AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

7-30-92
Vol. 57 No. 147

federal register

Thursday
July 30, 1992

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

7-30-92
Vol. 57 No. 147
Pages 33623-33856

federal register

Thursday
July 30, 1992

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

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The President

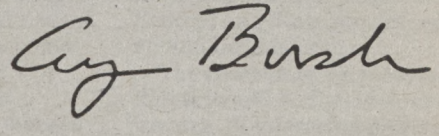
Presidential Determination No. 92–36 of July 21, 1992

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended—Burma

Memorandum for the Secretary of State

Pursuant to section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(c)(1), I hereby determine that it is important to the national interest that $3 million be made available from the U.S. Emergency Refugee and Migration Assistance Fund (the ERMA Fund) to meet the unexpected and urgent refugee needs of Burmese refugees and displaced persons. These funds may be contributed on a multilateral or bilateral basis as appropriate to international organizations, private voluntary organizations, and other governmental and nongovernmental organizations engaged in this relief effort.

You are authorized and directed to inform the appropriate committees of the Congress of this determination and the obligation of funds under this authority, and to publish this memorandum in the **Federal Register.**



THE WHITE HOUSE,
Washington, July 21, 1992.

[FR Doc. 92–18195
Filed 7–28–92; 2:40 pm]
Billing code 3195–01–M

Rules and Regulations

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

Animal and Plant Health Inspection Service

9 CFR Parts 54 and 79

[Docket No. 91-019-2]

RIN 0579-AA24

Scrapie Flock Certification and Animal Identification Procedures

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are establishing a voluntary scrapie sheep and goat flock certification program to reduce the incidence and control the spread of scrapie, a sheep and goat disease. Among other features, this program establishes an official identification system for certain sheep and goats in flocks participating in the flock certification program. This rule was developed by the Scrapie Negotiated Rulemaking Advisory Committee, and reflects early steps toward the long-term goal or eradication of scrapie in the United States. This long-term goal should be facilitated by further scientific research on the nature and means of spread of scrapie, and requires development of additional methods for diagnosis and control of scrapie, such as a live-animal diagnostic test for the disease. We are also requiring a permanent, indelible mark on certain sheep and goats as a condition for interstate movement. The animals which are required to be identified are: scrapie-positive sheep and goats, and sheep and goats from infected flocks and source flocks except: (1) sheep and goats, other than high-risk animals, from infected and source flocks that meet certain specified requirements, and (2) high-risk animals less than one year of age moving in slaughter channels. (Owners of flocks participating in the voluntary scrapie sheep and goat flock certification program will meet these requirements.) This rule will affect persons who move certain sheep and goats interstate.

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Sheep, Goat, Equine, and Poultry Diseases Staff, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 769, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6954.

SUPPLEMENTARY INFORMATION:

Background on Scrapie

Scrapie is a progressive degenerative disease of the central nervous system of sheep and goats. The disease develops slowly, with an incubation period lasting from months to years. The signs which then become manifest may include nervousness, incoordination, slight muscular tremors, visible weight loss, lack of luster in the animal's wool, and itching. Infected animals become debilitated and die.

There is no diagnostic test for confirming the presence of the disease in a live animal, and generally the presence of the disease cannot be detected until the animal becomes clinically ill. Due to the lack of a live-animal diagnostic test, efforts to control and eliminate the disease depend upon the cooperation of flock owners and veterinarians in reporting clinically ill animals. There is no known treatment for the disease. Control efforts have therefore focused upon the destruction of certain animals in order to reduce the incidence and prevent the spread of scrapie.

The impact of scrapie could increase if the spread of scrapie is not controlled or if its incidence increases. Additionally, a scrapie-like disease called bovine spongiform encephalopathy (BSE) has recently caused serious outbreaks of cattle disease in the United Kingdom, where scrapie has been prevalent for more than 200 years. The spread of BSE in countries with scrapie-infected animals has been epidemiologically associated with the use of rendered, scrapie-infected sheep carcasses as a source of supplemental protein in cattle feed. BSE is not known to exist in the United States; however, the possibility that it could become established is a strong additional argument for effective control of scrapie in the United States.

On November 2, 1988, we published in the **Federal Register** (53 FR 44200-44202, Docket No. 88-131) an advance notice of proposed rulemaking that solicited comments on whether to remove the regulations for destroying animals because of scrapie and discontinue the Scrapie Eradication Program while we considered alternative programs for controlling the disease. The commenters represented numerous diverse interests, including State and Federal government officials, industry associations, sheep producers, breeders, farmers, veterinarians, and other individuals. A number of the commenters stressed that a successful scrapie control or eradication program would require the support of the divergent interests affected by the disease. Many commenters felt that a continuing dialogue among the different factions of the sheep and goat industries and Federal and State regulatory officials should be encouraged.

The comments we received suggested that it would be highly desirable to involve all interested parties in developing an effective, uniform program that could be implemented through cooperative Federal-State efforts. On July 13, 1989, we published in the **Federal Register** (54 FR 29576-29577, Docket No. 89-079), a second advance notice in which we responded to the comments we received addressing Docket No. 88-131. In the July 13th notice, we informed the public of our determination to continue the current Scrapie Eradication Program until development of a revised and improved scrapie program had been explored. In the July 13th notice, we stated that we were considering the regulatory option of conducting a negotiated rulemaking in order to develop such a program. We concluded that consensus on a scrapie program is attainable, and that we should proceed with negotiated rulemaking.

Scrapie Negotiated Rulemaking Advisory Committee

On February 26, 1990, the Animal and Plant Health Inspection Service (APHIS) published a notice in the **Federal Register** (55 FR 6662-6663, Docket No. 89-139) announcing our intent to

establish an advisory committee to develop a proposed rule containing alternatives to the current regulatory program for the control of scrapie. This committee, called the Scrapie Negotiated Rulemaking Advisory Committee (the Committee), was subsequently established in accordance with the Federal Advisory Committee Act. Invitations to join the Committee were sent to representatives of the following parties with a definable stake in the outcome of the proposed rule.

All of these organizations accepted membership on the Committee, except for the American Rambouillet Breeders Association, which was unable to participate. APHIS was also a Committee member.

American Association of Small Ruminant Practitioners
American Farm Bureau Federation
American Hampshire Sheep Association
American Rambouillet Breeders Association
American Polypay Sheep Association
American Sheep Industry Association, Inc.
American Suffolk Sheep Society
Continental Dorset Club
National Assembly of Chief Livestock Health Officials
National Suffolk Sheep Association
United State Animal Health Association

The Committee drafted operating procedures as its first meeting. These procedures allowed additional representatives to join the Committee, if the addition of the new members was approved by a consensus of the Committee. At its second meeting, the Committee agreed to allow the American Meat Institute and the National Renderers Association to join the Committee. These two organizations accepted membership and became Committee members as of the third Committee meeting.

The Committee met eight times between May 1990 and January 1991. During those meetings, the Committee reached consensus on the content and requirements of a program to reduce the incidence of scrapie and control its spread. The Committee recorded its consensus views in the form of three documents: two proposed rules; and a Uniform Methods and Rules (UM&R) document, a handbook for participants in flock certification that describes flock management procedures, including animal identification, recordkeeping, diagnostic procedures for scrapie, and other technical matters. The UM&R also describes four classes of certification status a participating flock can achieve: Certifiable Classes C, B, A, and Certified. Class C flocks are the lowest level, must meet lesser requirements than higher levels, and are in a higher risk category for scrapie than the other levels. Certified flocks are the highest level, must meet the strictest requirements, and are in the lowest risk category for scrapie.

On July 16, 1991, we published a proposed rule in the **Federal Register** (56 FR 32342–32352, Docket No. 91–019) reflecting the consensus of the Committee members, proposing the Voluntary Scrapie Flock Certification Program, and telling interested persons how to obtain a copy of the UM&R. This proposed rule invited comments to be submitted on or before September 16, 1991.

Proposed Rule Comments and Responses

We received comments from 48 commenters prior to the close of the comment period. These commenters included associations of sheep producers, other animal industry associations, research scientists, veterinarians, State government officials, slaughter and rendering companies, and other members of the public. Of these 48 commenters, 28 strongly supported adopting the proposed rule, and stated their belief that the proposed rule, if administered as proposed and properly funded, will lead to control and eventual eradication of scrapie. Thirteen commenters strongly opposed adopting the proposed rule, and the remainder discussed proposed rule issues without specifically recommending that the rule be either adopted or withdrawn.

The issues raised by commenters, and changes we made in response to some comments, are discussed below.

Comment: Of the 28 commenters writing to support the proposed rule, 24 also supported implementation and funding by APHIS of a limited indemnity program as designed by the Scrapie Negotiated Rulemaking Advisory Committee (the Committee).

Response: In addition to the scrapie certification program contained in the proposed rule, the Committee also reached consensus of a limited indemnity program for sheep infected with scrapie. Since the final Committee meeting in January 1991, we drafted a proposed rulemaking document which, if adopted, would provide Federal indemnity to help eradicate scrapie. This proposed rule (APHIS Docket No. 91–150–1) is published elsewhere in this issue of the **Federal Register**. The APHIS scrapie certification and indemnity programs will be funded at the levels authorized by Congressional action in USDA appropriations bills.

Comment: Seventeen commenters objected to costs they perceived in the program, including both direct costs to participating flock owners and generalized economic harm to sheep industries. Several of these commenters noted that large commercial producers, such as western range flocks, would have difficulty meeting both the costs and the management requirements of the program.

Response: For sheep producers, participation in the Voluntary Scrapie Flock Certification Program means that their flocks will be subject to management that can eventually result in certification as a scrapie-free flock. We believe the benefits to participating sheep producers far outweigh the costs because certified sheep should have an increased economic value for both domestic and export sales. The major costs to participating sheep producers will be from identification devices such as the electronic implant, a cost which should decrease as the devices become widely available.

In terms of generalized impact on the sheep industry, as opposed to economic impacts on participating flocks, we believe that the sheep industry in general will benefit from the development of new markets for certified scrapie-free United States sheep. It is likely that over the first few years of program operations the demand for certified sheep will exceed the supply, and that higher prices offered for certified sheep will motivate additional sheep producers to join the certification program. This financial motivation to join the certification program is one of the reasons we expect the program to succeed. However, we expect the pool of flocks participating in the certification program to be small (though growing) over the next several years, and expect that during this time there will be a healthy market for sheep from nonparticipating flocks. Sheep from nonparticipating flocks will presumably sell for a smaller average price than sheep from participating flocks, but they will also be produced at a smaller average cost, since their production cost will not include costs associated with the certification program.

We recognize that large commercial producers will have to expend more resources than small producers to participate in the certification program, and that their current flock management practices are not as readily adaptable to the certification program as are the practices of the typical small flock. In general, small sheep producers already

devote significant attention to individual sheep in their flocks, and the additional identification and record-keeping requirements for certification are not a major new investment for them. In contrast, if a large commercial producer decides to participate in the certification program, the producer would usually have to greatly increase the amount of attention, identification, and recordkeeping associated with each sheep.

One aspect of the final rule which should ameliorate this impact on large commercial producers is the exception of certain animals under one year of age from the identification requirement. Many large commercial producers sell the majority of their lambs to slaughter before they reach the age of one year, and commercial flocks would not bear the burden or cost of identifying these animals. In another aspect of the final rule, large commercial flocks may choose not to advance beyond the Certifiable Class C status of the program. As described in the Uniform Methods and Rules, Certifiable Class C status requires significantly less recordkeeping and less frequent inspections than higher levels of status.

Comment: Eleven commenters wrote that increased funding of research would be preferable to implementing the proposal. They suggested that better information in any of the following areas might result in more effective approaches to scrapie control: live-animal tests; genetic susceptibility to scrapie; epidemiology of scrapie, and nature of the scrapie agent.

Response: APHIS favors increased research on all these scrapie-related issues, but we are not authorized to fund or perform basic scientific research. The Agricultural Research Service, as well as other Federal and State agencies and universities, conduct and fund research on various aspects of scrapie and the scrapie agent. We are carefully monitoring the results of this research, and if research results suggest ways to improve the scrapie certification program, we will propose changes to it, In the meantime, we believe that the scrapie certification program represents an effective first step toward scrapie control, using the scientific knowledge currently available.

Comment: Eight commenters recommended that, in view of research tracing the spread of scrapie and bovine spongiform encephalopathy (BSE) to the use of some types of animal feed containing rendered ruminant protein, the use of ruminant feed containing rendered ruminant protein should be banned in the United States, as it has been in the United Kingdom and other countries.

Response: At this time, we do not believe a ban on domestically produced animal feed containing ruminant protein is necessary to prevent the spread of the scrapie or BSE agent through such feed. However, APHIS and other Federal agencies continue to monitor risks associated with animal feed, and may propose rulemaking on the subject if it seems necessary to control these risks.

Epidemiologic factors believed conducive to the development of BSE in the United Kingdom are significantly different from those in the United States. These factors include the relative numbers of sheep and dairy cattle, the amount of scrapie infection, the amount of sheep-derived meat and bone meal fed to cattle in relation to other protein supplements, and the average age of dairy cattle in the two countries. We believe that increased industry awareness of the probable link between BSE and scrapie further reduces the risk of BSE occurring in the United States. APHIS has mounted an educational effort to help inform U.S. cattle producers about BSE and its probable origin and means of spread. We have held briefings on the issue and widely distributed press release and fact sheets to animal industries. In addition, voluntary actions initiated by the National Renderers Association have reduced the potential for scrapie-infected material being processed in rendering plants.

Comment: Six commenters stated that the proposed program would not be truly voluntary in nature, because buyers would buy sheep only from participating flocks, and because State governments may use the program as a model and make part or all of it mandatory through State law.

Response: We anticipate that it will be many years before there are enough participating flocks to meet the total demand for sheep purchases in the United States. During that period, most buyers will have to purchase from nonparticipating flocks if they want to buy sheep. It is true that we expect the average price of sheep from participating flocks to be higher than the price of sheep from nonparticipating flocks, and that this will encourage flock owners to participate. This results from the basic fact that in a free market, sheep certified scrapie-free will be more highly valued. We are using this fact to allow sheep producers who wish to add to the value of their sheep to do so by joining the program, but we do not require anyone to join.

State governments are already free to enact State laws and regulations concerning sheep production. Adoption of this final rule does not increase or decrease their authority to do so.

Comment: Four commenters addressed the need for a better test to determine that animals are scrapie-positive. They pointed out that it is difficult and expensive to submit brain samples for histopathology, and that many submitted samples are unusable. One of these commenters suggested that the definition of a scrapie-positive animal be amended to allow use of newly-available tests for protease-resistant protein (PrPres) to show whether an animal is scrapie-positive.

Response: We agree that scrapie control would be enhanced by a better test for scrapie, but examination of brain samples is currently the only reliable test. If easier test methods are proven reliable, we will propose to change the regulations to take advantage of them. We agree that use of protease-resistant protein tests (which still require submission of brain samples) can aid the diagnosis of scrapie-positive animals. We are changing the definition of scrapie-positive animal in § 54.1 and § 79.1 to allow testing "through histological examination of central nervous system samples from the animal for microscopic lesions in the form of nuronal vacuoles or spongy degeneration, or by the use of protease-resistant protein analysis or other confirmatory techniques used in conjunction with histological examination."

Comment: Four commenters wrote that, seen in context, scrapie is not one of the more important flock management problems facing U.S. sheep producers, and that the costs of the proposed program outweigh its possible benefits.

Response: The true incidence of scrapie in the United States is not known with certainty, but the number of reported cases has risen in recent years. While many flock owners do not consider scrapie a major flock management problem, it would become one if this trend continues. Therefore, we believe now is the appropriate time to institute an effective scrapie control program. Certainly the costs of a control program would be greater if we did not begin it until the problem became more widespread. As discussed elsewhere in this document, we believe the costs of the program will be offset by higher prices and expanded markets for sheep from certified flocks.

Comment: Four commenters questioned whether use of electronic implants for identification in the

program is realistic and cost-effective. They asked about supplies and costs of the devices, and suggested that use of lip tattoos, nose prints, or other methods may be more suitable. Two commenters suggested that APHIS should provide details on acceptable methods for applying the indelible, 1" × 1" S-mark that is required for animals from infected or source flocks moved interstate.

Response: There are two types of identification in the rule: an electronic implant ID for sheep in participating flocks (see § 79.2(a)(3)), and an indelible 1" × 1" mark in the form of the letter "S" for certain animals from infected or source flocks that are moved interstate (see § 79.2(a)). The electronic implant was chosen for participating flocks because the certification program depends on a uniform identification system that is not subject to loss or tampering, that can be easily read and recorded with a low error rate under field conditions. All available identification technologies were evaluated using these criteria, including tattoos and nose prints, and the electronic implant was determined to be the best choice for the certification program. While electronic implant ID is a relatively new technology for animal identification, it has been thoroughly tested, and we believe that it will become more commonly used and cost-effective as the scrapie certification program becomes established.

APHIS did not wish to be unnecessarily specific regarding how to apply the indelible 1" × 1" mark in the form of the letter "S" required by § 79.2(a) for some sheep and goats, as we wished to allow sheep and goat producers to select the method that works best for their circumstances. If we receive a substantial number of requests for this type of guidance, we will consider publishing voluntary guidelines on how to do the marking, or adding mandatory marking procedures to the regulations.

Comment: Three commenters stated that the rule, and the control methods it uses, were based on a possibly unwarranted assumption that scrapie is an infectious disease transmitted by an agent. These commenters suggested that it is more correct to address scrapie through a genetics model that considers genetic susceptibility to the disease and a genetically-controlled incubation period that may vary from breed to breed.

Response: There is ample evidence that scrapie is an infectious disease. The incubation period has been shown to be genetically controlled in the Cheviot breed of sheep in England so that some animals develop clinical scrapie approximately 2 to 4 years after exposure (short incubation period), while others may not develop clinical scrapie within their lifetime (long incubation period). The role genetics plays in scrapie incubation length has still not been well defined for most breeds of sheep. However, a control program based on selection for the long incubation period would not address the problem of infected, but clinically normal sheep potentially shedding the scrapie agent.

Comment: Three commenters stated that the records participating flock owners are required to keep are too extensive, time-consuming, and costly to maintain.

Response: We believe the record requirements represent the minimum amount of recordkeeping necessary to effectively track the movement of sheep infected with and exposed to scrapie, a basic requirement for the success of a scrapie control program. For many flocks the records required by the rule represent little more than the records the flock owners already keep for breeding and sale purposes, although some records may have to be kept in a different format to comply with the rule. We believe that where the recordkeeping places an additional burden on flock owners, it is a necessary burden for program success.

Comment: One commenter suggested that research does not indicate that scrapie is transmitted by contacts with rams, and that the restrictions on commingling flocks with regard to rams are not needed. The commenter believes that this restriction will also be costly for producers who form partnerships to share one genetically superior ram as a sire.

Response: The methods by which scrapie is spread are still not fully understood, and at this point we do not have adequate information to rule out the possibility that scrapie may be spread by rams under some circumstances, since the scrapie agent has been found in rams. The sense of the Committee was that the possibility of scrapie transmission by rams should be addressed in the regulations. While transmission of scrapie by rams does not appear to be a major means of scrapie spread, the Committee decided that this potential means of scrapie spread should be addressed.

Comment: Two commenters stated that the proposed program is too vulnerable to fraud by participating flocks, and that this opportunity would render the program ineffective.

Response: We believe that the use of permanent identification through electronic implants will greatly reduce the possibility of fraud. In addition, APHIS maintains controls to guard against fraud in all of its programs, and believes these controls to be largely effective.

Comment: One commenter suggested that the UM&R statement that applications for enrollment in the program would be reviewed within 60 days should be changed to 30 days because 60 days is too long. The same commenter believes that when a flock owner disputes a flock certification status decision, it should be appealed to the State Scrapie Certification Board before it is appealed to the Administrator.

Response: The Committee set the timeframe for review of applications at 60 days after carefully considering the steps involved in application review and the probable levels of resources available to perform these tasks. While many applications will probably complete the review process in less than 60 days, we do not believe it would be realistic to reduce this timeframe to 30 days.

Regarding appeal of a flock's certification status, a dispute on certification status may be appealed to the State Scrapie Certification Board before it is appealed to the Administrator. The commenter seems to have misread the "Uniform Methods and Rules-Voluntary Scrapie Flock Certification," which states on page 7 that a flock owner whose certification status is reduced shall be given "opportunity to present his/her views to the State Scrapie Certification Board," and may also appeal the decision of the Board to the Administrator. To eliminate the possibility of confusion regarding the right to appeal a decision regarding flock certification status, we are changing the UM&R to specifically provide that a flock owner may appeal the decision to reduce the certification status to the State Scrapie Certification Board.

Comment: One commenter stated that the goat industry should have been represented on the Scrapie Negotiated Rulemaking Advisory Committee. This commenter noted that although scrapie is not a significant problem in goats in the United States, the final rule should discuss impacts on the goat industry.

Response: The final rule establishes a certification program that can be used for both sheep and goats. We agree that scrapie does not appear to be a significant problem in goats in the United States. Only three cases of scrapie have ever been diagnosed in goats in this country, and all three were

animals that had been raised or commingled with sheep. We do not foresee that adoption of the final rule will have any significant economic impacts on the goat industry. However, we do invite goat owners to participate in the Voluntary Scrapie Flock Certification Program, and we intend to distribute materials, fact sheets, and press releases regarding the program to goat associations as well as sheep associations in the future.

Comment: One commenter stated that use of the negotiated rulemaking process for scrapie was not in the public interest, because it allowed special interest groups veto power over any proposed control programs.

Response: The negotiated rulemaking process for scrapie relied on consensus by a group of interested parties, all of whom had an interest in developing an effective control program. No one party had more of a "veto power" than any other party. We believe that the process was in the public interest, because it allowed a broad cross section of the sheep industry, associated industries, veterinary practitioners, researchers, and regulatory agencies to reach consensus on a proposal.

The proposed definition of "Flock plan" mentions exposed flocks in connection with infected flocks and source flocks. We are changing the term "Exposed flock" to "Trace flock" and are defining it to clearly identify flocks eligible to enter into a flock plan, as follows:

Trace flock. A flock in which a Veterinary Services representative has determined that one animal, which was diagnosed as a scrapie-positive animal at an age of 54 months or less, was born.

A trace flock is designated if there is some evidence the flock may contain animals infected with scrapie (i.e., a single animal born in the flock tests positive for scrapie within 54 months of birth), but not the same degree of evidence that would cause the flock to be designated a source flock (which occurs if two animals born in the flock test positive for scrapie within 60 months of each other, while both are under 54 months of age). The definition of trace flock, like the definition of source flock, is based on scientific studies on the average time it takes for a sheep that becomes infected with scrapie to show signs of scrapie, or test positive for scrapie. These studies conclude that a sheep younger than 54 months that has scrapie probably became infected at or near birth.

We are adopting the proposal as a final rule, with the changes discussed above. In addition, this final rule makes nonsubstantive editorial changes to the proposal, to clarify the regulations.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291 and we have determined that it is not a "major rule." Based on information compiled by the Department, it has been determined that this rule, if adopted, will have an effect on the economy of less than 100 million dollars; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

There are approximately 11 million sheep in the United States, including 785,000 registered sheep and 10,215,000 nonregistered sheep. These sheep are divided among approximately 112,000 flocks or producers, including approximately 26,000 registered flocks and 86,000 nonregistered flocks.

The Voluntary Scrapie Flock Certification Program described in this document is not a rulemaking action and is not subject to the analytical requirements of Executive Order 12291 and the Regulatory Flexibility Act. Therefore, potential economic impacts of the Voluntary Scrapie Flock Certification Program are not discussed in this section.

This rule will affect a small number of sheep and goat producers who own scrapie-infected or source flocks and desire to move animals from them interstate, by imposing a small cost for identification of each animal moved. We estimate that it will cost approximately 50 cents to identify a sheep or goat from a scrapie-infected or source flock to meet the requirements of this rule. We have collected the following information on the number of scrapie-infected and source flocks that are known to us as of January 11, 1991:

Scrapie-infected flocks: 108
Scrapie source flocks: 13
Sheep in scrapie-infected flocks: 7,430
Goats in scrapie-infected flocks: 9
Sheep in scrapie source flocks: 3,418
Total infected and source flocks: 121
Total animals in these flocks: 10,857

The Committee considered various alternatives to this rule. One alternative was to establish a continuing program to destroy all flocks containing infected and exposed animals, using a broad definition of "exposed." Depopulating entire flocks in this way would cost the Federal government millions of dollars in indemnity payments, and would result in vast losses to the industry. Both APHIS and the industry view this approach as undesirable because most of the animals that would be destroyed would likely present minimal risk of spreading the disease and, by sheer volume, would account for most of the indemnity paid. This could also lead to abuse of the indemnity provisions by flock owners who fail to report scrapie when the market price of sheep and goats is high because they would stand to lose many animals worth far more than the indemnity would compensate. If the market price is depressed, however, this approach could result in increased reporting of infected flocks in order to receive the indemnity. Also, when sheep market prices are low, flock owners eligible for indemnity might enlarge their flocks by buying low-cost animals in order to maximize their indemnity payments.

Another alternative was to abolish the existing scrapie program and do nothing until a live-animal diagnostic test for scrapie is developed. After such a test is developed, APHIS could design a program to use the test to identify and destroy infected animals. This alternative was not selected because the date such a test could be ready is uncertain, and the scrapie problem needs to be addressed now.

The selected alternative will impose a small identification cost on persons who move the following types of animals interstate: Scrapie-positive animals, animals from an infected flock, and animals from a source flock (except high-risk animals less than one year of age moving in slaughter channels from flocks that meet the requirements of § 79.2, and animals other than high-risk from scrapie infected flocks and scrapie source flocks that meet the requirements of § 79.2). We are not able to determine the exact number of these animals. This rule will potentially be applicable to 121 flocks, or approximately 0.1 percent of the approximately 112,000 flocks in the United States. Animals in these flocks number 10,857, or approximately 0.1 percent of all sheep and goats in the United States. If all these flock owners decided to move all their animals interstate, the identification costs would average approximately $45 per flock ($5,426.50 divided among 121 flocks). However, it is extremely unlikely that these owners would choose to move all these animals interstate, and, therefore, the identification costs for these animals will probably be less than this estimate. In addition, some of these owners will

probably choose to comply with the requirements in § 79.2, which allow interstate movement of certain animals from infected flocks and source flocks without requiring the identification discussed above. We currently do not have reliable estimates of the cost of complying with the requirements in § 79.2, and invite comments supplying information in this area.

The identification costs to the owners of scrapie-infected and source flocks should be at least partially balanced by the economic gains the owners accrue through having access to interstate markets which may pay higher prices for their animals. The overall cost of this identification to the sheep and goat industry is also balanced by the benefits that accrue to the industry by enabling APHIS and State governments to use the identification to better tract the movements of animals from scrapie-infected and source flocks. Potential control of scrapie spread is also improved through this tracking.

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

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Upon adoption of this rule:

(1) All State and local laws and regulations that are in conflict with this rule will be preempted;

(2) No retroactive effect will be given to this rule; and

(3) It will not require administrative proceedings before parties may file suit in court challenging its provisions.

Executive Order 12372

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

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579-0101.

List of Subjects

9 CFR Part 54

Animal diseases, Goats, Indemnity payments, Scrapie, Sheep.

9 CFR Part 79

Animal diseases, Goats, Quarantine, Scrapie, Sheep, Transportation.

Accordingly, 9 CFR parts 54 and 79 are amended as follows:

PART 54—CONTROL OF SCRAPIE

1. The authority citation for part 54 continues to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 134a–134h; 7 CFR 2.17, 2.51, and 371.2(d).

§§ 54.2 through 54.9 [Designated as Subpart A]

2. The heading for part 54 is revised to read as set forth above, and a new "Subpart A—Animals Destroyed Because of Scrapie" is established to include §§ 54.2 through 54.9 currently contained in part 54.

3. In § 54.1 the definitions of "Flock" and "State representative" are revised, and the following definitions are added to read as follows:

§ 54.1 Definitions.

* * * * *

Accredited Veterinarian. A veterinarian approved by the Administrator in accordance with part 161 of this chapter to perform functions specified in parts 1, 2, 3, and 11 of subchapter A of this chapter and subchapters B, C, and D of this chapter, and to perform functions required by cooperative State-Federal disease control and eradication programs.

* * * * *

Animal and Plant Health Inspection Service. The Animal and Plant Health Inspection Service, United States Department of Agriculture.

APHIS. The Animal and Plant Health Inspection Service, United States Department of Agriculture.

APHIS representative. An individual employed by APHIS in animal health activities who is authorized by the Administrator to perform the function involved.

Area Veterinarian in Charge. The veterinary official of Veterinary Services, who is assigned by the Administrator to supervise and perform the official animal health work of the Animal and Plant Health Inspection Service in the State concerned.

* * * * *

Breed Association and Registries. Organizations which maintain the permanent records of ancestry or pedigrees of animals (including the animal's sire and dam), individual identification of animals, and ownership of animals.

* * * * *

Flock. All animals maintained on any single premises; and all animals under common ownership or supervision on two or more premises which are geographically separated, but among which there is an interchange or movement of animals.

Flock Plan. A written flock management agreement designated by the owner of a flock, an accredited veterinarian, and a Veterinary Services representative or State representative in which each participant agrees to undertake actions specified in the flock plan to control the spread of scrapie from, and eradicate scrapie in, an infected flock, source flock, or trace flock. The flock plan shall require an edipemiologic investigation to identify high-risk animals that must be removed from the flock, and shall include other requirements found necessary by the Veterinary Services representative or State representative to control scrapie in the flock. These other requirements may include, but are not limited to, cleaning and disinfection of flock premises, education of the owner of the flock and personnel working with the flock in techniques to recognize clinical signs of scrapie and control the spread of scrapie, and maintaining records of animals in the flock.

High-Risk Animal. An animal which is:

(1) The progeny of a scrapie-positive dam;

(2) Born in the same flock during the same lambing season as progeny of a scrapie-positive dam, unless the progeny of the scrapie-positive dam are from separate contemporary lambing groups (groups that are managed as separate units and are not commingled during lambing and for 60 days following the date of the last lamb is born in a lambing season, and that do not use the same lambing facility unless the lambing facility is cleaned and disinfected between lambings by removing all organic matter and spraying the lambing facility with a 2 percent sodium hydroxide solution or 0.5 percent sodium hypochlorite solution); or

(3) Born in a source or trace flock during the same lambing season as a scrapie-positive ewe or ram in the same flock.

Infected Flock. Any flock in which a Veterinary Services representative or State representative has determined an animal to be a scrapie-positive animal. A flock will no longer be an infected

flock after it has completed the requirements of a flock plan.

* * * * *

Scrapie-positive animal. An animal for which a diagnosis of scrapie has been made by the National Veterinary Services Laboratories, United States Department of Agriculture, or another laboratory authorized by the Administrator to conduct scrapie tests in accordance with this part, through histological examinations of central nervous system samples from the animal for microscopic lesions in the form of neuronal vacuoles or spongy degeneration, or by the use of protease-resistant protein analysis or other confirmatory techniques used in conjunction with histological examinations.

Source Flock. A flock in which a Veterinary Services representative has determined that at least two animals, that were diagnosed as scrapie-positive animals at an age of 54 months or less, were born. In order to be a source flock, the second scrapie-positive diagnosis must be made within 60 months of the first scrapie-positive diagnosis. A flock will no longer be considered a source flock after it has combined the requirements of a flock plan.

* * * * *

State representative. An individual employed in animal health activities by a State or a political subdivision of a State, and who is authorized by the State or political subdivision to perform the function involved.

Trace flock. A flock in which a Veterinary Services representative has determined that one animal, which was diagnosed as a scrapie-positive animal at an age of 54 months or less, was born.

Uniform Methods and Rules—Voluntary Scrapie Flock Certification. Uniform methods and rules for reducing the incidence and controlling the spread of scrapie through flock certification.[1]

* * * * *

4. A new subpart B is added to part 54, to read as follows:

Subpart B—Voluntary Scrapie Flock Certification Program

Sec.

54.10 Administration.
54.11 Participation.
54.12 State Scrapie Certification Boards.
54.13 Cooperative agreements with States.

[1] Individual copies of the UM&R may be obtained from the Administrator, c/o Sheep, Goat, Equine, and Poultry Diseases Staff, Animal and Plant Health Inspection Service, United States Department of Agriculture, 6505 Belcrest Road, Hyattsville, MD 20782; or from the American Sheep Industry Association, Producer Services, 6911 S. Yosemite Street, Englewood, CO 80112–1414, telephone (303) 771–3500.

§ 54.10 Administration.

(a) The Voluntary Scrapie Flock Certification Program is a cooperative effort between APHIS; members of the sheep and goat industry including owners of flocks, slaughterers and renderers, and breed associations and registeries; accredited veterinarians; and State governments. APHIS coordinates with State Scrapie Certification Boards and State animal health agencies to encourage flock owners to reduce the incidence of scrapie by voluntarily complying with the "Uniform Methods and Rules—Voluntary Scrapie Flock Certification."

§ 54.11 Participation.

Any owner of a flock may apply to enter the Voluntary Scrapie Flock Certification Program by sending a written request applying for enrollment to a State Scrapie Certification Board, or to the Administrator. A notice containing a current list of flocks participating in the Voluntary Scrapie Flock Certification Program, and the certification status of each flock, will be published in the **Federal Register** from time to time. This list may also be obtained from the Administrator, c/o Sheep, Goat, Equine, and Poultry Diseases Staff, Animal and Plant Health Inspection Service, United States Department of Agriculture, 6505 Belcrest Road, Hyattsville, MD 20782.

(Approved by the Office of Management and Budget under control number 0579–0101).

§ 54.12 State Scrapie Certification Boards.

An Area Veterinarian in Charge, after consulting with a State representative and industry representatives, may appoint a State Scrapie Certification Board for the purpose of coordinating activities for the Voluntary Scrapie Flock Certification Program, including making decisions to admit flocks to the Voluntary Scrapie Flock Certification Program and to change flock status in accordance with the "Uniform Methods and Rules—Voluntary Scrapie Flock Certification." No more than one State Scrapie Certification Board may be formed in each State. Each State Scrapie Certification Board shall include as members the Area Veterinarian in Charge, one or more State representatives, one or more accredited veterinarians, and one or more owners of flocks, and at the discretion of the Area Veterinarian in Charge may include other members.

§ 54.13 Cooperative agreements with States.

APHIS may execute a cooperative agreement with the animal health agency of any State to cooperatively carry out administration of the Voluntary Scrapie Flock Certification Program within that State. These cooperative agreements will describe the respective roles of APHIS and State personnel in implementing the "Uniform Methods and Rules—Voluntary Scrapie Flock Certification Program," and may: specify the financial, material, and personnel resources to be committed to the Voluntary Scrapie Flock Certification Program by APHIS and the State; assign specific Voluntary Scrapie Flock Certification Program activities to APHIS or State personnel; establish schedules for APHIS representatives or State representatives to visit participating flocks; establish procedures for maintaining and sharing Voluntary Scrapie Flock Certification Program records specified in the "Uniform Methods and Rules—Voluntary Scrapie Flock Certification Program," and specify other responsibilities of State representatives and Veterinary Services representatives in support of the Voluntary Scrapie Flock Certification Program.

(Approved by the Office of Management and Budget under control number 0579–0101).

5. Part 79 is revised as follows:

PART 79—SCRAPIE IN SHEEP AND GOATS

Sec.

79.1 Definitions.
79.2 General restrictions.
79.3 Designation of scrapie-positive animals, source flocks, and infected flocks; notice to owners; publication.

Authority: 21 U.S.C. 111–113, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 79.1 Definitions.

Accredited Veterinarian. A veterinarian approved by the Administrator in accordance with part 161 of this chapter to perform functions specified in parts 1, 2, 3, and 11 of subchapter A, and subchapters B, C, and D of this chapter, and to perform functions required by cooperative State-Federal disease control and eradication programs.

Administrator. The Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, or any employee of the United States Department of Agriculture authorized to act in his or her stead.

Animal. A sheep or goat.

Breed Associations and Registries. Organizations which maintain the permanent records of ancestry or pedigrees of animals (including the animal's sire and dam), individual identification of animals, and ownership of animals.

Exposed animal. Any animal which has been in the same flock at the same time within the previous 60 months as a scrapie-positive animal, excluding limited contacts. Limited contacts are contacts between animals that occur off the premises of the flock, and do not occur during or immediately after parturition for any of the animals involved. Limited contacts do not include commingling (when animals concurrently share the same pen or same section in a transportation unit where there is uninhibited physical contact).

Flock. All animals maintained on any single premises; and all animals under common ownership or supervision on two or more premises which are geographically separated, but among which there is an interchange or movement of animals.

Flock Plan. A written flock management agreement designed by the owner of a flock, an accredited veterinarian, and a Veterinary Services representative or State representative in which each participant agrees to undertake actions specified in the flock plan to control the spread of scrapie from, and eradicate scrapie in, an infected flock, source flock, or trace flock. The flock plan shall require an epidemiologic investigation to identify high-risk animals that must be removed from the flock, and shall include other requirements found necessary by the Veterinary Services representative or State representative to control scrapie in the flock. These other requirements may include, but are not limited to, cleaning and disinfection of flock premises, education of the owner of the flock and personnel working with the flock in techniques to recognize clinical signs of scrapie and control the spread of scrapie, and maintaining records of animals in the flock.

High-Risk Animal. An animal which is:

(1) The progeny of a scrapie-positive dam;

(2) Born in the same flock during the same lambing season as progeny of a scrapie-positive dam, unless the progeny of the scrapie-positive dam are from separate contemporary lambing groups (groups that are managed as separate units and are not commingled during lambing and for 60 days following the date the last lamb was born, and that do not use the same lambing facility unless the lambing facility is cleaned and disinfected between lambings by removing all organic matter and spraying the lambing facility with a 2 percent sodium hydroxide solution or 0.5 percent sodium hypochlorite solution); or

(3) Born during the same lambing season as a scrapie-positive ewe or ram in a source flock or trace flock.

Infected Flock. Any flock in which a Veterinary Services representative or State representative has determined an animal to be a scrapie-positive animal. A flock will no longer be an infected flock after it has completed the requirements of a flock plan.

Scrapie-positive animal. An animal for which a diagnosis of scrapie has been made by the National Veterinary Services Laboratories, United States Department of Agriculture, or another laboratory authorized by the Administrator to conduct scrapie tests in accordance with this part, through histological examination of central nervous system samples from the animal for microscopic lesions in the form of neuronal vacuoles or spongy degeneration, or by the use of protease-resistant protein analysis or other confirmatory techniques used in conjunction with histological examination.

Source Flock. A flock in which a Veterinary Services representative has determined that at least two animals, that were diagnosed as scrapie-positive animals at an age of 54 months or less, were born. In order to be a source flock, the second scrapie-positive diagnosis must be made within 60 months of the first scrapie-positive diagnosis. A flock will no longer be considered a source flock after it has completed the requirements of a flock plan.

State. Each of the 50 States, the District of Columbia, the Northern Mariana Islands, Puerto Rico, and all territories or possessions of the United States.

State representative. An individual employed in animal health activities by a State or political subdivision of a State, and who is authorized by the State or political subdivision to perform the function involved.

Trace flock. A flock in which a Veterinary Services representative has determined that one animal, which was diagnosed as a scrapie-positive animal at an age of 54 months or less, was born.

Veterinary Services representative. An individual employed by Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture in animal health activities who is authorized by the Administrator to perform the function involved.

(Approved by the Office of Management and Budget under control number 0579–0101.)

§ 79.2 General restrictions.

(a) No scrapie-positive animal, animal from an infected flock, or animal from a source flock may be moved interstate, unless the animal has been permanently identified with an indelible mark in the form of the letter "S" at least 1" by 1" applied on the left jaw; *Except that,* high-risk animals less than one year of age moving in slaughter channels and animals other than high risk animals are not required to be permanently identified if the animals are from infected flocks or source flocks meeting the following conditions:[1]

(1) The owner of the flock or his or her agent has signed an agreement with the Administrator in which the owner of the flock or his or her agent agrees to comply with the requirements of this section until the time the flock is no longer an infected flock or source flock.

(2) The owner of the flock or his or her agent shall immediately report to a State representative, Veterinary Services representative, or an accredited veterinarian any animals in the flock exhibiting the following: weight loss despite retention of appetite; behavioral abnormalities; pruritus (itching); wool pulling; biting at legs or side; lip smacking; motor abnormalities such as incoordination, high stepping gait of forelimbs, bunny hop movement of rear legs, swaying of back end; increased sensitivity to noise and sudden movement; tremor, "star gazing", head pressing, recumbency, or other signs of neurological disease or chronic wasting illness. Such animals must not be removed from the flock without written permission of a Veterinary Services representative or State representative.

(3) The owner of the flock or his or her agent shall identify all animals 1 year of age or over within the flock. All animals less than 1 year of age will be identified when a change of ownership occurs, with the exception of those moving

[1] Owners of flocks participating in the Voluntary Scrapie Flock Certification Program described in 9 CFR Part 54 agree to follow the "Uniform Methods and Rules—Voluntary Scrapie Flock Certification" (the UM&R), which include, among other requirements, the conditions in this section. Individual copies of the UM&R may be obtained from the Administrator, c/o Sheep, Goat, Equine, and Poultry Diseases Staff, Animal and Plant Health Inspection Service, United States Department of Agriculture, 6505 Belcrest Road, Hyattsville, MD 20782; or from the American Sheep Industry Association, Producer Services, 6911 S. Yosemite Street, Englewood, CO 80112–1414, telephone (303) 771–3500.

within slaughter channels. The form of identification will be an electronic implant providing a unique identification number which may be applied by the owner of the flock or his or her agent in accordance with instructions by a Veterinary Services representative, State representative, or an accredited veterinarian.

(4) The owner of the flock or his or her agent shall maintain, and keep for a minimum of five years after an animal dies or is otherwise removed from a flock, the following records for each animal in the flock: the animal's individual identification number from its electronic implant and any secondary form of identification the owner of the flock may choose to maintain; sex; breed; date of acquisition and source (previous flock), if the animal was not born in the flock; and disposition, including the date and cause of death, if known, or date of removal from the flock.

(5) The owner of the flock or his or her agent shall allow breed associations and registries, livestock markets, and packers to disclose records to Veterinary Services representatives or State representatives, to be used to trace source flocks and exposed animals.

(6) The owner of the flock or his or her agent shall make animals in the flock and records required to be kept under paragraph (a)(4) of this section available for inspection by Veterinary Services representatives and State representatives, given reasonable prior notice.

(7) Upon request of a Veterinary Services representative, the owner of the flock or his or her agent will have an accredited veterinarian collect and submit tissues from animals reported in accordance with paragraph (a)(2) of this section to a laboratory designated by a Veterinary Services representative.

(b) [Reserved]

(Approved by the Office of Management and Budget under control number 0579–0101.)

§ 79.3 Designation of scrapie-positive animals, source flocks, and infected flocks; notice to owners; publication.

(a) A Veterinary Services representative or State representative will determine an animal to be a scrapie-positive animal after determining that the animal has been diagnosed with scrapie in accordance with the definition of a scrapie-positive animal in § 79.1 of this part. A Veterinary Services representative or State representative will determine a flock to be a source flock after reviewing sale, movement, and breeding records that indicate the flock meets the definition of a source flock. A Veterinary Services representative or State representative will determine a flock to be an infected flock after determining that a scrapie-positive animal is in the flock.

(b) As soon as possible after making such a determination, a Veterinary Services representative or State representative will attempt to notify the owner of the flock in writing that the flock contained a scrapie-positive animal, or is an infected flock, or source flock.[2] The notice will include a description of the interstate movement restrictions and identification requirements contained in this part. (Approved by the Office of Management and Budget under control number 0579–0101.)

Done in Washington, DC, this 23 day of July, 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–17878 Filed 7–29–92; 8:45 am]

BILLING CODE 3410–34–M

[2] A current list of flocks determined to be infected flocks or source flocks will be published in the Federal Register from time to time. This list may also be obtained from the Administrator, c/o Sheep, Goat, Equine, and Poultry Diseases Staff, Animal and Plant Health Inspection Service, United States Department of Agriculture, 6505 Belcrest Road, Hyattsville, MD 20782.

Food Safety and Inspection Service

9 CFR Part 318

[Docket No. 89–025F]

RIN 0583–AA43

Additional Curing Methods for Destroying Trichinae

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule; correction.

SUMMARY: The Food Safety and Inspection Service is correcting three typographical errors in its final regulation for additional curing methods for destroying trichinae, which was published on Monday June 22, 1992, (57 FR 27870).

EFFECTIVE DATE: July 22, 1992.

FOR FURTHER INFORMATION CONTACT: William C. Smith, Director, Processed Products Inspection Division, Science & Technology, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250 (202) 720–3840.

SUPPLEMENTARY INFORMATION: On June 22, 1992, the Food Safety and Inspection Service published a final rule (57 FR 27870) which amended § 318.10 of the Federal meat inspection regulations (9 CFR 318.10) that prescribes the treatment of pork and products containing pork to destroy trichinae. There were three typographical errors that are corrected as follows:

On page 27874, in the third column, in § 318.10(c)(3)(i) Method No. 7, in the title of the first Table the second line "105 Millimeters (4 1/16 Inches) Or; is corrected to read "105 Millimeters (4 1/8 Inches) Or".

On page 27875, in the second column, in § 318.10(c)(3)(iv) Method No. 3(F)(2), line 9, the temperature "69 °F (15.6 °C)" is corrected to read "60 °F (15.6 °C)".

On page 27876, in the third column, in § 318.10(c)(3)(iv) Method No. 6(B), line 3, the temperature "110 °F (41 °C)" is corrected to read "110 °F (43 °C)".

Done at Washington, DC on: July 23, 1992.

H. Russell Cross,

Administrator, Food Safety and Inspection Service.

[FR Doc. 92–17938 Filed 7–29–92; 8:45 am]

BILLING CODE 3410–DM–M

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1301

Privacy Act

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Final rule.

