoundment	1996
Small impoundment	2001
Pathfinder-Lucky Mc, Gas Hills, WY	1998
Petrotomics, Shirley Basin, WY	1995
Quivira, Ambrosia Lake, NM:	1997
-2 operational impoundments	
-1 non-operational impoundment	
Rio Algom, Lisbon, WY	1996
Sohio-L-Bar, Cebolleta, NM	1992
UMETCO, Gas Hills, WY	1995
-1 operational impoundment	
-1 non-operational impoundment	
UMETOC, Maybell, CO	1997
UMETOC, Uravan, CO	[2] 2002
UNC, Church Rock, NM	1997
Union Pacific, Bear Creek, WY	1996
WNI, Sherwood, WA	1996
WNI, Split Rock, WY	1995

[1] For completing emplacement of final earthen cover to limit radon emissions to a flux of no more than 20 $pCi/m^2/s$.

[2] CERCLA Consent Decree requires final cover over tailings by 1997 but allows small portion (roughly 1% of the impoundment) to remain open to receive residues from groundwater restoration activities.

[FR Doc. 91-25872 Filed 10-24-91; 8:45 am]

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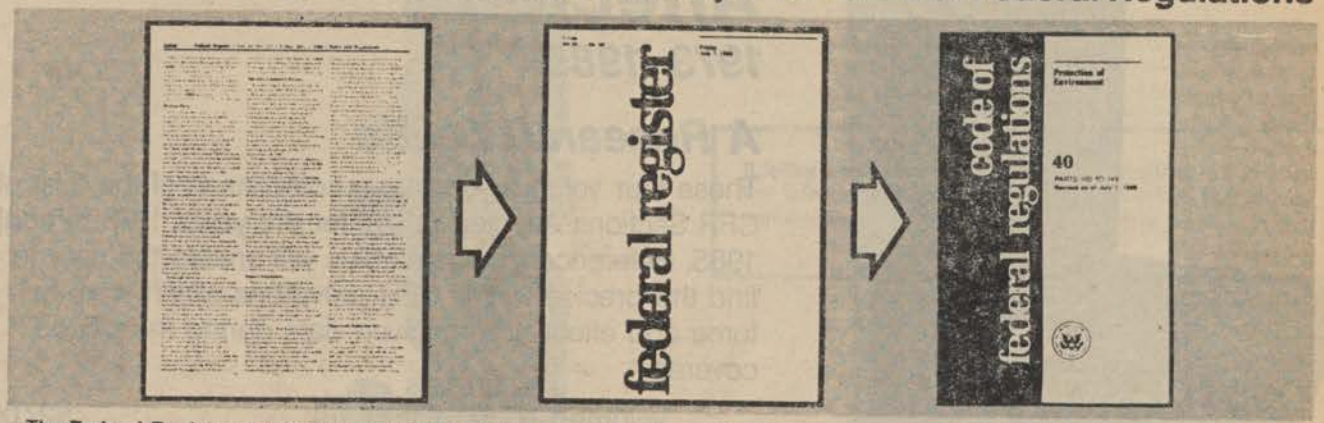

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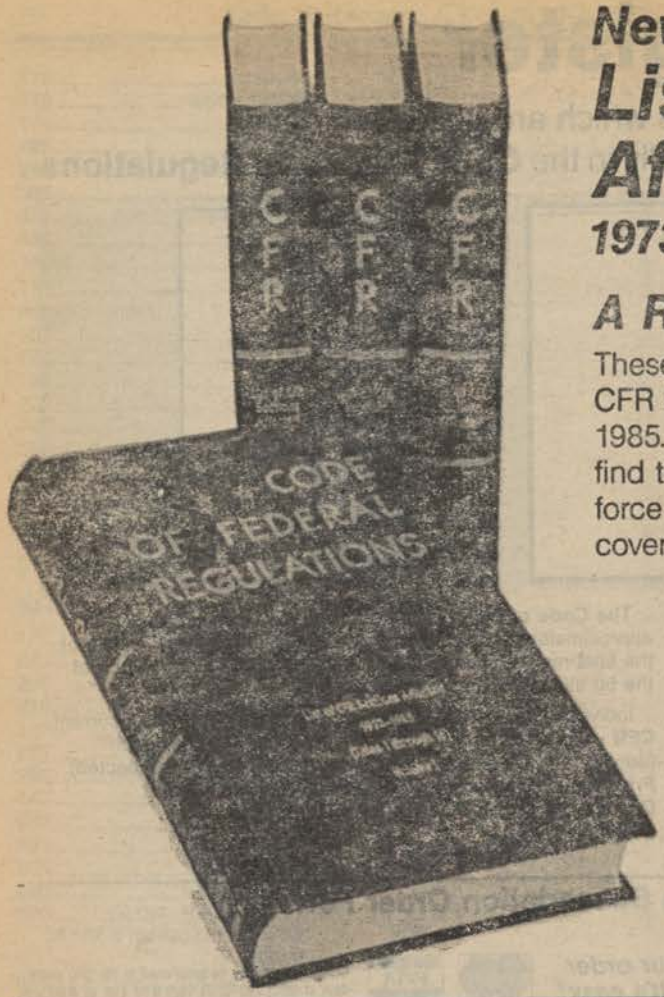

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