SUMMARY: The Tennessee Valley Authority is amending its Privacy Act regulations. The regulations are amended to show that the "reviewing official" is now the Vice President, Employee Worklife, and to instruct individuals who wish to appeal TVA's initial determination not to amend or correct that individual's record to deliver their appeal to the Vice President, Employee worklife.

EFFECTIVE DATE: July 30, 1992.

FOR FURTHER INFORMATION CONTACT: Mark R. Winter, Tennessee Valley Authority, 1101 Market Street (MR 2F), Chattanooga, TN 37402–2801, telephone number: (615) 751–2523.

SUPPLEMENTARY INFORMATION: This rule was not published in proposed form since it relates to agency practice. Since this rule is non-substantive, it is being made effective immediately, July 30, 1992.

List of Subjects in 18 CFR Part 1301

Administrative practice and procedure, Freedom of Information, Privacy Act, Sunshine Act.

For the reasons set forth in the preamble, title 18, chapter XIII of the

Code of Federal Regulations is amended as follows:

PART 1301—PROCEDURES

1. The authority citation for part 1301, continues to read as follows:

Authority: 16 U.S.C. 831–831dd, 5 U.S.C. 552a.

2. Section 1301.12 is amended by revising paragraph (f) to read as follows:

§ 1301.12 Definitions.

* * * * *

(f) The term *reviewing official* means TVA's Vice President, Employee Worklife, or another TVA official designated by the Vice President in writing to decide an appeal pursuant to § 1301.19;

* * * * *

3. Section 1301.19 is amended by revising paragraph (a) introductory text to read as follows:

§ 1301.19 Appeals on initial adverse agency determination on correction or amendment.

(a) An individual may appeal an initial determination refusing to amend that individual's record in accordance with this section. An appeal must be taken within 20 days of receipt of notice of TVA's initial refusal to amend the record and is taken by delivering a written notice of appeal to the Vice President, Employee Worklife, Tennessee Valley Authority, Knoxville, Tennessee 37902. Such notice shall be signed by the appellant and shall state:

* * * * *

Charles E. Price,

Interim Vice President, Information Services.

[FR Doc. 92–18004 Filed 7–29–92; 8:45 am]

BILLING CODE 8120–08–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8424]

RIN 1545–AN51

Group Term Life Insurance

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations which prescribe the cost of group term life insurance for purposes of section 79 of the Internal Revenue Code. This revision is necessary to conform to statutory changes concerning the cost of group term life insurance for individuals over 63 years of age. These regulations provide guidance to employers who must use these costs to calculate amounts includible in the gross income of their employees because of group term life insurance provided by the employers.

EFFECTIVE DATE: These regulations are effective for taxable years beginning after December 31, 1988.

FOR FURTHER INFORMATION CONTACT: Betty Clary, (202) 566–3496 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations amending the Income Tax Regulations under section 79 of the Internal Revenue Code. The regulations reflect the amendment of section 79 by section 5013 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647) with respect to individuals over 63 years of age.

Explanation of Provisions

Section 79 of the Internal Revenue Code (Code) generally permits an employee to exclude from gross income the cost of the first $50,000 of employer-provided group term life insurance coverage. The remaining cost of the coverage is included in the employee's gross income. Currently, the cost of the insurance coverage is determined on the basis of the employee's actual age, using uniform premiums prescribed in the regulations under section 79 of the Code. Under prior law, the cost of group-term coverage for an individual age 64 or older was calculated using age 63. This special rule for individuals over age 63 was eliminated by section 5013 of the Technical and Miscellaneous Act of 1988 (TAMRA), thereby requiring the Internal Revenue Service to develop uniform premium rates for individuals over age 63.

On November 20, 1989, the Internal Revenue Service published in the **Federal Register** (54 FR 47995), a notice of proposed rulemaking by cross-reference to a temporary regulation published the same day in the **Federal Register** (54 FR 47978) under section 79 of the Internal Revenue Code. The temporary regulation, § 1.79–3T, added rates to the uniform premium table for individuals age 65 to 69 ($2.10 per month per $1,000 of group term life insurance protection) and for individuals age 70 and older ($3.76 per month per $1,000 of group term life insurance protection). These rates were developed using the same data and assumptions as had been used previously to develop rates for individuals younger than 65. The rates for individuals under 65 did not change.

Written and oral comments were received from the public concerning the regulation. No one requested a public hearing and none was held. The issues raised by the comments had been considered prior to the publication of the temporary regulation, or were outside the scope of the regulation.

Several comments were received criticizing the temporary regulation, which was published on November 20, 1989, for making the rates for individuals 64 and older effective as of January 1, 1989. During the formulation of the temporary regulation, the Service concluded that, because the effective date of section 5013 of TAMRA was January 1, 1989, Congress intended that regulations prescribing the rates for the older age groups also be effective as of that date.

A number of commenters expressed the view that the current uniform premium rates do not reflect changes in the mortality experience and gender mix of employees that have occurred since the uniform premium table was last updated in 1983. They believe that this results in rates that are too high for some age groups but too low for others. The Internal Revenue Service agrees that the uniform premium table should be revised, and a regulation project was opened in 1989 for that purpose. The project has been delayed, however, because the mortality statistics published by the Society of Actuaries that are used to develop the uniform premium rates are also in the process of revision.

Finally, some commenters argued that the uniform premium rates should be the same for all employees, regardless of age. This issue is answered by statute since section 79(c) of the Internal Revenue Code requires the uniform premiums to be computed on the basis of five-year age brackets.

Accordingly, this Treasury decision adopts the temporary regulation in final form without substantive change, by removing § 1.79–3T and incorporating that section's uniform premium table directly in § 1.79–3.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of

the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Drafting Information

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

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

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

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

Par. 2. Section 1.79–3 is amended by revising paragraph (d)(2) to read as follows:

§ 1.79–3 Determination of amount equal to cost of group-term life insurance.

* * * * *

(d) * * *

(2) For the cost of group-term life insurance provided after December 31, 1988, the following table sets forth the cost of $1,000 of group-term life insurance provided for one month, computed on the basis of 5-year age brackets. For purposes of Table I, the age of the employee is the employee's attained age on the last day of the employee's taxable year.

TABLE I.—UNIFORM PREMIUMS FOR $1,000 OF GROUP-TERM LIFE INSURANCE PROTECTION

5-year age bracket	Cost per $1,000 of protection for 1-month
Under 30	$0.08
30 to 34	.09
35 to 39	.11
40 to 44	.17
45 to 49	.29
50 to 54	.48
55 to 59	.75
60 to 64	1.17
65 to 69	2.10
70 and above	3.76

* * * * *

Par. 3. Section 1.79–3T is removed.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Dated: July 5, 1992.

Approved:

Fred T. Goldberg, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 92–17935 Filed 7–29–92; 8:45 am]

BILLING CODE 4830–01–M

26 CFR Part 43

[T.D. 8422]

RINS 1545–AO41; 1545–AP03

Final Regulations Regarding the Tax on Transportation by Water

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final Regulations.

SUMMARY: This document contains regulations that implement the tax on the transportation of passengers on covered voyages by certain vessels under sections 4471 and 4472 of the Internal Revenue Code ("the Code") as enacted by section 7504 of the Revenue Reconciliation Act of 1989 (Pub. L. 101–239, 103 Stat. 2106, 2362). These regulations affect persons providing transportation by water.

EFFECTIVE DATE: These regulations are effective for voyages beginning on or after January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Edward B. Madden, Jr., on (202) 566–4077 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations to be added to part 43 of title 26 of the Code of Federal Regulations ("CFR") under sections 4471 and 4472 of the Code. On Friday, October 12, 1990, the Internal Revenue Service ("the Service") published temporary regulations in the **Federal Register** (T.D. 8314; 55 FR 41519, as corrected in 55 FR 46667) on the Excise Tax on Transportation by Water under section 4471. A Notice of Proposed Rulemaking cross-referencing the temporary regulations was published the same day in the **Federal Register** (55 FR 41546). Also on Friday, October 12, 1990, the Service published a Notice of Proposed Rulemaking in the **Federal Register** (55 FR 41545, as corrected in 55 FR 46132) proposing regulations under section 4472. Further, on Thursday, January 3, 1991, the Service published a Notice of Proposed Rulemaking in the **Federal Register** (56 FR 233) proposing amendments to the regulations on the Excise Tax on Transportation by Water (26 CFR part 43) by cross-reference to temporary regulations published the same day in the **Federal Register** (T.D. 8328; 56 FR 179). Written comments responding to the notices were received and a public hearing was held on April 8, 1991.

Explanation of Provisions

The regulations provide taxpayers with rules and definitions for complying with the tax imposed by section 4471 of the Code. The preamble to the proposed regulations generally explains the provisions of the regulations except as discussed below.

Section 4471 of the Code imposes a tax of $3 per passenger on a covered voyage to be paid by the person providing the covered voyage. The tax is to be imposed only once for each passenger, either at the time of first embarkation or disembarkation in the United States. A "covered voyage" is a voyage of a commercial passenger vessel that extends over one or more nights, or of a commercial vessel that transports passengers engaged in gambling aboard the vessel beyond the territorial waters of the United States. A passenger vessel is any vessel with stateroom or berth accommodations for more than 16 passengers.

One commentator suggested that the regulations should clarify that a single "voyage" does not encompass different sets of passengers. In keeping with the definition of "covered voyage" contained in section 4472 of the Code, the regulations define "voyage" in relation to the movement of a vessel and independent of the itinerary of the passengers of the vessel. The itinerary of a passenger or of a group of passengers may include all or any part of a voyage by a vessel.

Several commentators suggested that the definition of "over 1 or more nights" as 18 or more hours including midnight fails to take account of the customary practices of the charter fishing industry. Commentators suggested that the definition should be revised to include one complete period of darkness. The Service and the Treasury Department believe that this definition is too expansive and is not consistent with Congressional intent. For example, under the suggested definition, a voyage commencing after nightfall on day one would not extend for one complete period of darkness until sunrise on day three. However, in order to address the commentators' concerns, the final regulations provide that a voyage extends over 1 or more nights if it extends for more than 24 hours.

Several commentators suggested that the regulations may be in conflict with recognized principles of international law. They contended that, to the extent the tax applies to foreign vessels

conducting gambling outside the territorial waters of the United States, the United States lacks both territorial and subject jurisdiction over the activity being taxed and that by failing to limit the application of the tax the regulations make an unwarranted assumption of extra-territorial jurisdiction. One commentator cited *Equal Employment Opportunity Commission* v. *Arabian American Oil Company*, 111 S.Ct. 1227 (1991) (*Aramco*), for the proposition that "legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States." Another commentator suggested that the tax is a de facto income tax on revenue derived from gambling and that imposition of such a tax is in violation of tax treaties between the United States and other countries.

The activity being taxed, the first embarkation or disembarkation in the United States of passengers on a covered voyage, is within the territorial jurisdiction of the United States. The tax is not imposed on gambling activities, or on income derived from gambling activities; rather, gambling is only one element in the determination of whether a voyage is a "covered voyage" for purposes of imposing the tax. In addition, the statutory language on its face unambiguously indicates that Congress intended activities outside the territorial limits of the United States to be considered in determining whether a voyage is a "covered voyage." Therefore, the tax is a legitimate and well recognized exercise of territorial jurisdiction.

One commentator recommended that at least 10 percent of a vessel's gross income should be derived from gambling before passengers are considered to be engaged in gambling aboard the vessel. This recommendation is not adopted because it would (in many cases) preclude the operator from passing the tax on to the passenger because the gambling revenues of the vessel could not be determined until the end of the voyage. A rule based on determining the percentage of gross receipts from various sources would also be more difficult for taxpayers to comply with and for the Service to administer.

A commentator suggested that the tax be limited to persons who actually gamble. This comment was not adopted because the statute makes no such distinction; it imposes the tax on each passenger on a covered voyage. Moreover, the Service could not administer a tax that depended on a passenger's conduct on the vessel.

In response to a comment, the final regulations modify the definition of "passenger" to exclude persons who, although routinely carried aboard vessels, are not paying passengers. Thus, the Master, the crew, and other persons actively engaged in the business of the vessel or its owners (such as, lecturers, instructors or group tour leaders in the employ of the vessel or its owners) are not "passengers" subject to the tax. On the other hand, persons on "familiarization" or promotional trips such as independent travel agents, vendors, contest winners, and tour group leaders not in the employ of the vessel or her owners are "passengers" subject to the tax.

Requirements for Filing Returns, Paying Tax, and Using Government Depositaries

For the rules relating to filing returns, paying tax, and using government depositaries, see the regulations under 26 CFR part 40.

Special Analyses

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

Drafting Information

The principal author of these regulations is Edward B. Madden, Jr., Office of Assistant Chief Counsel (Passthroughs & Special Industries), Internal Revenue Service. Other personnel from the Service and Treasury Department, however, participated in their development.

List of Subjects in 26 CFR Part 43

Excise taxes, Gambling, Transportation by water, Vessels.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR, part 43, is amended as follows:

PART 43—[AMENDED]

Paragraph 1. The authority citation for part 43 continues to read in part as follows:

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

§43.0–1T [Redesignated as §43.0–1]

Par. 2. Section 43.0–1T is redesignated as § 43.0–1 and the section heading is amended by removing "(temporary)".

§43.4471–1T [Redesignated as §43.4471–1]

Par. 3. Section 43.4471–1T is redesignated as § 43.4471–1 and the section heading is amended by removing "(temporary)".

Par. 4. New § 43.4472–1 is added to read as follows:

§ 43.4472–1 Definitions.

(a) *In general.* For definitions of the terms "covered voyage" and "passenger vessel," see sections 4472 (1) and (2).

(b) *Voyage.* For purposes of this section, "voyage" means a journey of a vessel that includes the outward and homeward trips or passages. The voyage commences when the vessel begins to load passengers and continues during the entire ensuing period until the vessel has made one outward and one homeward passage (including intermediate passages, if made). A voyage may be a covered voyage with respect to a passenger even if the passenger does not make both an outward and homeward passage or if the point of first embarkation or disembarkation by the passenger in the United States is an intermediate stop of the vessel.

(c) *Over 1 or more nights.* A voyage is considered to extend over 1 or more nights if it extends for more than 24 hours.

(d) *Engaged in gambling.* A passenger is engaged in gambling aboard a vessel if that person is participating as a player in any policy game or other lottery, or any other game of chance, for money or other thing of value, provided that the policy game, other lottery, or game of chance is conducted, sponsored, or operated by the owner or operator of the vessel, as either principal or agent, or by an employee, agent, or franchisee of the owner or operator of the vessel. A passenger is not engaged in gambling aboard a vessel if the passenger participates with other passengers in a casual, "friendly" game of chance that is not conducted, sponsored, or operated by the owner or operator of the vessel or by an employee, agent, or franchisee of the owner or operator.

(e) *Territorial waters.* For purposes of sections 4471 and 4472, the territorial waters of the United States are those waters within the international boundary line between the United States and any contiguous foreign

country or within 3 nautical miles (3.45 statute miles) from low tide on the coastline. No inference is intended as to the extent of the territorial limits for other tax purposes.

(f) *Passenger.* For purposes of sections 4471 and 4472, "passenger" means an individual carried on the vessel except—

(1) The Master; or

(2) A crew member or other individual engaged in the business of the vessel or her owners. A person is engaged in the business of the vessel or her owners if the person is an employee of the vessel or her owners or has a duty, contractual or otherwise, to perform on the vessel on behalf of the vessel or her owners. For example, a person engaged as an entertainer, instructor, or lecturer for the benefit of the passengers is not a passenger, but a person on a promotional trip such as a travel agent or contest winner is a passenger even though the vessel or her owners may derive some future benefit from the promotion.

George O'Hanlon,

Acting Commissioner of Internal Revenue.

Approved: June 29, 1992.

Fred T. Goldberg, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 92-17830 Filed 7-29-92; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR 165

[COTP Baltimore, MD Regulation 92-05-27]

Safety Zone Regulation: Chesapeake Bay, Smith Point, VA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard Marine Safety Office Baltimore is establishing a safety zone for the U.S. Army Corps of Engineers wreck removal operation of three charted wrecks in the Chesapeake Bay. Diving operations will be conducted using explosive charges to clear/remove obstructions in the vicinity of Smith Point, VA. The safety zone is needed to control commercial & recreational vessel traffic and to provide for the safety of life and property on navigable waters. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: This regulation becomes effective on July 22, 1992, at 7:00 a.m. and terminates at 7 p.m. 31 August 1992. Main shipping traffic will be affected as described. Area a. July 22–26, Area b. July 27–August 15, Area c. August 22–31. Hours of operation will be from 7 a.m. to 7 p.m. daily.

FOR FURTHER INFORMATION CONTACT: LT Cynthia L. Stowe, U.S.C.G. Marine Safety Office Baltimore, U.S. Custom House, 40 South Gay Street, Baltimore, Maryland 21202–4022, (410) 962–5105.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of **Federal Register** publication. Specifically, the U.S. Army Corps of Engineers requested Coast Guard assistance on July 09, 1992, leaving insufficient time to publish a NPRM in advance of the event. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent any damage to vessels which could be caused by explosives in the area.

Drafting Information

The drafters of this regulation are LT Cynthia L. Stowe, project officer for the Captain of the Port, Baltimore, Maryland and LT Kathleen A. Duignan, project attorney, Fifth Coast Guard District legal staff.

Discussion of Regulation

The circumstances requiring this regulation arose on July 09, 1992 when the U.S. Army Corps of Engineers requested Coast Guard assistance during the removal of obstructions to navigation in the vicinity of Smith Point, Chesapeake Bay, to take place July 22, 1992 to August 31, 1992. The operation will include the removal of three charted wrecks in the vicinity of Smith Point located within the Chesapeake Bay main shipping channel. The safety zones will consist of a circle with a 200 yard radius around each wreck. The safety zones will be on the western edge of the inbound channel but will not close the shipping channel. The three wreck areas a–c are located as follows: Area a. latitude 37–57–44.88 North; longitude 76–11–42.11 West; area b. latitude 37–55–12.48 North; longitude 76–11–11.74 West; area c. latitude 37–57–49.56 North; longitude 76–11–54.61 West. The Army Corps of Engineers survey vessel LINTHICUM will remain on station and monitor channel 13 VHF–FM.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

Regulatory Evaluation

This regulation is considered not major under Executive Order 12291 and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the emergency rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment. This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart F of part 165 of title 33, Code of Federal Regulations is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.45.

2. A new section 165.T551 is added to read as follows:

§ 165.T551 Safety Zone: Chesapeake Bay Smith Point, VA.

(a) *Location:* The following area is a safety zone: A circle with a 200 yard radius around three charted wrecks in the vicinity of Smith Point, VA. The safety zones will be on the western edge of the inbound channel but will not close the shipping channel. The three wreck areas are located as follows: Area a. latitude 37–57–44.88 North; longitude 76–11–42.11 West; area b. latitude 37–55–12.48 North; longitude 76–11–11.74 West; area c. latitude 37–57–49.56 North; longitude 76–11–54.61 West.

(b) *Effective Date:* This regulation becomes effective on July 22, 1992, at 7 a.m. and terminates at 7 p.m. August 31, 1992, unless sooner terminated by the Captain of the Port, Baltimore, Maryland. Main shipping traffic will be affected as described. Area a. July 22–26, Area b. July 27–August 15, Area c. August 22–31. Hours of operation will be from 7 a.m. to 7 p.m. daily.

(c) *Regulation:* (1) In accordance with the general regulations in § 165.23 of this part, entry into the safety zone is

prohibited unless authorized by the Captain of the Port or his designated representative.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (2)(a) of these regulations, but may not block a navigable channel.

(d) *Definitions.* The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Baltimore, Maryland to act on his behalf.

(1) The Captain of the Port and the Duty Officer at the Marine Safety Office, Baltimore, Maryland can be contacted at telephone number (410) 962–5105.

(2) The Coast Guard Patrol Commander and each Coast Guard vessel enforcing the safety zone can be contacted on VHF–FM channels 13 and 16.

Dated: July 22, 1992.

D.B. Crawford,

Commander, U.S. Coast Guard, Acting Captain of the Port, Baltimore, Maryland.

[FR Doc. 92–18036 Filed 7–29–92; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 271

[FRL–4190–3]

Georgia; Final Authorization of State's Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Final rule; technical amendment.

SUMMARY: This document amends a final rule granting the State of Georgia authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The final rule on Georgia's application for program revision, which included a provision addressing RCRA sections 3004(t) (2) and (3), was published on September 4, 1986, at (51 FR 31619). This action is necessary to deauthorize Georgia for RCRA section 3004(t) (2) and (3) which is a non-delegable provision.

EFFECTIVE DATE: July 30, 1992.

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

SUPPLEMENTARY INFORMATION: Georgia applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA) on September 25, 1985. The Environmental Protection Agency (EPA) reviewed Georgia's application and published a Final Decision on September 4, 1986. On September 18, 1986, Georgia was granted authorization for all changes made to the Federal program from the date the State received Final Authorization up to and including the July 15, 1985, codification rule, except for the authority to implement RCRA section 3005(j). A detailed discussion of the revisions for which Georgia was granted Final Authorization was included in EPA's tentative decision published July 7, 1986 (51 FR 24549). Georgia's program submission included a provision addressing RCRA section 3004(t) (2) and (3). Those provisions create a Federal cause of action for any person with a claim arising from conduct for which financial assurances are required under RCRA. This action may be asserted directly against the guarantor of the assurances if (1) the owner or operator of the facility is in bankruptcy or other similar proceedings under Federal law, or (2) the person with the claim is not likely to obtain jurisdiction over the facility owner/operator in either Federal or State court. The cause of action created by section 3004(t) is always available in Federal court and, therefore, is not delegable to States. States are welcome to create parallel causes of action viable in state courts, but to the extent that States do so, the State cause of action cannot limit the availability of the Federal action. Therefore, EPA is deauthorizing its prior authorization for this provision to the State of Georgia.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 92–18045 Filed 7–29–92; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 390 and 395

[FHWA Docket Nos. MC–88–12, MC–91–2, and MC–91–3]

RIN 2125–AC67

Federal Motor Carrier Safety Regulations; General; Emergency Relief Exemption; Emergency Tow Truck Operations

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending the Federal Motor Carrier Safety Regulations (FMCSRs) to exempt motor carriers and drivers from certain parts of the FMCSRs when directly responding to emergencies. This rule constitutes the FHWA's final action on three notices of proposed rulemaking (NPRM). Two NPRMs proposed to exempt motor carriers and drivers from most of the FMCSRs when responding to regional disasters or local emergency situations. The third NPRM proposed certain relief from the hours of service rules for tow truck motor carrier operations and tow truck drivers. This rule will allow motor carriers and drivers responding to emergencies to be exempt from the FMCSRs while providing direct assistance to the emergency relief efforts.

The FHWA is also making certain technical amendments to the hours of service regulations in part 395.

EFFECTIVE DATE: August 31, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. David Miller, Office of Motor Carrier Standards, (202) 366–2981, or Mr. Charles Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal legal holidays.

SUPPLEMENTARY INFORMATION:

I. Introduction

The FHWA requested public comments on three NPRMs which address emergency relief response as follows:

1. Disaster Relief [56 FR 24162, May 29, 1991, Docket No. MC–91–2].
2. Local Emergencies [56 FR 24166, May 29, 1991, Docket No. MC–91–3].
3. Tow Truck Operations [55 FR 27844, July 6, 1990, Docket No. MC–88–12].

II. Comments to the Dockets

A. Regional Disasters [Docket MC–91–2]

The proposal to address emergencies created by regional disasters would exempt motor carriers and drivers operating in interstate commerce from the requirements of parts 390 through 399 when providing direct assistance as part of a disaster relief effort. To accomplish this, the proposed rule provided that the exemption would be utilized only when a disaster had occurred and the President of the United States, a Governor of a State, or his or her authorized representative had publicly declared that assistance was needed to supplement State and local efforts to save lives and property, to protect public health and safety, or otherwise to lessen the impact of a disaster in any part of the United States. The exemption would last the length of the emergency or 30 days from the time of the initial declaration, whichever was less, except that a motor carrier could apply for, and the Regional Director of Motor Carriers (RD) may approve, an extension of time prior to the expiration of the relief exemption.

Comments Submitted to the Docket

The FHWA received sixty-six comments to this NPRM. The commenters included industry associations, motor carriers, labor unions, Federal and State law enforcement agencies, one transportation advocacy group and the Secretary of Defense. Some of the commenters also addressed docket MC–91–3. Generally, the comments supported the proposal.

Comments About Definitions

Comments: Many commenters asked that specific types of disasters be included in the definition of "disaster" and "direct assistance." The FHWA defined "disaster" in the NPRM as "any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, mud slide, snow storm, drought, forest fire, explosion, blackout, or other occurrences, natural or man-made, as determined by the President of the United States or a Governor of a State." Many public utilities suggested that "ice storm" be included in the definition. The American Trucking Associations (ATA) requested that "Acts of war/terrorism" be included. Indianhead Truck Line Inc. proposed that the FHWA incorporate crude oil spills in the definition of "disaster".

FHWA Response: The FHWA believes the definition published in the NPRM covers most disasters. The President has broad statutory and constitutional discretion to respond to threats to national security. The definition of an "emergency" included in the final rule encompasses an emergency declared by the President in response to acts of war or terrorism, but it is simply not feasible to list every possible event separately. However, because of these comments, and for other reasons, the FHWA has changed the definition somewhat. See section III, Final Rule.

Who May Declare a Disaster or Emergency

Comments: Commenters were concerned with the provision to require a disaster declaration by the President of the United States, a Governor of a State or his or her authorized representative. Fourteen public utility motor carriers and Edison Electric Institute requested that electric utilities be allowed to respond immediately after a disaster occurred. Mississippi Power Company's comments were representative of those submitted by many electric utilities. According to Mississippi Power, the "requirement that a disaster declaration be made prior to the commencement of relief operations poses two problems: (1) It does not cover all situations in which emergency electrical power restoration is required; and (2) it does not provide advanced notice for electric utilities to adequately prepare for disaster relief," for example, by sending equipment to an area where a hurricane might come ashore. Mississippi Power also noted that, "[a]lthough emergency relief is needed during (ice storms, freezing rain, and snow) storms, under the Proposed Rulemaking, unless a disaster is declared, utilities would not be granted an exemption from the FMCSRs to provide this relief. This would effectively prohibit the utilities from providing emergency assistance after ice storms, freezing rain, and snow." The National Tank Truck Carriers, Inc. requested that the FHWA's nine Regional Directors of Motor Carriers be given the authority to issue exemptions to trucking companies wishing to conduct "emergency relief" operations.

FHWA Response: The FHWA did not propose, and is not adopting, a universal exemption from the FMCSRs for electric utilities. The exemption was to be available only during large-scale disasters which are inherently unpredictable and require a response well beyond the range of routine events like ice Storms. Although disruptive, such storms are a fact of life for utilities. When they occur, relief may well be available under the local emergencies rule (described below).

The FHWA believes that the Regional Directors of Motor Carriers (RD) should have the authority to exempt motor carriers and drivers. The FHWA has amended the final rule to allow the RDs to waive the FMCSRs for motor carriers and drivers after the RD has determined that an emergency exists.

Comments: The ATA and the Tennessee Public Service Commission believes the FHWA should expand the declaration provision to include local officials. The ATA argued that "the language dealing with requests for disaster relief is predicated on the assumption that such requests will be transmitted directly from the competent authority to each motor carrier to be involved." the Federal Express Corporation requested the FHWA to expand the authority to declare an emergency to include other Federal officials in addition to the President.

FHWA Response: The FHWA did not intend this language to be restrictive. After a disaster has been declared, the exemption may be used by all motor carriers providing direct assistance to the disaster relief effort. The authorized individual declaring the disaster need not specify individual motor carriers allowed to use the exemption; rather, an individual motor carrier will decide if it wishes to participate in the relief work.

Comments: The International Brotherhood of Teamsters (IBT) was concerned that the declaration of a disaster might not be issued until after the emergency relief effort had subsided. The IBT cited the June 28, 1991, Southern California earthquake as an example. It wrote that although the Governor's Office of Constituent Services indicated to the Teamsters that the initial clean-up lasted approximately 48 hours, the Governor of California did not declare the earthquake a disaster until July 5, 1991.

The U.S. Secretary of Defense serves as the Executive Agent of the National Communications System and the National Transportable Telecommunications Capability. Counsel for the Secretary requested that the FHWA allow "automatic" exemptions for parties asked to engage in disaster relief efforts. The Secretary argued that the "official declaration" language limits the scope of possible emergency response. The Secretary requested that telecommunications carriers involved in providing a response to an emergency at the request of any Federal, State or local official be allowed to take the exemption.

FHWA Response: The public's safety is adequately served by recognizing the authority of the following persons to declare a disaster that would trigger the operation of this rule: (1) The President of the United States, (2) a Governor of a State, (3) any authorized representative of the President or Governor of a State having authority to declare a disaster, or (4) the Regional Director of Motor Carriers for the FHWA region in which the emergency occurs.

The final rule includes some of the commenters suggestions. See section III, Final Rule.

Recordkeeping Comments

Comments: PSI Energy suggested that the FHWA suspend the accident reporting regulations in part 394 for the duration of the disaster, but thereafter require motor carriers to report accidents which may have occurred during the period of the exemption.

The Minnesota Department of Transportation proposed that motor carriers be required to keep a file with seven items relating to the disaster relief provided, including at a minimum: (1) List of the drivers used, (2) list of the vehicles used, (3) dates and times relief operations were conducted, (4) description of the services provided, (5) declaration documentation, (6) date of declaration, and (7) date disaster conditions ended.

FHWA Response: Although PSI Energy's and Minnesota DOT's type of documentation would be convenient for a law enforeement official investigating a motor carrier's compliance, the FHWA believes that other records maintained by motor carriers who provide disaster relief will be adequate to demonstrate participation under this rule. Additional recordkeeping would be burdensome to participating motor carriers and perhaps would create a disincentive for motor carriers to provide direct assistance in emergencies. Therefore, the FHWA has determined that existing records will adequately facilitate enforcement review, whenever applicable.

The FHWA intends to propose that the current motor carrier-based accident reporting requirements in 49 CFR 394 be eliminated and replaced with a police-generated report submitted to the FHWA by the States. A **Federal Register** notice on this subject is to be published soon.

Statutory Comments

Comments: Duquesne Light Company recommended that the FHWA delete the proposed requirement that intrastate motor carriers have minimum financial responsibility coverage because "we believe that compliance with this requirement would cause unnecessary delays in providing disaster assistance * * *."

FHWA Response: The Motor Carrier Act of 1980, which created the financial responsibility requirement, does not authorize an exemption from its provisions. Motor carriers that do not have minimum levels of financial responsibility cannot participate in the emergency relief effort on the authority of this rule.

Comments: Duquesne Light Company also recommended that the FHWA reconsider the NPRM's Federalism Assessment statement: "Nothing in this document preempts any State law or regulation." Duquesne Light Company argued that "it seems appropriate that, if exemption form the FMCSR's is being proposed (for disaster relief) at the Federal level, a similar relaxation of statutes should also exist at the State level. Otherwise, it is conceivable that relief assistance could be delayed while waiting to obtain fuel tax stickers or satisfy other similar State mandates."

FHWA Response: Duquesne Light Company appears to be asking the FHWA to require the States to grant the same exemptions that are granted in this rule. The FHWA has no authority to require States to waive the application of State safety laws or mandates. the FHWA does require States to have compatible State safety regulations and to enforce the FMCSRs on interstate commercial motor carriers, but the FHWA cannot force States to adopt these exemptions for intrastate motor carriers under current Federal statutes. The States are encouraged to adopt the FMCSRs for the intrastate motor carriers. Motor carriers operating under this exemption through a State in interstate commerce would not be prohibited from doing so by that State.

Comments: National Tank Truck Carriers, Inc. requested that "only carriers who have a 'satisfactory' safety rating should be permitted to take part in this exemption." It believes there are sufficient numbers of "safe" carriers that could handle the emergency situation.

FHWA Response: The FHWA believes motor carriers should be permitted to participate to the maximum extent possible in providing direct assistance in emergency relief and disaster situations. The only motor carriers not exempted from the FMCSRs by this rule are motor carriers subject to an operational out-of-service order based on the finding that they are an imminent safety hazard (49 CFR 386.72(b)) and hazardous materials carriers and passenger carriers that were shut down after failing to improve an unsatisfactory rating to conditional or satisfactory after 45 days. (See interim final rule, 56 FR 40801, August 16, 1991.) The Motor Carrier Safety Act of 1990 requires the latter carriers to cease hazardous materials and passenger operations, and this rule cannot and does not waive that requirement.

Comments: Nineteen comments addressed the question whether 30 days was a sufficient time period to respond effectively to most disasters. Eighteen commenters agreed that 30 days would be sufficient, and one, Atlantic Electric, thought that 45 days would be more "workable."

FHWA Response: Since the overwhelming majority of commenters found the length of the proposed exemption adequate, the final rule retains the 30-day period included in the NPRM. However, the time period lasts only as long as there is direct assistance being provided to the emergency relief effort, not to exceed 30 calendar days, unless extended by an express act of the Regional Director of Motor Carriers.

Comments: Three commenters opposed the NPRM: the Maine State Police, the IBT, and the Advocates for Highway and Auto Safety. The Maine State Police argued that "[t]his proposed regulation does not limit or identify the motor carriers involved in the relief effort nor are there adequate safeguards in place within FHWA to provide assurance that motor carriers involved or not involved in relief efforts would be asked to document their participation in the effort."

FHWA Response: It is the FHWA's intent to exempt motor carriers providing direct assistance to restore essential services and supplies while responding to the declared emergency. The motor carriers must be able to document that an emergency existed, that a declaration of an emergency was made by a person authorized to do so and that the assistance they provided met the requirements of the definition of direct assistance in order to claim the exemption. Therefore, the FHWA believes adequate safeguards are in place to demonstrate compliance with the intent of this final rule.

Comments: The IBT opposed the rule because it believed the FHWA was responding to a hypothetical problem. The Teamsters argued that the last two years have proven that exemptions from the FMCSRs are not warranted, because "1. Compliance with the FMCSRs did not pose any impediment to their efforts, those of their members, or activities of motor carriers employing Teamsters to carry out emergency relief activities,

[and] 2. None of the Teamster local unions [are] aware of any complaints by motor carriers about burdens or obstacles posed by the FMCSRs, as these companies engaged in direct response activities."

FHWA Response: Although motor carriers employing IBT members may not have had any difficulty complying with the FMCSRs and did not complain about burdens or obstacles posed by the FMCSRs, public utilities have petitioned the FHWA for regulatory relief while responding to disasters. The FHWA believes their request is reasonable. The exemption granted by this rule will allow wholly intrastate motor carriers to provide interstate relief services in a disaster area. However, the FHWA believes a motor carrier should be granted an exemption from the FMCSRs only for the period the carrier is directly involved in the relief effort, or 30 days, whichever is less. The wording on the length of the exemption has been changed to reflect this conclusion.

Comments: Advocates for Highway and Auto Safety (Advocates) were concerned that the proposed rule would increase accident risks by allowing unsafe drivers and vehicles to operate in areas that would be disorganized. The Advocates argued that the lack of signalized traffic controls would affect safe traffic behavior and that motor carriers may press into service drivers and equipment that would not otherwise comply with the FMCSRs.

FHWA Response: The FHWA does not believe that safety will be compromised because of this rulemaking action. It is true that major disasters like hurricanes often put traffic signals out of service, but they also knock down power lines, trees and buildings, and strew roads with debris. Rescue vehicles move slowly and carefully, and automobile traffic virtually disappears at first, as commuters stay home from work. The purpose of this rule is to ensure that essential services like electricity are restored rapidly so that daily life, including large volumes of traffic moving smoothly and safely through signalized intersections, can resume as soon as possible. Most interstate motor carriers and drivers that will be utilizing this exemption are already complying with the FMCSRs. There is no reason to believe these carriers will not operate in a safe manner during the emergency. Despite out determination to assist motor carriers to respond to emergencies without administrative or procedural burdens, the FHWA believes carriers and drivers must, at a minimum, comply with Part 383, Commercial Driver's License, and the financial responsibility provisions of Part 387 even while providing direct assistance during emergencies.

B. Local Emergencies [Docket MC–91–3]

The FHWA published two NPRMs that would grant exemptions from the hours of service regulations for motor carriers and drivers responding to local emergencies. The FHWA proposed on May 29, 1991, to exempt motor carriers and drivers of commercial motor vehicles from the requirements of § 395.3 (a) and (b) while such vehicles are being used to respond directly to an emergency situation at the request of a State or local government official having jurisdiction and authority over emergency situations, including, but not limited to, law enforcement or emergency response officials.

The May 29 NPRM included five conditions that motor carriers and drivers would have to meet in order to comply with the proposed exception. The conditions were:

(1) The driver must be in full compliance with the FMCSRs at the time of the request;

(2) There must be no other drivers with unused driving time available at the same location;

(3) The request for emergency response must be made by a State or local government official, such as a law enforcement or emergency response official;

(4) Upon completion of the emergency response operations, the driver must go off duty for a minimum of 8 consecutive hours and until sufficient time has accrued for the driver to meet the requirements of § 395.3(b); and

(5) A notation of the time, type of emergency, and the name, title, address, and telephone number of the public official making the request, must be recorded upon the applicable record of duty status required to be maintained in compliance with § 395.8 of this subpart.

Comments Submitted to Docket

The FHWA received 73 comments on this NPRM. The commenters included industry associations, motor carriers, labor unions, Federal and State law enforcement agencies and one transportation safety group.

The Five Conditions

The principal concerns mentioned by the commenters were the five conditions to be met in order to qualify for the exemption.

Condition No. 1—Drivers in Full Compliance with the FMCSRs

Comments: Many commenters argued that drivers should not be required to be in compliance with the FMCSRs at the time a request is made for assistance.

FHWA Response: The FHWA agrees. Motor carriers have drivers employed who may not regularly drive in interstate commerce. They also may have drivers who have not been qualified under the FMCSRs or who have allowed their qualifications to lapse. Emergencies require immediate attention and the FHWA does not want to impede the availability of drivers and motor carriers to provide for delivery and restoration of essential goods and services. Refer to Section III, Final Rule, for a discussion of the additional persons who may be involved in using the exemption.

Condition No. 2—Drivers With Available Hours

Comments: Twenty-six commenters wrote about the condition that required motor carriers to use all drivers at the same location with available hours first. Eight commenters (the National Private Truck Council, American Bus Association, the National Water Well Association, the Minnesota Department of Transportation, Spill Recovery of Indiana, Inc., and three public utilities, Northern Lights, Inc., American Electric Power, and Potomac Edison Power) wrote that motor carriers should use all drivers with available hours first. Seventeen commenters, of which twelve are public utilities, wrote that the requirement should include a reference to drivers that have the necessary skills to perform the specific job required. The commenters argued that the phrase "necessary skills" would indicate that only drivers of commercial motor vehicles who also have the training to perform safety-sensitive functions other than driving (such as electric line repairing, spill clean-up, etc.) would be allowed to respond to the emergency. They contended that the rule, as proposed, might have required motor carriers to use maintenance shop mechanics to respond to downed power line emergencies, if the mechanics were the only drivers with hours available. Mechanics, however, have no training in repairing electrical lines, and that could have dangerous consequences.

FHWA Response: The FHWA agrees with the arguments of the seventeen commenters. The FHWA does not intend to impede quick action in responding to emergencies. The FHWA is deleting this requirement.

Condition No. 3—Who May Declare An Emergency

Comments; The major concern raised by the commenters was the requirement that a State or local government official having jurisdiction and authority to respond to an emergency, including law enforcement and emergency response officials, must request the assistance. One motor carrier, Wisconsin Public Service Corporation, agreed that this requirement was reasonable, but thirteen commenters thought it was too limited and restrictive. Federal Express Corporation requested that "State or local" be deleted, so that any government official, Federal, State or local, would be able to declare the emergency in cases of labor interruptions or strikes affecting interstate commercial transportation.

Eleven public utilities and their trade association, Edison Electric Institute, requested that the FHWA allow others to declare an emergency, including a motor carrier, the president of a motor carrier, a customer, or anyone.

FHWA Response: The FHWA agrees that there may be Federal officials in addition to the President who have authority to declare emergencies, and the FHWA has therefore changed the wording of the final rule. It should be noted that FHWA officials do not have authority to declare a public emergency, although the rule permits the Regional Director of Motor Carriers to waive the FMCSRs under certain listed conditions.

Condition No. 4—Rest and Recovery from Fatigue

Comments: Another frequently expressed concern was the condition that the driver go off duty after the emergency for a minimum of 8 consecutive hours and until sufficient time had accrued for the driver to meet the requirements of § 395.3(b). Edison Electric Institute and eight public utilities objected to this requirement; specifically, the requirement that the driver comply with § 395.3(b). This section prohibits a motor carrier from requiring or permitting a driver to drive, and prohibits a driver from driving, a commercial motor vehicle after being on duty 60 hours in 7 days or after being on duty 70 hours in 8 days, depending on how many days per week a motor carrier operates its business.

The California Highway Patrol requested that drivers be required to proceed to the nearest safe resting place at the conclusion of the disaster relief efforts. The driver would then be placed off-duty for at least 8 consecutive hours before returning to the motor carrier's principal place of business or terminal.

FHWA Response: The FHWA believes the driver should be allowed to return to the terminal or normal work reporting location before going off duty. However, the final rule prohibits the motor carrier from requiring the driver to return immediately to the normal work reporting location if the driver decides that he or she is too tired to drive safely.

The FHWA disagrees with the argument that no more than 8 hours of rest is needed to recover fully from the fatigue of working during an emergency. The FHWA believes that additional time is necessary when the 60 or 70 hour rules are exceeded. Refer to Section III, Final Rule, for a discussion of the additional off-duty time the FHWA is requiring.

Condition No. 5—Recordkeeping

The final condition proposed in the NPRM would have required a driver to record the government official's name, title, address and telephone number along with the time and type of emergency on the applicable record of duty status. This was included to assist FHWA investigators in tracking down requestors of assistance. Many commenters thought this requirement was unreasonable because it would cause them to prepare duplicate paperwork. Many electric companies argued that they presently record this information for compliance with State and local laws and it would be unreasonable for them to duplicate the information onto a record of duty status.

FHWA Response: Because the final rule exempts the motor carrier and driver from part 395 altogether during an emergency, the FHWA agrees that the requirement is unnecessary.

The FHWA will expect motor carriers to provide appropriate documentation for inspection by FHWA investigators upon demand, especially during compliance reviews after the response operations have ended. The documentation must indicate, at a minimum, that an emergency had been declared by a public official who has authority to declare emergencies and that the motor carrier was providing direct assistance to the emergency relief efforts.

Comments About Definitions

Comments: Federal Express Corporation requested that FHWA expand the definition of the term "emergency situation" to "include any labor interruption which impairs the transportation of interstate commerce." Federal Express argued that "cargo carriers often experience significant demands for additional service when threatened strikes, prolonged labor arbitration or actual strikes occur."

FHWA Response: Strikes can create emergency situations requiring government intervention. For example, carriers might be asked to transport medical and surgical supplies, blood products, food, or even human organs for transplantation if deliveries to hospitals were interrupted by a strike. However, the FHWA recognizes that job actions are a normal part of a market economy. It is not our intent to authorize the use of this rule to influence the outcome of strikes. The FHWA will monitor developments in this area. The situation described by Federal Express Corporation (i.e. greatly increased cargo volume as shippers try to beat a strike deadline or shift from one mode to another) would rarely qualify as an emergency under the rule the FHWA is today adopting.

Comments: Midwest Industrial Supply requested that the definition of "emergency situation" include "instance[s] where carriers are providing a service necessary to abate an environmentally-sensitive emission problem for which EPA (the Environmental Protection Agency) has issued an enforcement order to a third party that requires the third party to abate immediately the harmful emissions." The Pennzoil Company requested that the FHWA include "protection of the environment" in the definition of "emergency situation." Indianhead Truck Line Inc. requested that the FHWA incorporate crude oil spills in the definition of "disaster" in Docket MC–91–2, but also apply that example to this docket.

FHWA Response: Participating in a routine environmental cleanup undertaken in response to an EPA abatement order would not normally qualify a motor carrier for an exemption under the final rule. However, a sudden or large-scale release of hazardous materials that threatened public health might well trigger an emergency declaration by the appropriate official, or perhaps a waiver of the FMCSRs by the Regional Director. The critical factor in declared emergencies, and thus in our rule, is not the type of event, but the impact of the event on public safety and welfare.

Comments: Northern Lights, Inc. requested that the FHWA reclassify a utility lineman as a "driver-salesperson." "This simple clarification would resolve most of the existing difficulties."

FHWA Response: This exception is for drivers who are engaged in selling goods or services to customers, such as

snack/beverage vendor drivers, plumbers, and heating/air conditioning repairmen. Utility linemen do not sell their services to a customer directly and the FHWA is unwilling to extend this narrow exception to drivers whose activity is far removed from retail sales.

Comments: Midwest Industrial Supply and the Minnesota Department of Transportation commented that the NPRM defined "emergency situation" in the preamble, but did not define the term in the rule.

FHWA Response: The final rule, which combines two NPRMs, includes a revised definition of "emergency" from the proposed rule on disaster relief.

C. Tow Truck Operations [Docket MC–88–12]

On July 6, 1990, in response to a petition from the Towing and Recovery Association of America, Inc. (TRAA), the FHWA proposed to exempt tow truck operators from the requirements of § 395.3. The proposed rule included conditions that tow truck operators would have to meet to be exempted from the hours of service requirements. Specifically, it was proposed that drivers who had their rest time interrupted by emergency calls must be "on-call" and could be used only if there were no other available drivers, with unused driving time, currently working at the time of the emergency. As proposed, "on call" would have meant that the driver was (a) on duty as defined in § 395.2; or (b) off-duty and had advised the employer of his/her whereabouts.

Comments Submitted to the Docket

The FHWA received seven comments in response to the NPRM. The commenters included four industry associations, two State agencies, and one environmental service company. Six of the commenters supported relief from the hours of service requirements.

Rest and Recovery From Fatigue

Comments: The major concern of the TRAA was the proposal to require a tow truck driver to accumulate 8 consecutive hours off-duty time after responding to an emergency incident before returning to his/her regular workshift. The TRAA contended that highway safety would not be compromised if the tow truck driver's off-duty time were accumulated in two separate periods. The TRAA argued "that [because] motor vehicle accidents are fortuitous events occurring at random and unpredictable times and places, it is not economically feasible for a standard-size towing firm, which typically is a small family-owned business operating on a very narrow profit margin, to operate a full employee shift during the hour of low call volume—primarily nights."

FHWA Response: The FHWA is not persuaded by those arguments. The 8 consecutive hours off duty required by § 395.3 are necessary for the protection of the driver and public safety. The FHWA believes the accumulation of off-duty time in two separate periods would compromise highway safety. It is true that the FMCSRs allow drivers and motor carriers to use two separate periods when utilizing sleeper berth equipment on the vehicle or in motor carrier provided sleeping accommodations at a natural gas or oil-well work site. The rest periods used in that exception are not comparable to the unregulated off-duty timer periods discussed by the TRAA. Drivers may use normal off-duty time for activities other than resting or sleeping.

Who May Declare an Emergency

Comments: The American Automobile Association (AAA) contended that the relief requested by the TRAA should be expanded to include tow truck operators responding to emergency road service calls from stranded motorists.

FHWA Response: The FHWA believes that, in the interest of public safety, relief is warranted for tow truck motor carriers and drivers who respond to police requests for assistance in removing disabled vehicles. Such a request from a police officer will exempt tow truck operators and drivers from parts 390 to 399 of the FMCSRs when the vehicles pose an immediate threat to human life or public welfare. Wrecked or disabled vehicles often constitute such a threat. Accidents sometimes block major highways completely, and even if traffic continues to move, the presence of damaged vehicles on or near the roadway creates obstacles and distractions which increase the risk of further accidents. Cars or trucks disabled by mechanical problems or lack of fuel may also be a threat since other drivers sometimes assume they are moving and attempt to follow them. Public safety officials have the expertise to determine whether immediate action is necessary to correct situations like this. Some of the emergencies in which a tow truck operator is summoned by law enforcement or emergency response officials will, in all likelihood, involve stranded motorists. However, tow truck operators responding to routine road-service calls from private parties are not covered by the exemption.

III. Final Rule

Section 390.5 Definitions

The term "direct assistance" has been changed to include telecommunications as an essential service, as proposed by the Secretary of Defense, AT&T, Bell South and GTE Service Corporation. In reviewing the commenters' recommendations that telecommunications be included in the definition, it became apparent that the media, especially television and radio companies, might want to use the exemption, too. These companies, or any other companies that the FHWA has not specifically addressed, may use the exemption when they are providing direct assistance services to mitigate or alleviate the results of the emergency. Reporting newsworthy events does not qualify for this exemption. The assistance must be direct assistance to the emergency relief effort as defined by this rule.

The sentence beginning "Upon termination of the relief services * * *" has been removed from the definition of direct assistance and placed in § 390.23(b).

The term "disaster" has been changed to "emergency." The FHWA believes that the term emergency is more useful in the context of this rule because local events which could not reasonably be classified as disasters are included in the exemption from parts 390 through 399.

The FHWA is amending the definition to include some particular types of "storm." The FHWA is adding after the word storm, the phrase "(e.g. thunderstorm, snowstorm, icestorm, blizzard, sandstorm, etc.)."

The term "emergency" is being revised to include the following phrase after "occurrence, natural or man-made,":

> Which interrupts the delivery of essential services (such as, electricity, medical care, sewer, water, telecommunications, and telecommunication transmissions) or essential supplies (such as food and fuel) or otherwise immediately threatens human life or pubic welfare, provided such hurricane, tornado, or other event results in (1) a declaration of an emergency by the President of the United States, the Governor of a State, or their authorized representatives having authority to declare emergencies; by the Regional Director of Motor Carriers for the region in which the occurrence happens; or by other Federal, State or local government officials having authority to declare emergencies, or (2) a request by a police officer for two trucks to move wrecked or disabled vehicles.

The new language, most of which is taken from the definition of "direct

assistance," imposes certain limits on the availability of the emergency exemption. The hurricane, tornado or other occurrence must (A) have a substantial impact, either regionally or locally (it interrupts the delivery of essential services or supplies, or it poses an immediate threat to public welfare), and (B) it must be severe enough to trigger the declaration of an emergency by a public official authorized to do so. A storm that does not produce a declaration by a public official is not an emergency for purposes of this regulation, and a declared emergency has no effect on a motor carrier's obligation to comply with the FMCSRs unless it meets the specific conditions of this rule. Only when both tests are met will a motor carrier or driver be exempt from the FMCSRs.

Additionally, the FHWA agrees with the Secretary of Defense, the Tennessee Public Service Commission and the ATA that motor carriers and drivers should be exempt from the FMCSRs when Federal, State and local government officials declare emergencies. The FHWA did not intend to impose narrow restrictions on the scope of possible emergency response and therefore has incorporated these proposals into the rule. The FHWA believes most motor carriers should be allowed to participate. However, the FHWA is limiting the length of time that motor carriers and drivers may use the exemption for local emergencies. That issue is discussed later.

The definition of "emergency relief" has been changed by removing the references to the President and the Governor and replacing them with the cross-reference "as defined in this section." A change similar to this was suggested by the Minnesota Department of Transportation.

Section 390.23 Relief from Regulations.

This section has been revised to include regional and local emergencies and tow truck operations. After a regional or local emergency has been declared by a public official having authority to do so, the motor carriers and drivers who respond will be exempt from parts 390 through 399 of the FMCSRs while they are providing direct assistance to the emergency relief effort. Tow trucks responding to a police officer's request for assistance in removing disabled vehicles are also exempt.

Regional Emergencies

The exemption for regional emergencies is similar to the disaster relief NPRM, as it is predicated on the declaration of the emergency by the President of the United States, a Governor of a State, or their authorized representatives. The Regional Director of Motor Carriers for the region in which the emergency occurs may also waive the regulations for motor carriers or drivers. The exemption or waiver would be in effect for the length of the motor carrier's or driver's direct assistance in the emergency relief effort or a maximum of 30 days, whichever is less. Motor carriers may request an extension of the 30-day exemption from the Regional Director of Motor Carriers, but they must request and receive approval before the initial 30-day period expires.

Local Emergencies

The NPRM of May 29, 1991, which would have exempted motor carriers and drivers from the requirements of § 395.3, has been revised. The FHWA has broadened the final rule to exempt motor carriers and drivers from parts 390 through 399 after a Federal, State or local government official having authority to declare public emergencies has made such a declaration.

In the NPRM, the exemption required the State or local government official to request assistance from a particular motor carrier or driver. The FHWA has removed this requirement, so that any motor carrier or driver may provide direct assistance once a declaration of an emergency has been made by a government official. The exemption is effective for the motor carrier and/or driver as long as they are providing direct assistance to the emergency relief effort, but for no longer than 5 calendar days including the initial day of the emergency. The 5-day period shall not be extended.

Tow Truck Responding to Emergencies

The NPRM of August 11, 1988, which would have exempted tow truck motor carriers and drivers from the requirements of § 395.3, has also been revised. The FHWA has broadened the final rule to exempt motor carriers and drivers from parts 390 through 399 after a Federal, State or local police officer has requested their assistance.

The exemption is effective for the motor carrier and/or driver as long as they are providing direct assistance to the emergency relief effort, but for no longer than 24 hours including the initial hour of the emergency. The 24-hour period shall not be extended.

The FHWA believes these changes will facilitate prompt restoration of essential services and supplies to affected communities, minimize loss of life and property damage and protect the health of individuals, while maintaining highway safety.

Rest and Recovery After Direct Assistance

As discussed above, the motor carrier and driver will be subject to the requirements of parts 390 through 399, upon completion of the direct assistance to the regional and local emergency relief effort. The FHWA has decided that, for purposes of this rule, direct assistance terminates when the motor carrier or driver begins interstate commercial operations with cargo not destined for the emergency area or drives or dispatches the vehicles to a non-affected location to begin operations in commerce. FHWA will permit a driver to return empty to the terminal or normal work reporting location in exempt status as part of the emergency relief effort. However, the driver may not be required by a motor carrier to return immediately to the terminal or any other work location, if the driver determines that he or she needs rest. Once at the normal work reporting location, the driver must be relieved of all duty and responsibilities. The driver may also be relieved of all duty and responsibilities at the emergency site prior to returning empty to the motor carrier's terminal or the driver's normal work reporting location.

In either case, drivers of commercial motor vehicles who are providing direct assistance to emergency relief efforts must, before returning to normal duty in interstate commerce, (1) take at least 8 hours off-duty, if they have driven more than 10 hours or have been on duty more than 15 hours, and (2) take 24-hours off-duty, if they have been on duty more than 60 hours in 7 days or 70 hours in 8 days.

Section 390.25 Extension of Relief From Regulations—Regional Emergencies

This section has been revised slightly for clarity. Most of the commenters believed that the 30-day period was sufficient time to provide emergency relief services to affected areas.

The initial 30-day period begins at the time of the declaration of the emergency by the President or a Governor, or the exemption from the regulations by the Regional Director of Motor Carriers. The FHWA envisions motor carriers beginning many regional emergencies under the exemption provided for under local emergencies and perhaps before the President or Governor formally declares a broader emergency, or having the Regional Director exempt motor carriers. Under this scenario, the motor carrier or driver may have up to 35 days

to provide direct assistance in response to the declared emergency.

However, the FHWA does not believe that motor carriers and drivers should be allowed an extension of the local emergency or tow truck exemption in the absence of a declared regional emergency.

Section 95.12 Removed

Section 395.12, the predecessor of this rule, is being removed.

This final rule is being issued under the authority of section 206(f) of the Motor Carrier Safety Act of 1984 (Pub. L. 98–554, title II, section 206(f), 98 Stat. 2832, 2835, codified at 49 U.S.C. app. 2505(f) (1988)). Section 206(f) reads in part as follows:

> After notice and an opportunity for comment, the Secretary may waive, in whole or in part, application of any regulation issued under this section with respect to any person or class of persons if the Secretary determines that such waiver is not contrary to the public interest and is consistent with the safe operation of commercial motor vehicles. * * * Any waiver authorized under this subsection shall be published in the **Federal Register**, together with the reasons for such waiver.

This waiver authority has been delegated to the FHWA [49 CFR 1.48(aa) (1990).

The FHWA has determined that this rule meets the requirements of section 206(f). As the petitioners and the comments to the dockets have demonstrated, the FMCSRs sometimes prevent motor carriers and drivers from participating quickly and effectively in emergency relief activity. It would be a travesty of "public interest" to enforce rules that actually delay efforts to protect lives and property. Conversely, the safe operation of commercial motor vehicles may well depend on rapid emergency response, e.g. to clear roads blocked by a storm, or restore electricity to traffic signals, or replenish fuel supplies. The FMCSRs are designed to enhance safety, but the regulatory burdens they entail are not justifiable when their effect during the limited periods when emergencies can most effectively be contained or mitigated, is to increase the risks to public health and welfare.

This is not to say that the FHWA believes this rule will impair the safety of motor vehicle operations during emergencies. The financial responsibility and commercial driver's license requirements (49 CFR parts 387 and 383, respectively) remain in effect. Tort law and the threat of higher insurance premiums will also act as a check on negligence. There is no reason to believe that motor carriers and drivers exempted from the FMCSRs by this rule will suddenly become indifferent to maintenance and operational safety practices.

Tehnical Amendments

The FHWA is also making certain technical amendments. All of the exemptions and exceptions found in part 395 are being incorporated into a new § 395.1, Scope of the rules in this part. The FHWA believes that this change will make it easier for drivers and motor carriers to understand these requirements. This consolidation is only a technical change. The following table describes this consolidation:

Old section	New section	Subject
395.3(a)(3)	395.1(i)	Sleeper-berth time.
395.3(b)(3)	395.1(c)	Driver Salespersons.
395.3(c)	395.1(g)	Retail Store Deliveries.
395.3(d)	395.1(d)(1)	Oilfield off-duty time.
395.3(b)(3) and (e)	395.1(j)(1)	Alaska maximum driving and on-duty time.
395.3(f)	395.1(d)(2)	Oilfield on-duty time.
395.7	395.1(l)	Travel time.
395.8(k)(2)	395.1(h)	Retention of driver's record of duty status.
395.8(l)(1)	395.1(e)	100 air-mile radius.
395.8(l)(2)	395.1(k)	Hawaiian driver's records of duty status.
395.10(a)	395.1(b)(1)	Adverse driving conditions.
395.10(b)	395.1(j)(2)	Adverse conditions in Alaska.
395.11	395.1(b)(2)	Emergency conditions.

The exception for drivers encountering adverse driving conditions in the State of Alaska is being moved from § 395.10(b) to § 395.1(i)(2) and the definition of adverse driving conditions, § 395.10(c) is being moved to § 395.2 Definitions.

The emergency conditions rule which was at § 395.11 is being moved to the exceptions section under adverse driving conditions, § 395.1(b)(2). The FHWA's published interpretations to the Federal Motor Carrier Safety Regulations (42 FR 60078; Nov. 23, 1977) included a discussion of § 395.11. The interpretation is still valid and is reprinted here for the convenience of motor carriers. See 42 FR 60087, item number 6.

Note: The regulatory citations reflect the new numbering scheme described above.

Emergency Conditions—Section 395.1(b)(2)

a. *Loading and unloading delays. Section 395.1(b)(2).* While it is true that unforeseen contingencies do arise from time to time in the course of motor carrier operations, loading and unloading delays are not unusual. The Safety Regulations, under two separate sections (395.1(b)(1) and 395.1(b)(2)), make ample allowances for contingencies that cannot always be anticipated. Loading and unloading delays do not fall within the definitions of the two sections above.

b. *Ordinary mechanical failures.*

Mechanical failures are not treated as emergencies for purposes of §§ 395.1(b)(1) or 395.1(b)(2). The majority of mechanical difficulties are the result of failure to assume a high degree of responsibility as to maintenance and inspection. Section 395.1(b)(1) is explicit in that a driver may not drive or be permitted or required to drive after he/she has been on duty 15 hours following 8 consecutive hours off duty. Under § 395.1(b)(2), if a genuine emergency occurs, a driver may complete his or her run and be on duty for more than 15 hours without being in violation of the provisions of the Hours of Service Regulations, if such run reasonably could have been completed absent the emergency.

c. *Emergency conditions are unforeseen circumstances.*

An absolute prerequisite for any such claim must be that the run is one which could normally and reasonably have been completed without a violation and that the unforeseen event occurred after the driver started on his or her tour of duty.

The term "in an emergency" shall not be construed as encompassing such things as driver's desire to get home, shipper's demands, market declines, shortage of drivers, or mechanical failures.

This exception should not be confused with the rule contained in § 390.23, which is the major subject of this rulemaking action. Section 390.23 exempts motor carriers and drivers from the requirements of the 10, 15 and 60/70 hour rules.

The FHWA is revising § 395.3 to reference paragraphs moved to § 395.1.

The FHWA is also amending the term "driver-salesman" to "driver-salesperson" and changing the words "he" or "his" to "he/she" or "his/her" wherever they appear in the definition of a driver-salesperson in § 395.2. Similarly, the word "he" used in the definition of "on duty time" is being changed to "he/she."

Finally, the term "motor vehicle," previously used in these regulations, has been changed wherever it appeared to "commercial motor vehicle" to promote consistency with the definitions used in 49 CFR part 390 and in the Motor Carrier Safety Act of 1984.

Rulemaking Analyses and Notices

Regulatory Impact

Emergencies are events that require immediate action to protect human life and the public welfare. This rule will remove regulatory requirements that could slow emergency response efforts by drivers and motor carriers. The technical amendments included in this document merely rearrange, move, consolidate, and make conforming changes to various sections of part 395. For this reason, and since the amendments impose no additional burdens, the FHWA is making these technical amendments final without prior notice and opportunity for comment. Furthermore, an opportunity to comment on these amendments is unnecessary because it is anticipated that useful information would not be received because of the procedural nature of the action.

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the DOT. It is anticipated that the economic impact of this rulemaking will be minimal. This rule reduces motor carriers' regulatory burdens and a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), the FHWA has evaluated the effects of this rulemaking on small entities. This final rule would exempt drivers and motor carriers from some or all of the FMCSRs in an emergency, thereby enabling them to provide direct assistance in a timely and effective manner to Communities experiencing hardship. This amendment would make emergency assistance available which, but for this change, might be unavailable or available only at a greater cost or after some delay in time. Since this amendment removes regulatory restrictions and procedural burdens during times of emergencies, the FHWA believes that this rule will not have an economic impact on small entities.

For these reasons, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

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

Nothing in this document preempts any State law or regulation.

This final rule does not limit the policy-making discretion of the States. States will not be required as part of the Motor Carrier Safety Assistance Program to adopt this rule for intrastate safety regulations, but they will have to adopt this amendment for the enforcement of interstate operations. The issues addressed in this final rule therefore have no federalism implications.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This final rule will remove, for intrastate or interstate motor carriers that provide "direct assistance" and "emergency relief" during publicly declared emergencies, the need for prior application for and approval by the FHWA of regulatory relief, as is currently required by the regulations. This rule will remove motor carriers' and drivers' collection of information requirements while providing direct assistance to emergency relief efforts. There are no information collection requirements for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulatory Identification Number

A regulatory identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 390

Emergency situation assistance, Highway safety, Highways and roads, Motor carriers.

49 CFR Part 395

Highway safety, Motor carriers, Reporting and recordkeeping requirements.

In consideration of the foregoing, the FHWA is amending title 49, Code of Federal Regulations, subtitle B, chapter III, parts 390 and 395 as set forth below:

Issued on: July 24, 1992.

T.D. Larson,

Administrator.

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

1. The authority citation for 49 CFR part 390 continues to read as follows:

Authority: 49 U.S.C. App. 2503 and 2505; 49 U.S.C. 3102 and 3104; and 49 CFR 1.48.

2. Section 390.5 is amended by adding the definitions of *Direct assistance, Emergency,* and *Emergency relief,* and placing them in alphabetical order to read as follows:

§ 390.5 Definitions.

* * * * *

Direct assistance means transportation and other relief services provided by a motor carrier or its driver(s) incident to the immediate restoration of essential services (such as, electricity, medial care, sewer, water, telecommunications, and telecommunication transmissions) or essential supplies (such as, food and fuel). It does not include transportation related to long-term rehabilitation of damaged physical infrastructure or routine commercial deliveries after the initial threat to life and property has passed.

* * * * *

Emergency means any hurricane, tornado, storm (e.g. thunderstorm, snowstorm, icestorm, blizzard, sandstorm, etc.), high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, mud slide, drought, forest fire, explosion, blackout or other occurrence, natural or man-made, which interrupts the delivery of essential services (such as, electricity, medical care, sewer, water, telecommunications, and telecommunication transmissions) or essential supplies (such as, food and fuel) or otherwise immediately threatens human life or public welfare, provided

such hurricane, tornado, or other event results in:

(1) A declaration of an emergency by the President of the United States, the Governor of a State, or their authorized representatives having authority to declare emergencies; by the Regional Director of Motor Carriers for the region in which the occurrence happens; or by other Federal, State or local government officials having authority to declare emergencies, or

(2) A request by a police officer for tow trucks to move wrecked or disabled vehicles.

Emergency relief means an operation in which a motor carrier or driver of a commercial motor vehicle is providing direct assistance to supplement State and local efforts and capabilities to save lives or property or to protect public health and safety as a result of an emergency as defined in this section.

* * * *

3. Section 390.23 is revised to read as follows:

§ 390.23 Relief from regulations.

(a) Parts 390 through 399 of this chapter shall not apply to any motor carrier or driver operating a commercial motor vehicle to provide emergency relief during an emergency, subject to the following time limits:

(1) *Regional emergencies.*

(i) The exemption provided by paragraph (a)(1) of this section is effective only when:

(A) An emergency has been declared by the President of the United States, the Governor of a State, or their authorized representatives having authority to declare emergencies; or

(B) The Regional Director of Motor Carriers has declared that a regional emergency exists which justifies an exemption from parts 390 through 399 of this chapter.

(ii) Except as provided in § 390.25, this exemption shall not exceed the duration of the motor carrier's or driver's direct assistance in providing emergency relief, or 30 days from the date of the initial declaration of the emergency or the exemption from the regulations by the Regional Director, whichever is less.

(2) *Local emergencies.*

(i) The exemption provided by paragraph (a)(2) of this section is effective only when:

(A) An emergency has been declared by a Federal, State or local government official having authority to declare an emergency; or

(B) The Regional Director of Motor Carriers has declared that a local emergency exists which justifies an exemption from parts 390 through 399 of this chapter.

(ii) This exemption shall not exceed the duration of the motor carrier's or driver's direct assistance in providing emergency relief, or 5 days from the date of the initial declaration of the emergency or the exemption from the regulations by the Regional Director, whichever is less.

(3) Tow Trucks responding to emergencies.

(i) The exemption provided by paragraph (a)(3) of this section is effective only when a request has been made by a Federal, State or local police officer for tow trucks to move wrecked or disabled vehicles.

(ii) This exemption shall not exceed the length of the motor carrier's or driver's direct assistance in providing emergency relief, or 24 hours from the time of the initial request for assistance by the Federal, State or local police officer, whichever is less.

(b) Upon termination of direct assistance to the regional or local emergency relief effort, the motor carrier or driver is subject to the requirements of parts 390 through 399 of this chapter, with the following exception: A driver may return empty to the motor carrier's terminal or the driver's normal work reporting location without complying with parts 390 through 399 of this chapter. However, a driver who informs the motor carrier that he or she needs immediate rest shall be permitted at least 8 consecutive hours off duty before the driver is required to return to such terminal or location. Having returned to the terminal or other location, the driver must be relieved of all duty and responsibilities. Direct assistance terminates when a driver or commercial motor vehicle is used in interstate commerce to transport cargo not destined for the emergency relief effort, or when the motor carrier dispatches such driver or vehicle to another location to begin operations in commerce.

(c) When the driver has been relieved of all duty and responsibilities upon termination of direct assistance to a regional or local emergency relief effort, no motor carrier shall permit or require any driver used by it to drive nor shall any such driver drive in commerce until:

(1) The driver has met the requirements of § 395.3(a) of this chapter; and

(2) The driver has had at least 24 consecutive hours off-duty when:

(A) The driver has been on duty for more than 60 hours in any 7 consecutive days at the time the driver is relieved of all duty if the employing motor carrier does not operate every day in the week, or

(B) The driver has been on duty for more than 70 hours in any 8 consecutive days at the time the driver is relieved of all duty if the employing motor carrier operates every day in the week.

4. Section 390.25 is added to read as follows:

§ 390.25 Extension of relief from regulations—emergencies.

The Regional Director of Motor Carriers may extend the 30-day time period of the exemption contained in § 390.23(a)(1), but not the 5-day time period contained in § 390.23(a)(2) or the 24-hour period contained in § 390.23(a)(3). Any motor carrier or driver seeking to extend the 30-day limit shall obtain approval from the Regional Director in the region in which the motor carrier's principal place of business is located before the expiration of the 30-day period. The motor carrier or driver shall give full details of the additional relief requested. The Regional Director shall determine if such relief is necessary taking into account both the severity of the ongoing emergency and the nature of the relief services to be provided by the carrier or driver. If the Regional Director approves an extension of the exemption, he or she shall establish a new time limit and place on the motor carrier or driver any other restrictions deemed necessary.

PART 395—[AMENDED]

5. The authority citation for part 395 continues to read as follows:

Authority: 49 U.S.C. 3102; 49 U.S.C. App. 2505; and 49 CFR 1.48.

6. Section 395.1 is added to read as follows:

§ 395.1 Scope of rules in this part.

(a) *General.* The rules in this part apply to all motor carriers and drivers, except as provided in paragraphs (b) through (k) of this section.

(b) *Adverse driving conditions.* (1) Except as provided in paragraph (i)(2) of this section, a driver who encounters adverse driving conditions, as defined in § 395.2, and cannot, because of those conditions, safely complete the run within the 10-hour maximum driving time permitted by § 395.3(a) may drive and be permitted or required to drive a commercial motor vehicle for not more than 2 additional hours in order to complete that run or to reach a place offering safety for vehicle occupants and security for the vehicle and its cargo. However, that driver may not drive or be permitted to drive—

(i) For more than 12 hours in the aggregate following 8 consecutive hours off duty; or

(ii) After he/she has been on duty 15 hours following 8 consecutive hours off duty.

(2) *Emergency conditions.* In case of any emergency, a driver may complete his/her run without being in violation of the provisions of these regulations, if such run reasonably could have been completed absent the emergency.

(c) *Driver-salesperson.* The provisions of § 395.3(b) shall not apply to any driver-salesperson whose total driving time does not exceed 40 hours in any period of 7 consecutive days.

(d) *Oilfield operations.* (1) In the instance of drivers of commercial motor vehicles used exclusively in the transportation of oilfield equipment, including the stringing and picking up of pipe used in pipelines, and servicing of the field operations of the natural gas and oil industry, any period of 8 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours.

(2) In the case of specially trained drivers of specially constructed oil well servicing vehicles, on-duty time shall not include waiting time at a natural gas or oil well site; *provided,* that all such time shall be fully and accurately accounted for in records to be maintained by the motor carrier. Such records shall be made available upon request of the Federal Highway Administration.

(e) *100 air-mile radius driver.* A driver is exempt from the requirements of Section 395.8 if:

(1) The driver operates within a 100 air-mile radius of the normal work reporting location;

(2) The driver, except a driver salesperson, returns to the work reporting location and is released from work within 12 consecutive hours;

(3) At least 8 consecutive hours off duty separate each 12 hours on duty;

(4) The driver does not exceed 10 hours maximum driving time following 8 consecutive hours off duty; and,

(5) The motor carrier that employs the driver maintains and retains for a period of 6 months accurate and true time records showing:

(i) The time the driver reports for duty each day;

(ii) The total number of hours the driver is on duty each day;

(iii) The time the driver is released from duty each day; and

(iv) The total time for the preceding 7 days in accordance with § 395.8(j)(2) for drivers used for the first time or intermittently.

(f) *Retail store deliveries.* The provisions of § 395.3 (a) and (b) shall not apply with respect to drivers of commercial motor vehicles engaged solely in making local deliveries from retail stores and/or retail catalog businesses to the ultimate consumer, when driving solely within a 100-air mile radius of the driver's work-reporting location, during the period from December 10 to December 25, both inclusive, of each year.

(g) *Retention of driver's record of duty status.* Upon written request to, and with the approval of, the Regional Director of Motor Carriers for the region in which the motor carrier has its principal place of business, a motor carrier may forward and maintain the driver's records of duty status at a regional or terminal office. The addresses and jurisdictions of the Regional Directors' offices are shown in § 390.27 of this chapter.

(h) *Sleeper berths.* Drivers using sleeper berth equipment as defined in § 395.2 or who are off duty at a natural gas or oil well location, may cumulate the required 8 consecutive hours off duty, as required by § 395.3, resting in a sleeper berth in two separate periods totaling 8 hours, neither period to be less than 2 hours, or resting while off duty in other sleeping accommodations at a natural gas or oil well location.

(i) *State of Alaska.* (1) The provisions of § 395.3 shall not apply to any driver who is driving a commercial motor vehicle in the State of Alaska. A driver who is driving a commercial motor vehicle in the State of Alaska must not drive or be required or permitted to drive—

(i) More than 15 hours following 8 consecutive hours off duty;

(ii) After having been on duty for 70 hours in any period of 7 consecutive days, if the motor carrier for which the driver drives does not operate every day in the week; or

(iii) After having been on duty for 80 hours in any period of 8 consecutive days, if the motor carrier for which the driver drives operates every day in the week.

(2) A driver who is driving a commercial motor vehicle in the State of Alaska and who encounters adverse driving conditions (as defined in § 395.2) may drive and be permitted or required to drive a commercial motor vehicle for the period of time needed to complete the run. After he/she completes the run, that driver must be off duty for 8 consecutive hours before he/she drives again.

(j) *State of Hawaii.* The rules in § 395.8 do not apply to a driver who drives a commercial motor vehicle in the State of Hawaii, if the motor carrier who employs the driver maintains and retains for a period of 6 months accurate and true records showing—

(1) The total number of hours the driver is on duty each day; and

(2) The time at which the driver reports for, and is released from, duty each day.

(k) *Travel time.* When a driver at the direction of the motor carrier is traveling, but not driving or assuming any other responsibility to the carrier, such time shall be counted as on-duty time unless the driver is afforded at least 8 consecutive hours off duty when arriving at destination, in which case he/she shall be considered off duty for the entire period.

7. Section 395.2 is revised to read as follows:

§ 395.2 Definitions.

As used in this part, the following words and terms are construed to mean:

Adverse driving conditions means snow, sleet, fog, other adverse weather conditions, a highway covered with snow or ice, or unusual road and traffic conditions, none of which were apparent on the basis of information known to the person dispatching the run at the time it was begun.

Automatic on-board recording device means an electric, electronic, electromechanical, or mechanical device capable of recording driver's duty status information accurately and automatically as required by § 395.15. The device must be integrally synchronized with specific operations of the vehicle in which it is installed. At a minimum, the device must record engine use, road speed, miles driven, the date, and time of day.

Driver-salesperson means any employee who is employed solely as such by a private carrier of property by commercial motor vehicle, who is engaged both in selling goods, services, or the use of goods, and in delivering by commercial motor vehicle the goods sold or provided or upon which the services are performed, who does so entirely within a radius of 100 miles of the point at which he/she reports for duty, who devotes not more than 50 percent of his/her hours on duty to driving time. The term *selling goods* for purposes of this section shall include in all cases solicitation or obtaining of reorders or new accounts, and may also include other selling or merchandising activities designed to retain the customer or to increase the sale of goods or services, in addition to solicitation or obtaining of reorders or new accounts.

Driving time means all time spent at the driving controls of a commercial motor vehicle in operation.

Eight consecutive days means the period of 8 consecutive days beginning on any day at the time designated by the motor carrier for a 24-hour period.

Multiple stops means all stops made in any one village, town, or city may be computed as one.

On duty time means all time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. *On-duty time* shall include:

(1) All time at a carrier or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the motor carrier;

(2) All time inspecting equipment as required by §§ 392.7 and 392.8 of this chapter or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;

(3) All driving time as defined in the term *driving time* in this section;

(4) All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth as defined by the term *sleeper berth* of this section;

(5) All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded;

(6) All time spent performing the driver requirements of §§ 392.40 and 392.41 of this chapter relating to accidents;

(7) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle;

(8) Performing any other work in the capacity of, or in the employ or service of, a common, contract or private motor carrier; and

(9) Performing any compensated work for any nonmotor carrier entity.

Seven consecutive days means the period of 7 consecutive days beginning on any day at the time designated by the motor carrier for a 24-hour period.

Sleeper berth means a berth conforming to the requirements of § 393.76 of this chapter.

Twenty-four-hour period means any 24-consecutive-hour period beginning at the time designated by the motor carrier for the terminal from which the driver is normally dispatched.

8. Section 395.3 is revised to read as follows:

§ 395.3 Maximum driving and on-duty time.

(a) Except as provided in §§ 395.1(b)(1), 395.1(f), and 395.1(i), no motor carrier shall permit or require any driver used by it to drive nor shall any such driver drive:

(1) More than 10 hours following 8 consecutive hours off duty; or

(2) For any period after having been on duty 15 hours following 8 consecutive hours off duty.

(b) No motor carrier shall permit or require a driver of a commercial motor vehicle, regardless of the number of motor carriers using the driver's services, to drive for any period after—

(1) Having been on duty 60 hours in any 7 consecutive days if the employing motor carrier does not operate every day in the week; or

(2) Having been on duty 70 hours in any period of 8 consecutive days if the employing motor carrier operates motor vehicles every day of the week.

§ 395.7 [Removed]

9. Section 395.7 is removed and reserved.

§ 395.8 [Amended]

10. Section 395.8 is amended by removing paragraph (k)(2); by redesignating paragraph (k)(3) as (k)(2); and removing paragraph (l).

§ 395.10 [Removed]

11. Section 395.10 is removed and reserved.

§ 395.11 [Removed]

12. Section 395.11 is removed and reserved.

§ 395.12 [Removed]

13. Section 395.12 is removed and reserved.

[FR Doc. 92–18038 Filed 7–29–92; 8:45 am]
BILLING CODE 4910–22–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 299

[Docket No. 920649–2149]

RIN 0648–AD29

U.S. Nationals Fishing in the Russian Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Interim final rule; request for comments.

SUMMARY: NMFS issues an interim final rule that revises the procedures for owners and operators of U.S. vessels to conduct fishing operations for fishery resources over which the Government of the Russian Federation exercises sovereign rights or fishery management authority. These revisions will improve U.S. fisheries management in the U.S. exclusive economic zone (EEZ).

DATES: This rule is effective July 29, 1992 except § 299.5 (b), (c) and (d) which contain information collection requirements subject to OMB approval under the Paperwork Reduction Act. These sections will be made effective upon OMB approval of the requirements. Comments on this interim final rule must be received by September 14, 1992.

ADDRESSES: Send comments to the Operations Support and Analysis Division, F/CM1, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910. Telex 467856 (US COM FISH CI), FAX (301) 588–4967.

Comments regarding the estimate of the paperwork burden or any other aspect of the information collection requirements under §§ 299.3(a) (2), and 299.5 (b), (c) and (d) should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20235, Attention: NOAA Desk Officer.

FOR FURTHER INFORMATION CONTACT: John D. Kelly, (301) 713–2337.

SUPPLEMENTARY INFORMATION: U.S. nationals have been eligible to engage in fishing operations in the Russian economic zone (EZ) since the United States and the former Union of Soviet Socialist Republics (U.S.S.R.) signed the Agreement on Mutual Fisheries Relations on May 31, 1988. On July 17, 1989, NMFS issued an interim final rule that specified the procedures for U.S. nationals to conduct fishing operations for fishery resources over which the former U.S.S.R. exercised sovereign rights or fishery management authority (54 FR 29896). Since that date, and owing to significant political changes within that country, new governments have been established in the Republics making up the former Soviet Union. The Department of State has determined that all rights and obligations due under the Mutual Fisheries Agreement (Agreement) with the former Soviet Union have now been assumed by the Russian Federation. Therefore, this interim final rule replaces references to "the Union of Soviet Socialist Republics" or "Soviet(s)" or "U.S.S.R." in 50 CFR part 299 with "Russian Federation" or "Russia" in most places.

During the years since the Agreement was signed, U.S. activity has significantly increased in the Russian EZ. However, NMFS has received very little information concerning U.S. fishing activities in the Russian EZ. At the same time, NMFS has observed increased landings of undocumented fish in U.S. ports, allegedly harvested from the Russian EZ in joint ventures. Some of these species or product-types would have been unlawful if harvested or processed in the EEZ. NMFS is concerned that some portion of these landings may actually consist of fish illegally harvested and processed in the EEZ. In order to obtain better information concerning U.S. fishing activities in the Russian EZ and to document the origin and quantity of fish that are harvested in fishing operations in the Russian EZ and brought into the EEZ, NMFS is amending 50 CFR part 299 to:

1. Require the responsible U.S. vessel owner to apply for Russian fishing permits through NMFS and to send all revisions to any such applications to NMFS;

2. Require the responsible U.S. vessel owner to provide a copy of the permit issued by the Russian authorities for that vessel together with any conditions or restrictions imposed subsequent to the application to NMFS; and

3. Establish certain reporting and recordkeeping requirements which must be met by the U.S. vessel owner and operator prior to the vessel departing the EEZ for the Russian EZ and prior to reentering the EEZ either to fish, or to land in a U.S. port fish taken in the Russian EZ. The rule requires copies of such reports to be maintained for 3 years.

In addition, the rule revises part 299 to require U.S. vessel owners and operators to report fish and fish production carried onboard when departing the EEZ for operations in the Russian EZ and to report additional production derived from the Russian EZ when reentering the EEZ and prior to conducting any fishing operations in the EEZ following reentry.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), determined that this rule is necessary for the conservation and management of fisheries off the West Coast and Alaska and that it is consistent with the Magnuson Fishery Conservation and Management Act (Magnuson Act) and other applicable law.

This rule is authorized under the Magnuson Act, 16 U.S.C. 1822(a)(4)(A), which authorizes the Secretary of State in cooperation with the Secretary of Commerce to enter into reciprocal fishing agreements, and 16 U.S.C. 1855(g), which authorizes the Secretary of Commerce to promulgate regulations necessary to carry out the provisions of the Magnuson Act.

This action is exempt from the provisions of E.O. 12291 under section 1(a)(2) because the regulations are issued with respect to a foreign affairs function of the United States and because it implements certain provisions of the Agreement with the Russian Federation that govern the activities of U.S. vessels and their owners when operating in the Russian EZ and when exiting and reentering the EEZ in association with operations in the Russian EZ.

This action is not subject to section 553 of the Administrative Procedure Act (APA) because it involves a foreign affairs function of the United States. Although not required by law to do so, the Assistant Administrator is soliciting public comments on this rule, and will consider them to the extent discretion exists to make modifications consistent with national law and the Agreement.

Because neither the APA nor any other statute requires public notice and opportunity to comment upon this rule, no regulatory flexibility analysis is required.

This rule contains information collection requirements subject to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The application requirements found at § 299.3(a)(2) have been previously approved by OMB under control number 0648–0228. The public reporting burden of the requirements is 30 minutes per response. A request for the new requirements has been submitted to the Office of Management and Budget. The public reporting burden of the new requirements is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing, reviewing, and recording the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Operations Support and Analysis Division, NMFS, and OMB (see **ADDRESSES**).

This rule is categorically excluded from the requirement to prepare an environmental assessment by NOAA Administrative Order 216–6. The Assistant Administrator has determined that this action does not pose significant threats to the human environment and is unlikely to result in any additional effect on the human environment not already analyzed in the environmental assessment prepared for the 1989 interim final rule (54 FR 29896; July 17, 1989).

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 299

Fisheries, Foreign fishing, Reporting and recordkeeping requirements, Russian Federation, Treaties, U.S.-Russia Agreement.

Dated: July 22, 1992.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 299 is revised to read as follows:

PART 299—U.S. NATIONALS FISHING IN THE RUSSIAN FISHERIES

Sec.

299.1 Purpose.
299.2 Definitions.
299.3 Procedures.
299.4 Permit issuance.
299.5 Recordkeeping and reporting.
299.6 Requirements.
299.7 Prohibited acts.
299.8 Penalties.

Authority: 16 U.S.C. 1801 *et seq.*

§ 299.1 Purpose.

This part regulates U.S. nationals fishing in the Russian fisheries and implements the Agreement between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics on Mutual Fisheries Relations, signed May 31, 1988.

§ 299.2 Definitions.

The terms used in this part have the following meanings:

Affiliates mean two persons (including individuals and entities) related in such a way that—

(1) One indirectly or directly controls or has power to control the other; or

(2) A third party controls or has power to control both.

Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a reorganized entity having the same or similar management, ownership, or employees as a former entity.

Agreement means the Agreement Between the Government of the United

States of America and the Government of the Union of Soviet Socialist Republics on Mutual Fisheries Relations, signed May 31, 1988.

Assistant Administrator means the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration (NOAA) or a designee.

Exclusive Economic Zone or *EEZ* means the zone established by Presidential Proclamation 5030, dated March 10, 1983, as defined in 16 U.S.C. 1802(6).

Fishery resource means any fish, any stock of fish, any species of fish, and any habitat of fish.

Fishing or *to fish* means any activity that does, is intended to, or can reasonably be expected to result in catching or removing from the water fishery resources. Fishing also includes the acts of scouting, processing, and support.

Fishing vessel means any boat, ship, or other craft that is used for, equipped to be used for, or of a type normally used for, fishing.

Magnuson Act means the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

NMFS means the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce.

National of the United States or *U.S. national* means any person subject to the jurisdiction of the United States, including, but not limited to, a citizen or resident of the United States, or a person employed on a vessel of the United States. In the case of a corporation, partnership or other non-natural person, this includes, but is not limited to, any entity that is the owner of a vessel of the United States.

Operator, with respect to any vessel, means the master or other individual on board and in charge of either the vessel, the vessel's fishing operation, or both.

Owner, with respect to any vessel, means any person who owns that vessel in whole or in part, whether or not it is leased or chartered to or managed by another person, or any charterer, whether bareboat, time, or voyage, and any person who acts in the capacity of a charterer, or manager, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel, any officer, director, manager, controlling shareholder of any entity described in this paragraph, any agent designated as such by any person described in this paragraph, and any affiliate of any person described in this paragraph.

Person means any individual (whether or not a citizen of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any state), and any Federal, state, or local government, or any entity of such government.

Processing means any operation by a vessel to receive fish from a fishing vessel and/or the preparation of fish, including but not limited to cleaning, cooking, canning, smoking, salting, drying, or freezing, either on the vessel's behalf or to assist another vessel.

Relevant laws and regulations of the Russian Federation means those Russian laws and regulations that concern fishing for fishery resources over which Russia exercises sovereign rights or fishery management authority.

Russian and *Federation* mean the Russian Federation, its government, or any organ or entity of its government.

Russian continental shelf and the phrase *continental shelf of Russia* mean the seabed and subsoil of the submarine areas over which, consistent with international law, Russia exercises sovereign rights.

Russian Economic Zone and *Russian EZ* mean a zone of waters off the coast of Russia beyond and adjacent to the Russian territorial sea extending a distance of up to 200 nautical miles from the baseline from which the territorial sea is measured, within which, consistent with international law, Russia has sovereign rights over the fishery resources.

Russian Federation or *Russia* means the governing entity that succeeded the Union of Soviet Socialist Republics, and that is the successor party to the Agreement of May 31, 1988.

Russian fisheries, Russian fishery resources, and *fishery resources over which Russia exercises sovereign rights or fishery management authority* mean fishery resources within the Russian EZ, fishery resources of the Russian continental shelf, and anadromous species that originate in the waters of Russia, whether found in the Russian EZ or beyond any exclusive economic zone or its equivalent.

Scouting means any operation by a vessel exploring (on behalf of the vessel or another vessel) for the presence of fish by any means that do not involve the catching of fish.

Support means any operation by a vessel assisting fishing by another vessel, including—

(1) Transferring or transporting fish or fish products; or

(2) Supplying a fishing vessel with water, fuel, provisions, fishing equipment, fish processing equipment, or other supplies.

Vessel of the United States, U.S. vessel, fishing vessel of the United States, or *U.S. fishing vessel,* as the context requires, means a vessel or a fishing vessel that is documented or numbered under the laws of the United States or of any state, or otherwise subject to the jurisdiction of the United States.

§ 299.3 Procedures.

(a) *Application for annual permits.* (1) *General.* U.S. vessel owners and operators must have a valid permit issued by the Russian Federation obtained pursuant to a complete application submitted through NMFS before fishing in the Russian EZ or for Russian fishery resources. Application forms and copies of applicable laws and regulations of the Russian Federation may be obtained from NMFS, 1335 East-West Highway, Silver Spring, MD 20910. Attention: Office of Fisheries Conservation and Management, F/CM1. Application for a permit must be made by submitting a complete application to NMFS at the same address.

(2) *Application information.* Applications must include the following information:

(i) The vessel name;

(ii) The vessel type;

(iii) The vessel's U.S. Coast Guard documentation number or state registration number;

(iv) The vessel's port of registration;

(v) The name of the vessel owner;

(vi) The type of fishing operation being proposed, i.e., fishing, exploration connected with the fishing operation, transport or support operations;

(vii) The objects of fishing operations i.e., the requested species and tonnage amounts involved in the operation;

(viii) The type of fishing gear to be employed unless the application is for a mothership, processing, or transport vessel which has not received a quota as result of prior negotiations or agreements;

(ix) The vessel's registered net tonnage;

(x) The vessel's cargo capacity, i.e., type of storage capacity (freezer or dry storage), number of holds and actual hold capacity in metric tonnage of fishery products;

(xi) The vessel's engine power (h.p.) and maximum speed (in knots);

(xii) The vessel's gross registered tonnage, its overall length (in meters), and the depth (in meters);

(xiii) The vessel's International Radio Call Sign (IRCS);

(xiv) The vessel's radio control frequencies;

(xv) The vessel's radio-telephone frequencies;

(xvi) The master's name and address;

(xvii) The number of crew members; and

(xviii) Any other information requested by the application form or otherwise required by the competent authorities of the Russian Federation.

(b) *Other application information.* Applications for motherships, processing or transport vessels must identify the type of fishing gear to be employed or the fishing quotas if the vessel has received or is requesting a quota. To facilitate processing, NMFS requests that permit applications for more than ten vessels be grouped by type and fishing area, and provide the name, address, telephone, and FAX number(s) of an individual who will be the official point of contact for an application.

(c) *Review of Applications.* NMFS will review each application, and if it is complete, forward it to the Department of State for submission to the competent authorities of the Russian Federation. NMFS will notify the permit applicant when the permit is submitted to the Russian Federation. NMFS will return incomplete applications to the applicant.

(d) *Action by Russian Federation.* The competent authorities of the Russian Federation will review each application, determine whether to issue a permit, establish such conditions and restrictions related to fishery management and conservation as may be needed, and determine any fees. Those authorities will inform the U.S. Fisheries Attache in Moscow of such determinations and the proposed conditions and restrictions and fees, the attache will then inform the Assistant Administrator and the Department of State. The Department of State, after consulting with the Assistant Administrator, will then notify the competent authorities of the Russian Federation of the acceptance or rejection of the conditions and restrictions and, in the case of a rejection, the State Department's objections. In the event the Department of State notifies the competent authorities of the Russian Federation of its objections to a decision not to issue a permit, or to specific conditions and restrictions, the two governments may consult with respect to these issues. The Department of State, after consulting with the Assistant Administrator, may submit a revised application.

(e) *Direct Communication.* U.S. applicants may communicate directly with the Russian Federation with regard to the status of their applications or permits and are encouraged to do so. Owners and operators should make direct contact and work with Russian industry and government authorities.

§ 299.4 Permit issuance.

(a) *Acceptance.* Once the Department of State has accepted the conditions and restrictions proposed by the Russian Federation and all fees have been paid, the competent authorities of the Russian Federation will approve the application. The Russian Federation will issue a permit to the vessel owner for each fishing vessel for which it has approved an application. That vessel will thereupon be authorized by the Russian Federation to fish in accordance with the Agreement and the terms and conditions set forth in the permit. The vessel owner may not transfer the permit to any other vessel or person. Any such transfer, or the sale or other transfer of the vessel, will immediately invalidate the permit. The vessel owner must notify NMFS of any change in the permit application information submitted to NMFS under § 299.3, at the address specified in § 299.3(a), within 7 calendar days of the change.

(b) *Copies.* The vessel owner and operator must mail a copy of each permit and any conditions and restrictions issued for that vessel by the Russian Federation within 7 calendar days of its receipt to NMFS at the address specified in § 299.3(a).

(c) *Validity.* Any permit issued by the Russian Federation with respect to a vessel subject to this part will be deemed to be a valid permit only if:

(1) A completed permit application has been forwarded to the competent authorities of the Russian Federation as provided in § 299.3(b)(1);

(2) Such application has been approved and a permit issued by the competent authorities of the Russian Federation as provided in paragraph (a) of this section; and

(3) The U.S. Department of State has notified the competent authorities of the Russian Federation that it has accepted the conditions and restrictions as provided in paragraph (a) of this section. The permit will be rendered invalid by: The transfer or sale of the permit specified in paragraph (a) of this section; the failure to submit to NMFS any changes in permit application information as required by paragraph (a) of this section; failure to submit to NMFS any permit copy required by paragraph (b) of this section or any other information or report required by any other provision of this part; or the failure to pay required permit fees.

(d) *Port calls.* U.S. fishing vessels that have been issued permits pursuant to the Agreement are authorized to enter the ports of Murmansk, Korf, Oktyabrski, and Provideniya in Russia to purchase bait, to replenish ship's stores or fresh water, to obtain bunkers, to provide rest for or make changes in their crews, to obtain repairs and other services normally provided in these ports, and, as necessary, to receive permits. Authorized vessels en route to one of the designated ports to receive a permit will be treated as non-fishing vessels, so long as such vessels observe the provisions of the Agreement. All such entries are subject to the applicable laws and regulations of the Russian Federation. U.S. nationals making port calls in Russia or entering the Russian territory must comply with the laws and regulations of Russia applicable to persons within the territorial jurisdiction of the Russian Federation. Entry of U.S. fishing vessels to ports of the Russian Federation will be permitted subject to notice to INFLOT, forwarded by the vessel's agent or owner using Telex, teletype, or telegram so as to be received 4 days in advance of the port entry. Information concerning communication procedures may be obtained from the Fisheries Attache, Embassy of the Russian Federation, 1609 Decatur Street, NW., Washington, DC 20011.

(e) *Visas.* Multiple entry visas valid for 6 months for entry into the ports specified in paragraph (d) of this section may be obtained by submitting crew lists to the Fisheries Attache, Embassy of the Russian Federation, at the address listed in paragraph (d) of this section. The crew list must be submitted at least 14 days prior to the first entry of the vessel into a port of Russia. An amended (supplemental) crew list may be submitted subsequent to the departure of a vessel from a U.S. port, subject to these provisions, provided that any visa issued thereunder will be valid only for 6 months from the date of issuance of the original crew list visa. Notification of entry to a port of Russia pursuant to paragraph (d) of this section must specify if shore leave is requested under such multiple entry visa.

(f) *Emergency medical treatment.* In cases where a U.S. seaman is evacuated from his vessel to Russia for emergency medical treatment, authorities of the United States will ensure that the seaman departs from Russia within 14 days after release from the hospital.

(g) *Exchange of crews.* The exchange of crews of U.S. fishing vessels in a port in Russia specified in paragraph (d) of this section will be permitted subject to

submission to the Embassy of the Russian Federation, Washington, DC, at the address listed in paragraph (d) of this section, of applications for individual transit and crewman visas for replacement crewmen. Applications must be submitted 14 days in advance of the arrival of the crewmen at a port of Russia and must indicate the names, dates, and places of birth, the purpose of the visit, the vessel to which assigned, and the modes and dates of arrival of all replacement crewmen. Individual passports or seamen's documents must accompany each application. Subject to its national laws and regulations, the Embassy of the Russian Federation will affix transit and crewman visas to each passport or seaman's document before it is returned. In addition to the above requirements, the Fisheries Attache, Embassy of the Russian Federation, must receive, 14 days in advance of arrival, the name of the vessel and date of its expected arrival, a list of names, dates and places of birth for those crewmen who will be admitted to a port of Russia, and the dates and manner of their departure from the port of Russia.

(h) *Research vessels.* Special provisions will be made as necessary regarding the entry into ports of the United States or Russia of research vessels of the two countries that are engaged in a mutually agreed upon research program in accordance with the Agreement. Requests for entries of such research vessels should be forwarded to the competent authorities of the relevant government through diplomatic channels.

(i) *Russian-imposed sanctions.* (1) The Russian Federation will impose appropriate fines, penalties, or forfeitures in accordance with its laws, for violations of its relevant laws or regulations.

(2) In the case of arrest and seizure of a U.S. vessel by Russian authorities, notification will be given promptly through diplomatic channels informing the United States of the facts and actions taken.

(3) The Russian Federation will release U.S. vessels and their crews promptly, subject to the posting of reasonable bond or other security.

(4) The sanctions for violations of limitations or restrictions on fishing operations will be appropriate fines, penalties, forfeitures, or revocations or suspensions of fishing privileges.

§ 299.5 Recordkeeping and reporting.

(a) *General.* The owner and operator of a vessel subject to this part are responsible for complying with all recordkeeping and reporting requirements in this part in a timely and accurate manner. Reports and records required by this part must be in English, in the formats specified, and unless otherwise specified, based on Greenwich mean time (GMT).

(b) *Vessel permit abstract report.* (1) The owner and operator of a vessel subject to this part must submit to NMFS Headquarters, Silver Spring, Maryland, a permit abstract report containing the following information:

(i) Vessel name;

(ii) Russian Federation permit number;

(iii) Duration of permit (*e.g.*, 1/1/91–12/31/91);

(iv) Authorized areas of fishing operations in geographic coordinates;

(v) Authorized catch quota in tons;

(vi) Authorized fishing gear; and

(vii) Type of permit (*e.g.*, catcher).

(2) The report must be telefaxed to (301) 588–4967 or telexed to 467856 (US COM FISH CI) within 5 calendar days of receipt of the Russian permit.

(c) *Activity reports.* The owner and operator of a vessel subject to this part must submit to NMFS Alaska Region, Juneau, by telefax to (907) 586–7013, the following reports:

(1) *Depart Report (Action code DEPART).* At least 24 hours before the vessel departs from the EEZ for the Russian EZ, NMFS must receive the following information:

(i) The date (month and day), and time (hour and minute GMT), and position (latitude and longitude to the nearest degree and minute), at which the vessel will depart the EEZ for the Russian EZ; and

(ii) The weight in metric tons (to the nearest hundredth of a metric ton) of all fish and fish product (listed by species and product codes) on board the vessel at the time it will depart the EEZ.

(2) *Return Report (Action code RETURN).* At least 24 hours before a vessel that has been in the Russian EZ enters the EEZ, NMFS must receive the following information:

(i) The date (month and day), time (hour and minute GMT), and position (latitude and longitude to the nearest degree and minute), at which the vessel will enter the EEZ; and

(ii) The weight in metric tons (to the nearest hundredth of a metric ton) of all fish and fish products (listed by species and product codes) on board the vessel at the time it will enter the EEZ, and the areas (Russian EZ, U.S. EEZ, or other) in which such fish products were harvested or received.

(3) All reports must specify: The appropriate action code ("DEPART" or "RETURN"); the vessel's name and international radio call sign (IRCS); the sender's name and telephone number, and FAX, TELEX, and COMSAT numbers; the date (month and day) and time (hour and minute GMT) that the report is submitted to NMFS; and the intended date and U.S. port of landing. See tables 1 and 2 of this section for product and species codes.

(d) *Recordkeeping.* The owner and operator of a vessel subject to this part must retain all copies of all reports required by this part on board the vessel for 1 year after the end of the calendar year in which the report was generated. The owner and operator must retain and make such records available for inspection upon the request of an authorized officer at any time for 3 years after the end of the calendar year in which the report was generated, whether or not such records are aboard the vessel.

TABLE 1—NMFS SPECIES CODES

Species Code and Species Name
110 Pacific cod
120 Other flatfish (all flatfish except yellowfin sole, rock sole, arrowtooth flounder, and Greenland turbot)
121 Arrowtooth and/or Kamchatka flounder (*Atheresthes stomias* and/or *Atheresthes evermanni*)
123 Rock sole
127 Yellowfin sole
130 Ling cod
134 Greenland turbot
139 Other rockfish (all rockfish and thornyheads except POP, sharpchin, northern shortraker, and rougheye)
141 Pacific ocean perch (*Sebastes alutus* only)
160 Sculpins
171 Shortraker/rougheye rockfish (*Sebastes borealis*/S. *aleutianus*)
172 Sharpchin/northern rockfish (*Sebastes zacentrus*/S. *polyspinis*)
193 Atka mackerel
213 Grenadier
270 Pollock
510 Smelt
511 Eulachon
516 Capelin
689 Sharks
700 Skates
710 Sablefish
870 Octopus
875 Squid
000 Salmon
001 Crab, unspecified
200 Pacific halibut
235 Pacific herring
410 Salmon, chinook
420 Salmon, Sockeye
430 Salmon, coho
450 Salmon, chum
540 Trout, steelhead
920 Unspecified king crab
921 Red king crab
922 Blue king crab
923 Gold/Brown king crab
930 Unspecified Tanner crab
931 Baiardi Tanner crab
932 Opilio Tanner crab

TABLE 2—NMFS PRODUCT CODES

Product Code and Product Type

1. Whole fish/food fish
2. Whole fish/bait
3. Bled only (throat, or isthmus, slit to allow blood to drain)
4. Gutted only (belly slit and viscera removed)
6. Head and gutted, with roe
7. Headed and gutted, Western cut (head removed just in front of the collarbone, and viscera removed)
8. Headed and gutted, Eastern cut (head removed just behind the collarbone, and viscera removed)
10. Headed and gutted, tail removed (head removed usually in front of the collarbone, and viscera and tail removed)
11. Kirimi (head removed either in front or behind the collarbone, viscera removed, and tail removed by cuts perpendicular to the spine, resulting in a steak)
12. Salted and split (head removed, belly slit, viscera removed, fillets cut from head to tail but remaining attached near tail; product salted)
13. Wings (on skates, side fins are cut off next to body)
14. Roe (eggs, either loose or in sacs, or skeins)
15. Pectoral girdle (collarbone and associated bones, cartilage and flesh)
16. Heads (heads only, regardless where severed from body)
17. Cheeks (muscles on sides of head)
18. Chins (lower jaw, muscles, and flesh)
19. Belly (flesh in region of pelvic and pectoral fins and behind head)
20. Fillets with skin and ribs (meat and skin with ribs attached, from sides of body behind head and in front of tail)
21 Fillets with skin, no ribs (meat and skin with ribs removed, from sides of body behind head and in front of tail)
22. Fillets with ribs and no skin (meat and skin with ribs removed, from sides of body behind head and in front of tail)
23. Fillets, skinless/bone removed (meat with ribs and skin removed, from sides of body behind and in front of tail)
30. Surimi (paste from fish flesh and additives)
31. Minced (ground flesh)
32. Fish meal (ground fish and fish parts, including bone meal)
33. Fish oil (rendered oil)

§ 299.6 Requirements.

(a) *Compliance with permit requirements.* (1) U.S. nationals and vessels subject to this part must have a valid permit, as specified in § 299.4(c) in order to fish for Russian fishery resources.

(2) U.S. nationals and vessels subject to this part that are fishing for Russian fishery resources must comply with all provisions, conditions, and restrictions of any applicable permit.

(b) *Compliance with Russian law.* U.S. nationals and vessels fishing for Russian fishery resources must comply with the relevant laws and regulations of the Russian Federation.

(c) *Protection of marine mammals.* U.S. nationals and vessels fishing for Russian fishery resources may not harass, hunt, capture, or kill any marine mammal within the Russian EZ, attempt to do so, except as may be provided for by an international agreement to which both the United States and Russia are parties, or in accordance with specific authorization and controls established by the Russian Federation. The provisions of the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361 *et seq.* also apply to any person or vessel subject to the jurisdiction of the United States while in the Russian EZ, and it shall not be a defense to any violation of the MMPA that the person or vessel was acting in accordance with any permit or authorization issued by the Russian Federation.

(d) *Cooperation with enforcement procedures.* (1) The operator of, or any person aboard, any U.S. vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer of the Russian Federation to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record, and catch for purposes of enforcing the relevant laws and regulations of Russia.

(2) The operator of, and any person aboard, any U.S. vessel subject to this part, must comply with directions issued by authorized officers of the Russian Federation in connection with the seizure of the vessel for violation of the relevant laws or regulations of the Russian Federation.

(3) U.S. nationals and vessels subject to this part must pay all fines and penalties and comply with forfeiture sanctions imposed by the Russian Federation for violations of its relevant laws and regulations.

(4) The operator of, and any person aboard, any U.S. vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer of the United States to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing records, and catch for purposes of enforcing the Magnuson Act, the Agreement, and this part.

(e) *Compliance with observer requirements.* The owner of, operator of, and any person aboard, any U.S. vessel fishing in the Russian EZ or for Russian fishery resources to which a Russian observer is assigned must—

(1) Allow and facilitate, on request, boarding of a U.S. vessel by the observer;

(2) Provide to the observer, at no cost to the observer or the Russian Federation, the courtesies and accommodations provided to ship's officers;

(3) Cooperate with the observer in the conduct of his or her official duties; and

(4) Reimburse the Russian Federation for the costs of providing an observer aboard the vessel.

§ 299.7 Prohibited acts.

It shall be unlawful for any U.S. national or vessel, or the owner or operator of any such vessel:

(a) To fish for Russian fishery resources without a valid permit issued by the competent authorities of the Russian Federation;

(b) To violate the provisions, conditions, and restrictions of an applicable permit;

(c) To violate the relevant laws and regulations of Russia;

(d) To harass, hunt, capture, or kill any marine mammal within the Russian EZ, or while fishing for Russian fishery resources, except as provided in § 299.6(c);

(e) To fail to comply immediately with enforcement and boarding procedures specified in § 299.6(d);

(f) To refuse to allow an authorized officer of the Russian Federation to board and inspect a vessel subject to this part for purposes of conducting any search, inspection, arrest, or seizure in connection with the enforcement of the relevant laws and regulations of the Russian Federation;

(g) To assault, resist, oppose, impede, intimidate, threaten, or interfere with, in any manner, any authorized officer of the Russian Federation in the conduct of any search, inspection, seizure, or arrest in connection with enforcement of the relevant laws and regulations of the Russian Federation;

(h) To fail to pay fines or penalties or comply with forfeitures imposed for a violation of the relevant laws and regulations of the Russian Federation;

(i) While fishing in the Russian EZ, or for Russian fishery resources, to refuse or fail to allow a Russian observer to board a vessel subject to this part;

(j) To fail to provide to a Russian observer on board a vessel fishing in the Russian EZ or for Russian fishery resources, the courtesies and accommodations provided to ship's officers;

(k) To assault, resist, oppose, impede, intimidate, threaten, interfere with, harass, or fail to cooperate, in any manner, with a Russian observer placed aboard a vessel subject to this part;

(l) To fail to reimburse the Russian Federation for the costs incurred in the utilization of Russian observers placed aboard such vessel;

(m) To refuse to allow an authorized officer of the United States to board and inspect a vessel subject to this part for purposes of conducting any search, inspection, arrest, or seizure in connection with the enforcement of the Magnuson Act or this part;

(n) To assault, resist, oppose, impede, intimidate, threaten, or interfere with, in any manner, any authorized officer of the United States in the conduct of any search, inspection, seizure, or arrest in connection with enforcement of the Magnuson Act or this part;

(o) To resist a lawful arrest for any act prohibited under the Magnuson Act or this part;

(p) To interfere with, delay, or prevent by any means, the apprehension of another person, knowing that such person has committed any act prohibited by the Magnuson Act or this part;

(q) To possess, have custody or control of, ship, transport, offer for sale, sell, purchase, transship, import, export, or traffic in any manner, any fish or parts thereof taken or retained, landed, purchased, sold, traded, acquired, or possessed, in any manner, in violation of the relevant laws and regulations of the Russian Federation, the Magnuson Act, or this part;

(r) For a vessel subject to this part to enter the Russian EZ to fish unless a permit application has been submitted through NMFS to the competent authorities of the Russian Federation by the U.S. Department of State for such vessel as provided in this part;

(s) To refuse to allow an authorized officer to inspect any report or record required to be made or kept under the Magnuson Act, the Agreement, or any provision of this part;

(t) To refuse, or to fail, to submit fishing gear, fish, proceeds, fishing permit, fish-related records (such as reports, logs, tally sheets, fish tickets, and charts), or other property, subject to such person's control, to inspection, detention, or seizure by an authorized officer, or to interfere with or prevent by any means, such inspection;

(u) To make or use any false statement or representation, oral or written, to an authorized officer, or to conceal any material fact (including by omission), concerning any matter subject to investigation by that officer under the Magnuson Act, the Agreement, or this part;

(v) To falsify or fail to make, keep, or submit, any report or record required to be made, kept, or submitted under the Magnuson Act, the Agreement or this part in the manner, and within the time, required by this part;

(w) To fish for Russian fisheries or to possess fish taken in Russian fisheries on board a vessel subject to this part without a valid permit or other valid form of authorization issued by the competent authorities of the Russian Federation on board the vessel;

(x) To make a false statement in an application for a permit subject to this part;

(y) To falsify, or fail to report to NMFS, any change in the information contained in a permit application subject to this part within 7 calendar days of such change;

(z) To attempt to do, cause to be done, or aid and abet in doing, any of the foregoing; or

(aa) To violate any other provision of this part.

§ 299.8 Penalties.

In addition to any fine, penalty, or forfeiture imposed by the Russian Federation, nationals and vessels of the United States violating the prohibitions of § 299.7 are subject to the fines, penalties, and forfeitures and the adjudicative procedures provided in the Magnuson Act, 16 U.S.C. 1858, 1860, 1861, and any other applicable laws and regulations of the United States.

[FR Doc. 92-17780 Filed 7-29-92; 8:45 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 147
Thursday, July 30, 1992

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

Animal and Plant Health Inspection Service

9 CFR Part 54

[Docket No. 91-150-1]

Scrapie Indemnification

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to revise our scrapie regulations regarding payment of indemnification resulting from the destruction of sheep or goats affected by scrapie or exposed to scrapie, and bloodline animals, by removing the provisions for bloodline animals, establishing an indemnification payment amount of $150 for registered animals and $50 for other animals, and by making other, nonsubstantive changes. This proposal is based on a consensus reached by the Scrapie Negotiated Rulemaking Advisory Committee.

If adopted, this proposal would affect the owners of sheep or goat flocks participating in the indemnification program by reducing the maximum indemnification that may be paid for each sheep or goat and by establishing new requirements for the payment of indemnity because of scrapie.

DATES: Consideration will be given only to comments received on or before September 14, 1992.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 91-150-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, Sheep, Goat, Equine, and Poultry Diseases Staff, Veterinary Services, APHIS, USDA, room 769, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8954.

SUPPLEMENTARY INFORMATION:

Current Indemnification Program

The regulations in 9 CFR part 54 (referred to below as the regulations) include provisions for the payment of Federal indemnification to the owners of sheep and goats destroyed due to the disease scrapie. Under the current regulations, if an animal is destroyed because it is determined to be either affected with scrapie, exposed to scrapie, or in the bloodline of an animal affected with scrapie, indemnification may be paid to its owner following appraisal of the animal at fair market value. The appraisal is done by an appraiser selected and employed by Veterinary Services, or, if the owner and State representative approve, the appraisal may be done by a Veterinary Services representative, either alone or with a State representative. The owner must agree, in writing, to accept this compensation from the United States government before the indemnification is paid.

The indemnification ceiling has been increased several times since the regulations were first promulgated in 1954 and is provided in § 54.7(a) of the regulations. Currently, the amount paid to the owner as indemnification is equal to two-thirds of the appraised value of the animal, not to exceed $300 per head.

The Federal regulations authorizing destruction and indemnity payments for certain animals because of scrapie have been amended several times since they were first promulgated in 1954. The amendments responded to revised assessments of the effectiveness of the eradication program, new evaluations of the risks presented by certain animals in infected flocks, and the availability of Federal funds for indemnity payments to animal owners, flock surveillance, and disease detection programs.

The regulations that were in effect from 1975-1983 provided that exposed animals as well as affected and bloodline animals were authorized for destruction and indemnification. An affected animal was defined in a 1976 amendment of the regulations to mean "[a]n animal for which a diagnosis of scrapie has been made by a Veterinary Services representative or State representative." Prior to 1978, a bloodline animal was defined to mean "any sheep or goat which is: the sire or dam of an affected animal; the descendant of an affected animal; or the full or half-brother or sister of an affected animal."

During its early stages the eradication program was intended to prevent lateral transmission of scrapie by contact, and required depopulation of entire infected and source flocks if scrapie was reported. However, under these regulations flock owners risked losing valuable bloodline animals if they reported the disease. Following an analysis of flock depopulation and indemnification under the eradication program, the regulations were amended in 1983 to provide less drastic means for eradicating the disease and controlling its spread. Under the 1983 amendments of the regulations, destruction of animals and the payment of indemnification were authorized for: (1) Affected animals, that is, animals diagnosed by a Veterinary Services or State representative as having scrapie, and (2) bloodline animals. A definition of "bloodline animal" was added to read "[t]he dam of an affected animal and the dam's first generation progeny, the maternal granddam of an affected animal, the first generation progeny of an affected animal, and all succeeding generations of female progeny from female progeny of an affected female animal." This definition concentrated on the dam and female progeny of affected animals, a group representing higher risks than related males. Depopulation of entire flocks was no longer required. Except for a recent amendment of the regulations in 1988, explained below, the regulations as amended in 1983 are currently in effect.

The 1983 amendment authorizing indemnification only for affected and female bloodline animals was prompted by the unavailability of sufficient funds to indemnify owners for all affected and exposed animals. The supplementary information accompanying that amendment justified this change by pointing out that most of the indemnification paid before the change was not for animals affected by scrapie,

but for exposed animals believed to present minimal risk of transmitting the disease. (See 48 FR 16235, April 15, 1983.)

Some industry representatives have expressed concern that the more extensive destruction and indemnification policy from 1975 to 1983 may have posed a disincentive to keeping accurate flock records and to accurate reporting of the disease by flock owners, and was therefore not effective in eradicating the disease. We share their concern. Agency reports indicate that fewer flocks were reported as infected each year during the 1975-1983 period than following the 1983 amendment, under which only affected and female bloodline animals were eligible for destruction and indemnification. Reports of scrapie increased after 1983. We cannot determine whether the increased level of reporting of scrapie following the 1983 amendments is due to more owners choosing to apply for indemnity because it was made available without involving depopulation of entire flocks, or if the increase is due to reduced effectiveness of the eradication program as a result of not requiring flock depopulation.

Under the regulations that took effect in 1983, once an animal was determined to be an affected animal by the Animal and Plant Health Inspection Service (APHIS), all animals in the flock, except bloodline animals, were considered to be scrapie-exposed animals. All affected and bloodline animals could be destroyed and Federal indemnification paid for these animals. Although not required by the regulations, APHIS chose to subject the remaining animals to surveillance and periodic inspections for 42 months following the most recent exposure to scrapie. Surveillance involves significant costs to Federal and State governments for personnel, travel time, and travel expenses. To address surveillance costs, the regulations in § 54.8 were amended on January 29, 1988 (53 FR 2580–2582, Docket No. 87–087), to once again allow whole-flock destruction and indemnification, but only when a cost-benefit analysis establishes that it is more cost effective to destroy the flock than to maintain it under surveillance. This January 1988 amendment also limited the indemnification paid each year to the amount of funds appropriated by Congress that appear to be available for this purpose for the remainder of the fiscal year.

The current scrapie indemnification regulations are not entirely consistent with the new Voluntary Scrapie Flock Certification Program (Docket No. 91–144, referred to below as the Program) published elsewhere in this issue of the **Federal Register** and effective October 1, 1992. For example, the Program uses epidemiologic investigation in conjunction with a flock management plan to identify animals with a high risk of contracting scrapie, rather than using a bloodline approach. Also, membership in the Program and participation in Program flock plans provide a cost-effective alternative to the choice the current regulations provide for exposed flocks; i.e., whole-flock depopulation.

Therefore, we are proposing to revise the indemnification regulations in 9 CFR part 54 as described below.

Proposed Scrapie Indemnification Program

As discussed above, APHIS recently established the Voluntary Scrapie Flock Certification Program, a scrapie control program that was designed by the Scrapie Negotiated Rulemaking Advisory Committee (the Committee). The Committee agreed that the implementation and effectiveness of the Program would be enhanced by a concentrated effort at the outset to destroy designated animals in a number of flocks in which a clinical diagnosis of scrapie has been confirmed by laboratory studies.

Elimination of these animals would appreciably reduce the amount of existing infection and diminish the probability of continued exposure of animals which have not yet acquired the disease.

The Committee also agreed that after the known infection has been reduced in this manner, it should not be necessary to continue an intensive destruction and indemnification program in addition to the Voluntary Scrapie Flock Certification Program. The flock certification program could thus proceed without the necessity of the costly indemnification provisions.

During the period the scrapie indemnification program is in effect, it should result in the destruction of numerous scrapie-positive and scrapie-exposed animals. The removal of these animals should aid the future success of the Voluntary Scrapie Flock Certification Program by removing many known or probable sources of scrapie.

An intensive scrapie indemnification program lasting six months was seen as desirable by the Committee. However, as discussed below, limiting scrapie indemnification to a strict time period established at the outset is not workable due to uncertainties in the level of scrapie indemnity funds available to achieve the goals of indemnification.

The length of time the proposed scrapie indemnification program would exist would depend on the total number of sheep for which indemnification applications are made, and the funds available to APHIS to pay indemnities. Currently, APHIS has approximately $1.5 to $1.9 million in contingency funds available to pay scrapie indemnities. This sum is probably sufficient to pay indemnification for most but not all of the approximately 180 flocks currently known to APHIS to be infected with scrapie or to be the source of animals infected with scrapie. This sum is not sufficient to pay indemnification for all the applications for indemnification APHIS expects to receive, since we are certain there are other infected and source flocks not yet known to APHIS.

To cope with the fact that current funds are not sufficient to provide for all anticipated indemnification needs, and the fact that future funding levels for scrapie indemnification are unpredictable, we propose the requirements described below for equitable distribution of available scrapie indemnification funds. During its existence, the scrapie indemnification program would disburse available scrapie indemnification funds in accordance with these proposed regulations.

At some future time, APHIS would determine that the purpose of the scrapie indemnification program is near achievement, i.e., that the number of scrapie-infected and scrapie source flocks has been reduced to the point that remaining reservoirs of scrapie infection can be managed by non-indemnification programs such as the Voluntary Scrapie Flock Certification Program. When APHIS believes that the scrapie indemnification program is approaching that point, we would publish a proposal in the **Federal Register** to discontinue the scrapie indemnification program.

The regulations we propose to add consist of new §§ 54.2 through 54.6. Their proposed requirements are discussed below.

Proposed § 54.2, "Animals eligible for indemnification payments," lists the animals for which indemnity may be paid. We propose to pay indemnity for animals in infected flocks or source flocks, two terms defined in the Voluntary Scrapie Flock Certification Program final rule published elsewhere in this issue of the **Federal Register** and discussed below. We propose to pay indemnity for the entire depopulation of such flocks, except when APHIS exercises discretion based on epidemiologic investigation to depopulate only high-risk animals

within the infected or source flocks. Indemnity may also be paid for animals that an APHIS representative or State representative requests to be destroyed for diagnostic testing to identify infected or source flocks.

We propose to pay indemnity for animals in infected flocks or source flocks to reduce the numbers of animals in these flocks, which would aid the effort to control scrapie. Destroying these animals would prevent them from spreading scrapie to other animals, and would reduce the number of flocks that are known reservoirs of scrapie. We propose to pay indemnity for animals destroyed for diagnostic testing at the request of an APHIS representative or State representative to identify infected or source flocks because testing these animals supports the program goal of controlling scrapie by helping to identify flocks that are reservoirs of scrapie.

This section also addresses what would happen if at any time the funds available for indemnity payments are not sufficient to pay for all applications approved for indemnification. As discussed below regarding proposed § 54.3(b), an indemnification application would not be approved unless sufficient funds appropriated by Congress for scrapie indemnity or APHIS contingency funds devoted to scrapie indemnity appear to be available to pay the indemnity. However, exact and current figures are not always available regarding the precise balance of available funds and the precise cost of each indemnification application in progress. At times, approved indemnification applications may represent a cost greater than the Congressionally appropriated or contingency funds available for indemnification. If this occurs, applicants for indemnification whose applications have been approved[1] in accordance with § 54.3(b) would be paid in the chronological order in which their applications were approved by APHIS, until available indemnification funds have been exhausted.

A flock owner may qualify for indemnification based on a determination that his or her flock is an infected flock or source flock. Under 9 CFR 79.3, a Veterinary Services representative or State representative determines a flock to be an infected flock after determining that a scrapie-positive animal is in the flock. According to part 79, a scrapie-positive animal is "An animal for which a diagnosis of scrapie has been made by the National Veterinary Services Laboratories, United States Department of Agriculture, or another laboratory authorized by the Administrator to conduct scrapie tests in accordance with this part, through histological examination of central nervous system samples from the animal for microscopic lesions in the form of neuronal vacuoles or spongy degeneration, or by the use of protease-resistant protein analysis or other confirmatory techniques used in conjunction with histological examination."

Section 79.3 states that a Veterinary Services representative or State representative will determine a flock to be a source flock "after reviewing sale, movement, and breeding records that indicate the flock meets the definition of a source flock." The definition of source flock in part 79 states that it is a flock in which "at least two animals, that were diagnosed as scrapie-positive animals at an age of 54 months or less, were born. In order to be a source flock, the second scrapie-positive diagnosis must be made within 60 months of the first scrapie-positive diagnosis."

The only other owners of animals eligible for indemnification, in addition to owners of infected or source flocks, are owners of animals destroyed for diagnostic testing for scrapie at the request of an APHIS representative or State representative for the purpose of identifying infected flocks and source flocks.

Proposed § 54.2 also provides that no indemnity shall be paid to an owner who fails to provide APHIS, within 30 days of request, with bills of sale, pedigree registration certificates issued by breed or registry associations, and all other records regarding movement of animals into and from the flock containing animals for which the owner has applied for indemnification. This is an incentive to provide these records. Our reasons for needing these records are discussed below, in the discussion of § 54.4.

Proposed § 54.2(b) provides that no indemnity shall be paid for an animal acquired by the owner, other than through birth into the flock, during the 6 months prior to the date APHIS receives an application for indemnification, or to an owner of a flock who has owned a flock for less than one year prior to the date APHIS receives an application for indemnification. This provision is to discourage entrepreneurs from seeking to acquire scrapie-affected animals solely for the purpose of obtaining indemnity payments. If such activity occurred, any resulting movement of scrapie-affected animals and their introduction into new flocks could spread scrapie, and increase indemnity payments required for this program.

Proposed § 54.3, "Application by owners for indemnification payments," describes how owners must apply for indemnity payments. It states that the application must include certain information about the owner's flock and the reasons the owner believes he or she may qualify for indemnity payments, including information concerning whether an APHIS or State representative ever notified the owner that the flock was an infected flock or source flock, and information concerning any diagnosis of scrapie made for animals in the flock, any signs of scrapie[2] observed in the flock by the owner, and any movement of animals into the flock from infected flocks or source flocks. This information is needed by APHIS to decide whether the flock has been determined to be, or should be determined to be, an infected flock or a source flock.

In addition, the application must include signed release letters addressed to any breed associations or registries that maintain records of the owner's sheep or goats, authorizing the associations or registries to release to APHIS all records maintained by the association or registry on sheep or goats currently or formerly owned by the owner. This provision is needed to authorize APHIS to obtain information we may need to identify other flocks that may have scrapie, i.e., flocks the applicant obtained animals from or flocks to which the applicant transferred animals.

[1] No matter when an application for indemnification for an infected or source flock is received by APHIS, it cannot be approved until after the flock is determined to be an infected flock or source flock. Because the tests used to identify infected and source flocks are very time-consuming, if two flock owners apply at the same time for indemnification but one of the flocks was already determined to be an infected or source flock prior to the time of application, that flock would probably be approved for indemnification sooner than the other flock. There are approximately 180 flocks that have already been identified as infected or source flocks. We believe it is equitable that if the proposed program is adopted, members of this group who apply for indemnification would effectively have first priority if competition for limited funds affects the availability of indemnity funds. Many of the owners of these flocks applied for indemnification under the existing program but were denied it due to insufficient funds. If these owners reapply under the new program, approval of their applications would be speeded because their flocks have already been determined to be infected flocks or source flocks.

[2] Signs of scrapie are listed in § 79.2(a)(2) of this chapter, added by the Voluntary Scrapie Flock Certification Program final rule published elsewhere in this issue of the **Federal Register**, effective October 1, 1992.

Proposed § 54.3(b) describes how APHIS would evaluate and approve applications. APHIS would evaluate each application to determine whether the animals for which indemnification is requested are eligible for indemnification payments in accordance with proposed § 54.2. APHIS would approve an application, and notify the applicant in writing of the date of approval, after determining that sufficient funds appropriated by Congress for scrapie indemnity or APHIS contingency funds devoted to scrapie indemnity appear to be available to provide indemnification to the applicant and after determining that the application requests indemnification only for animals eligible for indemnification payments under the regulations.

Proposed § 54.4, "Certification by owners," states that as a condition of receiving indemnity payments, the owner must sign a written agreement with APHIS to do the following:

(a) The owner will make available for review within 30 days of request by an APHIS representative all bills of sale, pedigree registration certificates issued by breed or registry associations, and other records regarding movement of animals into and from the flock containing animals for which an indemnification application is made;

(b) If the owner maintains any flock after the payment of indemnification, the owner shall maintain the flock in accordance with the Voluntary Scrapie Flock Certification Program procedures referenced in subpart B of this part. This condition will significantly reduce the risk that if the owner continues to maintain a flock, it could become reinfected with scrapie.

(c) If the animal for which indemnification is paid is subject to any mortgage, the owner shall consent to the payment of the indemnification to the person holding the mortgage. This simply ensures that the indemnity payment will go to the person or persons entitled to the value of the animal.

Proposed § 54.5, "Amount of indemnification payments," states that indemnity paid under the regulations shall be paid in the amount of $150 for each registered animal destroyed and $50 for each other animal destroyed. The Committee established these values after considering both the average fair market value of sheep and goats in the United States, and the much lower average fair market value of sheep and goats from flocks known to be affected with scrapie. The Committee believes these values will provide a strong incentive for owners of eligible animals to apply for indemnity payments.

Proposed § 54.6, "Procedures for destruction of animals," sets forth proposed requirements for the destruction of animals for which indemnity is paid, and for the disposal of their carcasses. These requirements are necessary to ensure that the animals are destroyed and properly disposed of, to prevent the risk that they could continue to spread scrapie. In general, animals would be destroyed on their premises because moving them presents a risk that the animals could spread disease during movement, or could be separated from the flock and eventually be added to another flock. Animals could be moved to another location for destruction only with prior approval of an APHIS representative, who would not approve movement if it presents a risk of spreading disease. This section also requires that destroyed animals be buried, incinerated, or otherwise disposed of in accordance with applicable State law. Burial, incineration, and other methods approved by State law for disposal of animals exposed to disease are all methods that prevent the further spread of scrapie from the remains of the destroyed animals. Finally, this section also requires that the destruction and disposition of the animals shall be supervised by an APHIS representative. Supervision by an APHIS representative would ensure that animals for which indemnity is paid are actually destroyed, and would ensure that their carcasses are disposed of in accordance with the regulations.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule, if adopted, would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

At present, there are about 11 million sheep and 2 million goats in the United States. This includes approximately 785,000 registered sheep and 10,215,000 nonregistered sheep. These animals are divided among approximately 112,000 flocks or producers, including approximately 26,000 registered flocks and 86,000 nonregistered flocks.

The current regulations allow owners of flocks affected by scrapie to apply for Federal indemnification. Indemnification may be paid for affected animals, bloodline animals and, in some cases, animals exposed to affected animals. Over the past 10 years approximately 10,000 animals have been destroyed in accordance with the regulations, with $2.2 million, or an average of $220 per animal, paid in indemnification. The indemnity paid was based on two-thirds of the fair market value of the animals destroyed, up to $300 per head. However, funds limitations meant that not all applications for indemnification were approved.

This proposed amendment, if adopted, would limit the indemnity paid to $150 per head for each registered animal destroyed and $50 for each other animal destroyed. In addition, the proposed rule would require applicants for indemnification to meet certain additional requirements, not in the current regulations, regarding access by APHIS to records concerning the flock, and participation by the flock owner in the Voluntary Scrapie Flock Certification Program.

Despite the facts that the rule, if adopted, would authorize a smaller average indemnity per animal and require flock owners to meet more conditions to qualify for indemnification, we believe that the rule, if adopted, would result in a large increase in applications for indemnification. This expectation rests on several factors. Since this indemnification program is intended to be discontinued after the number of scrapie-infected and scrapie source flocks has been sufficiently reduced, after which indemnification applications will not be accepted, flock owners who have been putting off applying for indemnification (perhaps waiting for the optimum situation of economic return) will be encouraged to apply while they can. Also, market conditions have increasingly turned against owners of animals from flocks known or suspected to be scrapie-infected or scrapie-exposed. As it becomes harder for these owners to sell their animals on the open market at a profit, they will become more motivated to apply for indemnification. Finally, many flock owners plan to join the Voluntary Scrapie Flock Certification Program, which would require them to dispose of any scrapie-infected or scrapie-exposed sheep or goats they possess. The

proposed indemnity regulations would allow these flock owners to recoup at least part of the cost of these animals.

The cost of the proposed indemnification program may fall anywhere within a wide range, depending largely on the total number of animals for which indemnification is paid during the life of the indemnification program. The indemnification payment per animal would be fixed at $150 for a registered animal and $50 for each other animal. We expect that flock owners will apply for indemnification for approximately 48,000 animals that are eligible for indemnification. This figure is based on the total number of infected flocks known to APHIS, and estimates by the American Sheep Industry Association of the number of sheep and goats eligible for indemnification.

APHIS data show that there are approximately 16,000 sheep known to be in infected or source flocks, and there is a reasonable expectation, based on the limited data available in this area, that the real figure for sheep in infected or source flocks is several times this number. As discussed above, we expect most flock owners eligible for indemnification, especially owners of registered sheep eligible for the higher indemnification rate, to apply for indemnification during the time indemnification would be available.

In light of this expectation, we estimate that indemnification costs to APHIS will fall in a range between $2.4 million (the indemnification cost for 48,000 nonregistered sheep or goats) and $7.2 million (the indemnification cost for 48,000 registered sheep or goats). We believe that registered animals are likely to comprise about 70 percent of the requests for indemnification, resulting in a total indemnification cost of approximately $5.76 million.

Sheep and goat owners applying for indemnification would endure a cost consisting of the difference between the indemnity payment they receive and the market price they could have obtained for the destroyed animals. However, in very many cases, there is no market for animals from flocks affected with scrapie, meaning that owners do not have the option of selling the animals for more than the indemnification price. Sheep and goat owners applying for indemnification would also pay whatever costs they incur in applying for indemnification and complying with the conditions involved in qualifying for it. We do not expect these application and compliance costs to be substantial, but we currently have insufficient data to estimate them.

The Committee considered various alternatives to this proposed rule. One alternative would be to establish a program to destroy all flocks containing infected and exposed sheep or goats, using a broad definition of "exposed," and without expressing any intent to discontinue indemnification after it has achieved specified goals. Depopulating entire flocks in this way would cost the Federal government many millions of dollars in indemnification payments, and would result in vast losses of animals to the industry. Both APHIS and the industry view this approach as undesirable because most of the animals that would be destroyed would likely present minimal risk of transmitting the disease and, by sheer volume, would account for most of the indemnification paid. This approach could also lead to abuse of the indemnification provisions by flock owners who fail to report scrapie when the market price of sheep and goats is high because they would stand to lose many animals worth far more than the indemnification they would receive. If the market price is depressed, however, this approach could result in increased reporting of infected flocks in order to receive indemnification payments. Also, when sheep market prices are low, flock owners eligible for indemnification might enlarge their flocks by buying low-cost animals in order to maximize their indemnification payments.

A majority of the approximately 112,000 sheep flocks or producers in the United States are small business entities. Most of the flock owners who have applied for indemnity in the past have been small entities, and this would probably continue to be true under the proposed indemnification program. We expect no more than approximately 500 small entities to apply for indemnification under the proposed program. Applicants who are approved would probably accrue a slight economic benefit from the indemnity payment, compared to the prices for which they could otherwise sell their sheep.

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

Executive Order 12372

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

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted:

(1) All State and local laws and regulations that are in conflict with this rule will be preempted;

(2) No retroactive effect will be given to this rule; and

(3) It will not require administrative proceedings before parties may file suit in court challenging its provisions.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection provisions that are included in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB). Your written comments will be considered if you submit them to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. You should submit a duplicate copy of your comments to:

(1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, and

(2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250.

List of Subjects in 9 CFR Part 54

Animal diseases, Goats, Indemnification payments, Scrapie, Sheep.

Under the circumstances described above, we propose to amend 9 CFR part 54 (as amended by the Voluntary Scrapie Flock Certification Program final rule published elsewhere in this issue of the Federal Register, which is effective October 1, 1992) as follows:

PART 54—CONTROL OF SCRAPIE

1. The authority citation for part 54 would continue to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 134a–134h; 7 CFR 2.17, 2.51, and 371.2(d).

2. Part 54 would be amended by revising "Subpart A—Animals Destroyed Because of Scrapie" to read as follows:

Subpart A—Scrapie Indemnification Program

Sec.

54.2 Animals eligible for indemnification payments.
54.3 Application by owners for indemnification payments.

Sec.
54.4 Certification by owners.
54.5 Amount of indemnification payments.
54.6 Procedures for destruction of animals.

Subpart A--Scrapie Indemnification Program

§ 54.2 Animals eligible for indemnification payments.

(a) An indemnification payment for an animal may be paid only after the owner of the animal has applied for indemnification and the application has been approved in accordance with § 54.3. Indemnification payments may be paid only for the following:

(1) Total depopulation of flocks that were determined to be infected flocks or source flocks; or, at the discretion of APHIS based on epidemiologic investigation, depopulation of high-risk animals from infected flocks or source flocks; and,

(2) Animals destroyed for diagnostic testing at the request of an APHIS representative or State representative to identify infected flocks and source flocks.

(b) If at any time funds appropriated by Congress for scrapie indemnity or APHIS contingency funds devoted to scrapie indemnity are not sufficient to pay all owners whose indemnification applications have been approved by APHIS in accordance with § 54.3(b), available funds will be paid in chronological order based on the dates that applications are approved by APHIS until available indemnification funds have been exhausted.

(c) No indemnification payment shall be made for an animal if the owner of the animal fails to provide APHIS, within 30 days of request by an APHIS representative or State representative, with bills of sale, pedigree registration certificates issued by breed or registry associations, and all other records regarding movement of animals into and from the flock containing animals for which the owner has applied for indemnification.

(d) No indemnification payment shall be made for an animal acquired by the owner, other than through birth within the flock, during the 6 months prior to the date of receipt by APHIS of an application by the owner for indemnification, or to an owner who has been an owner of a flock for less than one year prior to the date of receipt by APHIS of an application by the owner for indemnification.

§ 54.3 Application by owners for indemnification payments.

(a) An owner must apply to receive indemnification by submitting to the Administrator a written request containing the following information about the owner and the flock containing animals for which the application to receive indemnification is made:

(1) Name, address, and social security number (optional) of the owner;

(2) Number, breed(s), sex, and any individual identification of animals in the flock;

(3) Address of the premises on which the flock is located;

(4) Reasons the owner believes animals in his or her flock may be eligible for indemnification, including:

(i) If an APHIS representative or State representative notified the owner that his or her flock was an infected flock or source flock, the date such notice was given and the name of the APHIS representative or State representative who gave the notice;

(ii) If the owner is aware of any diagnosis of scrapie made for animals in the flock, the date of the diagnosis, identification of any animals destroyed in the process of making such diagnosis, and the name of the person or organization who made the diagnosis;

(iii) Any signs of scrapie listed in § 79.2(a)(2) of this chapter that are observed in the flock by the owner; and

(iv) Any movement of animals into the owner's flock from infected flocks or source flocks; and

(5) Signed release letters addressed to any breed associations or registries that maintain records of the owner's animals, authorizing the breed associations or registries to release to APHIS all records maintained by the breed associations or registries on animals currently or formerly owned by the owner.

(b) APHIS will evaluate each application to determine whether it is complete and includes the agreement required by § 54.4, and whether the animals for which indemnification is requested are eligible for indemnification payments in accordance with § 54.2. APHIS will approve an application, and notify the applicant in writing of the date of approval, after determining that the application requests indemnification only for:

(1) Animals in a flock that has been determined to be an infected flock or a source flock, or

(2) Animals destroyed for diagnostic testing at the request of an APHIS representative or State representative to identify infected flocks and source flocks. Indemnity will be paid until available indemnification funds have been exhausted.

§ 54.4 Certification by owners.

Before any indemnification payment is made to an owner, the owner must sign a written agreement with APHIS, certifying the following:

(a) The owner will make available for review, within 30 days of a request by an APHIS representative, all bills of sale, pedigree registration certificates issued by breed or registry associations, and other records regarding movement of animals into and from the flock containing animals for which an indemnification application is made;

(b) If the owner maintains any flock after the payment of indemnification, the owner shall maintain the flock in accordance with the Voluntary Scrapie Flock Certification Program procedures referenced in subpart B of this part;

(c) If the animal for which indemnification is paid is subject to any mortgage, the owner shall consent to the payment of the indemnification to the person holding the mortgage.

§ 54.5 Amount of indemnification payments.

Indemnity paid in accordance with § 54.2 shall be paid in the amount of $150 for each registered animal destroyed and $50 for each other animal destroyed.

§ 54.6 Procedures for destruction of animals.

(a) Animals for which indemnity is sought, other than animals destroyed for diagnostic testing, shall be destroyed on the premises where the animals are held, pastured, or penned at the time indemnity is approved; except that the animals may be moved for destruction to another location when movement to the location is approved in advance by an APHIS representative.

(b) The carcasses of animals destroyed in accordance with this section shall be disposed of by burial, incineration, or other disposal methods authorized by applicable State law.

(c) The destruction and disposition of animals destroyed in accordance with this section shall be performed in the presence of an APHIS representative.

Done in Washington, DC, this 23d day of July, 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-17892 Filed 7-29-92; 8:45 am]

BILLING CODE 3410-34-F

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563

[No. 92-228]

RIN 1550-AA52

Reporting Requirements for Adjustable-Rate Mortgage Index Data

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS), proposes to amend its reporting regulation to require any member savings association within the jurisdiction of a Federal Home Loan Bank (FHLBank), that reports data from which a FHLBank calculates and publishes an adjustable-rate mortgage index, to continue to provide the FHLBank with such data upon the FHLBank's request. Such data currently may be extracted directly from the monthly Thrift Financial Report (TFR) by the FHLBank or reported to a FHLBank based on, but independently of, the TFR. The proposed regulation will ensure that the adjustable-rate mortgage index data continues to be reported, upon the FHLBank's request, notwithstanding the elimination of the monthly TFR.

DATES: Comments must be received on or before August 31, 1992.

ADDRESSES: Send comments to Director, Information Services Division, Public Affairs, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. (92-228). These submissions may be hand delivered to 1700 G Street, NW. from 9 a.m. to 4 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906-7753 or (202) 906-7755. Submissions must be received by 5 p.m. on the day they are due in order to be considered by the OTS. Late-filed, misaddressed or misidentified submissions will not be considered in this rulemaking. Comments will be available for inspection at 1776 G Street, NW., Street Level.

FOR FURTHER INFORMATION CONTACT: Catherine Shepard, Senior Attorney, (202) 906-7275, Regulations and Legislation Division, Chief Counsel's Office; Patrick G. Berbakos, Deputy Assistant Director, Supervisory Systems, (202) 906-6720, Thomas A. Loeffler, Assistant Director of Supervisory Operations, (202) 906-5762, Supervisory Operations; Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: On January 21, 1992, the OTS published a notice and request for comment in the Federal Register proposing to eliminate the monthly TFR as of January 1, 1993. 57 FR 2314 (1992). The OTS expects that savings associations will realize significant financial benefits from the elimination of the monthly TFR and that there will be a corresponding reduction in the paperwork burden on the thrift industry.

As set forth more fully in the notice and request for comment, the monthly TFR data were designed to be, and have been, used for a number of purposes other than monitoring the safety and soundness of savings associations. See 57 FR 2314 (1992). These purposes include providing the HFLBanks with data for calculating and publishing adjustable rate-mortgage indices.

The Federal Home Loan Bank of San Francisco (FHLB-San Francisco) was among the commenters. The FHLB-San Francisco expressed concern that elimination of the monthly TFR would jeopardize a critical publication. Savings associations under the jurisdiction of the FHLB-San Francisco currently extract the cost of funds data from their monthly TFR and report the data to the FHLB-San Francisco. The FHLB-San Francisco uses the data to calculate and publish the cost of funds for those Eleventh District savings associations as an adjustable-rate mortgage index used throughout the home mortgage lending industry. The FHLB-San Francisco noted the importance of certain TFR data and stated that if savings associations ceased to provide key data items it would be unable to publish the adjustable-rate mortgage index, which is the base index for over $250 billion of home mortgage loans nationwide.

The OTS recognizes that certain data contained in the monthly TFR are sufficiently important to the publication of adjustable-rate mortgage indices and to the efficient functioning of the home loan mortgage market to justify their continued collection.

The OTS has legal authority to require savings associations to continue to report adjustable rate-mortgage index data to the Federal Home Loan Banks. Section 402(e)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") authorizes the OTS to:

> take such action as may be necessary to assure that the indexes prepared by the (former) Federal Savings and Loan Insurance Corporation, the (former) Federal Home Loan Bank Board, and the Federal Home Loan Banks immediately prior to enactment of this subsection and used to calculate the interest rate on adjustable rate mortgage instruments continue to be available.

Accordingly, the OTS proposes to amend its reporting regulations, 12 CFR 563.180, to require, upon the request of any FHLBank, member savings associations that currently provide data from which an adjustable-rate mortgage index is calculated to continue to report such data to the Federal Home Loan Bank. Such data will be limited to the data a savings association submitted to its FHLBank on or before August 9, 1989, the data of enactment of the FIRREA, and that was used for the calculation of an adjustable-rate mortgage index.

The OTS notes that the proposed regulation does not perpetuate the monthly TFR, which will be eliminated effective January 1, 1993. Nor does the proposed regulation impose a new reporting requirement. Rather, the data reporting regulation requires the continuation of an existing reporting requirement, but of a much more limited scope.

Solicitation of Comments

The OTS solicits comments on all aspects of this proposed regulation, including any suggested alternative means of collecting the adjustable-rate mortgage index data. A 30-day comment period is provided.

Executive Order 12291

The OTS has determined that this proposal does not constitute a "major rule" and, therefore, the preparation of a regulatory impact analysis is not required.

Regulatory Flexibility Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is certified that the regulation proposed herein will not have a significant impact on a substantial number of small savings associations.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h). Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, DC 20503, with copies to the Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

The collection of information in this proposed regulation is in 12 CFR 563.180(e). The information will be used

by the Federal Home Loan Banks in the publication of adjustable-rate mortgage indices and allow the home loan mortgage market to function efficiently.

Estimated total annual reporting burden: 25,200 hours.

Estimated average annual burden hours per respondent: 12.

Estimated number of respondents: 2100.

Estimated annual frequency of responses: 12.

List of Subjects in 12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

Accordingly, the Office of Thrift Supervision hereby proposes to amend 563, chapter V, title 12, Code of Federal Regulations as set forth below:

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 563—OPERATIONS

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

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1468, 1828, 3806; 42 U.S.C. 4106.

2. Section 563.180 is amended by adding a new paragraph (e) to read as follows:

§ 563.180 Criminal referrals and other reports and statements.

* * * * *

(e) *Adjustable-rate mortgage indices.* Upon the request of its Federal Home Loan Bank, any savings association that reported on the monthly Thrift Financial Report and from which data a Federal Home Loan Bank calculated and published an adjustable-rate mortgage index shall continue to report such data to the Federal Home Loan Bank notwithstanding the OTS's elimination of the monthly Thrift Financial Report. The data to be reported under this paragraph shall be limited to those data a savings association reported for an adjustable-rate mortgage index calculated and published by a Federal Home Loan Bank on or before August 9, 1989.

Dated: May 26, 1992.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 92-17939 Filed 7-29-92; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 341

[Docket No. 76N-052N]

RIN 0905-AA06

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Proposed Amendment of Tentative Final Monograph for OTC Nasal Decongestant Drug Products; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice of proposed rulemaking that appeared in the Federal Register of June 19, 1992 (57 FR 27658), to amend the tentative final monograph for over-the-counter (OTC) nasal decongestant drug products to modify the drug interaction precaution statement required in the labeling of oral nasal decongestant drug products. The document was published with some inadvertent errors in the language proposing to amend 21 CFR 341.80. This document corrects those errors.

DATES: Written comments on the proposed regulation by August 18, 1992; written comments on the agency's economic impact determination by August 18, 1992. FDA is proposing that the final rule based on this proposal be effective 12 months after the date of publication of the final rule in the Federal Register.

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: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

In FR Doc. 92-14355, appearing on page 27658, in the Federal Register of Friday, June 19, 1992, the following corrections are made:

1. On page 27659, in the first column, in the first full paragraph, in the fifth and sixth lines, the phrase "Do not take" is corrected to read "Do not use".

§ 341.80 [Corrected]

2. On page 27660, in the second column, in § 341.80 *Labeling of nasal decongestant drug products*, in paragraph (c)(1)(i)(*d*), appearing in the first and second lines, the phrase "Do not take" is corrected to read "Do not use".

Dated: July 22, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-17934 Filed 7-29-92; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-0372-88; INTL-0401-88]

RIN 1545-AM15; 1545-AL80

Intercompany Transfer Pricing and Cost Sharing Regulations Under Section 482; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed Income Tax Regulations relating to intercompany transfer pricing and cost sharing under section 482 of the Internal Revenue Code.

DATES: The public hearing will be held on Monday, August 31, 1992, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Monday, August 17, 1992.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (INTL-0372-88; INTL-0401-88), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Bob Boyer of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-377-9231, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is a notice of proposed rulemaking that contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 482 of the Internal Revenue Code of 1986. The proposed regulations

appeared in the **Federal Register** on Thursday, January 30, 1992 (57 FR 3571).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Monday, August 17, 1992, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Becasue of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying.

Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

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

[FR Doc. 92-18055 Filed 7-27-92; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 902

Alaska Abandoned Mine Land Reclamation Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed Rule; Public Comment Period and Opportunity for Public Hearing on Proposed Amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Alaska Abandoned Mine Land Reclamation (AMLR) Program (hereinafter, the "Alaska AMLR Program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) 30 U.S.C. Sections 1231 *et seq.* This amendment would implement a State-administrated Abandoned Mine Land Emergency Program in accordance with Section 410 of SMCRA.

This notice sets forth the times and locations that the Alaska AMLR Program and the proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., m.d.t. August 31, 1992. If requested, a public hearing on the proposed amendment will be held on August 24, 1992. Requests to present oral testimony at the hearing must be received by 4 p.m., m.d.t. on August 14, 1992.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett of the Casper Field Office, at the address listed below.

Copies of the Alaska AMLR Program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, Room 2128, Casper, Wyoming 82601-1918, Telephone: (307) 261-5776.

Samuel M. Dunaway Jr., Acting Director, Division of Mining, Department of Natural Resources, P.O. Box 107016, Anchorage, Alaska 99510-7016, Telephone: (907) 563-1853.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone (307) 261-5776.

SUPPLEMENTARY INFORMATION:

I. Background

On December 23, 1983, the Secretary of the Interior approved the Alaska AMLR program. General background information, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Alaska AMLR program can be found in the December 23, 1983, **Federal Register** (48 FR 56753).

II. Proposed Amendment

By letter dated May 28, 1992, (Administrative Record No. AK-D-1), Alaska submitted a proposed amendment to its AMLR Program pursuant to SMCRA. Alaska submitted the proposed amendment at the request of the Director, OSM. Alaska proposes to amend the Alaska Reclamation Plan to implement a State-administered Abandoned Mine Land Emergency Program in accordance with Section 410 of SMCRA.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 884.15, OSM is seeking comment on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 884.14. If the amendment is deemed adequate, it will become part of the Alaska AMLR Program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at a public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by 4 p.m., m.d.t. August 14, 1992. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested, as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."** All such meetings will be open to the public

and, if possible, notices of meetings will be posted at the locations listed under "ADDRESSES." A written summary of each meeting will be made a part of the administrative record.

Executive Order 12778

This rule has been reviewed under the principles set forth in section 2 of E.O. 12778 (56 FR 55195; October 25, 1991) on Civil Justice Reform. The Department of the Interior has determined that this rule meets the applicable standards of section 2(a) and 2(b) of E.O. 12778. Under SMCRA section 405 and 30 CFR part 884, the agency decision on State program submittals must be based solely on a determination of whether the submittal is consistent with SMCRA and the Federal regulations. The only decision allowed under the law is approval, disapproval or conditional approval of State program amendments.

Executive Order No. 12291 and the Regulatory Flexibility Act

On March 30, 1992, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval of AMLP programs and amendments. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this 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.*). This rule is modeled after and based upon counterpart Federal regulations for which an economic analysis and certification was previously made that such regulations will not have a significant economic effect upon a substantial number of small entities. This rule will not impose any new Federal requirements; rather it will ensure that existing requirements established by SMCRA and previously promulgated by OSM will be met by the State. In making the determination for the current rule, the Department of the Interior relied upon the data and assumptions in the previous analysis.

List of Subjects in 30 CFR Part 902

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 17, 1992.

W. Hord Tipton,

Deputy Director, Operations & Technical Services.

[FR Doc. 92-17969 Filed 7-29-92; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 914

Indiana Regulatory Program Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt of Indiana's response to a required program amendment codified in the Federal regulations at 30 CFR 914.16(a) concerning the State's regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The required amendment concerns notification of permit decisions to commenters or objectors to a permit application, and to each party to an informal conference or hearing. Indiana's response to the required amendment is intended to assert that the Indiana statutes and rules currently allow for appropriate and timely notification in accordance with SMCRA and that an amendment is not necessary.

This notice sets forth the times and locations that the Indiana program, the required amendment, and Indiana's response will be available for public inspection, the comment period during which interested persons may submit written comments on Indiana's response, and the procedures that will be followed for a public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on August 31, 1992; if requested, a public hearing on the proposed amendment is scheduled for 1 p.m. on August 24, 1992; and requests to present oral testimony at the hearing must be received on or before 4 p.m. on August 14, 1992.

ADDRESSES: Written comments and requests to testify at the hearing should be directed to Mr. Roger W. Calhoun, Acting Director, Indianapolis Field Office, at the address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Indiana program, the response letter, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for public review at the following locations, during normal business hours, Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, IN 46204. Telephone: (317) 226-6166.

Indiana Department of Natural Resources, 402 West Washington Street, Room 295, Indianapolis, IN 46204. Telephone: (317) 232-1547.

Each requester may receive, free of charge, one copy of Indiana's response letter by contacting the OSM Indianapolis Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Acting Director, Telephone (317) 226-6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 Federal Register (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Discussion of the Proposed Amendments

By letter dated February 15, 1991 (Administrative Record No. IND-0836), the Indiana Department of Natural Resources (IDNR) submitted proposed Program Amendment Number 91-2 to the Indiana program at Indiana Code (IC) 13-4.1-4-5.3 and other statutory provisions. Proposed IC 13-4.1-4-5.3 added a provision to the Indiana program that within 10 days after a permit is issued, the director of IDNR shall notify: local government officials; each person identified in the permit application under IC 13-4.1-3-3(a)(2); each person who has requested a hearing under IC 13-4.1-4-2(c)(2); and each person who has requested such a notice.

Upon review of the proposed amendment, OSM concluded that the proposed provision does not appear to afford adequate notice to commenters and objectors to a permit application because they would not be notified until a permit is issued. After a permit is issued, the time period specified in IC 13-4.1-4-5(b) for requesting a hearing on a permit decision has expired. Therefore, the proposed provision would not satisfy the Federal regulations at 30 CFR 773.19(b). In the Federal Register notice in which OSM announced approval of Program Amendment Number 91-2, OSM also required that

Indiana amend the Indiana program to provide timely notice to commenters and objectors and to each party to an informal conference or hearing (56 FR 37016–37019; August 2, 1991).

By letter dated May 4, 1992 (Administrative Record No. IND–1078), the IDNR submitted a response to the required amendment at 30 CFR 914.16(a). In the letter, Indiana asserted that the current Indiana program statutes and regulations allow for appropriate and timely notification in accordance with SMCRA and that an amendment of the Indiana program to satisfy 30 CFR 914.16(a) is not necessary.

The full text of the letter submitted by Indiana is available for public inspection at the addresses listed above. The Director now seeks public comment on whether the Indiana program is no less effective than the Federal regulations at 30 CFR 773.19(b)(1).

III. Public Comment Procedures

In accordance with provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the information submitted by Indiana satisfies the requirements of 30 CFR 732.15 for the approval of State program amendments. If the information is deemed adequate, the required amendment codified at 30 CFR 914.16(a) will be removed.

Written Comments

Written comments should be specific, pertain only to issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by 4 p.m. August 14, 1992. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons who desire to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the Indianapolis Field Office by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."** All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed above under **"ADDRESSES."** A summary of the meeting will be included in the Administrative Record.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would 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.*). This rule is modeled after and based upon counterpart Federal regulations for which an economic analysis and certification was previously made that such regulations would not have a significant economic effect upon a substantial number of small entities. This rule would not impose any new Federal requirements; rather it would ensure that existing requirements established by SMCRA and previously promulgated by OSM will be met by the State. In making the determination for the current rule, the Department of the Interior relied upon the data and assumptions in the previous analysis.

Executive Order 12778

This rule has been reviewed under the principles set forth in section 2 of E.O. 12778 (56 FR 55195, October 25, 1991) on Civil Justice Reform. The Department of the Interior has determined that, to the extent allowed by law, the regulation meets the applicable standards of section 2(a) and 2(b) of E.O. 12778. Under SMCRA section 405 and 30 CFR part 884 and section 503(a) and 30 CFR 732.15 and 732.17(h)(10), the agency decision on State program submittals must be based solely on a determination of whether the submittal is consistent with SMCRA and the Federal regulations. The only decision allowed under the law is approval, disapproval or conditional approval of State program amendments.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 12, 1992.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 92–17968 Filed 7–29–92; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 938

Pennsylvania Regulatory Program; Regulatory Reform

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt and requesting comments on a proposed amendment to the Pennsylvania permanent regulatory program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment (Administration Record Number PA 808.00) would expand the definition of "coal preparation activity." The proposed amendment would also amend the definition of "valid existing rights" under section 86.1 (Definitions) by listing the actual calendar date when subsection 86.1(iii), concerning coal preparation activities and their associated haul roads, became effective. Lastly, the proposed rule makes it clear that any coal preparation activity at the site of ultimate coal use under the anthracite program is not subject to the regulations.

This notice sets forth the times and locations that the Pennsylvania program and the proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the amendment and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on August

31, 1992, to ensure consideration in the rulemaking process. If requested, a public hearing on the amendment will be held at 9 a.m. on August 24, 1992. Requests to present testimony at the hearing must be received on or before 4 p.m. on August 14, 1992.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to Robert J. Biggi, Director, Harrisburg Field Office at the address listed below. Copies of the Pennsylvania program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSM's Harrisburg Field Office.

Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, telephone: (717) 782–4036.

Pennsylvania Department of Environmental Resources, Bureau of Mining and Reclamation, Room 209 Executive House, 2nd and Chestnut Streets, P.O. 2357, Harrisburg, Pennsylvania 17105, telephone: (717) 787–5103.

A public hearing, if held, will be at the Penn Harris Motor Inn and Convention Center at the Camp Hill Bypass and U.S. Routes 11 and 15, Camp Hill, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Director, Harrisburg Field Office, (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program

The Secretary of the Interior conditionally approved the Pennsylvania program on July 31, 1982. Information on the background of the Pennsylvania program including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982, Federal Register (47 FR 33050). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Discussion of Amendment

The Pennsylvania Department of Environmental Resources (PADER) submitted a proposed amendment (Administrative Record Number PA 720) on December 5, 1988, concerning coal preparation activities that were not previously regulated under its approved program. OSM approved the proposed amendment (54 FR 29704) on July 14, 1989.

On June 2, 1992, PADER submitted a proposed amendment (Administrative Record Number PA 808.00) to make minor revisions to PADER'S coal preparation regulations. The revisions expand the definition of coal preparation activity to include a facility associated with the coal preparation activity and make the definition consistent in Chapters 86, 88, and 89.

The amendment clarifies the effective date of subsection (iii) of the definition of "valid existing rights" in section 86.1 (Definitions) by listing the actual calendar date when subsection 86.1 (iii), concerning coal preparation activities and their associated haul roads, became effective. The amendment revises the coverage of off-site coal preparation activities under the anthracite program by exempting any activity located at the site of ultimate coal use. This revision is similar to that approved for the Bituminous program on May 31, 1991.

Proposed amendment changes are summarized below. Editorial changes are not included.

1. Sections 86.1, 88.1 and 89.5 Definitions-Coal Preparation Activity

The definition of coal preparation activity is expanded in the respective subsections to include a facility associated with the coal preparation activity and impoundments.

2. Section 86.1 Definitions-Valid Existing Rights

Subsection (iii), concerning coal preparation activities and their associated haul roads, is revised to show the actual calendar date that the provision approved by OSM on July 14, 1989 (54 FR 29704), became part of PADER's approved program. Proposed amendments are not part of PADER approved program until a notice is published in the *Pennsylvania Bulletin* stating that the amendment has been approved by OSM. The notice stating that the coal preparation plant permitting rules (PA 720) were effective on August 25, 1989, was published in 19 Pa.B. 3674 on August 26, 1989. Subsection (iii) was part of PA 720; thus, PADER deleted the phrase, "the effective date of this subsection" and inserted the date specified in the notice.

3. Section 88.381 General Requirements

Subsection 88.381(a) is revised to make it clear that the anthracite rules cover all off-site coal preparation activities except those that are located at the site of ultimate coal use. This change makes the anthracite provision consistent with the bituminous counterpart (section 89.171) that was approved on May 31, 1991 (56 FR 24687).

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comments on whether the amendments proposed by Pennsylvania satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Pennsylvania program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Harrisburg Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m. on August 14, 1992. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held.

Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Harrisburg Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will

be posted at the locations listed under "ADDRESSES." A written summary of each meeting will be made part of the Administrative Record.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would 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.*). This rule is modeled after and based upon counterpart Federal regulations for which an economic analysis and certification was previously made that such regulations would not have a significant economic effect upon a substantial number of small entities. This rule would not impose any new Federal requirements; rather it would ensure that existing requirements established by SMCRA and previously promulgated by OSM will be met by the State. In making the determination for the current rule, the Department of the Interior relied upon the data and assumptions in the previous analysis.

Executive Order 12778

This rule has been reviewed under the principles set forth in section 2 of E.O. 12778 (56 FR 55195, October 25, 1991) on Civil Justice Reform. The Department of the Interior has determined that, to the extent allowed by law, the regulation meets the applicable standards of section 2(a) and 2(b) of E.O. 12778. Under SMCRA section 405 and 30 CFR part 884 and section 503(a) and 30 CFR 732.15 and 732.17(h)(10), the agency decision on State program submittals must be based solely on a determination of whether the submittal is consistent with SMCRA and the State regulations. The only decision allowed is approval, disapproval, or conditional approval of State program amendments.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 17, 1992.

David G. Simpson,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 92–17970 Filed 7–29–92; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 938

Pennsylvania Regulatory Program; Regulatory Reform

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt and requesting comments on a proposed amendment to the Pennsylvania permanent regulatory program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment (Administrative Record Number PA–807.00) would expand the coverage of the Pennsylvania Department of Environmental Resource's (PADER) Small Operator Assistance Program (SOAP) by increasing the coal production eligibility limit from 100,000 to 300,000 tons. The amendment includes other changes to SOAP required by OSM in a Federal rulemaking (56 FR 24687, May 31, 1991) concerning coal production periods and family ownership.

This notice sets forth the times and locations that the Pennsylvania program and the proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the amendment and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on August 31, 1992 to ensure consideration in the rulemaking process. If requested, a public hearing on the amendment will be held at 9 a.m. on August 24, 1992. Requests to present testimony at the hearing must be received on or before 4 p.m. on August 17, 1992.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to Robert J. Biggi, Director, Harrisburg Field Office at the address listed below. Copies of the Pennsylvania program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSM's Harrisburg Field Office.

Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation Center, Third Floor, suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036.

Pennsylvania Department of Environment Resources, Bureau of Mining and Reclamation, room 209, Executive House, 2d and Chestnut Streets, P.O. 2357, Harrisburg, Pennsylvania 17105, Telephone: (717) 787–5103.

A public hearing, if held, will be at the Penn Harris Motor Inn and Convention Center at the Camp Hill Bypass and U.S. Routes 11 and 15, Camp Hill, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Director, Harrisburg Field Office, (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program

The Secretary of the Interior conditionally approved the Pennsylvania program on July 31, 1982. Information on the background of the Pennsylvania program including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982, Federal Register (47 FR 33050). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Discussion of Amendment

On November 5, 1990, the President signed into law the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508 which includes the Abandoned Mine Lands Reclamation (AML) Act of 1990, as amended. Section 6011 (Small Operator Assistance), of the AML Act of 1990 amends section 507(c) of SMCRA by increasing the SOAP coal production eligibility limit for any surface coal mining operator from 100,000 tons to 300,000 tons. The proposed amendment includes a similar change.

PADER's program amendment (Administrative Record Number PA–790.00), dated December 22, 1989, included changes to its SOAP rules. In a Federal rulemaking (56 FR 24687, May 31, 1991) for PA 790.00, the Director found that PADER must make additional changes to its SOAP rules. Specifically, on page 24691, the Director required PADER to: (1) make it clear that any and all consecutive 12-month periods must be considered in the determination of

eligibility for assistance and (2) clarify that all coal produced by operations owned by the applicant's family members and relatives must be counted toward the 100,000 ton limitation. The proposed amendment includes changes that are intended to comply with the Director's requirements.

Proposed amendment changes are summarized below. Editorial changes are not included.

1. Section 86.83 Eligibility for Assistance

a. Subsection (a)(2) is amended to clarify that the coal production eligibility period applies to any consecutive 12-month period and to increase the coal production eligibility limit from 100,000 tons to 300,000 tons.

b. Subsection (b)(5) is amended to clarify that all coal produced by operations owned by the applicant's family members and relatives must be counted toward the coal production eligibility limit.

2. Section 86.94 Applicant Liability

a. Subsection (a)(4) is amended to clarify that the applicant is liable for the costs of laboratory services if the applicant's coal production exceeds 300,000 tons during any consecutive 12-month period.

b. Subsection (a)(5) is amended to clarify that both the applicant and the successor to permit are jointly liable for the costs of laboratory services if the successor's coal production exceeds 300,000 tons in any 12-month period.

III. Public Comment Procedures

In accordance with the provisions of 30 CRR 732.17(h), OSM is now seeking comments on whether the amendments proposed by Pennsylvania satisfy the applicable program approval criteria of 30 CRR 732.15. If the amendments are deemed adequate, they will become part of the Pennsylvania program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Harrisburg Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. on August 14, 1992. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held.

Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Harrisburg Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under ADDRESSES. A written summary of each meeting will be made part of the Administrative Record.

Executive Order 12778

The rule has been reviewed under the principles set forth in section 2 of E.O. 12778 (56 FR 55195, October 25, 1991) on Civil Justice Reform. The Department of the Interior has determined that, to the extent allowed by law, the regulation meet the applicable standards of section 2(a) and 2(b) of E.O. 12778. Under SMCRA section 405 and 30 CFR part 884 and section 503(a) and 30 CFR 732.15 and 732.17 (h)(10), the agency decision on State program submittals must be based solely on a determination of whether the submittal is consistent with SMCRA and the State regulations. The only decision allowed is approval, disapproval, are conditional approval of State program amendments.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would 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.*). This rule is modeled after and based upon counterpart Federal regulations for which an economic analysis and certification was previously made that such regulations would not have a significant economic effect upon a substantial number of small entities. This rule would not impose any new Federal requirements; rather it would ensure that existing requirements established by SMCRA and previously promulgated by OSM will be met by the State. In making the determination for the current rule, the Department of the Interior relied upon the data and assumptions in the previous analysis.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 12, 1992.

Jeffrey D. Jarrett,

Acting Assistant Director Eastern Support Center.

[FR Doc. 92–17971 Filed 7–29–92; 8:45 am]

BILLING CODE 4310–05–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 59 and 61

[RIN 3067–AB71]

National Flood Insurance Program; General Provisions and Insurance Coverage

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the General Provisions and Standard Flood Insurance Policy (SFIP) of the National Flood Insurance Program (NFIP) by clarifying certain insurance coverage provisions, amending the NFIP definitions of terms, and by establishing a new SFIP for the insuring of residential condominium building associations and the individual unit owners residing in such buildings, while making appropriate amendments to the existing SFIP forms, the Dwelling Form and the General Property Form. In addition, it is proposed that optional coverages be offered under the Dwelling Form whereby policyholders may purchase coverage for certain losses due

to: (1) Land subsidence, water seepage and sewer backups; (2) increased cost of construction arising out of compliance with local floodplain management ordinances; and (3) the standard policy's limitations of coverage in basements.

DATES: Comments must be received on or before September 28, 1992.

ADDRESSES: Comments should be sent to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Donald L. Collins, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472; (202) 646–3419.

SUPPLEMENTARY INFORMATION: Before discussing the more extensive changes involved in the establishment of a condominium master policy for residential condominium buildings and conforming changes to the Dwelling Form, it is appropriate to review the proposed coverage clarifications inasmuch as these will, if adopted, be included in all of the SFIP forms, including the general property policy form.

The flood insurance coverage clarifications proposed include:

1. In the Definitions section of the General Provisions, at § 59.1, and variously, in the SFIP, at § 61.13, a new definition of "association" is proposed to describe a group of unit owners which manages a condominium building. A new definition of "elevated building" is proposed in aid of simplification of the existing definition and in order to improve the Agency's litigation position in litigation involving elevated buildings. A new definition of "valued policy" is added. A new definition of "residential condominium building" is added. The definition of "direct physical loss by or from flood" is proposed to be amended by the addition of language making it clear that the SFIP is not a "valued policy" (in which the face amount of the policy is arrived at after inspection of the property by agreement between the insured and the insurer) and not subject to state laws which provide that, in a total loss of a building from the peril insured against, the insurer is liable for the face amount of the policy, even if the building, at the time of the loss, is worth less than the policy's coverage limits. As a matter of tax-payer expense, the NFIP could not incur the cost of inspecting nearly 2.5 million properties annually. A new definition of "coinsurance" is proposed to be added to the new SFIP residential condominium building form to encourage policyholders to insure to value by providing for a sharing of the cost to restore a building damaged by flood in cases in which the condominium association carries insufficient limits of insurance coverage on the building. A new definition of "improvement" is proposed to be added, and a new definition of "unit" is proposed in conjunction with the SFIP condominium forms of coverage. The definition of "special hazard area" is proposed to be added to the SFIP by way of clarifying the grant of coverage in the case of enclosures below the elevated floors of elevated buildings located in non-special hazard areas, with conforming changes at § 61.5(f)(9) of the regulations and in the SFIP, in Article V(f).

2. In Part 61—Insurance Coverage and Rates, at § 61.3, it is proposed to amend the grant of coverage for additions and extensions to include coverage only for a building which is attached to the insured structure by means of a common wall. Of course, covered contents in that part of the building are included. At § 61.4, and in the SFIP's conforming language in the "Losses Not Covered" article, the grant of coverage for losses arising due to sewer backup or seepage of water is limited to losses in which there has been, at the same time, actual physical contact between surface flood water and the insured building. In a final rule published on May 7, 1992, 57 FR 19539, FEMA revised the minimum deductibles (for buildings and contents separately) for flood insurance policies where subsidized premium rates are used to calculate the premiums. The new minimum deductibles ($750.00) will apply to policies issued or renewed on and after October 1, 1992, for buildings (and the contents in them) that were built before the effective date of the Flood Insurance Rate Map for the community or December 31, 1974, whichever is later, and that are located in zones A, AO, AH, A1–30, AE, VO, V1–30, VE, or V. Now, at § 61.5, paragraph (d), new deductibles are being proposed for the insuring of residential condominium buildings. At § 61.6, a new paragraph (c) is proposed to be added whereby, in the case of a residential condominium building in a regular program community, the allowable limits of building coverage are stated in terms of the number of units times the allowable limits of coverage for single family homeowners, in recognition of the program concept that in the residential condominium building, the unit owner is to be treated as a single-family homeowner. In addition, in the SFIP, the "Liberalization" clause is proposed to be amended to clarify that it only applies to losses occurring on or after the effective date of any policy changes. Finally, general editorial revisions to the SFIP are proposed to be made in connection with this rule.

3. As to the SFIP, in addition to the proposed changes discussed above, FEMA proposes to add a new policy form to accommodate the needs of residential condominium building associations and the unit owners of the dwelling units in such buildings. The changes proposed, therefore, are to the appendices to § 61.13 and will, if adopted, result in the following sequence of appendices:

- A (1), a revised Dwelling Form
- A (2), a revised General Property Form
- A (3), a new Residential Condominium Building Association Form

In addition, the proposed rule contemplates that the SFIP will be revised, in all of its forms, to clear up a long standing problem in property insurance: Whether certain items of property are covered under the building coverage as real property or under the personal property coverage as personal property. Certain property, such as carpeting, household appliances, lighting fixtures, draperies, etc., has historically presented property loss claims professionals with the dilemma of whether coverage is afforded for such property under building coverage or contents (personal property) coverage. The proposed SFIP forms will clear up the problem, by listing the kinds of property which can only be covered under the policy's building coverage and the kinds of property which can only be covered under the personal property coverage.

What follows is background information leading to this proposal.

Prior to January 1, 1989, residential condominium building associations and their member/unit owners insured their respective interests under the General Property and Dwelling Forms, respectively, of the SFIP.

For example, using NFIP regular program limits of coverage (see § 61.6), the association could insure the building's common elements under the General Property form for an amount equal to the lesser of its actual cash value (replacement cost value of the building at the time of loss, less depreciation) or the statutory limits of coverage available for the insuring of residential buildings other than single family residences, which is $250,000.00. Also, an association could insure a 2–4 unit residential condominium building under the Dwelling Form for $250,000.00.

At the same time, a unit owner could obtain insurance under the Dwelling form with coverage for:

1. Losses involving individually owned building and contents items;

2. Losses involving common element building damage to the building in which the unit is located in the event the loss exceeds the building coverage available to the condominium association and provided the total building loss payments attributable to the unit owner under both policies does not exceed the statutory limit of $185,000.00;

3. Assessments levied against the policyholder for building damage to other condominium structures of the association insured by the NFIP in an amount equal to the lesser of the available statutory limits of the building's common elements at the policy's inception date or the insured value of the damaged common property.

Under the above coverage provisions, it was possible for an association of condominium unit owners to obtain a policy of flood insurance covering the building's commonly owned elements in the sum of $250,000.00 and for each unit owner in that building to obtain the statutory single family limit of building coverage (of $185,000.00) to insure the unit owner's interest in the building, i.e., the improvements owned by the unit owner within the unit and the unit owner's responsibility for damages to the parts of the building owned in common with the other unit owners. If every unit owner purchased the allowable limit and the association did likewise, assuming the actual cash value of the building exceeded the statutory limits, in this case, $185,000.00 times the number of units, the building would be over-insured by $250,000.00. To correct this situation in the adjustment of total losses to such buildings, the Dwelling Form provides for a reduction in the amount to be paid equal to the value of the unit owner's share in the $250,000.00 paid under the association policy. Also, the general property form of SFIP contained an endorsement whereby, in a flood loss situation, any building coverage not used to pay for damages to the common elements could be applied toward payment of losses sustained by unit owners to improvements and installed appliances within the units owned solely by the affected unit owners.

Given this array of coverage provisions, in order to avoid duplicate payments or payments in excess of the statutory cap, NFIP insurers receiving a claim under a Dwelling policy for building damage sustained by a unit owner were instructed not to pay any part of the building loss until the insurer had satisfied itself that the condominium association had not insured the building for the maximum allowable amount of coverage. Adjusters were instructed to obtain either a copy of any condominium association policy or a letter signed by an officer of the association to the effect that no such policy existed prior to the adjustment of any Dwelling Policy loss.

Another aspect of the pre-1989 condominium insurance program is that, in cases in which the association took out the maximum building coverage of $250,000.00 and only a few of the unit owners purchased building coverage under the Dwelling form, the building could be underinsured, leaving the unit owners exposed to substantial assessments for the repair of building damages exceeding the association's policy limits.

In the next phase of the NFIP condominium insurance program, aimed primarily at encouraging condominium associations to insure the building to value, on January 1, 1989, FEMA introduced a new Condominium Master Policy (CMP) program.

Under this program, what follows are some of the key provisions which were incorporated into the NFIP's insurance manual, the business manual used by private sector property insurance agents when applying for flood insurance on behalf of their clients:

• *Eligibility.* To qualify for coverage under the Condominium Master Policy, a building must be in the Regular Program, contain at least 5 units, and have at least 3 floors. Only one building per policy is allowed.

Improvements within the units are also covered under the Condominium Master Policy. However, only contents owned in common are covered. Contents that are owned by individual unit owners must be insured under an individual unit owner's contents policy.

The residential unit owner should purchase contents coverage under the Dwelling Form. The non-residential unit owner should purchase contents coverage under the General Property Form.

• *Replacement Cost Coverage.* Replacement Cost Coverage is not available under the Condominium Master Policy at this time.

• *Coverage Limits.* The maximum amount of building coverage that can be purchased is the actual cash value of the building or the total (residential plus non-residential) number of units in the building times $185,000, whichever is less.

The coverage limits for contents is the actual cash value of the contents owned in common up to a maximum of $60,000 per building. A unit owner's occupant's contents coverage must be purchased under a separate policy (Dwelling Form).

• *Assessment Coverage.* Condominium Master Policy assessment coverage applies only when the building covered by the CMP is fully insured. The assessment coverage then applies to the common elements of any other building of the condominium association covered by flood insurance that is:

(i) In the name of the condominium association;

(ii) Provided under the Act; and

(iii) In an amount at least equal to the actual cash value of the building's common elements at the beginning of the current policy term or the maximum building coverage limit available under the Act, whichever is less.

Prominent among the purposes of the CMP program was the introduction of a condominium building insurance program which would encourage insurance to value while, at the same time, remove the possibility that duplicate payments could, despite claims adjuster and supervisor training efforts, occur when both the association and unit owner held a policy insuring the same property. This thrust was needed because, under the CMP program, the owner-insurance factor could be as much as $185,000.00 times the number of units in one policy, plus additional policies on each unit in the amount of $185,000.00, providing the same coverage.

To achieve the desired results, agents were notified that, as to their residential condominium association clients, the association was to notify unit owners of the benefits of a Condominium Master Policy and, if a unit owner had purchased an individual Dwelling Policy that provides building coverage, the association was to encourage the unit owner to contact the agent to determine if that coverage is needed. It was also pointed out to the agents that when insurance to value is purchased on the Condominium Master Policy, there would not be a need for individual unit policies.

Associations were also advised, through their agents, that unit owners and their agents were to consult with any existing mortgagee on an individual unit owner's policy to ensure that a mortgagee's mandated insurance requirement was being met. In such instances, the unit owner or the producer was advised to show the mortgagee evidence of the new Condominium Master Policy, documenting the amount of coverage. The advice went on to state that if a mortgagee determined that the coverage

purchased under the Condominium Master Policy was insufficient to meet the mandatory purchase requirements, the mortgagee could insist that a separate unit owner's building coverage policy remain in force.

The purposes of the proposed rule establishing a new, distinct SFIP for the insuring of residential condominium buildings are to bring economic factors to bear in the effort to encourage insurance to value in the case of residential condominium building association policies and to strengthen the safeguards against the possibility that duplicate claim payments could be made due to the existence of unit owner policies in these buildings. Thus, a new policy is being proposed, one with a penalty clause, i.e., a coinsurance clause which requires the insured condominium association to share in the flood loss if it has not insured the building to 80% of its replacement cost value. It is also the purpose of the proposed rule, to require residential condominium building associations to insure to value, and to place a strong limitation on the use of the unit owner's current assessment coverage availability by stipulating in the Dwelling Form that the unit owner's assessment coverage is excess over the association's coverage and by notifying the unit owner policyholder that his or her loss will not be paid until the NFIP has verified the extent to which the unit owner's loss may be covered under the condominium association policy.

At the core of this proposal, of course, stands the issue of why insurance to value is such an important property insurance principle. FIA believes—particularly in respect to the NFIP—that it is a bedrock principle of insurance because it:

- Provides an insurer with sufficient premium dollars to operate a fiscally sound insurance program.
- Provides policyholders with coverage needed for severe losses.
- Eliminates inequity in situations in which one insured insures property for its full value and another, at the same rate, insures property for a fraction of its value. Both insureds receive the same degree of compensation in a loss situation, yet the one insuring to value pays a larger share of the combined premium.

To sum up, the purpose of this proposal is to channel condominium associations into the property insurance mainstream of insurance to value by introducing a residential condominium building association policy with replacement cost coverage and a coinsurance clause for the building coverage.

The new CMP program will preserve the best features of the current program while achieving its purposes. The new CMP program is proposed to establish a Residential Condominium Building Association Policy of flood insurance with:

- Replacement cost coverage (building only);
- Limits not to exceed $185,000 times number of units;
- 80% co-insurance factor for building coverage;
- Building and contents coverage for:
- All commonly owned contents otherwise eligible.
- Entire building, including unit-owner improvements and appliances within units.
- Eligibility for all residential condominium associations as to any residential condominium building having 75% of its interior space occupied by residential units, with no limitation on the number of units or floors the building must have as a condition for eligibility—an improvement over the current CMP program.
- Contents coverage on an ACV basis, with no coinsurance clause.

The coinsurance clause formula and the way in which it will dissuade condominium associations from underinsuring condominium buildings is described as follows:

$$\frac{\text{Insurance Carried}}{\text{Insurance Required}} \times \text{Amount of Loss} = \text{Limit of Recovery}$$

a. *Example 1:* The insurance carried is $500,000.00, the replacement cost value of the building is $1,000,000.00 (which is available under the National Flood Insurance Program) and the amount of the loss is $240,000.00. The formula is applied as follows:

$$\frac{\$500.000.00}{\$1,000,000.00 \times 80\%} \times \$240,000.00 =$$

$$\frac{\$500,000.00}{\$800,000.00} \times \$240,000.00 = \$149,500.00 \text{ Limit of Recovery } *$$

* ($150,000 Less Deductible). The balance of the loss in the sum of $90,500.00 is not covered.

b. *Example 2:* The insurance carried is $1,850,000.00, the replacement cost value of the building is $2,000,000.00 and the amount of loss is $1,000,000.00. The formula is not applied because $1,850,000 exceeds $1,600,000 ($2,000,000 × 80%). The Insured is paid the full amount of the loss ($1 Million).

FEMA believes that it is appropriate and necessary at this time to establish coinsurance provisions as a strong inducement for the insuring of residential condominium buildings to value because, in the first place, the NFIP cannot refuse to insure such buildings. As long as the community is eligible to participate in the NFIP and the building meets the program's insurance coverage underwriting criteria, the NFIP must insure it, even if the building is seriously underinsured. In view of this statutory mandate, FEMA believes it is not in the best interests of the NFIP policyholders who pay premiums to insure their property to value to utilize their premium dollars to help defray the losses of those who pay less in premiums, but at the same rate, and who insure the building in an amount which they judge is enough to cover the damages caused by a moderate flooding event.

The NFIP has not had to use taxpayers' funds to meet the insurance program's loss and administrative costs since 1985 and has operated and funded its flood insurance activities strictly through the reserving and investing of the premiums paid by its policyholders. Those who underinsure their property gain a benefit from such premium reserves disproportionate to the benefits gained by those who insure to value and pay enough premiums to cover the catastrophic loss.

Underinsurance also diminishes premium income in a way which could jeopardize taxpayer funds in a catastrophic flooding situation, or a series of catastrophic floods because, should the NFIP exhaust its premium reserves in paying losses, additional funds will have to come out of the general treasury through the NFIP's statutory borrowing authority of $1 billion.

In addition, recent studies and inquiries by the Federal Insurance Administration (FIA) concerning the extent to which there may be an underinsurance problem in the case of the Condominium Master Policy Program indicate that such a problem exists.

For example, in one study of over 70 CMPs issued by the NFIP through its direct federal insurance program, 25% of the residential condominium buildings insured were under-insured and some carry limits as low as $250,000, which represents only a fraction of the values of the buildings insured. Incidentally, the carrying of the $250,000 limit signals another fiscally unfortunate aspect of the underinsurance practice. Prior to the introduction of the CMP program, the

quarter of a million dollar limit for building coverage was the maximum amount of coverage available, and the premium for this coverage is $632.00. Under the CMP program, the premium is only $483.50 (A-zone rates, lowest floor at base flood elevation, condominium building with more than one floor, no basement). The reason for the rate differential is that, in establishing rates for the CMP, the expectation was that the residential condominium association would insure their buildings to value, but this has not occurred to the extent it should have. In addition to the NFIP's direct program experience, the indication FIA has obtained from many of the WYO Program companies (see 44 CFR 62.23) issuing NFIP flood insurance to their policyholders under an arrangement with the Federal Insurance Administrator is that the companies, too, are experiencing underinsurance problems under the CMP program.

With the introduction of the new condominium master policy program, FIA expects that the additional premium funds generated by the proposed rule's insurance to value inducements will help assure sufficient policyholder premium reserves for the continued administration of the NFIP without resort to taxpayer subsidies.

Regarding the proposal to display in each policy form the exact nature of many of the items of property which are intended to be covered, as applicable, *only* under building coverage, or *only* under the personal property coverage, it is believed that this change, too, will generate additional premium funds. This is so because, in the adjustment of property insurance losses under the NFIP and, in the private sector, under the 1968 Homeowners Policy Program, many items of "building equipment" covered under the building coverage constituted personal property for which coverage was also provided under the contents, or personal property, coverage. This resulted in a loss adjustment involving solely the building coverage in the payment, under building coverage, for such items as tools, fans, washing machines, dryers, pool equipment, outdoor equipment, and the like.

Under the NFIP, personal property coverage-in-force constitutes only about 14% of the building coverage and, with the building coverage rates being generally lower than the rates for personal property coverage, there exists a built-in inducement for policyholders to purchase, under the current rules, low limits of personal property coverage because a great many items of personal property are also covered, as "building equipment" and "outdoor equipment", under the building coverage. A few years ago, the Homeowner's Program was amended to delete "building equipment" and "outdoor equipment" coverage. Now the NFIP proposes to restructure its SFIPs so as to provide only Building Coverage and Personal Property Coverage, under which coverages building and outdoor equipment will be covered, as appropriate, depending upon whether a particular item of property is real property or personal property.

In addition, the NFIP proposes to provide further clarification of what constitutes building and personal property items of coverage by specifically listing certain of the key items of property in its policies. By so doing:

1. Policyholders will be encouraged to purchase adequate personal property coverage to cover items such as many household appliances, for which coverage has in the past been provided under the building coverage.

2. Policyholders, insurance agents, and loss adjusters will have a clear statement, at the time of a loss, of what is covered under the building coverage and what is covered under the personal property coverage. This will end a great deal of confusion and help put to rest, as to the NFIP, the conflicting court decisions as to these items which have evolved over the past few decades.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

This rule is not a major rule under Executive Order 12291, Federal Regulation, February 17, 1981. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

The information collection requirements in this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, as amended. OMB control number 3067–0021 is assigned to the collection of information under this proposed rule.

Public reporting and recordkeeping burden for the collection of information titled "Claims for National Flood Insurance Program" is estimated to average 3.8 hours per claim. The estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information requirements. The information required under the terms of the Standard Flood Insurance Policies described in appendixes A(1), A(2), and A(3) of the proposed rule is collected using the following FEMA forms:

FEMA Form No.	Title	Burden estimate
81–40	Worksheet-contents-personal property	2.5 hours.
81–40	Worksheet-building	2.5 hours.
81–41A	Worksheet-building (Cont'd)	1.0 hour.
81–42	Proof of loss	5–6 minutes.
81–43	Notice of loss	4 minutes.
81–44	Statement as to full cost of repair or replacement cost coverage, subject to the terms and conditions of this policy	6–7 minutes.
81–57	National Flood Insurance Program preliminary report	4 minutes.
81–58	National Flood Insurance Program final report	4 minutes.
81–59	National Flood Insurance Program narrative report	5–6 minutes.
81–63	Cause of Loss and Subrogation report	45 minutes to 1 hour.

Send comments regarding the burden estimates or any aspect of the collection, including suggestions for reducing the burden, to: Information Collections Management, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, and to the Office of Management and Budget, Paperwork Reduction Project (3067–0021), Washington, DC 20503.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under

Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Parts 59 and 61

Flood Insurance.

Accordingly, FEMA proposes to amend 44 CFR parts 59 and 61 as follows:

PART 59—GENERAL PROVISIONS

1. The authority citation for part 59 is proposed to be revised to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. Section 59.1 is proposed to be amended to read as follows:

a. By removing the current definition of *Elevated building.*

b. By adding, alphabetically, new definitions of *Association, Elevated building, Residential condominium building,* and *Valued policy* to read as follows:

§ 59.1 Definitions.

* * * * *

Association means a group of unit owners which manages a residential condominium building in which the insured unit owner maintains a residence.

* * * * *

Elevated building means a nonbasement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

* * * * *

Residential condominium building means a building owned by the members of a condominium containing one or more residential units and in which at least 75% of the floor area within the building is residential.

* * * * *

Valued policy means a policy contract in which the insurer and the insured agree on the value of the property insured, that value being payable in event of total loss.

* * * * *

PART 61—INSURANCE COVERAGE AND RATES

3. The authority citation for part 61 is proposed to be revised to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

4. Section 61.3 is proposed to be amended by adding a new sentence at the end thereof to read as follows:

§ 61.3 Types of coverage.

* * * Additions and extensions attached to a structure for which coverage is provided shall not include a structure which is attached to the insured structure by any means other than a common wall.

§ 61.4 [Amended]

5. Section 61.4 is proposed to be amended, at paragraph (c), line 5, by removing the period after the word "situation" and adding the following, "unless at the same time there has been actual physical contact between surface flood water and the insured property described in the application for flood insurance.".

6. Section 61.5 is proposed to be amended as follows:

a. By revising paragraphs (d) (1) and (d) (2) to read as follows:

§ 61.5 Special terms and conditions.

* * * * *

(d)(1) Each loss sustained by the insured is subject to a deductible provision under which the insured bears a portion of the loss before payment is made under the policy. For a building located in an Emergency Program community or for any building located in a Regular Program community in Zones A, AO, AH, A1–30, AE, VO, V1–30, VE, or V where the rates available for buildings built before the effective date of the FIRM (or December 31, 1974, whichever is later) are used to compute the premium, the amount of the deductible for each loss occurrence is (i) for structural (i.e., insured building) losses, $750.00; and (ii) for contents (i.e., insured personal property) losses, $750.00; provided, however, in the case of a residential condominium building in a Regular Program community having five or more units, the amount of the deductible for each loss occurrence is (i) for structural (i.e., insured building) losses, $7,500.00; and (ii) for contents (i.e., insured personal property) losses, $7,500.00.

(2) For buildings other than those described in paragraph (d)(1) of this section, the amount of the deductible for each loss occurrence is (i) for structural (i.e., insured building) losses, $500.00; and (ii) for contents (i.e., insured personal property) losses, $500.00; provided, however, in the case of a residential condominium building in a Regular Program community having five or more units, the amount of the deductible for each loss occurrence is (i) for structural (i.e., insured building) losses, $5,000.00; and (ii) for contents (i.e., insured personal property) losses, $5,000.00.

* * * * *

§ 61.5 [Amended]

b. In paragraph (d)(3) add above the "Note," the following new "Category Four" of "Optional Deductibles" to read as follows:

* * * * *

(3) * * *

CATEGORY FOUR—RESIDENTIAL CONDOMINIUM BUILDING POLICIES

Options.....	Policy combining building and contents	Single Coverage only policy (either building or contents)
	$10,000/$10,000	$10,000
	$25,000/$10,000	$25,000

* * * * *

c. In paragraph (f)(9), line 1, after the first reference of the phrase "Post-FIRM building," add the phrase "which is located in a special hazard area".

7. Section 61.6 is proposed to be amended by adding a new paragraph (c), to read as follows:

§ 61.6 Maximum amounts of coverage available.

* * * * *

(c) In the insuring of a residential condominium building in a Regular Program community, the maximum limits of building coverage permitted under the Act is the lesser of $185,000.00 times the number of units in the building or the building's replacement cost. The maximum limit of contents coverage permitted under the Act in a Regular Program community is the lesser of $60,000.00 or the actual cash value of the contents.

§ 61.13 [Amended]

8. Section 61.13 is proposed to be amended as follows:

a. By removing the parenthetical phrase in paragraph (a) and adding in its place the following parenthetical phrase:

("General Property, Dwelling, and Residential Condominium Building Association")

b. By adding, in paragraph (d) after the word "than" and before the word "through", the phrase "by the express written consent of the Administrator".

9. Appendix A (1) of part 61 is proposed to be revised to read as follows:

Appendix A (1)—Federal Emergency Management Agency, Federal Insurance Administration, Standard Flood Insurance Policy

[Issued Pursuant to the National Flood Insurance Act of 1968, or Any Acts Amendatory Thereof (Hereinafter Called the Act), and Applicable Federal Regulations in title 44 of the Code of Federal Regulations, subchapter B]

Dwelling Form

READ THE POLICY CAREFULLY. THE COVERAGE PROVIDED IS SUBJECT TO LIMITATIONS, RESTRICTIONS AND EXCLUSIONS. THIS POLICY COVERS ONLY A RESIDENTIAL BUILDING, NOT A CONDOMINIUM, DESIGNED FOR PRINCIPAL USE AS A DWELLING PLACE FOR NO MORE THAN FOUR FAMILIES, OR A SINGLE FAMILY DWELLING UNIT IN A CONDOMINIUM BUILDING.

Insuring Agreement

AGREEMENT OF INSURANCE between the Federal Emergency Management Agency (FEMA), as Insurer, (hereinafter known as "we," "our," and "us,") and the Insured, (hereinafter known as "you" and "your").

We insure you against all *DIRECT PHYSICAL LOSS BY OR FROM FLOOD* to the insured property, based upon:

1. Your having paid the correct amount of premium; and

2. Our reliance on the accuracy of the information and statements you have furnished; and

3. All the terms of this policy, the National Flood Insurance Act of 1968, as amended, and Title 44 of the Code of Federal Regulations.

On this basis, you are insured up to the lesser of:

1. The *actual cash value*, not including any antique value, of the property at the time of loss; or

2. The amount it would cost to repair or replace the property with material of like kind and quality within a reasonable time after the loss.

Article 1—Persons Insured

We insure only:

A. The named Insured and legal representatives;

B. Any mortgagee and loss payee named in the *application and declarations page* in the order of precedence and to the extent of their interest but for no more, in the aggregate, than the interest of the named Insured.

Article 2—Definitions

AS USED IN THIS POLICY—

Act means the National Flood Insurance Act of 1968, and any acts amendatory thereof.

Actual Cash Value means the replacement cost of an insured item of property at the time of loss, less the value of physical depreciation as to the item damaged.

Application means the statement made and signed by you or your agent, and giving information on the basis of which we determine the acceptability of the risk, the *policy* to be issued and the correct premium payment. The correct premium payment must accompany the *application* for the policy to be issued. The *application* is a part of this *flood* insurance *policy*.

Association means the group of *unit* owners which manages the *condominium building* in which you, as the insured unit owner, maintain your residence.

Base flood means the *flood* having a one percent chance of being equalled or exceeded in any given year.

Basement means any area of the *building* having its floor subgrade (below ground level) on all sides.

Building means a *walled and roofed* structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, including a *manufactured* (i.e., *mobile*) *home* on a permanent foundation, subject to *Article 6*, paragraph H. and a *walled and roofed building* in the course of construction, alteration or repair.

Cancellation means that ending of the insurance coverage provided by this *policy* prior to the *expiration date*.

Coastal High Hazard Area means an area subject to high velocity waters, including hurricane wave wash and tsunamis.

Condominium means a system of individual ownership of *units* in a multi-unit *building* or *buildings* or in single-unit *buildings* as to which each *unit* owner in the *condominium* has an undivided interest in the common areas of the *building(s)* and facilities that serve the *building(s)*.

Condominium Association Policy means a *policy* of *flood* insurance coverage issued to an *association* pursuant to the *Act*.

Declarations Page is a computer generated summary of information furnished by you in the *application* for insurance. The *declarations page* also describes the term of the *policy*, limits of coverage, and displays the premium and our name. The *declarations page* is a part of this *flood* insurance *policy*.

Direct Physical Loss By or From Flood means any loss in the nature of actual loss of or physical damage, evidenced by physical changes, to the insured property (*building* or personal property) which is directly and proximately caused by a *flood* (as defined in this *policy*).

Dwelling means a *building* designed for use as a residence for no more than four families and a single family *dwelling unit* in a *condominium building*.

Elevated Building means a non-basement *building* which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Emergency Program Community means a community wherein a Flood Hazard Boundary Map (FHBM) is in effect and only limited amounts of insurance are available under the *Act*.

Expense Constant means a flat charge per *policy* term, paid by the Insured to defray the Federal Government's policywriting and other expenses.

Expiration Date means the ending of the insurance coverage provided by this *policy* on the *expiration date* shown on the *declarations page*.

Federal policy fee means a flat charge per *policy* term, paid by the Insured to defray certain administrative expenses incurred in carrying out the *National Flood Insurance Program* not covered by the *expense constant*. This fee was established by section 1307(a)(1)(B)(iii) of the National Flood Insurance Act of 1968, as amended, and is not subject to producers' commissions, *Write Your Own company* expense allowances, or state or local premium taxes.

Flood means:

A. A general and temporary condition of partial or complete inundation of normally dry land area from:

1. The overflow of inland or tidal waters.

2. The unusual and rapid accumulation or runoff of surface waters from any source.

3. Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in subparagraph A–2 above and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, including your premises, as when earth is carried by a current of water and deposited along the path of the current.

B. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding the cyclical levels which result in flooding as defined in subparagraph A–1 above.

Improvements means fixtures, alterations, installations, or additions comprising a part of the insured *building* or *condominium dwelling unit*.

Manufactured home means a *building* transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term *manufactured home* does not include park trailers, and other similar vehicles. To be eligible for coverage under this *policy*, a *manufactured home* must be on a permanent foundation and, if located in a FEMA designated *Special Hazard Area*, must meet the requirements of paragraph H. of *Article 6*.

Mobile home means a *manufactured home*.

National Flood Insurance Program means the program of *flood* insurance coverage and floodplain management administered under the *Act* and applicable Federal regulations in Title 44 of the Code of Federal Regulations, Subchapter B.

Policy means the entire written contract between you and us; it includes this printed form, the *application*, and *declarations page*, any endorsements which may be issued and any renewal certificates indicating that coverage has been instituted for a new *policy* and *policy* term. Only one *dwelling building*

or *unit*, specifically described by you in the *application*, may be insured under this *policy*, unless application to cover more than one *dwelling building* or *unit* is made on a form or in a format approved for that purpose by the Federal Insurance Administrator.

Post-FIRM building means a *building* for which the start of construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of the initial Flood Insurance Rate Map (FIRM) for the community in which the *building* is located, whichever is later.

Pre-FIRM rated building means a *building* for which the start of construction or substantial improvement occurred on or before December 31, 1974, or before the effective date of the initial Flood Insurance Rate Map (FIRM) for the community in which the *building* is located, whichever is later.

Probation Additional Premium means a flat charge per *policy* term paid by the Insured on all new and renewal *policies* issued covering property in a community that has been placed on probation under the provisions of 44 CFR 59.24.

Regular Program Community means a community wherein a Flood Insurance Rate Map (FIRM) is in effect and full limits of coverage are available under the *Act*.

Residential condominium building means a *building* owned by the members of a *Condominium Association* and containing one or more residential *units*.

Special hazard area means an area having special *flood*, mudslide, (i.e., mudflow) and/or *flood*-related erosion hazards, and shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map as Zone A, AO, A1–30, AE, A99, AH, VO, V1–30, VE, V, M or E.

Unit means a single family *dwelling unit*, owned by the named Insured, in a *condominium building*.

Valued policy means a *policy* contract in which the Insurer and the Insured agree on the value of the property insured, that value being payable in event of total loss.

Walled and Roofed means the *building* has in place two or more exterior, rigid walls and the roof is fully secured so that *building* will resist flotation, collapse and lateral movement.

Write Your Own company means a private sector property insurance company that is authorized to sell the *National Flood Insurance Program Policy* pursuant to an arrangement with the Federal Insurance Administrator.

Article 3—Losses Not Covered

We only provide coverage for *direct physical loss by or from flood* which means we do not cover:

A. *Compensation, reimbursement or allowance for:*

1. Loss of use of the insured property or premises.

2. Loss of access to the insured property or premises.

3. Loss of profits.

4. Loss resulting from interruption of business, profession, or manufacture.

5. Your additional living expenses incurred while the insured *building* is being repaired or is uninhabitable for any reason.

6. Any increased cost of repair or reconstruction as a result of any ordinance regulating reconstruction or repair.

7. Any other economic loss.

B. *Losses from other casualties, including loss caused by:*

1. Theft, fire, windstorm, wind, explosion, earthquake, land sinkage, land subsidence, landslide, destabilization or movement of land resulting from the accumulation of water in subsurface land areas, gradual erosion, or any other earth movement except such mudslides (i.e., mudflows) or erosion as is covered under the peril of *flood*.

2. Rain, snow, sleet, hail or water spray.

3. Sewer backup or seepage of water unless at the same time there has been actual physical contact between surface *flood* water and the insured property, or from freezing, thawing, or the pressure or weight of ice or water.

4. Water, moisture, mildew, mold or mudslide (i.e., mudflow) damage resulting primarily from any condition substantially confined to the described *dwelling* or from any condition which is within your control (including but not limited to design, structural or mechanical defects, failures, stoppages or breakages of water or sewer lines, drains, pumps, fixtures or equipment).

C. *Losses of the following nature:*

1. A loss which is already in progress as of 12:01 A.M. of the first day of the *policy* term, or, as to any increase in the limits of coverage which is requested by you, a loss which is already in progress as of 12:01 A.M. on the date when the additional coverage becomes effective.

2. A loss from a *flood* which is confined to the premises on which your insured property is located unless the *flood* is displaced over two acres of the premises.

3. A loss caused by your modification to the insured property which materially increases the risk of flooding.

4. A loss caused intentionally by you or any member of your household.

5. A loss caused by or resulting from power, heating or cooling failure, unless such failure results from physical damage to power, heating or cooling equipment situated on the premises where the described *building* or *unit* is located, caused by a *flood*.

6. Loss to any *building* or contents located on property leased from the Federal Government, arising from or incident to the flooding of the property by the Federal Government, where the lease expressly holds the Federal Government harmless, under *flood* insurance issued under any Federal Government program, from loss arising from or incident to the flooding of the property by the Federal Government.

Article 4—Property Covered

(Subject to Articles 3, 5, and 6 Provisions, Which Also Apply to the Other Articles, Terms and Conditions of This Policy, Including the Insuring Agreement)

Coverage A—Building Property

Subject to paragraph C below, we cover your *dwelling* which includes:

A. A residential *building*, not a condominium, designed for principal use as a *dwelling* place for no more than four families, including:

1. Additions and extensions attached to and in contact with the *dwelling* by means of a common wall.

2. Materials and supplies to be used in constructing, altering or repairing the *dwelling* or an appurtenant structure while stored inside a fully enclosed *building*:

a. At the property address; or

b. On an adjacent property at the time of loss; or

c. In case of another *building* at the property address which does not have walls on all sides, while stored and secured to prevent flotation out of the *building* during flooding (the flotation out of the *building* shall be deemed by you and us to establish the conclusive presumption that the materials and supplies were not reasonably secured to prevent flotation, in which case no coverage is provided for such materials and supplies under this *policy*).

3. As appurtenant structures, detached garages and carports located at the described premises, at your option at the time of loss, in an amount up to 10% of the amount of insurance you have purchased to cover the *dwelling*, including additions to the *dwelling*. By exercising this option, you reduce the amount of insurance available to cover other loss relating to Coverage A.

This option may not be used to extend coverage to *buildings*:

a. Occupied, rented or leased in whole or in part for *dwelling* purposes (or held for such use); or

b. Used in whole or in part for business or farming purposes (or held for such uses); or

c. Which are boathouses.

4. A *building* in the course of construction before it is *walled and roofed* subject to the following conditions:

a. The amount of the deductible for each loss occurrence before the *building* is *walled and roofed* is two times the deductible which is selected to apply after the *building* is *walled and roofed*;

b. Coverage is provided before the *building* is *walled and roofed* only while construction is in progress, or if construction is halted, only for a period of up to 90 continuous days thereafter, until construction is resumed; and

c. There is no coverage before the *building* is *walled and roofed* where the lowest floor, including *basement* floor, of a non-elevated *building* or the lowest elevated floor of an *elevated building* is below the *base flood* elevation in Zones AH, AE or A1-30 or is below the *base flood* elevation adjusted to include the effect of wave action in Zones VE

or V1–30. The lowest floor levels are based on the bottom of the lowest horizontal structural member of the floor in Zones VE or V1–30 and the top of the floor in Zones AH, AE or A1–30.

B. Or, we cover your single-family *dwelling unit*, including *improvements* therein owned solely by you, in a *condominium building*, along with your share of assessments made against you as a tenant in common in that *building's* common elements and the common elements of any other *building* of your *Condominium Association* covered by insurance that is:

1. In the name of your *Condominium Association;*

2. Provided under the *Act* ; and

3. In an amount at least equal to the *actual cash value* of the *building's* common elements at the beginning of the current *policy* term or the maximum *building* coverage limit available under the *Act* , whichever is less.

Provided, with respect to coverage for single-family *dwelling unit* assessments:

1. Coverage is available only when each of the *unit* owners comprising the membership of the *Association* are also assessed by reason of the same cause and provided the assessment arises out of a *direct physical loss by or from* flood to the *condominium building* in which your unit is located or to another *condominium building* of the *Association*, as to which the *condominium* documents (Articles of Association, Declarations, and your Deed) impose upon you the responsibility for such an assessment). The deductibles provisions of *Article 7* of this *policy* do not apply to assessments.

2. Assessments made by the *Association* to recoup the amount of a loss deductible incurred by the *Association* in connection with any *condominium building* or contents *policy* of insurance are not covered.

3. Assessments made by the *Association* in connection with loss of or damage to personal property, including any contents of any *condominium building* of the *Association*, are not covered.

4. Assessments made by the *Association* of a *condominium building* are not covered if the assessments are made to recoup loss not reimbursed to the *Association*, under a *policy* of insurance issued pursuant to the *National Flood Insurance Program*, by reason of the fact that the *condominium building* insured under such *policy* was not, at the time of the loss, insured in an amount equal to the lesser of 80% or more of the full replacement cost of the *building* or the maximum amount of insurance available under the *National Flood Insurance Program*.

C. And, under this "Coverage A—Building Property", we cover fixtures including the following items of property, if owned solely by you, for which coverage is *not provided* under "Coverage B—Personal Property":

- Furnaces
- Wall mirrors permanently installed
- Permanently Installed Corner Cupboards, Bookcases, Paneling, and Wallpaper
- Venetian Blinds
- Central Air Conditioners
- Awnings and Canopies
- Elevator Equipment
- Sprinklers
- Built-in Dishwashers
- Garbage Disposal Units
- Outdoor Antennas and Aerials
- Pumps and machinery for operating them
- Carpet Permanently Installed Over Unfinished Flooring
- Built-in Microwave Ovens
- Hot Water Heaters, Including Solar Water Heaters
- Ranges and Stoves
- Radiators
- Kitchen Cabinets
- Light Fixtures
- Plumbing Fixtures
- Refrigerators

Coverage B—Personal Property

A. *Subject to paragraphs B. and C. below*, we cover personal property:

1. Owned by you as contents incidental to the occupancy of the *building*.

2. Owned by members of your family in your household.

3. At your option and within the limits of personal property coverage you have purchased, owned by your guests and servants.

Such personal property is covered while stored:

a. Within your *dwelling*;

b. Within a fully enclosed *building* at the property address;

c. Within a *building* having in place two or more rigid walls and a fully secured roof if the contents are secured to prevent flotation out of the *building* during flooding. The flotation out of the *building* during flooding of any such contents shall be deemed to establish the conclusive presumption that the contents were not reasonably secured to prevent flotation; or

d. At a temporary location, as expressly authorized under this *policy* (see Article 5, paragraph C.2.).

B. Coverage, under this "Coverage B—Personal Property", includes the following property if owned solely by you, for which coverage is *not provided* under "Coverage A—Building Property":

- Clothes Washers.
- Clothes Dryers.
- Food Freezers.
- Air Conditioning Units.
- Portable Dishwashers.
- Carpet, including wall-to-wall carpet, over finished flooring and whether or not it is permanently installed.
- Carpet not permanently installed over unfinished flooring.
- Outdoor equipment and furniture stored inside the *dwelling* or another fully enclosed *building* at the property address.
- Portable microwave ovens and "cook-out" grills, ovens and the like.

C. *Limitations*. Under this "Coverage B—Personal Property" we shall not reimburse you for loss as to:

1. Personal property owned by you in common with any *unit* owners comprising the membership of a *Condominium Association*.

2. The following personal property to the extent the loss to any one or more of such property exceeds, individually or in total, $250.00:

- Artwork, including but not limited to, paintings, etchings, pictures, tapestries, art glass windows, statuary, marbles, and bronzes;
- Rare books;
- Necklaces, bracelets, gems, precious or semi-precious stones, articles of gold, silver, or platinum; or
- Furs or any article containing fur which represents its principal value.

Coverage C—Debris Removal

Within the limits of your coverage, we cover any expense you incur, including the value of your own labor and the labor of members of your household at prevailing Federal minimum wage rates, as a result of removing debris of, on or from the insured property so long as the debris problem was directly caused by a *flood*. Under these provisions coverage extends to:

A. Non-owned debris from beyond the boundaries of the described premises which is physically on the insured property.

B. Parts of the insured property which is anywhere:

1. On the described premises; and

2. On property beyond the boundaries of the described premises.

Article 5—Special Provisions Applicable To Coverages A, B, and C

A. *Condominium unit owner coverage in excess over Association coverage*. The insurance under this *policy* shall be excess over any insurance in the name of your *Condominium Association* covering the same property covered by this *policy*. Loss shall not be paid under "Coverage A—Building Property", paragraph B., and under "Coverage B—Personal Property" until we have verified the extent to which loss to *improvements* and personal property within your *unit*, and to the common elements of your *building* or any other *building* of your *Condominium Association*, is covered by any insurance in the name of your *Condominium Association*.

Should the amount of insurance collectible under this *policy* for a loss, when combined with any recovery available to you as a tenant in common under any *Condominium Association flood* insurance *policy* provided under the *Act* for the same loss, exceed the statutorily permissible limits of *building* coverage available for the insuring of single-family *dwellings* under the *Act*, then the limits of *building* coverage under this *policy* shall be reduced in regard to that loss by the amount of such excess.

B. *This policy is not a valued policy*. Loss will be paid, provided you have purchased a sufficient amount of coverage, i.e., in an amount equal to the lesser of the value of the damaged property under the terms and conditions of this *policy* (and regardless of whether the amount of insurance purchased is greater than such value) or the limit of coverage permitted under the *Act*.

C. *Insured Property, Covered Locations*. Your *dwelling* and personal property are covered while the property is located:

1. At the property address shown on the *application* or endorsement, if corrected by endorsement; and

2. For 45 days, at another place above ground level or outside of the *special hazard area*, to which any of the insured property

shall necessarily be removed by you in order to protect and preserve it from *flood*, due to the imminent danger of *flood* (provided, personal property so removed must be placed in a fully enclosed *building* or otherwise reasonably protected from the elements to be insured against loss), in which case the reasonable expenses incurred by you, including the value of your own labor and the labor of members of your household at prevailing Federal minimum wage rates, in moving any of your insured property temporarily away from the peril of *flood* shall be reimbursed to you in an amount not to exceed $500. This *policy's* deductible amounts, as provided for at *Article 7*, shall not be applied to this reimbursement.

D. *Coverage For Certain Loss Mitigation Measures.* When the insurance under this *policy* covers a *building*, reasonable expenses incurred by you for the purchase of the following items are also covered, in an aggregate amount not to exceed $500:

1. Sandbags, including sand to fill them and plastic sheeting and lumber used in connection with them;

2. Fill for temporary levees;

3. Pumps; and

4. Wood;

all for thepurpose of saving the *building* due to the imminent danger of a *flood* loss, including the value of your own labor and the labor of members of your household at prevailing Federal minimum wage rates.

The *policy's building* deductible amount, as provided for at *Article 7*, shall not be applied to this reimbursement.

For reimbursement under this paragraph D to apply, the following conditions must be met:

a. The insured property must be in imminent danger of sustaining *flood* damage; and

b. The threat of *flood* damage must be of such imminence as to lead a person of common prudence to apprehend *flood* damage; and

c. A general and temporary condition of flooding in the area must occur, even if the flooding does not reach the insured property, or a legally authorized official must issue an evacuation order or other civil order for the community in which the insured property is located calling for measures to preserve life and property from the peril of *flood*.

Article 6—Property Not Covered

We do *not cover* any of the following:

A. *Valuables and commercial property. meaning:*

1. Accounts, bills, currency, deeds, evidences of debt, money, coins, medals, postage stamps, securities, bullion, manuscripts, other valuable papers or records, and personal property used in a business.

2. Personal property used in connection with any incidental commercial occupancy or use of the *building*.

B. *Property over water or in the open, meaning:*

1. A *building* and personal property in the *building* located entirely in, on, or over water or seaward of mean high tide, if the *building* was newly constructed or substantially improved on or after October 1, 1982.

2. Personal property in the open.

C. *Structures other than buildings, including:*

1. Fences, retaining walls, seawalls, bulkheads, wharves, piers, bridges, and docks.

2. Indoor and outdoor swimming pools.

3. Open structures and personal property located in, on, or over water, including boat houses or any structure or *building* into which boats are floated.

4. Underground structures and equipment, including wells, septic tank and septic systems.

D. *Other real property, including:*

1. Land, land values, lawns, trees, shrubs, plants, and growing crops.

2. Those portions of walks, walkways, driveways, patios, and other surfaces, all of whatever kind of construction, located outside the perimeter, exterior walls of the insured *building* or *unit*.

E. *Other personal property, meaning:*

1. Animals, livestock, birds, and fish.

2. Aircraft.

3. Any self-propelled vehicle or machine and motor vehicle (other than motorized equipment pertaining to the service of the described *unit* or *building*, operated principally on your premises, and not licensed for highway use) including their parts and equipment.

4. Trailers on wheels and other recreational vehicles whether affixed to a permanent foundation or on wheels.

5. Watercraft including their furnishings and equipment.

F. *Building enclosures and personal property lower than the elevated floors of elevated buildings, and basements, including personal property in a basement, as follows:*

1. In a *special hazard area*, at an elevation lower than the lowest elevated floor of an *elevated Post-FIRM building*, including a *manufactured* (i.e., *mobile*) *home:*

a. Personal property.

b. *Building* enclosures, equipment, machinery, fixtures and components, except for the required utility connections and the footing, foundation, posts, pilings, piers or other foundation walls and anchorage system as required for the support of the *building*.

2. In a *basement* as defined in *Article 2:*

a. Personal property.

b. *Building* equipment, machinery, fixtures and components, including finished walls, floors, ceilings and other *improvements*, except for the required utility connections, fiberglass insulation, drywalls and sheetrock walls, and ceilings but only to the extent of replacing drywalls and sheetrock walls in an unfinished manner (i.e., nailed to framing but not taped, painted, or covered).

3. *Provided*, with regard to both 1. and 2., except for the case of a *dwelling unit* in a *condominium building* as to which the *Association's* coverage is sufficient to cover such property, the following *building* and personal property items *are covered* so long as you have *purchased building* and personal property coverage, *as appropriate:*

- Sump pumps
- Well water tanks and pumps
- Oil tanks and the oil in them
- Cisterns and the water in them
- Natural gas tanks and the gas in them
- Pumps and or tanks used in conjunction with solar energy
- Furnaces
- Clothes washers and dryers
- Food freezers and the food in them
- Air conditioners
- Heat pumps
- Electrical junction and circuit breaker boxes
- Clean-up
- Elevators and equipment, except for such equipment located below the *base flood* level if such equipment was installed on or after October 1, 1987.

G. *Property below ground, meaning* a *building* or *unit* and its contents, including personal property and machinery and equipment, which are part of the *building* or *unit*, where more than 49% of the *actual cash value* of such *building* or unit is below ground, unless the lowest level is at or above the *base flood* elevation (in the Regular Program) or the adjacent ground level (in the Emergency Program) by reason of earth having been used as an insulation material in conjunction with energy efficient building techniques.

H. *Certain manufactured homes, meaning* a *manufactured* (i.e., *mobile*) *home* located or placed within a FEMA designated *Special Hazard Area* that is not anchored to a permanent foundation to resist flotation, collapse, or lateral movement:

1. By over-the-top or frame ties to ground anchors; or

2. In accordance with manufacturer's specifications; or

3. In compliance with the community's floodplain management requirements;

unless it is a *manufactured* (i.e., *mobile*) *home* on a permanent foundation continuously insured by the *National Flood Insurance Program* at the same site at least since September 30, 1982.

I. *Containers, meaning units* which are primarily containers, rather than *buildings* (such as gas and liquid tanks).

J. *Buildings and their contents made ineligible* for *flood* insurance pursuant to the provisions of the Coastal Barrier Resources Act, 16 U.S.C. 3501 *et seq.*, and the Coastal Barrier Improvement Act of 1990, Pub. L. 101–591, 16 U.S.C. 3501 *et seq.*

Article 7—Deductibles

A. Each loss to your insured property is subject to a deductible provision under which you bear a portion of the loss before payment is made under the *policy*.

B. The loss deductible shall apply separately to each *building* and personal property loss including, as to each, any appurtenant structure loss and debris removal expense.

C. For any flood insurance policy issued or renewed for a property located in an Emergency Program community or for any property located in a Regular Program community in Zones A, AO, AH, A1–30, AE, VO, V1–30, VE, or V where the rates available for *buiidings* built before the effective date of the Flood Insurance Rate Map (FIRM) or December 31, 1974, whichever is later, are used to compute the premium, the amount of the deductible for each loss

occurrence is determined as follows: we shall be liable only when such loss exceeds $750.00, or the amount of any higher deductible which you selected when you applied for this *policy* or subsequently by endorsement.

D. For policies other than those described in paragraph C. above, the amount of the deductible for each loss occurrence is determined as follows: we shall be liable only when such loss exceeds $500.00, or the amount of any higher deductible which you selected when you applied for this *policy* or subsequently by endorsement.

Article 8—Replacement Cost Provisions

Subject to *Article 7* and the limits of building coverage you have purchased, these provisions shall apply only to a single family *dwelling* which is your principal residence and which is covered under this *policy*.

For purposes of this *Article 8*, a single family *dwelling* qualifies as your principal residence provided that, at the time of the loss, you or your spouse have lived in your *building* for either:

1. 80% of the calendar year immediately preceding the loss; or

2. 80% of the period of your ownership of the insured *building*, if less than one calendar year immediately preceded the loss.

The following are excluded from replacement cost coverage:

1. A *unit* in a *condominium building*.

2. Outdoor antennas and aerials, awnings, and other outdoor equipment, all whether attached to the *building* or not.

3. Carpeting.

4. Appliances.

Under this Article:

A. If at the time of loss the total amount of insurance applicable to the *dwelling* is 80% or more of the full replacement cost of such *dwelling*, or is the maximum amount of insurance available under the *National Flood Insurance Program*, the coverage of this *policy* applicable to the *dwelling* is extended to include the full cost of repair or replacement (without deduction for depreciation).

B. If at the time of loss the total amount of insurance applicable to the *dwelling* is less than 800 of the full replacement cost of such *dwelling* and less than the maximum amount of insurance available under the *National Flood Insurance Program*, our liability for loss shall not exceed the larger of the following amounts:

1. The *actual cash value* (meaning replacement cost less depreciation) of that part of the *dwelling* damaged or destroyed; or

2. That portion of the full cost of repair or replacement without deduction for depreciation of that part of the *dwelling* damaged or destroyed, which the total amount of insurance applicable to the *dwelling* bears to 80% of the full replacement cost of such *dwelling*.

If 80% of the full replacement cost of such *dwelling* is greater than the maximum amount of insurance available under the *National Flood Insurance Program*, use the maximum amount in lieu of the 80% figure in the application of this limit.

C. Our liability for loss under this *policy* shall not exceed the smallest of the following amounts:

1. The limit of liability of this *policy* applicable to the damaged or destroyed *building;* or

2. The replacement cost of the *dwelling* or any part thereof identical with such *dwelling* on the same premises and intended for the same occupancy and use; or

3. The amount actually and necessarily expended in repairing or replacing said *dwelling* or any part thereof intended for the same occupancy and use.

D. When the full cost of repair or replacement is more than $1,000 or more than 5% of the whole amount of insurance applicable to said *dwelling*, we shall not be liable for any loss under paragraph A. or subparagraph B.2. of these provisions unless and until actual repair or replacement is completed.

E. In determining if the whole amount of insurance applicable to said *dwelling* is 80% or more of the full replacement cost of such *dwelling*, the cost of excavations, underground flues and pipes, underground wiring and drains, and brick, stone and concrete foundations, piers and other supports which are below the under surface of the lowest *basement* floor, or where there is no *basement*, which are below the surface of the ground inside the foundation walls, shall be disregarded.

F. You may elect to disregard this condition in making claim hereunder, but such election shall not prejudice your right to make further claim within 180 days after loss for any additional liability brought about by these provisions.

G. These Replacement Cost Provisions do not apply to any *manufactured* (i.e., *mobile*) *home* which when assembled is not at least 16 feet wide or does not have an area within its perimeter walls of at least 600 square feet or personal property (contents) covered under this *policy*, nor do they apply to any loss where insured property is abandoned and remains as debris at the property address following a loss.

H. If your *dwelling* sustains a total loss or if we should pay you the entire *building* loss proceeds under these Replacement Cost Provisions, there is no requirement that you rebuild the *building* at the insured property address.

I. If the community in which your property is located has been converted from the Emergency Program to the Regular Program during the current *policy* term, then these Replacement Cost Provisions shall be applied based on the maximum amount of insurance available under the *National Flood Insurance Program* at the beginning of the current *policy* term instead of at the time of loss.

Article 9—General Conditions and Provisions

A. *Pair and Set Clause:* If you lose an article which is part of a pair or set, we will have the option of paying you an amount equal to the cost of replacing the lost article, less depreciation, or an amount which represents the fair proportion of the total value of the pair or set that the lost article bears to the pair or set.

B. *Concealment, Fraud:* We will not cover you under this *policy*, which shall be void, nor can this *policy* be renewed or any new *flood* insurance coverage be issued to you if:

1. You have sworn falsely, or willfully concealed or misrepresented any material fact; or

2. You have done any fraudulent act concerning this insurance (see paragraph F.1.d. below); or

3. You have willfully concealed or misrepresented any fact on a "Recertification Questionnaire," which causes us to issue a *policy* to you based on a premium amount which is less than the premium amount which would have been payable by you were it not for the misstatement of fact (see paragraph G. below).

C. *Other Insurance:* If a loss covered by this *policy* is also covered by other insurance whether collectible or not, except insurance in the name of the *Condominium Association*, issued pursuant to the *Act*, we will pay only the proportion of the loss that the limit of liability that applies under this *policy* bears to the total amount of insurance covering the loss.

If there is other insurance in the name of the *Condominium Association* covering the same property covered by this *policy*, this insurance shall be excess over the other insurance.

D. *Amendments, Waivers, Assignment:* This *policy* cannot be amended nor can any of its provisions be waived without the express written consent of the Federal Insurance Administrator. No action we take under the terms of this *policy* can constitute a waiver of any of our rights. Except in the case of 1. a contents only *policy*, and 2. a *policy* issued to cover a *building* in the course of construction, assignment of this *policy*, in writing, is allowed upon transfer of title.

E. *Cancellation of Policy By You:*

You may cancel this *policy* at any time but a refund of premium money will only be made to you when:

1. You cancel because you have transferred ownership of the described *building* or *unit* to someone else. In this case, we will refund to you, once we receive your written request for *cancellation* (signed by you), the excess of premiums paid by you which apply to the unused portion of the *policy's* term, pro rata but with retention of the *expense constant* and the *Federal policy fee*.

2. You cancel a *policy* having a term of 3 years, on an anniversary date, and the reason for the *cancellation* is:

a. A *policy* of *flood* insurance has been obtained or is being obtained in substitution for this *policy* and we have received a written concurrence in the *cancellation* from any mortgagee of which we have actual notice; or

b. You have extinguished the insured mortgage debt and are no longer required by the mortgagee to maintain the coverage.

Refund of any premium, under this subparagraph 2. shall be pro rata but with retention of the *expense constant* and the *Federal policy fee*.

3. You cancel because we have determined that your property is not, in fact, in a *special hazard area;* and you were required to purchase *flood* insurance coverage by a private lender or Federal agency pursuant to the *Act;* and the lender or Federal agency no longer requires the retention by you of the

coverage. In this event, if no claims have been paid or are pending, your premium payments will be refunded to you in full, according to our applicable regulations.

F. *Voidance, Reduction or Reformation of the Coverage By Us:*

1. *Voidance:* This *policy* shall be void and of no legal force and effect in the event that any one of the following conditions occurs:

a. The property listed on the *application* is not eligible for coverage, in which case the *policy* is void from its inception;

b. The community in which the property is located was not participating in the *National Flood Insurance Program* on the *policy's* inception date and did not qualify as a participating community during the *policy's* term and before the occurrence of any loss for which you may receive compensation under the *policy;*

c. If, during the term of the *policy,* the participation in the *National Flood Insurance Program* of the community in which your property is located ceases, in which case the *policy* shall be deemed void effective at the end of the last day of the *policy* year in which such cessation occurred and shall not be renewed.

In the event the voided *policy* included 3 *policy* years in a contract term of 3 years, you shall be entitled to a pro rata refund of any premium applicable to the remainder of the *policy's* term;

d. In the event you or your agent have:

(1) Sworn falsely, or

(2) Fraudulently or willfully concealed or misrepresented any material facts including facts relevant to the rating of this *policy* in the *application* for coverage, or upon any renewal of coverage, or in connection with the submission of any claim brought under the *policy,* in which case this entire *policy* shall be void as of the date the wrongful act was committed or from its inception if this *policy* is a renewal *policy* and the wrongful act occurred in connection with an *application* for or renewal or endorsement of a *policy* issued to you in a prior year and affects the rating of or premium amount received for this *policy.* Refunds of premiums, if any, shall be subject to offsets for our administrative expenses (including the payment of agent's commissions for any voided *policy* year) in connection with the issuance of the *policy;*

e. The premium you submit is less than the minimum set forth in 44 CFR 61.10 in connection with any *application* for a new *policy* or *policy* renewal, in which case the *policy* is void from its inception date.

2. *Reduction of Coverage Limits or Reformation:* In the event that the premium payment received by us is not sufficient (whether evident or not) to purchase the amount of coverage requested by an *application,* renewal, endorsement, or other form and paragraph F.1.d. does not apply, then the *policy* shall be deemed to provide only such coverage as can be purchased for the entire term of the *policy,* for the amount of premium received, subject to increasing the amount of coverage pursuant to 44 CFR 61.11; provided, however:

a. If the insufficient premium is discovered by us prior to a loss and we can determine the amount of insufficient premium from information in our possession at the time of our discovery of the insufficient premium, we shall give a notice of additional premium due, and if you *remit* and we *receive* the additional premium required to purchase the limits of coverage for each kind of coverage as was initially requested by you within 30 days from the date we give you written notice of additional premium due, the *policy* shall be reformed, from its inception date, to provide *flood* insurance coverage in the amount of coverage initially requested.

b. If the insufficient premium is discovered by us at the time of a loss under the *policy,* we shall give a notice of premium due, and if you *remit* and we *receive* the additional premium required to purchase (for the current *policy* term and the previous *policy* term, if then insured) the limits of coverage for each kind of coverage as was initially requested by you within 30 days from the date we give you written notice of additional premium due, the *policy* shall be reformed, from its inception date, to provide *flood* insurance coverage in the amount of coverage initially requested.

c. Under subparagraphs a. and b. as to any mortgagee or trustee named in the *policy,* we shall give a notice of additional premium due and the right of reformation shall continue in force for the benefit only of the mortgagee or trustee, up to the amount of your indebtedness, for 30 days after written notice to the mortgagee or trustee.

G. *Policy Renewal:* The term of this *policy* commences on its inception date and ends on its *expiration date,* as shown on the "*Declarations Page*" which is attached to the *policy.* We are under no obligation to:

1. Send you any renewal notice or other notice that your *policy* term is coming to an end and the receipt of any such notice by you shall not be deemed to be a waiver of this provision on our part.

2. Assure that *policy* changes reflected in endorsements submitted by you during the *policy* term and accepted by us are included in any renewal notice or new *policy* which we send to you. "*Policy* changes" includes the addition of any increases in the amounts of coverage.

This *policy* shall not be renewed and the coverage provided by it shall not continue into any successive *policy* term unless the renewal premium payment is received by us at the office of the *National Flood Insurance Program* within 30 days of the *expiration date* of this *policy,* subject to *Article 9,* paragraph F. above. If the renewal premium payment is mailed by certified mail to the *National Flood Insurance Program* prior to the *expiration date,* it shall be deemed to have been received within the required 30 days. The coverage provided by the renewal *policy* is in effect for any loss occurring during this 30-day period, even if the loss occurs before the renewal premium payment is received, so long as the renewal premium payment is received within the required 30 days. In all other cases, this *policy* shall terminate as of the *expiration date* of the last *policy* term for which the premium payment was timely received at the office of the *National Flood Insurance Program* and, in that event, we shall not be obligated to provide you with any *cancellation,* termination, *policy* lapse, or *policy* renewal notice.

In connection with the renewal of this *policy,* you may be requested during the *policy* term to recertify, on a Recertification Questionnaire we will provide you, the rating information used to rate your most recent *application* for or renewal of insurance.

Notwithstanding your responsibility to submit the appropriate renewal premium in sufficient time to permit its receipt by us prior to the expiration of the *policy* being renewed, we have established a business procedure for mailing renewal notices to assist Insureds in meeting their responsibility. Regarding our business procedure, evidence of the placing of any such notices into the U.S. Postal Service, addressed to you at the address appearing on your most recent *application* or other appropriate form (received by the *National Flood Insurance Program* prior to the mailing of the renewal notice by us), does, in all respects for purposes of the *National Flood Insurance Program,* presumptively establish delivery to you for all purposes irrespective of whether you actually received the notice.

However, in the event we determine that, through any circumstances, any renewal notice was not placed into the U.S. Postal Service, or, if placed, was prepared or addressed in a manner which we determine could preclude the likelihood of its being actually and timely received by you prior to the due date for the renewal premium, the following procedures shall be followed:

In the event that you or your agent notified us, not later than 1 year after the date on which the payment of the renewal was due, of a nonreceipt of a renewal notice prior to the due date for the renewal premium, which we determine was attributable to the above circumstance, we shall mail a second bill providing a revised due date, which shall be 30 days after the date on which the bill is mailed.

If the renewal payment requested by reason of the second bill is not received by the revised due date, no renewal shall occur and the *policy* shall remain as an expired *policy* as of the *expiration date* prescribed on the *policy.*

H. *Conditions Suspending or Restricting Insurance:* Unless otherwise provided in writing added hereto, we shall not be liable for loss occurring while the hazard is increased by any means within your control or knowledge.

I. *Alterations and Repairs:* You may, at any time and at your own expense, make alterations, additions and repairs to the insured property, and complete structures in the course of construction.

J. *Requirements in Case of Loss:* Should a *flood* loss occur to your insured property, you must:

1. Notify us in writing as soon as practicable;

2. As soon as reasonably possible, separate the damaged and undamaged property, putting it in the best possible order so that we may examine it; and

3. Within 60 days after the loss, send us a proof of loss, which is your statement as to the amount you are claiming under the *policy*

signed and sworn to by you and furnishing us with the following information:

a. The date and time of the loss;

b. A brief explanation of how the loss happened;

c. Your interest in the property damaged (for example, "owner") and the interest, if any, of others in the damaged property;

d. The *actual cash value* of each damaged item of insured property and the amount of damages sustained;

e. Names of mortgagees or anyone else having a lien, charge or claim against the insured property;

f. Details as to any other contracts of insurance covering the property, whether valid or not;

g. Details of any changes in ownership, use, occupancy, location or possession of the insured property since the *policy* was issued;

h. Details as to who occupied any insured *building* at the time of loss and for what purpose; and

i. The amount you claim is due under this *policy* to cover the loss, including statements concerning:

(1) The limits of coverage stated in the *policy;* and

(2) The cost to repair or replace the damaged property (whichever costs less).

4. The insurance adjuster whom we hire to investigate your claim may furnish you with a proof of loss form, and she or he may help you to complete it. However, this is a matter of courtesy only, and you must still send us a proof of loss within 60 days after the loss even if the adjuster does not furnish the form or help you complete it.

In completing the proof of loss, you must use your own judgment concerning the amount of loss and the justification for that amount.

The adjuster is not authorized to approve or disapprove claims or tell you whether your claim will be approved by us.

5. We may, at our option, waive the requirement for the completion and filing of a proof of loss in certain cases, in which event you will be required to sign and, at our option, swear to an adjuster's report of the loss which includes information about your loss and the damages sustained, which is needed by us in order to adjust your claim.

6. Any false statements made in the course of presenting a claim under this *policy* may be punishable by fine or imprisonment under the applicable Federal Laws.

K. *Our Options After a Loss:* Options we may, in our sole discretion, exercise after loss include the following:

1. *Evidence of Loss*: If we specifically request it, in writing, you may be required to furnish us with a complete inventory of the destroyed, damaged and undamaged property, including details as to quantities, costs, *actual cash values,* amounts of loss claimed, and any written plans and specifications for repair of the damaged property which you can make reasonably available to us.

2. *Examination Under Oath and Access to Insured Property Ownership Records and Condominium Documents:* We may require you to:

a. Show us, or our designee, the damaged property, to be examined under oath by our designee and to sign any transcripts of such examinations; and

b. At such reasonable times and places as we may designate, permit us to examine and make extracts and copies of any *policies* of property insurance insuring you against loss; and the deed establishing your ownership of the insured real property; and the *condominium* documents including the Declarations of the *condominium,* its Articles of Association or Incorporation, and other *condominium* documents if you are a *unit* owner in a *condominium building*; and all books of accounts, bills, invoices and other vouchers, or certified copies thereof if the originals are lost, pertaining to the damaged property.

3. *Options to Replace:* We may take all or any part of the damaged property at the agreed or appraised value and, also, repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving you notice of our intention to do so within 30 days after the receipt of the proof of loss herein required under paragraph J.3. above.

4. *Adjustment Options*: We may adjust loss to any insured property of others with the owners of such property or with you for their account. Any such insurance under this *policy* shall not inure directly or indirectly to the benefit of any carrier or other bailee for hire.

L. *When Loss Payable:* Loss is payable within 60 days after you file your proof of loss (or within 90 days after the insurance adjuster files an adjuster's report signed and sworn to by you in lieu of a proof of loss) and ascertainment of the loss is made either by agreement between us and you expressed in writing or by the filing with us of an award as provided in paragraph N. below.

If we reject your proof of loss in whole or in part, you may accept such denial of your claim, or exercise your rights under this *policy*, or file an amended proof of loss as long as it is filed within 60 days of the date of the loss or any extension of time allowed by the Administrator.

M. *Abandonment:* You may not abandon damaged or undamaged insured property to us.

However, we may permit you to keep damaged, insured property ("salvage") after a loss and we will reduce the amount of the loss proceeds payable to you under the *policy* by the value of the salvage.

N. *Appraisal:* If at any time after a loss, we are unable to agree with you as to the *actual cash value* or, if applicable, replacement cost of the damaged property so as to determine the amount of loss to be paid to you, then, on the written demand of either one of us, each of us shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of such demand. The appraisers shall first select a competent and disinterested umpire; and failing, after 15 days, to agree upon such umpire, then, on your request or our request, such umpire shall be selected by a judge of a court of record in the State in which the insured property is located. The appraisers shall then appraise the loss, stating separately replacement cost, *actual cash value* and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two (appraisers or appraiser and umpire) when filed with us shall determine the amount of *actual cash value* and loss or, should this *policy's* replacement cost provisions apply, the amount of replacement cost and loss. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by both of us equally.

O. *Loss Clause:* If we pay you for damage to property sustained in a *flood* loss, you are still eligible, during the term of the *policy*, to collect for a subsequent loss due to another *flood.* Of course, all loss arising out of a single, continuous *flood* of long duration shall be adjusted as one *flood* loss.

P. *Mortgage Clause:* (Applicable to *building* coverage only and effective only when *policy* is made payable to a mortgagee or trustee named in the *application* and *declarations page* attached to this *policy* or of whom we have actual notice prior to the payment of loss proceeds under this *policy*).

Loss, if any, under this *policy,* shall be payable to the aforesaid as mortgagee or trustee as interest may appear under all present or future mortgages upon the property described in which the aforesaid may have an interest as mortgagee or trustee, in order of precedence of said mortgages, and this insurance, as to the interest of the mortgagee or trustee only therein, shall not be invalidated by any act or neglect of the mortgagor or owner of the described property, nor by any foreclosure or other proceedings or notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are permitted by this *policy*; provided, that in case the mortgagor or owner shall neglect to pay any premium due under this *policy*, the mortgagee or trustee shall, on demand, pay the same.

Provided, also, that the mortgagee or trustee shall notify us of any change of ownership or occupancy or increase of hazard which shall come to the knowledge of said mortgagee or trustee and, unless permitted by this *policy*, it shall be noted thereon and the mortgagee or trustee shall, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise, this *policy* shall be null and void

If this *policy* is cancelled by us, it shall continue in force for the benefit only of the mortgagee or trustee for 30 days after written notice to the mortgagee or trustee of such *cancellation* and shall then cease, and we shall have the right, on like notice, to cancel this agreement.

Whenever we shall pay the mortgagee or trustee any sum for loss under this *policy* and shall claim that, as to the mortgagor or owner, no liability therefor existed, we shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt, or may, at our option, pay to the mortgagee or trustee the whole principal due or to grow due on the mortgage with interest, and shall thereupon receive a full

assignment and transfer of the mortgage and of all such other securities; but no subrogation shall impair the right of the mortgagee or trustee to recover the full amount of said mortgagee's or trustee's claim.

Q. *Mortgagee Obligations:* If you fail to render proof of loss, the named mortgagee or trustee, upon notice, shall render proof of loss in the form herein specified within 60 days thereafter and shall be subject to the provisions of this *policy* relating to appraisal and time of payment and of bringing suit.

R. *Conditions for Filing a Lawsuit:* You may not sue us to recover money under this *policy* unless you have complied with all the requirements of the *policy*. If you do sue, you must start the suit within 12 months from the date we mailed you notice that we have denied your claim, or part of your claim, and you must file the suit in the United States District Court of the district in which the insured property was located at the time of loss.

S. *Subrogation:* Whenever we make a payment for a loss under this *policy*, we are subrogated to your right to recover for that loss from any other person. That means that your right to recover for a loss that was partly or totally caused by someone else is automatically transferred to us, to the extent that we have paid you for the loss. We may require you to acknowledge this transfer in writing. After the loss, you may not give up our right to recover this money or do anything which would prevent us from recovering it. If you make any claim against any person who caused your loss and recover any money, you must pay us back first before you may keep any of that money.

T. *Continuous Lake Flooding:* Where the insured *building* has been inundated by rising lake waters continuously for 90 days or more and it appears reasonably certain that a continuation of this flooding will result in damage, reimbursable under this *policy*, to the insured *building* equal to or greater than the *building policy* limits plus the deductible or the maximum payable under the *policy* for any one *building* loss, we will pay you the lesser of these two amounts without waiting for the further damage to occur if you sign a release agreeing:

1. To make no further claim under this *policy;*

2. Not to seek renewal of this *policy;* and

3. Not to apply for any *flood* insurance under the *Act* for property at the property location of the insured *building.*

If the *policy* term ends before the insured *building* has been flooded continuously for 90 days, the provisions of this paragraph T. still apply so long as the first *building* damage reimbursable under this *policy* from the continuous flooding occurred before the end of the *policy* term.

U. *Duplicate Policies Not Allowed:* Property may not be insured under more than one *policy* issued under the *Act.* When we find that duplicate *policies* are in effect, we shall by written notice give you the option of choosing which *policy* is to remain in effect under the following procedures:

1. If you choose to keep in effect the *policy* with the earlier effective date, we shall by the same written notice give you an opportunity to add the coverage limits of the later *policy* to those of the earlier *policy*, as of the effective date of the later *policy*.

2. If you choose to keep in effect the *policy* with the later effective date, we shall by the same written notice give you the opportunity to add the coverage limits of the earlier *policy* to those of the later *policy*, as of the effective date of the later *policy*.

In either case, you must pay the pro rata premium for the increased coverage limits within 30 days of the written notice. In no event shall the resulting coverage limits exceed the statutorily permissible limits of coverage under the *Act* or your insurable interests, whichever is less.

We shall make a refund to you, according to applicable *National Flood Insurance Program* rules, of the premium for the *policy* not being kept in effect. For purposes of this paragraph U., the term "effective date" means the date coverage that has been in effect without any lapse was first placed in effect.

In addition to the provisions of this paragraph U. for increasing *policy* limits, the usual procedures for increasing *policy* limits, by mid-term endorsement or at renewal time, with the appropriate waiting period, are applicable to the *policy* you choose to keep in effect.

Article 10—Liberalization Clause

If during the period that insurance is in force under this *policy* or within 45 days prior to the inception date thereof, should we have adopted under the *Act*, any forms, endorsements, rules or regulations by which this *policy* could be extended or broadened, without additional premium charge, by endorsement or substitution of form, then, such extended or broadened insurance shall inure to your benefit as though such endorsement or substitution of form had been made. Any broadening or extension of this *policy* to your benefit shall only apply to losses occurring on or after the effective date of the adoption of any forms, endorsements, rules or regulations affecting this *policy*.

Article 11—What Law Governs

This *policy* is governed by the *flood* insurance regulations issued by FEMA, the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001, *et seq.*) and Federal common law.

IN WITNESS WHEREOF, we have signed this *policy* below and hereby enter into this Insurance Agreement.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

(The information required under the terms of this policy has been approved by the Office of Management and Budget under OMB control number 3067–0021.)

10. Appendix A(2) of part 61 is proposed to be revised to read as follows:

Appendix A(2)—Federal Emergency Management Agency, Federal Insurance Administration, Standard Flood Insurance Policy

[Issued Pursuant to the National Flood Insurance Act of 1968, or Any Acts Amendatory Thereof (Hereinafter Called the Act), and Applicable Federal Regulations in title 44 of the Code of Federal Regulations, subchapter B]

General Property Form

Read the policy carefully. The coverage provided is subject to limitations, restrictions and exclusions.

This policy provides no coverage:

1. In a regular program community, for a residential condominium building, as defined in this policy; and

2. Except for personal property coverage, for a unit in a condominium building.

Insuring Agreement

Agreement of Insurance between the Federal Emergency Management Agency (FEMA), as Insurer, and the Insured.

The Insurer insures the Insured against all *Direct physical loss by or from flood* to the insured property, based upon:

1. The Insured having paid the correct amount of premium; and

2. The Insurer's reliance on the accuracy of the information and statements the Insured has furnished; and

3. All the terms of this *policy*, the National Flood Insurance Act of 1968, as amended, and Title 44 of the Code of Federal Regulations.

On this basis, the Insured is insured up to the lesser of:

1. The *actual cash value*, not including any antique value, of the property at the time of loss; or

2. The amount it would cost to repair or replace the property with material of like kind and quality within a reasonable time after the loss.

Article 1—Persons Insured

The following are insured under this policy:

A. The named Insured and legal representatives;

B. Any mortgagee and trustee named in the *application* and *declarations page* in the order of precedence and to the extent of their interest but for no more, in the aggregate, than the interest of the named Insured.

Article 2—Definitions

As used in this policy:

Act means the National Flood Insurance Act of 1968 and any acts amendatory thereof.

Actual Cash Value means the replacement cost of an insured item of property at the time of loss, less the value of physical depreciation as to the item damaged.

Application means the statement made and signed by the Insured, or the Insured's agent, and giving information on the basis of which the Insurer determines the acceptability of the risk, the *policy* to be issued and the correct premium payment, which must accompany the *application* in order for the *policy* to be issued. The *application* is a part of this *flood* insurance *policy*.

Association means the group of *unit* owners which manages the described *Condominium Building*.

Base flood means the *flood* having a one percent chance of being equalled or exceeded in any given year.

Basement means any area of the *building* having its floor subgrade (below ground level) on all sides.

Building means a *walled and roofed* structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, including a *walled and roofed building* in the course of construction, alteration or repair and a *manufactured* (i.e., *mobile*) *home* on a permanent foundation, subject to *Article 6*, paragraph H.

Cancellation means that ending of the insurance coverage provided by this *policy* prior to the *expiration date.*

Coastal High Hazard Area means an area subject to high velocity waters, including hurricane wave wash and tsunamis.

Condominium means a system of individual ownership of *units* in a multi-unit *building* or *buildings* or in single-unit *buildings* as to which each *unit* owner in the *condominium* has an undivided interest in the common areas of the *building(s)* and facilities that serve the *building(s).*

Declarations Page is a computer generated summary of information furnished by the Insured in the *application* for insurance. The *declarations page* also describes the term of the *policy*, limits of coverage, and displays the premium and the name of the Insurer. The *declarations page* is a part of this *flood* insurance *policy.*

Direct Physical Loss By or From Flood means any loss in the nature of actual loss of or physical damage, evidenced by physical changes, to the insured property (*building* or personal property) which is directly and proximately caused by a *"flood"* (as defined in this *policy*).

Elevated Building means a non-basement *building* which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Emergency Program Community means a community wherein a Flood Hazard Boundary Map (FHBM) is in effect and only limited amounts of insurance are available under the *Act.*

Expense Constant means a flat charge per *policy* term, paid by the Insured to defray the Federal Government's policy writing and other expenses.

Expiration Date means the ending of the insurance coverage provided by this *policy* on the *expiration date* shown on the *declarations page.*

Federal policy fee means a flat charge per *policy* term, paid by the Insured to defray certain administrative expenses incurred in carrying out the *National Flood Insurance Program* not covered by the *expense constant.* This fee was established by section 1307(a) (1) (B) (iii) of the National Flood Insurance Act of 1968, as amended, and is not subject to producers' commissions, *Write Your Own company* expense allowances, or state or local premium taxes.

Flood means:

A. A general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters.

2. The unusual and rapid accumulation or runoff of surface waters from any source.

3. Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in subparagraph A–2 above and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas as when earth is carried by a current of water and deposited along the path of the current.

B. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding the cyclical levels which result in flooding as defined in subparagraph A-I above.

Improvements means fixtures, alterations, or additions comprising a part of the insured *building.*

Manufactured home means a *building* transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term *"manufactured home"* does not include park trailers, and other similar vehicles. To be eligible for coverage under this *policy*, a *manufactured home* must be on a permanent foundation and, if located in a FEMA designated *Special Hazard Area,* must meet the requirements of paragraph H. of *Article 6.*

Mobile home means a *manufactured home.*

National Flood Insurance Program means the program of flood insurance coverage and floodplain management administered under the Act and applicable Federal regulations in Title 44 of the Code of Federal Regulations, Subchapter B.

Policy means the entire written contract between the Insured and the Insurer, including this printed form, the *application,* and *declarations page,* any endorsements which may be issued and any renewal certificates indicating that coverage has been instituted for a new *policy* and *policy* term. *Only one building, specifically described by the Insured in the application, may be insured under this policy, unless application to cover more than one building is made on a form or in a format approved for that purpose by the Federal Insurance Administrator.*

Post-FIRM building means a *building* for which the start of construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of the initial Flood Insurance Rate Map (FIRM) for the community in which the *building* is located, whichever is later.

Pre-FIRM rated building means a building for which the start of construction or substantial improvement occurred on or before December 31, 1974, or before the effective date of the initial Flood Insurance Rate Map (FIRM) for the community in which the *building* is located, whichever is later.

Probation Additional Premium means a flat charge per *policy* term paid by the Insured on all new and renewal *policies* issued covering property in a community that has been placed on probation under the provisions of 44 CFR 59.24.

Regular Program Community means a community wherein a Flood Insurance Rate Map (FIRM) is in effect and full limits of coverage are available under the *Act.*

Residential Condominium Building means a *building* owned by the members of a *condominium association* containing one or more residential *units* and in which at least 75% of the floor area within the *building* is residential.

Special hazard area means an area having special *flood,* mudslide (i.e., mudflow), and/or flood-related erosion hazards, and shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map as Zone A, AO, A1–30, RE, A99, AH, VO, V130, VE, V, M or E.

Unit means a *unit* not used for any dwelling purposes, in a *Condominium Building.*

Valued policy means a *policy* contract in which the Insurer and the Insured agree on the value of the property insured, that value being payable in event of total loss.

Walled and Roofed means the *building* has in place two or more exterior, rigid walls and the roof is fully secured so that the *building* will resist flotation, collapse and lateral movement.

Write Your Own company means a private sector property insurance company that is authorized to sell the *National Flood Insurance Program Policy* pursuant to an arrangement with the Federal Insurance Administrator.

Article 3—Losses Not Covered

The Insurer only provides coverage for *direct physical loss by or from flood* which means the following are not covered:

A. *Compensation. reimbursement or allowance for:*

1. Loss of use of the insured property or premises.

2. Loss of access to the insured property or premises.

3. Loss of profits.

4. Loss resulting from interruption of business, profession, or manufacture.

5. Any additional expenses incurred while the insured *building* is being repaired or is uninhabitable for any reason.

6. Any increased cost of repair or reconstruction as a result of any ordinance regulating reconstruction or repair.

7. Any other economic loss.

B. *Losses from other casualties, including loss caused by:*

1. Theft, fire, windstorm, wind, explosion, earthquake, land sinkage, land subsidence, landslide, destabilization or movement of land resulting from the accumulation of water in subsurface land areas, gradual erosion, or any other earth movement except such mudslides (i.e., mudflows) or erosion as is covered under the peril of *flood.*

2. Rain, snow, sleet, hail or water spray.

3. Sewer backup or seepage of water unless at the same time there has been actual physical contact between surface *flood* water and the insured property, or from freezing, thawing, or the pressure or weight of ice or water.

4. Water, moisture, mildew, mold or mudslide (i.e., mudflow) damage resulting primarily from any condition substantially confined to the insured *building* or from any condition which is within the Insured's control (including but not limited to design, structural or mechanical defects, failures, stoppages or breakages of water or sewer lines, drains, pumps, fixtures or equipment).

C. *Losses of the following nature:*

1. A loss which is already in progress as of 12:01 A.M. of the first day of the *policy* term, or, as to any increase in the limits of coverage which is requested by the Insured, a loss which is already in progress as of 12:01 A.M. on the date when the additional coverage becomes effective.

2. A loss from a *flood* which is confined to the premises on which the insured property is located unless the *flood* is displaced over two acres of the premises.

3. A loss caused by the Insured's modification to the insured property which materially increases the risk of flooding.

4. A loss caused intentionally by the Insured.

5. A loss caused by or resulting from power, heating or cooling failure, unless such failure results from physical damage to power, heating or cooling equipment situated on the premises where the described *building* or *unit* is located, caused by a *flood*.

6. A loss to any *building* or contents located on property leased from the Federal Government, arising from or incident to the flooding of the property by the Federal Government where the lease expressly holds the Federal Government harmless, under *flood* insurance issued under any Federal Government program, from loss arising from or incident to the flooding of the property by the Federal Government.

Article 4—Property Covered (Subject to Articles 3, 5 and 6 Provisions, Which Also Apply to the Other Articles, Terms, and Conditions of This Policy, Including the Insuring Agreement)

Coverage A—Building Property

This *policy* covers a *building* (the *"building"*) at the premises which is described in the *application*, and includes:

1. The entire *building*, for its real property elements, including, if owned in common by a *Condominium Association*, as named Insured, all *units* within the *building* and the *improvements* within the *units*.

2. Additions and extensions attached to and a part of the *building*.

3. Fixtures, machinery and equipment, including the following property, all while within the *building* and owned by the named Insured, as to which coverage is *not provided* under "Coverage B—Personal Property":

- Furnaces
- Wall Mirrors Permanently Installed
- Permanently Installed Corner Cupboards, Bookcases, Paneling, and Wallpaper
- Ventilating Equipment
- Fire Extinguishing Apparatus
- Venetian Blinds
- Central Air Conditioners
- Awnings and Canopies
- Elevator Equipment
- Sprinklers
- Outdoor Antennas and Aerials
- Pumps and Machinery for Operating them
- Carpet Permanently Installed Over Unfinished Flooring
- In the Units Within the *Building, Installed:*
  - •• Built-in Dishwashers
  - •• Garbage Disposal Units
  - •• Hot Water Heaters
  - •• Kitchen Cabinets
  - •• Built-in Microwave Ovens
  - •• Plumbing Fixtures
  - •• Radiators
  - •• Ranges
  - •• Refrigerators
  - •• Stoves

4. Materials and supplies to be used in constructing, altering or repairing the *building* while stored inside a fully enclosed *building*:

a. At the property address; or

b. On an adjacent property at the time of loss; or

c. In case of another *building* at the property address which does not have walls on all sides, while stored and secured to prevent flotation out of the *building* during flooding (the flotation out of the *building* shall be deemed to establish the conclusive presumption that the materials and supplies were not reasonably secured to prevent flotation, in which case no coverage is provided for such materials and supplies under this *policy*).

5. A *building* in the course of construction before it is *walled and roofed* subject to the following conditions:

a. The amount of the deductible for each loss occurrence before the *building* is *walled and roofed* is two times the deductible which is selected to apply after the *building* is *walled and roofed;*

b. Coverage is provided before the *building* is *walled and roofed* only while construction is in progress, or if construction is halted, only for a period of up to 90 continuous days thereafter, until construction is resumed; and

c. There is no coverage before the *building* is *walled and roofed* where the lowest floor, including *basement* floor, of a non-elevated *building* or the lowest elevated floor of an *elevated building* is below the *base flood* elevation in Zones AH, AE or A1–30 or is below the *base flood* elevation adjusted to include the effect of wave action in Zones VE or V1–30. The lowest floor levels are based on the bottom of the lowest horizontal structural member of the floor in Zones VE or V1–30 and the top of the floor in Zones AH, AE or A1–30.

Coverage B—Personal Property

A. Subject to paragraphs B, C, and D, below, this *policy* covers personal property which is in or on the insured, fully enclosed *building* and is:

1. Owned solely by the Insured, or in common by the *unit* owners of a *condominium*, i.e., as to which each *unit* owner has an undivided ownership interest; or

2. In the case of a *condominium*, owned solely by a *condominium association* and used exclusively in the conduct of the business affairs of the *condominium*.

3. Such personal property is also covered while stored at a temporary location, as expressly authorized under this *policy* (see *Article 5*, paragraph B.2.).

B. When the insurance under this *policy* covers personal property (contents), coverage shall be for either household contents or other than household contents, but not for both.

1. When the insurance under this *policy* covers other than household contents, such insurance shall cover, subject to "Coverage A—Building Property", paragraph 3.: merchandise and stock, materials and stock supplies of every description, furniture, fixtures, machinery and equipment of every description all owned by the Insured and all while within the described enclosed *building*. Bailees' goods are specifically excluded from coverage under this *policy*.

2. When the insurance under this *policy* covers household contents, such insurance shall cover, subject to "Coverage A—Building Property", paragraph 3.: all household and personal property usual or incidental to the occupancy of the premises as a residence, except any property more specifically covered in whole or in part by other insurance including the peril insured against in this *policy*, belonging to the Insured or members of the Insured's family of the same household, or for which the Insured may be liable, or, at the *option of the Insured*, belonging to a servant or guest of the Insured—all while within the described enclosed *building*.

C. Coverage for personal property includes the following property, subject to paragraph A. 1. and 2., above, for which coverage is *not provided* (irrespective of the manner in which the property is installed in or adapted to the *building*) under "Coverage A—Building Property":

- Clothes Washers
- Clothes Dryers
- Food Freezers
- Air Conditioning Units Installed in the *Building*
- Portable Dishwashers
- Carpet, including wall-to-wall carpet, over finished flooring and whether or not it is permanently installed
- Carpet not permanently installed over unfinished flooring
- Outdoor equipment and furniture stored inside the dwelling or another fully enclosed *building* at the property address
- Portable microwave ovens and "cook-out" grills, ovens and the like

D. *Limitations.* Under this "Coverage B—Personal Property", the Insured shall not be reimbursed for loss as to the following personal property to the extent the loss to any one or more of such property exceeds, individually or in total, $250.00:

- Artwork, including but not limited to, paintings, etchings, pictures, tapestries, art glass windows, statuary, marbles, and bronzes;
- Rare books;
- Necklaces, bracelets, gems, precious or semi-precious stones, articles of gold, silver, or platinum; or
- Furs or any article containing fur which represents its principal value.

E. The Insured, if not an owner of the described *building*, may apply up to 10% of the amount of insurance applicable to the personal property covered under this item, not as an additional amount of insurance, to cover loss to *improvements* to the described *building* which have been made, or acquired, at the expense of the Insured exclusive of rent paid by the Insured, even though the *improvements* are not legally subject to removal by the Insured.

F. The Insured, if a *condominium unit* owner in the described *building*, may apply up to 10% of the amount of insurance on personal property covered under this *policy*, not as an additional amount of insurance, to cover loss to the interior walls, floors, and ceilings that are not otherwise covered under a *condominium association policy* insuring the described non-residential *condominium building*.

G. In the case of personal property owned by the Insured in a *condominium building*, as a *condominium unit* owner, as well as in common with other *condominium unit* owners, should the amount of insurance collectible under this *policy* for a loss, when combined with any recovery available to the Insured as a tenant in common under any *condominium association flood* insurance coverage provided under the *Act* for the same loss, exceed the statutorily permissible limits of personal property coverage available under the *Act* for the insuring of the personal property, then the limits of personal property coverage under this *policy* shall be reduced in regard to that loss by the amount of such excess.

The insurance under this *policy* shall be excess over any insurance in the name of the *Condominium Association* covering the same property. Loss shall not be paid under this policy until the Insurer has verified the extent to which such loss is covered by any insurance in the name of a *condominium association*.

Coverage C—Debris Removal

This insurance covers expense incurred in the removal of debris of, or on, or from the *building* or personal property covered hereunder, which may be occasioned by loss caused by a *flood*. Under these provisions coverage extends to:

1. Non-owned debris from beyond the boundaries of the described premises which is physically on the insured property (i.e., on the *building* or the personal property).

2. Parts of the insured property anywhere:

a. On the described premises; and

b. On property beyond the boundaries of the described premises.

The total liability under this *policy* for both loss to property and debris removal expense shall not exceed the amount of insurance applying under this *policy* to the property covered.

Article 5—Special Provisions Applicable to Coverages A, B, and C

A. *This policy is not a valued policy.* Loss will be paid, provided the Insured has purchased a sufficient amount of coverage, i.e., in an amount equal to the lesser of the value of the damaged property under the terms and conditions of this *policy* (and regardless of whether the amount of insurance purchased is greater than such value) or the limit of coverage permitted under the *Act*.

B. *Insured Property, Covered Locations.* The *building* and personal property are covered while the property is located:

1. At the property address shown on the *application;* and

2. For 45 days at another place above ground level or outside of the *special hazard area*, to which any of the insured property shall necessarily be removed in order to protect and preserve it from *flood*, due to the imminent danger of *flood* (provided, personal property so removed must be placed in a fully enclosed *building* or otherwise reasonably protected from the elements to be insured against loss), in which case the reasonable expenses incurred by the Insured, including the value of its own labor at prevailing Federal minimum wage rates, in moving any of the insured property temporarily away from the peril of *flood* shall be reimbursed in an amount not to exceed $500.00. This *policy's* deductible amounts, as provided for at *Article 7*, shall not be applied to this reimbursement, but shall be applied to any other benefits under this *policy's* coverage.

C. *Coverage For Certain Loss Mitigation Measures.* When the insurance under this *policy* covers a *building*, reasonable expenses incurred by the Insured for the purchase of the following items are also covered, in an aggregate amount not to exceed $500.00:

1. Sandbags, including sand to fill them and plastic sheeting and lumber used in connection with them;

2. Fill for temporary levees;

3. Pumps; and

4. Wood;

all for the purpose of saving the *building* due to the imminent danger of a *flood* loss, including the value of the Insured's own labor at prevailing Federal minimum wage rates.

For reimbursement under this paragraph C. to apply, the following conditions must be met:

a. The insured property must be in imminent danger of sustaining *flood* damage; and

b. The threat of *flood* damage must be of such imminence as to lead a person of common prudence to apprehend *flood* damage; and

c. A general and temporary condition of flooding in the area must occur, even if the flooding does not reach the insured property, or a legally authorized official must issue an evacuation order or other civil order for the community in which the insured property is located calling for measures to preserve life and property from the peril of *flood*.

The *policy's building* deductible amount, as provided for at *Article 7*, shall not be applied to this reimbursement, but shall be applied to any other benefits under the *policy's building* coverage.

Article 6—Property Not Covered

This *policy shall not* cover any of the following:

A. *Valuables and commercial property, meaning:*

1. Accounts, bills, currency, deeds, evidences of debt, money, coins, medals, postage stamps, securities, bullion, manuscripts, other valuable papers or records, and personal property used in a business.

2. Personal property used in connection with any incidental commercial occupancy or use of the *building*.

B. *Property over water or in the open, meaning:*

1. A *building* and personal property in the *building* located entirely in, on, or over water or seaward of mean high tide, if the *building* was newly constructed or substantially improved on or after October 1, 1982.

2. Personal property in the open.

C. *Structures other than buildings including:*

1. Fences, retaining walls, seawalls, bulkheads, wharves, piers, bridges, and docks.

2. Indoor and outdoor swimming pools.

3. Open structures and personal property located in, on, or over water, including boat houses or any structure or *building* into which boats are floated.

4. Underground structures and equipment, including wells, septic tanks and septic systems.

D. *Other real property, including:*

1. Land, land values, lawns, trees, shrubs, plants, and growing crops.

2. Those portions of walks, walkways, driveways, patios, and other surfaces, all of whatever kind of construction, located outside the perimeter, exterior walls of the insured *building*.

E. *Other personal property, meaning:*

1. Animals, livestock, birds, and fish.

2. Aircraft.

3. Any self-propelled vehicle or machine and motor vehicle (other than motorized equipment pertaining to the service of the described *unit* or *building*, operated principally on the premises of the Insured, and not licensed for highway use) including their parts and equipment.

4. Trailers on wheels and other recreational vehicles whether affixed to a permanent foundation or on wheels.

5. Watercraft including their furnishings and equipment.

6. Personal property owned by or in the care, custody or control of a *unit* owner, except for the property described in *Article 4* under "Coverage B—Personal Property", paragraph B. of this *policy*.

F. *Building enclosures and personal property lower than the elevated floors of elevated buildings, and basements, including personal property in a basement, as follows:*

1. In a *special hazard area*, at an elevation lower than the lowest elevated floor of an *elevated Post-FIRM building*, including a *manufactured* (i.e., *mobile*) *home:*

a. Personal property.

b. *Building* enclosures, equipment, machinery, fixtures and components, except for the required utility connections and the footing, foundation, posts, pilings, piers or other foundation walls and anchorage system as required for the support of the *building*.

2. In a *basement* as defined in *Article 2:*

a. Personal property.

b. *Building* equipment, machinery, fixtures and components, including finished walls, floors, ceilings and other improvements, except for the required utility connections, fiberglass insulation, drywalls and sheetrock walls, and ceilings but only to the extent of replacing drywalls and sheetrock walls in an unfinished manner (i.e., nailed to framing but not taped, painted, or covered).

3. *Provided*, with regard to both 1. and 2., above, the following *building* and personal property items *are covered* so long as the

Insured has *purchased building* and personal property coverage, *as appropriate*:

- Sump pumps
- Well water tanks and pumps
- Oil tanks and the oil in them
- Cisterns and the water in them
- Natural gas tanks and the gas in them
- Pumps and/or tanks used in conjunction with solar energy
- Furnaces
- Clothes washers and dryers
- Food freezers and the food in them
- Air conditioners
- Heat pumps
- Electrical junction and circuit breaker boxes
- Clean-up
- Elevators and equipment, except for such equipment located below the *base flood* level if such equipment was installed on or after October 1, 1987.

G. *Property below ground, meaning* a *building* or *unit* and its contents, including personal property and machinery and equipment, which are part of the *building* or *unit*, where more than 49 percent of the *actual cash value* of such *building* or *unit* is below ground, unless the lowest level is at or above the *base flood* elevation (in the Regular Program) or the adjacent ground level (in the Emergency Program) by reason of earth having been used as an insulation material in conjunction with energy efficient building techniques.

H. *Certain manufactured homes, meaning* a *manufactured* (i.e., *mobile*) *home* located or placed within a FEMA designated *Special Hazard Area* that is not anchored to a permanent foundation to resist flotation, collapse, or lateral movement:

1. By over-the-top or frame ties to ground anchors; or

2. In accordance with manufacturer's specifications; or

3. In compliance with the community's floodplain management requirements; unless it is a *manufactured* (i.e., *mobile*) *home* on a permanent foundation continuously insured by the *National Flood Insurance Program* at the same site at least since September 30, 1982.

I. *Containers, meaning units* which are primarily containers, rather than *buildings* (such as gas and liquid tanks).

J. *Buildings and their contents made ineligible* for *flood* insurance pursuant to the provisions of the Coastal Barrier Resources Act, 16 U.S.C. 3501 *et seq.*, and the Coastal Barrier Improvement Act of 1990, Pub. L. 101–591, 16 U.S.C. 3501 *et seq.*

K. *Residential condominium buildings* and their contents owned by the Insured as a tenant in common with others under a *condominium* form of ownership and any *building* components and contents owned solely by the Insured in connection with a *residential condominium building.*

Article 7—Deductibles

A. Each loss to the insured property is subject to a deductible provision under which the Insured bears a portion of the loss before payment is made under the *policy.*

B. The loss deductible shall apply separately to each *building* and personal property coverage loss including, as to each, any appurtenant structure loss and debris removal expense.

C. For any flood insurance policy issued or renewed for a property located in an Emergency Program community or for any property located in a Regular Program community in Zones A, AO, AH, A1–30, AE, VO, V1–30, VE, or V where the rates available for *buildings* built before the effective date of the Flood Insurance Rate Map (FIRM) or December 31, 1974, whichever is later, are used to compute the premium, the amount of the deductible for each loss occurrence is determined as follows: The Insurer shall be liable only when such loss exceeds $750.00, or the amount of any higher deductible which the Insured selected when it applied for this *policy* or subsequently by endorsement.

D. For policies other than those described in paragraph C. above, the amount of the deductible for each loss occurrence is determined as follows: The Insurer shall be liable only when such loss exceeds $500.00, or the amount of any higher deductible which the Insured selected when it applied for this *policy* or subsequently by endorsement.

Article 8—General Conditions and Provisions

A. *Pair and Set Clause:* If there is loss of an article which is part of a pair or set, the measure of loss shall be a reasonable and fair proportion of the total value of the pair or set, giving consideration to the importance of said article, but such loss shall not be construed to mean total loss of the pair or set.

B. *Concealment, Fraud:* This *policy* shall be void, nor can this *policy* be renewed or any new *flood* insurance coverage be issued to the Insured if any person insured under *Article 1*, paragraph A., whether before or after a loss, has:

1. Sworn falsely, or willfully concealed or misrepresented any material fact; or

2. Done any fraudulent act concerning this insurance (See paragraph E.1.d. below); or

3. Willfully concealed or misrepresented any fact on a "Recertification Questionnaire," which causes the Insurer to issue a *policy* based on a premium amount which is less than the premium amount which would have been payable were it not for the misstatement of fact (see paragraph F. below).

C. *Other Insurance:* If a loss covered by this *policy* is also covered by other insurance, whether collectible or not, the Insurer will pay only the proportion of the loss that the limit of liability that applies under this *policy* bears to the total amount of insurance covering the loss, *provided*, if at the time of loss, there is other insurance *made available* under the *Act*, in the name of a *unit* owner which provides coverage for the same loss covered by this *policy*, this *policy's* coverage shall be primary and not contributing with such other insurance.

D. *Amendments and Waivers, Assignment:* This Standard *Flood* Insurance *Policy* cannot be amended nor can any of its provisions be waived without the express written consent of the Federal Insurance Administrator. No action the Insurer takes under the terms of this *policy* can constitute a waiver of any of its rights. Except in the case of 1. a contents only *policy* and 2. a *policy* issued to cover a *building* in the course of construction, assignment of this *policy*, in writing, is allowed upon transfer of title.

E. *Voidance, Reduction or Reformation of the Coverage:*

1. *Voidance:* This *policy* shall be void and of no legal force and effect in the event that any one of the following conditions occurs:

a. The property listed on the *application* is not eligible for coverage, in which case the *policy* is void from its inception;

b. The community in which the property is located was not participating in the *National Flood Insurance Program* on the *policy's* inception date and did not qualify as a participating community during the *policy's* term and before the occurrence of any loss;

c. If, during the term of the *policy*, the participation in the *National Flood Insurance Program* of the community in which the property is located ceases, in which case the *policy* shall be deemed void effective at the end of the last day of the *policy* year in which such cessation occurred and shall not be renewed.

In the event the voided *policy* included 3 *policy* years in a contract term of 3 years, the Insured shall be entitled to a pro-rata refund of any premium applicable to the remainder of the *policy's* term;

d. In the event the Insured or its agent has:

(1) Sworn falsely; or

(2) Fraudulently or willfully concealed or misrepresented any material fact including facts relevant to the rating of this *policy* in the *application* for coverage, or upon any renewal of coverage, or in connection with the submission of any claim brought under the *policy*, in which case this entire *policy* shall be void as of the date the wrongful act was committed or from its inception if this *policy* is a renewal *policy* and the wrongful act occurred in connection with an *application* for or renewal or endorsement of a *policy* issued to the Insured in a prior year and affects the rating of or premium amount received for this *policy*. Refunds of premiums, if any, shall be subject to offsets for the Insurer's administrative expenses (including the payment of agent's commissions for any voided *policy* year) in connection with the issuance of the *policy;*

e. The premium submitted is less than the minimum set forth in 44 CFR 61.10 in connection with any *application* for a new *policy* or *policy* renewal, in which case the *policy* is void from its inception date.

2. *Reduction of Coverage Limits or Reformation:* In the event that the premium payment is not sufficient (whether evident or not) to purchase the amount of coverage requested by an *application*, renewal, endorsement, or other form and paragraph E.1.d. does not apply, then the *policy* shall be deemed to provide only such coverage as can be purchased for the entire term of the *policy*, for the amount of premium received, subject to increasing the amount of coverage pursuant to 44 CFR 61.11; provided, however:

a. If the insufficient premium is discovered by the Insurer prior to a loss and the Insurer can determine the amount of insufficient premium from information in its possession at the time of its discovery of the insufficient

premium, the Insurer shall give a notice of additional premium due, and if the Insured *remits* and the Insurer *receives* the additional premium required to purchase the limits of coverage for each kind of coverage as was initially requested by the Insured within 30 days from the date the Insurer gives the Insured written notice of additional premium due, the *policy* shall be reformed, from its inception date, to provide *flood* insurance coverage in the amount of coverage initially requested.

b. If the insufficient premium is discovered by the Insurer at the time of a loss under the *policy*, the Insurer shall give a notice of premium due, and if the Insured *remits* and the Insurer *receives* the additional premium required to purchase (for the current *policy* term and the previous *policy* term, if then insured) the limits of coverage for each kind of coverage as was initially requested by the Insured within 30 days from the date the Insurer gives the Insured written notice of additional premium due, the *policy* shall be reformed, from its inception date, to provide *flood* insurance coverage in the amount of coverage initially requested.

c. Under subparagraphs a. and b. as to any mortgagee or trustee named in the *policy*, the Insurer shall give a notice of additional premium due and the right of reformation shall continue in force for the benefit only of the mortgagee or trustee, up to the amount of the Insured's indebtedness, for 30 days after written notice to the mortgagee or trustee.

F. *Policy Renewal:* The term of this *policy* commences on its inception date and ends on its *expiration date*, as shown on the "*Declarations Page*" which is attached to the *policy*. The Insurer is under no obligation to:

1. Send the Insured any renewal notice or other notice that the *policy* term is coming to an end and the receipt of any such notice by the Insured shall not be deemed to be a waiver of this provision on the Insurer's part.

2. Assure that *policy* changes reflected in endorsements submitted during the *policy* term are included in any renewal notice or new *policy* sent to the Insured. *"Policy changes"* includes the addition of any increases in the amounts of coverage.

This *policy* shall not be renewed and the coverage provided by it shall not continue into any successive *policy* term unless the renewal premium payment is received by the Insurer at the office of the *National Flood Insurance Program* within 30 days of the *expiration date* of this *policy*, subject to paragraph E. above. If the renewal premium payment is mailed by certified mail to the Insurer prior to the *expiration date*, it shall be deemed to have been received within the required 30 days. The coverage provided by the renewal *policy* is in effect for any loss occurring during this 30-day period even if the loss occurs before the renewal premium payment is received, so long as the renewal premium payment is received within the required 30 days. In all other cases, this *policy* shall terminate as of the *expiration date* of the last *policy* term for which the premium payment was timely received and in that event, the Insurer shall not be obligated to provide the Insured with any *cancellation*, termination, *policy* lapse, or *policy* renewal notice.

In connection with the renewal of this *policy*, the Insured may be requested during the *policy* term to recertify, on a Recertification Questionnaire the Insurer will provide, the rating information used to rate the most recent *application* for or renewal of insurance.

Notwithstanding the Insured's responsibility to submit the appropriate renewal premium in sufficient time to permit its receipt by the Insurer prior to the expiration of the *policy* being renewed, the Insurer has established a business procedure for mailing renewal notices to assist Insureds in meeting their responsibility. Regarding the business procedure, evidence of the placing of any such notices into the U.S. Postal Service, addressed to the Insured at the address appearing on its most recent *anplication* or other appropriate form (received by the Insurer prior to the mailing of the renewal notice), does, in all respects, for purposes of the *National Flood Insurance Program*, presumptively establish delivery to the Insured for all purposes irrespective of whether the Insured actually received the notice.

However, in the event the Insurer determines that, through any circumstances, any renewal notice was not placed into the U.S. Postal Service, or, if placed, was prepared or addressed in a manner which the Insurer determines could preclude the likelihood of its being actually and timely received by the Insured prior to the due date for the renewal premium, the following procedures shall be followed:

In the event that the Insured or its agent notified the Insurer, not later than 1 year after the date on which the payment of the renewal premium was due, of a nonreceipt of a renewal notice prior to the due date for the renewal premium, which the Insurer determines was attributable to the above circumstance, the Insurer shall mail a second bill providing a revised due date, which shall be 30 days after the date on which the bill is mailed.

If the renewal payment requested by reason of the second bill is not received by the revised due date, no renewal shall occur and the *policy* shall remain as an expired *policy* as of the *expiration date* prescribed on the *policy*.

G. *Conditions Suspending or Restricting Insurance:* Unless otherwise provided in writing added hereto, the Insurer shall not be liable for loss occurring while the hazard is increased by any means within the control or knowledge of the Insured.

H. *Liberalization clause:* If during the period that insurance is in force under this *policy* or within 45 days prior to the inception date thereof, should the Insurer have adopted under the *Act*, any forms, endorsements, rules or regulations by which this *policy* could be extended or broadened, without additional premium charge, by endorsement or substitution of form, then, such extended or broadened insurance shall inure to the benefit of the Insured as though such endorsement or substitution of form had been made. Any broadening or extension of this *policy* to the Insured's benefit shall only apply to losses occurring on or after the effective date of the adoption of any forms, endorsements, rules or regulations affecting this *policy*.

I. *Alterations and Repairs:* The Insured may, at the Insured's own expense, make alterations, additions and repairs, and complete structures in the course of construction.

J. *Cancellation of Policy By Insured:* The Insured may cancel this *Policy* at any time but a refund of premium money will only be made when:

1. Except with respect to a *condominium building* or a *building* which has a *condominium* form of ownership, the Insured cancels because the Insured has transferred ownership of the insured property to someone else. In this case, the Insurer will refund to the Insured, once the Insurer receives the Insured's written request for *cancellation* (signed by the Insured) the excess of premiums paid by the Insured which apply to the unused portion of the *policy's* term, pro rata but with retention of the *expense constant* and the *Federal policy fee*.

2. The Insured cancels a *policy* having a term of 3 years, on an anniversary date, and the reason for the *cancellation* is that:

a. A *policy* of *flood* insurance has been obtained or is being obtained in substitution for this *policy* and the Insurer has received a written concurrence in the *cancellation* from any mortgagee of which the Insurer has actual notice, or

b. The Insured has extinguished the insured mortgage debt and is no longer required by the mortgagee to maintain the coverage. Refund of any premium, under this subparagraph 2. shall be pro rata but with retention of the *expense constant* and the *Federal nolicy fee*.

3. The Insured cancels because the Insurer has determined that the property is not, in fact, in a *special hazard area;* and the Insured was required to purchase *flood* insurance coverage by a private lender or Federal agency pursuant to P.L. 93–234, § 102 and the lender or agency no longer requires the retention of the coverage. In this event, if no claims have been paid or are pending, the premium payments will be refunded in full, according to applicable *National Flood Insurance Program* regulations.

K. *Loss Clause:* Payment of any loss under this *policy* shall not reduce the amount of insurance applicable to any other loss during the *policy* term which arises out of a separate occurrence of the peril insured against hereunder; provided, that all loss arising out of a continuous or protracted occurrence shall be deemed to constitute loss arising out of a single occurrence.

L. *Mortgage Clause:* (Applicable to *building* coverage only and effective only when the *policy* is made payable to a mortgagee or trustee named in the *application* and *declarations page* attached to this *policy.)*

Loss, if any, under this *policy*, shall be payable to the aforesaid as mortgagee or trustee as interest may appear under all present or future mortgages upon the property described in which the aforesaid may have an interest as mortgagee or trustee, in order of precedence of said mortgages, and this insurance, as to the interest of the mortgagee

or trustee only therein, shall not be invalidated:

1. By any act or neglect of the mortgagor or owner of the described property; nor

2. By any foreclosure or other proceedings or notice of sale relating to the property; nor

3. By any change in the title or ownership of the property; nor

4. By the occupation of the premises for purposes more hazardous than are permitted by this *policy, provided,* that in case the mortgagor or owner shall neglect to pay any premium due under this *policy,* the mortgagee or trustee shall, on demand, pay the same.

Provided, also, that the mortgagee or trustee shall notify the Insurer of any change of ownership or occupancy of the *building* or increase of hazard which shall come to the knowledge of said mortgagee or trustee and, unless permitted by this *policy,* it shall be noted thereon and the mortgagee or trustee shall, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise, this *policy* shall be null and void.

If this *policy* is cancelled by the Insurer, it shall continue in force for the benefit of the mortgagee or trustee for 30 days after written notice to the mortgagee or trustee of such *cancellation* and shall then cease.

Whenever the Insurer shall pay the mortgagee or trustee any sum for loss under this *policy* and shall claim that, as to the mortgagor or owner, no liability therefor existed, the Insurer shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt, or may, at its option, pay to the mortgagee or trustee the whole principal due or to grow due on the mortgage with interest, and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities, but no subrogation shall impair the right of the mortgagee or trustee to recover the full amount of said mortgagee's or trustee's claim.

M. *Mortgagee Obligations:* If the Insured fails to render proof of loss, the named mortgagee or trustee, upon notice, shall render proof of loss in the form herein specified within 60 days thereafter and shall be subject to the provisions of this *policy* relating to appraisal and time of payment and of bringing suit.

N. *Loss Payable Clause (Applicable to contents items only):* Loss, if any, shall be adjusted with the Insured and shall be payable to the Insured and loss payee as their interests may appear.

O. *Requirements in Case of Loss:* Should a *flood* loss occur to the insured property, the Insured must:

1. Notify the Insurer in writing as soon as practicable;

2. As soon as reasonably possible, separate the damaged and undamaged property, putting it in the best possible order so that the Insurer may examine it; and

3. Within 60 days after the loss, send the Insurer a proof of loss, which is the Insured's statement as to the amount it is claiming under the *policy* signed and sworn to by the Insured and furnishing the following information:

a. The date and time of the loss;

b. A brief explanation of how the loss happened;

c. The Insured's interest in the property damaged (for example, "owner") and the interests, if any, of others in the damaged property;

d. The *actual cash value* of each damaged item of insured property and the amount of damages sustained;

e. The names of mortgagees or anyone else having a lien, charge or claim against the insured property;

f. Details as to any other contracts of insurance covering the property, whether valid or not;

g. Details of any changes in ownership, use, occupancy, location or possession of the insured property since the *policy* was issued;

h. Details as to who occupied any insured *building* at the time of loss and for what purpose; and

i. The amount the Insured claims is due under this *policy* to cover the loss, including statements concerning:

(1) The limits of coverage stated in the *policy*; and

(2) The cost to repair or replace the damaged property (whichever costs less).

4. The insurance adjuster whom the Insurer hires to investigate the claim may furnish the Insured with a proof of loss form, and she or he may help the Insured to complete it. However, this is a matter of courtesy only, and the Insured must still send the Insurer a proof of loss within 60 days after the loss even if the adjuster does not furnish the form or help the Insured complete it. In completing the proof of loss, the Insured must use its own judgment concerning the amount of loss and the justification for the amount.

The adjuster is not authorized to approve or disapprove claims or to tell the Insured whether the claim will be approved by the Insurer.

5. The Insurer may, at its option, waive the requirement for the completion and filing of a proof of loss in certain cases, in which event the Insured will be required to sign and, at the Insurer's option, swear to an adjuster's report of the loss which includes information about the loss and the damages needed by the Insurer in order to adjust the claim.

6. Any false statements made in the course of presenting a claim under this *policy* may be punishable by fine or imprisonment under the applicable Federal laws.

P. *Options After a Loss:* Options the Insurer may, in its sole discretion, exercise after loss include the following:

1. *Evidence of Loss:* If the Insurer specifically requests it, in writing, the Insured may be required to furnish a complete inventory of the destroyed, damaged and undamaged property, including details as to quantities, costs, *actual cash values,* amount of loss claims, and any written plans and specifications for repair of the damaged property which can reasonably be made available to the Insurer.

2. *Examination Under Oath and Access to the Condominium Association's Articles of Association or Incorporation, Property Insurance Policies, and Other Condominium Documents:* The Insurer may require the Insured to:

a. Show the Insurer, or its designee, the damaged property;

b. Be examined under oath by the Insurer or its designee;

c. Sign any transcripts of such examinations; and

d. At such reasonable times and places as the Insurer may designate, permit the Insurer to examine and make extracts and copies of any *condominium* documents, including the Articles of Association or Incorporation, Declarations of the *condominium,* property insurance policies, and other *condominium* documents; and all books of accounts, bills, invoices and vouchers, or certified copies thereof if the originals are lost, pertaining to the damaged property.

3. *Options to Repair or Replace:* The Insurer may take all or any part of the damaged property at the agreed or appraised value and, also, repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving the Insured notice of the Insurer's intention to do so within 30 days after the receipt of the proof of loss herein required under paragraph O. above.

4. *Adjustment Options:* The Insurer may adjust loss to any insured property of others with the owners of such property or with the Insured for their account. Any such insurance under this *policy* shall not inure directly or indirectly to the benefit of any carrier or other bailee for hire.

Q. *When Loss Payable:* Loss is payable within 60 days after the Insured files its proof of loss (or within 90 days after the insurance adjuster files an adjuster's report signed and sworn to by the Insured in lieu of a proof of loss) and ascertainment of the loss is made either by agreement between the Insured and the Insurer in writing or by the filing with the Insurer of an award as provided in paragraph S. below.

If the Insurer rejects the Insured's proof of loss in whole or in part, the Insured may accept such denial of its claim, or exercise its rights under this *policy,* or file an amended proof of loss as long as it is filed within 60 days of the date of the loss or any extension of time allowed by the Administrator.

R. *Abandonment:* The Insured may not abandon damaged or undamaged insured property to the Insurer.

However, the Insurer may permit the Insured to keep damaged, insured property ("salvage") after a loss and reduce the amount of the loss proceeds payable to the Insured under the *policy* by the value of the salvage.

S. *Appraisal:* In case the Insured and the Insurer shall fail to agree as to the *actual cash value* of the amount of loss, then:

1. On the written demand of either the Insurer or the Insured, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of such demand.

2. The appraisers shall first select a competent and disinterested umpire and failing, after 15 days, to agree upon such umpire, then on the Insurer's request or the Insured's request, such umpire shall be selected by a judge of a court of record in the

State in which the insured property is located.

3. The appraisers shall then appraise the loss, stating separately *actual cash value* and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire.

4. An award in writing, so itemized, of any two (appraisers or appraiser and umpire) when filed with the Insurer shall determine the amount of *actual cash value* and loss.

5. Each appraiser shall be paid by the party selecting him or her and the expenses of appraisal and umpire shall be paid by both parties equally.

T. *Action Against the Insurer:* No suit or action on this *policy* for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this *policy* shall have been complied with, and unless commenced within 12 months next after the date of mailing of notice of disallowance or partial disallowance of the claim. An action on such claim against the Insurer must be instituted, without regard to the amount in controversy, in the United States District Court for the district in which the property shall have been situated.

U. *Subrogation:* In the event of any payment under this *policy*, the Insurer shall be subrogated to all the Insured's rights of recovery therefor against any party, and the Insurer may require from the Insured an assignment of all rights of recovery against any party for loss to the extent that payment therefor is made by the Insurer. The Insured shall do nothing after loss to prejudice such rights; however, this insurance shall not be invalidated should the Insured waive in writing prior to a loss any or all rights of recovery against any party for loss occurring to the described property.

V. *Continuous Lake Flooding:* Where the insured *building* has been inundated by rising lake waters continuously for 90 days or more and it appears reasonably certain that a continuation of this flooding will result in damage, reimbursable under this *policy*, to the insured *building* equal to or greater than the *building policy* limits plus the deductible or the maximum payable under the *policy* for any one *building* loss, the Insurer will pay the Insured the lesser of these two amounts without waiting for the further damage to occur if the Insured signs a release agreeing to:

1. *Make no further claim* under this *policy*; and

2. *Not seek* renewal of this *policy*; and

3. *Not apply for any flood* insurance under the *Act* for property at the property location of the insured *building*.

If the *policy* term ends before the insured *building* has been flooded continuously for 90 days, the provisions of this paragraph V. still apply so long as the first *building* damage reimbursable under this *policy* from the continuous flooding occurred before the end of the *policy* term.

W. *Duplicate Policies Not Allowed:* Property may not be insured under more than one *policy* issued under the *Act*. When the Insurer finds that duplicate *policies* are in effect, the Insurer shall by written notice give the Insured the option of choosing which *policy* is to remain in effect, under the following procedures:

1. If the Insured chooses to keep in effect the *policy* with the earlier effective date, the Insurer shall by the same written notice give the Insured an opportunity to add the coverage limits of the later *policy* to those of the earlier *policy*, as of the effective date of the later *policy*.

2. If the Insured chooses to keep in effect the *policy* with the later effective date, the Insurer shall by the same written notice give the Insured the opportunity to add the coverage limits of the earlier *policy* to those of the later *policy*, as of the effective date of the later *policy*.

In either case, the Insured must pay the pro rata premium for the increased coverage limits within 30 days of the written notice. In no event shall the resulting coverage limits exceed the statutorily permissible limits of coverage under the *Act* or the Insured's insurable interest, whichever is less.

The Insurer shall make a refund to the Insured, according to applicable *National Flood Insurance Program* rules, of the premium for the *policy* not being kept in effect.

For purposes of this paragraph W., the term "*effective date*" means the date coverage that has been in effect without any lapse was first placed in effect. In addition to the provisions of this paragraph W. for increasing *policy* limits, the usual procedures for increasing limits by mid-term endorsement or at renewal time, with the appropriate waiting period, are applicable to the *policy* the Insured chooses to keep in effect.

Article 9—What Law Governs

This *policy* is governed by the *flood* insurance regulations issued by FEMA, the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001, *et seq.*) and Federal common law.

IN WITNESS WHEREOF, the Insurer has executed and attested these presents.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

(The information required under the terms of this policy has been approved by the Office of Management and Budget under OMB control number 3067–0021).

11. Appendix A(3) of part 61 is proposed to be added to read as follows:

Appendix A(3)—Federal Emergency Management Agency, Federal Insurance Administration, Standard Flood Insurance Policy

[Issued Pursuant to the National Flood Insurance Act of 1968, or Any Acts Amendatory Thereof (Hereinafter Called the Act), and Applicable Federal Regulations in Title 44 of the Code of Federal Regulations, Subchapter B]

Residential Condominium Building Association Policy

Read the policy carefully. The coverage provided is subject to limitations, restrictions and exclusions. This policy covers only a residential condominium building in a regular program community. If the community reverts to emergency program status during the policy term and remains as an emergency program community at time of renewal, this policy cannot be renewed.

Insuring Agreement

Agreement of Insurance between the Federal Emergency Management Agency (FEMA), as Insurer, and the Insured.

The Insurer insures the Insured against all *Direct Physical Loss by or From Flood* to the insured property, based upon:

1. The Insured having paid the correct amount of premium; and

2. The Insurer's reliance on the accuracy of the information and statements the Insured has furnished; and

3. All the terms of this *policy*, the National Flood Insurance Act of 1968, as amended, and Title 44 of the Code of Federal Regulations.

On this basis, the Insured is insured up to the lesser of:

1. The *actual cash value*, not including any antique value, of the property at the time of loss; or

2. The amount it would cost to repair or replace the property with material of like kind and quality within a reasonable time after the loss.

Article 1—Persons Insured

The following are insured under this *policy:*

A. The named Insured *condominium association, unit* owners in the insured *residential condominium building* and legal representatives;

B. Any mortgagee and trustee named in the *application* and *declarations page* in the order of precedence and to the extent of their interest but for no more, in the aggregate, than the interest of the named Insured.

Article 2—Definitions

As Used in this Policy:

Act means the National Flood Insurance Act of 1968 and any acts amendatory thereof.

Actual Cash Value means the replacement cost of an insured item of property at the time of loss, less the value of physical depreciation as to the item damaged.

Application means the statement made and signed by the Insured, or the Insured's agent, and giving information on the basis of which the Insurer determines the acceptability of the risk, the *policy* to be issued and the correct premium payment, which must accompany the *application* in order for the *policy* to be issued. The *application* is a part of this *flood* insurance *policy*.

Association means the group of unit owners which manages the described *Residential Condominium Building*.

Base flood means the *flood* having a one percent chance of being equalled or exceeded in any given year.

Basement means any area of the *building* having its floor subgrade (below ground level) on all sides.

Building means a *walled and roofed* structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, including a *walled and roofed building* in the course of construction, alteration or repair and a *manufactured* (i.e., *mobile*) *home* on a permanent foundation, subject to *Article 6*, paragraph H.

Cancellation means that ending of the insurance coverage provided by this *policy* prior to the *expiration date.*

Coastal High Hazard Area means an area subject to high velocity waters, including hurricane wave wash and tsunamis.

Coinsurance means that the Insurer's liability for loss under the *policy* shall be in an amount which is of no greater proportion to the amount of loss than the amount of insurance which the Insured has purchased to cover the property bears, at the time of loss, to the value of the insured property under the terms and conditions of this *policy*, provided, if the property is insured at the time of loss in an amount equal to the lesser of 80% or more of its full replacement cost or the maximum amount of insurance available under the *National Flood Insurance Program*, the loss will be adjusted, subject to the *policy's* limit of coverage and all of the other terms and conditions of the *policy*, as if the amount of insurance and the value of the insured property are equal.

Condominium means a system of individual ownership of *units* in a multi-unit *building* or *buildings* or in single-unit *buildings* as to which each *unit* owner in the *condominium* has an undivided interest in the common areas of the *building(s)* and facilities that serve the *building(s).*

Declarations Page is a computer generated summary of information furnished by the Insured in the *application* for insurance. The *declarations page* also describes the term of the *policy*, limits of coverage, and displays the premium and the name of the Insurer. The *declarations page* is a part of this *flood* insurance *policy.*

Direct Physical Loss By or From Flood means any loss in the nature of actual loss of or physical damage, evidenced by physical changes, to the insured property (*building* or personal property) which is directly and proximately caused by a *"flood"* (as defined in this *policy*).

Elevated Building means a non-basement *building* which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Emergency Program Community means a community wherein a Flood Hazard Boundary Map (FHBM) is in effect and only limited amounts of insurance are available under the *Act.*

Expense Constant means a flat charge per *policy* term, paid by the Insured to defray the Federal Government's policywriting and other expenses.

Expiration Date means the ending of the insurance coverage provided by this *policy* on the *expiration date* shown on the *declarations page.*

Federal policy fee means a flat charge per *policy* term, paid by the Insured to defray certain administrative expenses incurred in carrying out the *National Flood Insurance Program* not covered by the *expense constant.* This fee was established by section 1307(a)(1)(B)(iii) of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4014, and is not subject to producers' commissions, *Write Your Own company* expense allowances, or state or local premium taxes.

Flood means:

A. A general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters.

2. The unusual and rapid accumulation or runoff of surface waters from any source.

3. Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in subparagraph A–2 above and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas as when earth is carried by a current of water and deposited along the path of the current.

B. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding the cyclical levels which result in flooding as defined in subparagraph A–1 above.

Improvements means fixtures, alterations, or additions comprising a part of the insured *building*, including the *units* within the insured *building.*

Manufactured home means a *building* transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term *manufactured home* does not include park trailers, and other similar vehicles. To be eligible for coverage under this *policy*, a *manufactured home* must be on a permanent foundation and, if located in a FEMA designated *Special Hazard Area*, must meet the requirements of paragraph H. of *Article 6.*

Mobile home means a *manufactured home.*

National Flood Insurance Program means the program of *flood* insurance coverage and floodplain management administered under the *Act* and applicable Federal regulations in Title 44 of the Code of Federal Regulations, Subchapter B.

Policy means the entire written contract between the Insured and the Insurer, including this printed form, the *application*, and *declarations page*, any endorsements which may be issued and any renewal certificates indicating that coverage has been instituted for a new *policy* and *policy* term. *Only one building, specifically described by the Insured in the application, may be insured under this policy, unless application to cover more than one building is made on a form or in a format approved for that purpose by the Federal Insurance Administrator.*

Post-FIRM building means a *building* for which the start of construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of the initial Flood Insurance Rate Map (FIRM) for the community in which the *building* is located, whichever is later.

Pre-FIRM rated building means a *building* for which the start of construction or substantial improvement occurred on or before December 31, 1974, or before the effective date of the initial Flood Insurance Rate Map (FIRM) for the community in which the *building* is located, whichever is later.

Probation Additional Premium means a flat charge per *policy* term paid by the Insured on all new and renewal *policies* issued covering property in a community that has been placed on probation under the provisions of 44 CFR 59.24.

Regular Program Community means a community wherein a Flood Insurance Rate Map (FIRM) is in effect and full limits of coverage are available under the *Act.*

Residential Condominium Building means a *building* owned by the members of a *condominium association* containing one or more residential *units* and in which at least 75% of the floor area within the *building* is residential.

Residential Condominium Building Association Policy means a *policy* of *flood* insurance coverage issued to an *Association* pursuant to the *Act.*

Special hazard area means an area having special *flood*, mudslide (i.e., mudflow), and/or *flood*-related erosion hazards, and shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map as Zone A, AO, A1–30, AE, A99, AH, VO, V1–30, VE, V, M or E.

Unit means a single family dwelling *unit*, in a *Residential Condominium Building.*

Valued policy means a *policy* contract in which the Insurer and the Insured agree on the value of the property insured, that value being payable in event of total loss.

Walled and Roofed means the *building* has in place two or more exterior, rigid walls and the roof is fully secured so that the *building* will resist flotation, collapse and lateral movement.

Write Your Own company means a private sector property insurance company that is authorized to sell the *National Flood Insurance Program Policy* pursuant to an arrangement with the Federal Insurance Administrator.

Article 3—Losses Not Covered

The Insurer only provides coverage for *direct physical loss by or from flood* which means the following are not covered:

A. *Compensation, reimbursement or allowance for:*

1. Loss of use of the insured property or premises.

2. Loss of access to the insured property or premises.

3. Loss of profits.

4. Loss resulting from interruption of business, profession, or manufacture.

5. Any additional living expenses incurred while the insured *building* is being repaired or is uninhabitable for any reason.

6. Any increased cost of repair or reconstruction as a result of any ordinance regulating reconstruction or repair.

7. Any other economic loss.

B. *Losses from other casualties, including loss caused by:*

1. Theft, fire, windstorm, wind, explosion, earthquake, land sinkage, land subsidence, landslide, destabilization or movement of land resulting from the accumulation of water in subsurface land areas, gradual erosion, or any other earth movement except such mudslides (i.e., mudflows) or erosion as is covered under the peril of *flood.*

2. Rain, snow, sleet, hail or water spray.

3. Sewer backup or seepage of water unless at the same time there has been actual physical contact between surface *flood* water and the insured property, or from freezing, thawing, or the pressure or weight of ice or water.

4. Water, moisture, mildew, mold or mudslide (i.e., mudflow) damage resulting primarily from any condition substantially confined to the insured *building* or from any condition which is within the Insured's control (including but not limited to design, structural or mechanical defects, failures, stoppages or breakages of water or sewer lines, drains, pumps, fixtures or equipment).

C. *Losses of the following nature:*

1. A loss which is already in progress as of 12:01 A.M. of the first day of the *policy* term, or, as to any increase in the limits of coverage which is requested by the Insured, a loss which is already in progress as of 12:01 A.M. on the date when the additional coverage becomes effective.

2. A loss from a *flood* which is confined to the premises on which the insured property is located unless the flood is displaced over two acres of the premises.

3. A loss caused by the Insured's modification to the insured property which materially increases the risk of flooding.

4. A loss caused intentionally by the Insured.

5. A loss caused by or resulting from power, heating or cooling failure, unless such failure results from physical damage to power, heating or cooling equipment situated on the premises where the described *building* or *unit* is located, caused by a *flood*.

6. A loss to any *building* or contents located on property leased from the Federal Government, arising from or incident to the flooding of the property by the Federal Government where the lease expressly holds the Federal Government harmless, under *flood* insurance issued under any Federal Government program, from loss arising from or incident to the flooding of the property by the Federal Government.

Article 4 Property Covered (Subject to Articles 3, 5 and 6 Provisions, which Also Apply to the Other Articles, Terms, and Conditions of This Policy, Including the Insuring Agreement)

Coverage A Building Property

This *policy* covers the *Residential Condominium Building* (the "building") at the premises which is described in the *application*, and includes:

1. The entire *building*, for its real property elements, including all *units* within the *building* and the *improvements* within the *units*.

2. Additions and extensions attached to and a part of the *building*.

3. Fixtures, machinery and equipment, including the following property, all while within the *building*, including its *units*, as to which coverage is *not provided* under "Coverage B—Personal Property":

- Furnaces
- Wall Mirrors Permanently Installed
- Permanently Installed Corner Cupboards, Bookcases, Paneling, and Wallpaper
- Ventilating Equipment
- Fire Extinguishing Apparatus
- Venetian Blinds
- Central Air Conditioners
- Awnings and Canopies
- Elevator Equipment
- Sprinklers
- Outdoor Antennas and Aerials
- Pumps and Machinery for Operating them
- Carpet Permanently Installed Over Unfinished Flooring
- In the *Units* Within the *Building*, *Installed:*
  - •• Built-in Dishwashers
  - •• Garbage Disposal Units
  - •• Hot Water Heaters
  - •• Kitchen Cabinets
  - •• Built-in Microwave Ovens
  - •• Plumbing Fixtures
  - •• Radiators
  - •• Ranges
  - •• Refrigerators
  - •• Stoves

4. Materials and supplies to be used in constructing, altering or repairing the *building* while stored inside a fully enclosed *building*:

a. At the property address; or

b. On an adjacent property at the time of loss; or

c. In case of another *building* at the property address which does not have walls on all sides, while stored and secured to prevent flotation out of the *building* during flooding (the flotation out of the *building* shall be deemed to establish the conclusive presumption that the materials and supplies were not reasonably secured to prevent flotation, in which case no coverage is provided for such materials and supplies under this *policy*).

5. A *building* in the course of construction before it is *walled and roofed* subject to the following conditions:

a. The amount of the deductible for each loss occurrence before the *building* is *walled and roofed* is two times the deductible which is selected to apply after the *building* is *walled and roofed;*

b. Coverage is provided before the *building* is *walled and roofed* only while construction is in progress, or if construction is halted, only for a period of up to 90 continuous days thereafter, until construction is resumed; and

c. There is no coverage before the *building* is *walled and roofed* where the lowest floor, including *basement* floor, of a non-elevated *building* or the lowest elevated floor of an *elevated building* is below the *base flood* elevation in Zones AH, AE or A1–30 or is below the *base flood* elevation adjusted to include the effect of wave action in Zones VE or V1–30. The lowest floor levels are based on the bottom of the lowest horizontal structural member of the floor in Zones VE or V1–30 and the top of the floor in Zones AH, AE or A1–30.

Coverage B—Personal Property

A. Subject to paragraphs B. and C. below, this *policy* covers personal property which is in or on the insured, fully enclosed *building* and is:

1. Owned by the *unit* owners of the *condominium* in common, i.e., as to which each *unit* owner has an undivided ownership interest; or

2. Owned solely by the *Condominium Association* and used exclusively in the conduct of the business affairs of the *condominium*.

3. Such personal property is also covered while stored at a temporary location, as expressly authorized under this *policy* (see *Article 5*, paragraph B.2.).

B. Coverage for personal property includes the following property, whether owned by the *Association* or *unit* owner and subject to paragraph A. 1. and 2., above, for which coverage is *not provided* (irrespective of the manner in which the property is installed in or adapted to the *building*) under "Coverage A—Building Property":

- Clothes Washers
- Clothes Dryers
- Food Freezers
- Air Conditioning Units Installed in the Building
- Portable Dishwashers
- Carpet, including wall-to-wall carpet, over finished flooring and whether or not it is permanently installed
- Carpet not permanently installed over unfinished flooring
- Outdoor equipment and furniture stored inside the dwelling or another fully enclosed *building* at the property address
- Portable microwave ovens and "cook-out" grills, ovens and the like

C. *Limitations.* Under this "Coverage B—Personal Property", the Insured shall not be reimbursed for loss as to the following personal property to the extent the loss to any one or more of such property exceeds, individually or in total, $250.00:

- Artwork, including but not limited to, paintings, etchings, pictures, tapestries, art glass windows, statuary, marbles, and bronzes;
- Rare books;
- Necklaces, bracelets, gems, precious or semi-precious stones, articles of gold, silver, or platinum; or
- Furs or any article containing fur which represents its principal value.

Coverage C—Debris Removal

This insurance covers expense incurred in the removal of debris of, or on, or from the *building* or personal property covered hereunder, which may be occasioned by loss caused by a *flood*. Under these provisions coverage extends to:

1. Non-owned debris from beyond the boundaries of the described premises which is physically on the insured property (i.e., on the *building* or the personal property).

2. Parts of the insured property anywhere:

a. On the described premises; and

b. On property beyond the boundaries of the described premises.

The total liability under this *policy* for both loss to property and debris removal expense shall not exceed the amount of insurance applying under this policy to the property covered.

Article 5—Special Provisions Applicable to Coverages A, B, and C

A. *This policy is not a valued policy.* Loss will be paid, provided the Insured has purchased a sufficient amount of coverage, i.e., in an amount equal to the lesser of the value of the damaged property under the terms and conditions of this *policy* (and regardless of whether the amount of insurance purchased is greater than such value) or the limit of coverage permitted under the *Act*.

B. *Insured Property. Covered Locations.* The *building* and personal property are covered while the property is located:

1. At the property address shown on the *application;* and

2. For 45 days at another place above ground level or outside of the *special hazard area,* to which any of the insured property shall necessarily be removed in order to protect and preserve it from *flood,* due to the imminent danger of *flood* (provided, personal property so removed must be placed in a fully enclosed *building* or otherwise reasonably protected from the elements to be insured against loss), in which case the reasonable expenses incurred by the Insured, including the value of its own labor at prevailing Federal minimum wage rates, in moving any of the insured property temporarily away from the peril of *flood* shall be reimbursed in an amount not to exceed $500.00. This *policy's* deductible amounts, as provided for at *Article 7,* shall not be applied to this reimbursement, but shall be applied to any other benefits under this *policy's* coverage.

C. *Coverage For Certain Loss Mitigation Measures.* When the insurance under this *policy* covers a *building,* reasonable expenses incurred by the Insured for the purchase of the following items are also covered, in an aggregate amount not to exceed $500.00:

1. Sandbags, including sand to fill them and plastic sheeting and lumber used in connection with them;

2. Fill for temporary levees;

3. Pumps; and

4. Wood;

all for the purpose of saving the *building* due to the imminent danger of a *flood* loss, including the value of the Insured's own labor at prevailing Federal minimum wage rates.

The *policy's building* deductible amount, as provided for at *Article 7,* shall not be applied to this reimbursement, but shall be applied to any other benefits under the *policy's building* coverage.

For reimbursement under this paragraph C. to apply, the following conditions must be met:

a. The insured property must be in imminent danger of sustaining *flood* damage; and

b. The threat of *flood* damage must be of such imminence as to lead a person of common prudence to apprehend *flood* damage; and

c. A general and temporary condition of flooding in the area must occur, even if the flooding does not reach the insured property, or a legally authorized official must issue an evacuation order or other civil order for the community in which the insured property is located calling for measures to preserve life and property from the peril of *flood.*

Article 6—Property Not Covered

This *policy shall not* cover any of the following:

A. *Valuables and commercial property, meaning:*

1. Accounts, bills, currency, deeds, evidences of debt, money, coins, medals, postage stamps, securities, bullion, manuscripts, other valuable papers or records, and personal property used in a business.

2. Personal property used in connection with any incidental commercial occupancy or use of the *building.*

B. *Property over water or in the open, meaning:*

1. A *building* and personal property in the *building* located entirely in, on, or over water or seaward of mean high tide, if the *building* was newly constructed or substantially improved on or after October 1, 1982.

2. Personal property in the open.

C. *Structures other than buildings, including:*

1. Fences, retaining walls, seawalls, bulkheads, wharves, piers, bridges, and docks.

2. Indoor and outdoor swimming pools.

3. Open structures and personal property located in, on, or over water, including boat houses or any structure or *building* into which boats are floated.

4. Underground structures and equipment, including wells, septic tanks and septic systems.

D. *Other real property, including:*

1. Land, land values, lawns, trees, shrubs, plants, and growing crops.

2. Those portions of walks, walkways, driveways, patios, and other surfaces, all of whatever kind of construction, located outside the perimeter, exterior walls of the insured *building.*

E. *Other personal property, meaning:*

1. Animals, livestock, birds, and fish.

2. Aircraft.

3. Any self-propelled vehicle or machine and motor vehicle (other than motorized equipment pertaining to the service of the described *unit* or *building,* operated principally on the premises of the Insured, and not licensed for highway use) including their parts and equipment.

4. Trailers on wheels and other recreational vehicles whether affixed to a permanent foundation or on wheels.

5. Watercraft including their furnishings and equipment.

6. Personal property owned by or in the care, custody or control of a *unit* owner, except for the property described in *Article 4* under "Coverage B—Personal Property", paragraph B. of this *policy.*

F. *Building enclosures and personal property lower than the elevated floors of elevated buildings, and basements, including personal property in a basement, as follows:*

1. In a *special hazard area,* at an elevation lower than the lowest elevated floor of an *elevated Post-FIRM building,* including a *manufactured* (i.e., *mobile*) *home:*

a. Personal property.

b. *Building* enclosures, equipment, machinery, fixtures and components, except for the required utility connections and the footing, foundation, posts, pilings, piers or other foundation walls and anchorage system as required for the support of the *building.*

2. In a *basement* as defined in *Article 2:*

a. Personal property.

b. *Building* equipment, machinery, fixtures and components, including finished walls, floors, ceilings and other improvements, except for the required utility connections, fiberglass insulation, drywalls and sheetrock walls, and ceilings but only to the extent of replacing drywalls and sheetrock walls in an unfinished manner (i.e., nailed to framing but not taped, painted, or covered).

3. *Provided,* with regard to both 1. and 2., above, the following *building* and personal property items *are covered* so long as the Insured has *purchased building* and personal property coverage, *as appropriate:*

- Sump pumps
- Well water tanks and pumps
- Oil tanks and the oil in them
- Cisterns and the water in them
- Natural gas tanks and the gas in them
- Pumps and/or tanks used in conjunction with solar energy
- Furnaces
- Clothes washers and dryers
- Food freezers and the food in them
- Air conditioners
- Heat pumps
- Electrical junction and circuit breaker boxes
- Clean-up
- Elevators and equipment, except for such equipment located below the *base flood* level if such equipment was installed on or after October 1, 1987.

G. *Property below ground, meaning* a *building* or *unit* and its contents, including personal property and machinery and equipment, which are part of the *building* or *unit,* where more than 49 percent of the *actual cash value* of such *building* or *unit* is below ground, unless the lowest level is at or above the *base flood* elevation by reason of earth having been used as an insulation material in conjunction with energy efficient building techniques.

H. *Certain manufactured homes, meaning* a *manufactured* (i.e., *mobile*) *home* located or placed within a FEMA designated *Special Hazard Area* that is not anchored to a permanent foundation to resist flotation, collapse, or lateral movement:

1. By over-the-top or frame ties to ground anchors; or

2. In accordance with manufacturer's specifications; or

3. In compliance with the community's floodplain management requirements;

unless it is a *manufactured* (i.e., *mobile*) *home* on a permanent foundation continuously insured by the *National Flood Insurance Program* at the same site at least since September 30, 1982.

I. *Containers, meaning units* which are primarily containers, rather than *buildings* (such as gas and liquid tanks).

J. *Buildings and their contents made ineligible* for *flood* insurance pursuant to the provisions of the Coastal Barrier Resources Act, 16 U.S.C. 3501 *et seq.,* and the Coastal Barrier Improvement Act of 1990, Pub. L. 101–591, 16 U.S.C. 3501 *et seq.*

Article 7—Deductibles

A. Each loss to the insured property is subject to a deductible provision under which the Insured bears a portion of the loss before payment is made under the *policy.*

B. The loss deductible shall apply separately to each *building* and personal property coverage loss including, as to each, any appurtenant structure loss and debris removal expense.

C. For any flood insurance policy issued or renewed for any property located in Zones A, AO, AH, A1–30, AE, VO, V1–30, VE, or V where the rates available for *buildings* built before the effective date of the Flood Insurance Rate Map (FIRM) or December 31, 1974, whichever is later, are used to compute the premium, the amount of the deductible for each loss occurrence is determined as follows: In the case of a *residential condominium building* having one to four *units*, the Insurer shall be liable only when such loss exceeds $750.00; and, in the case of a *residential condominium building* having five or more *units*, the Insurer shall be liable only when such loss exceeds $7,500.00; or as to any *residential condominium building*, the amount of any higher deductible which the Insured selected when it applied for this *policy* or subsequently by endorsement.

D. For policies other than those described in paragraph C. above, the amount of the deductible for each loss occurrence is determined as follows: In the case of a *residential condominium building* having one to four *units*, the Insurer shall be liable only when such loss exceeds $500.00; and, in the case of a *residential condominium building* having five or more *units*, the Insurer shall be liable only when such loss exceeds $5,000.00; or, as to any *residential condominium building*, the amount of any higher deductible which the Insured selected when it applied for this *policy* or subsequently by endorsement.

Article 8—Replacement Cost Coverage (For Building Coverage Only)

Subject to *ARTICLES 7 and 9*, this policy will, in the event of a loss for which there is coverage and subject to the limits of *building* coverage purchased, pay the full cost of repair or replacement of the damaged parts of the *building* without deduction for depreciation. Under this Article:

A. The following outdoor property, whether attached to the insured *building* or not, are excluded from Replacement Cost Coverage: antennas, aerials, carpeting, awnings, appliances, and other outdoor equipment.

B. Carpeting inside the insured *building* and laid over or affixed to finished or unfinished flooring is excluded from Replacement Cost Coverage.

C. The Insurer's liability for loss under this *policy* shall not exceed the smallest of the following amounts:

1. The limit of liability of this *policy* applicable to the damaged or destroyed *building*; or

2. The cost to repair or replace the *building* or any part thereof with material of like kind and quality on the same premises and intended for the same occupancy and use; or

3. The amount actually and necessarily expended in repairing or replacing said *building* or any part thereof intended for the same occupancy and use.

D. The Insurer shall not be liable for any loss on a Replacement Cost Coverage basis unless and until actual repair or replacement of the damaged *building*, or parts thereof, is completed.

E. These Replacement Cost Provisions do not apply to any *manufactured* (i.e., *mobile*) home which when assembled is not at least 16 feet wide or does not have an area within its perimeter walls of at least 600 square feet nor do they apply to any loss where insured property is abandoned and remains as debris at the property address following a loss.

F. If the *building* sustains a total loss or if the Insurer should pay the entire *building* loss proceeds under these Replacement Cost Provisions; there is no requirement that the *building* be rebuilt at the insured property address.

Article 9—Coinsurance (For Building Coverage Only)

A. In consideration of the rate and form under which this *policy* is written, it is expressly stipulated and made a condition of this contract that the Insurer's liability for loss under this *policy* shall be in an amount which is of no greater proportion to the amount of loss than the amount of insurance which the Insured has purchased to cover the insured property bears, at the time of loss, to the replacement cost value of the insured property, as follows:

1. If at the time of loss the total amount of insurance applicable to the insured property is the lesser of 80% or more of the full replacement cost of the insured property or the maximum amount of insurance available under the *National Flood Insurance Program*, the loss will be adjusted, subject to the *policy's* limit of coverage and all of the other terms and conditions of this *policy*, as if the amount of insurance and the value of the insured property are equal.

2. If at the time of loss the Insured has not purchased the maximum amount of insurance available under the *National Flood Insurance Program*, or if the replacement cost value of the covered property at the time of the loss times 80% is greater than the amount of insurance purchased to cover the property, the full cost of replacement or repair of the insured property, subject to the terms and conditions of this *policy*, arising out of a covered loss, shall not be paid and payment shall be made as follows:

To the extent the Insured has not purchased insurance in an amount equal to the lesser of 80% or more of the full replacement cost of the insured property at the time of loss or the maximum amount of insurance available under the *National Flood Insurance Program*, the Insured will not be reimbursed fully for a loss. The amount of loss to be paid in such cases shall be determined in accordance with the following formula:

$$\frac{\text{Insurance Carried}}{\text{Insurance Required}} \times \text{Amount of Loss} = \text{Limit of Recovery}$$

a. *Example 1*: The insurance carried is $500,000.00, the replacement cost value of the building is $1,000,000.00 (which is available under the *National Flood Insurance Program*) and the amount of the loss is $240,000.00. The formula is applied as follows:

$$\frac{\$500,000.00}{\$1,000,000.00 \times 80\%} \times \$240,000.00 = \frac{\$500,000.00}{\$800,000.00} \times \$240,000.00 = \$149,500.00 \text{ Limit of Recovery}^{*}$$

* ($150,000 Less Deductible) The balance of the loss in the sum of $90,500.00 is not covered.

b. *Example 2:* The insurance carried is $1,850,000.00, the replacement cost value of the *building* is $2,000,000.00 and the amount of loss is $1,000,000.00. The formula is not applied because $1,850,000 exceeds $1,600,000 ($2,000,000 × 80). The Insured is paid the full amount of the loss ($1 Million).

B. In determining if the whole amount of insurance applicable to the *building* is 80% or more of the full replacement cost of such *building*:

1. The replacement cost value of any covered *building* property described in *Article 4* shall be included and the replacement cost value of any *building* property described in *Article 4* which constitutes property not covered under this *policy* shall not be included.

2. Regarding *improvements*, only the replacement cost value of *improvements* installed by the *Association* shall be included.

Article 10—General Conditions and Provisions

A. *Pair and Set Clause:* If there is loss of an article which is part of a pair or set, the measure of loss shall be a reasonable and fair proportion of the total value of the pair or set, giving consideration to the importance of said article, but such loss shall not be construed to mean total loss of the pair or set.

B. *Concealment, Fraud:* This *policy* shall be void, nor can this *policy* be renewed or any new *flood* insurance coverage be issued to the Insured if any person insured under *Article 1*, paragraph A., whether before or after a loss, has:

1. Sworn falsely, or willfully concealed or misrepresented any material fact; or

2. Done any fraudulent act concerning this insurance (see paragraph E.1.d. below); or

3. Willfully concealed or misrepresented any fact on a "Recertification Questionnaire," which causes the Insurer to issue a *policy* based on a premium amount which is less than the premium amount which would have been payable were it not for the misstatement of fact (see paragraph F. below).

C. *Other Insurance:* If a loss covered by this *policy* is also covered by other insurance, whether collectible or not, the Insurer will pay only the proportion of the loss that the

limit of liability that applies under this *policy* bears to the total amount of insurance covering the loss, *provided*, if at the time of loss, there is other insurance *made available* under the *Act*, in the name of a *unit* owner which provides coverage for the same loss covered by this *policy*, this *policy's* coverage shall be primary and not contributing with such other insurance.

D. *Amendments and Waivers, Assignment:* This Standard *Flood* Insurance *Policy* cannot be amended nor can any of its provisions be waived without the express written consent of the Federal Insurance Administrator. No action the Insurer takes under the terms of this *policy* can constitute a waiver of any of its rights. Except in the case of 1. a contents only *policy* and 2. a *policy* issued to cover a *building* in the course of construction, assignment of this *policy*, in writing, is allowed upon transfer of title.

E. *Voidance, Reduction or Reformation of the Coverage:*

1. *Voidance:* This *policy* shall be void and of no legal force and effect in the event that any one of the following conditions occurs:

a. The property listed on the *application* is not eligible for coverage, in which case the *policy* is void from its inception;

b. The community in which the property is located was not participating in the *National Flood Insurance Program* on the *policy's* inception date and did not qualify as a participating community during the *policy's* term and before the occurrence of any loss;

c. If, during the term of the *policy*, the participation in the *National Flood Insurance Program* of the community in which the property is located ceases, in which case the *policy* shall be deemed void effective at the end of the last day of the *policy* year in which such cessation occurred and shall not be renewed.

In the event the voided *policy* included 3 *policy* years in a contract term of 3 years, the Insured shall be entitled to a pro-rata refund of any premium applicable to the remainder of the *policy's* term;

d. In the event the Insured or its agent has:

(1) sworn falsely; or

(2) fraudulently or willfully concealed or misrepresented any material fact including facts relevant to the rating of this *policy* in the *application* for coverage, or upon any renewal of coverage, or in connection with the submission of any claim brought under the *policy*, in which case this entire *policy* shall be void as of the date the wrongful act was committed or from its inception if this *policy* is a renewal *policy* and the wrongful act occurred in connection with an *application* for or renewal or endorsement of a *policy* issued to the Insured in a prior year and affects the rating of or premium amount received for this *policy*. Refunds of premiums, if any, shall be subject to offsets for the Insurer's administrative expenses (including the payment of agent's commissions for any voided *policy* year) in connection with the issuance of the *policy*;

e. The premium submitted is less than the minimum set forth in 44 CFR 61.10 in connection with any *application* for a new *policy* or *policy* renewal, in which case the *policy* is void from its inception date.

2. *Reduction of Coverage Limits or Reformation:* In the event that the premium payment is not sufficient (whether evident or not) to purchase the amount of coverage requested by an *application*, renewal, endorsement, or other form and paragraph E.1.d. does not apply, then the *policy* shall be deemed to provide only such coverage as can be purchased for the entire term, of the *policy*, for the amount of premium received, subject to increasing the amount of coverage pursuant to 44 CFR 61.11; provided, however:

a. If the insufficient premium is discovered by the Insurer prior to a loss and the Insurer can determine the amount of insufficient premium from information in its possession at the time of its discovery of the insufficient premium, the Insurer shall give a notice of additional premium due, and if the Insured *remits* and the Insurer *receives* the additional premium required to purchase the limits of coverage for each kind of coverage as was initially requested by the Insured within 30 days from the date the Insurer gives the Insured written notice of additional premium due, the *policy* shall be reformed, from its inception date, to provide *flood* insurance coverage in the amount of coverage initially requested.

b. If the insufficient premium is discovered by the Insurer at the time of a loss under the *policy*, the Insurer shall give a notice of premium due, and if the Insured *remits* and the Insurer *receives* the additional premium required to purchase (for the current *policy* term and the previous *policy* term, if then insured) the limits of coverage for each kind of coverage as was initially requested by the Insured within 30 days from the date the Insurer gives the Insured written notice of additional premium due, the *policy* shall be reformed, from its inception date, to provide *flood* insurance coverage in the amount of coverage initially requested.

c. Under subparagraphs a. and b. as to any mortgagee or trustee named in the *policy*, the Insurer shall give a notice of additional premium due and the right of reformation shall continue in force for the benefit only of the mortgagee or trustee, up to the amount of the Insured's indebtedness, for 30 days after written notice to the mortgagee or trustee.

F. *Policy Renewal:* The term of this *policy* commences on its inception date and ends on its *expiration date*, as shown on the "*Declarations Page*" which is attached to the *policy*. The Insurer is under no obligation to:

1. Send the Insured any renewal notice or other notice that the *policy* term is coming to an end and the receipt of any such notice by the Insured shall not be deemed to be a waiver of this provision on the Insurer's part.

2. Assure that *policy* changes reflected in endorsements submitted during the *policy* term are included in any renewal notice or new *policy* sent to the Insured. "*Policy changes*" includes the addition of any increases in the amounts of coverage.

This *policy* shall not be renewed and the coverage provided by it shall not continue into any successive *policy* term unless the renewal premium payment is received by the Insurer at the office of the *National Flood Insurance Program* within 30 days of the *expiration date* of this *policy*, subject to paragraph E. above. If the renewal premium payment is mailed by certified mail to the Insurer prior to the *expiration date*, it shall be deemed to have been received within the required 30 days. The coverage provided by the renewal *policy* is in effect for any loss occurring during this 30-day period eyen if the loss occurs before the renewal premium payment is received, so long as the renewal premium payment is received within the required 30 days. In all other cases, this *policy* shall terminate as of the *expiration date* of the last *policy* term for which the premium payment was timely received and in that event, the Insurer shall not be obligated to provide the Insured with any *cancellation*, termination, *policy* lapse, or *policy* renewal notice.

In connection with the renewal of this *policy*, the Insured may be requested during the *policy* term to recertify, on a Recertification Questionnaire the Insurer will provide, the rating information used to rate the most recent *application* for or renewal of insurance.

Notwithstanding the Insured's responsibility to submit the appropriate renewal premium in sufficient time to permit its receipt by the Insurer prior to the expiration of the *policy* being renewed, the Insurer has established a business procedure for mailing renewal notices to assist Insureds in meeting their responsibility. Regarding the business procedure, evidence of the placing of any such notices into the U.S. Postal Service, addressed to the Insured at the address appearing on its most recent *application* or other appropriate form (received by the Insurer prior to the mailing of the renewal notice), does, in all respects, for purposes of the *National Flood Insurance Program*, presumptively establish delivery to the Insured for all purposes irrespective of whether the Insured actually received the notice.

However, in the event the Insurer determines that, through any circumstances, any renewal notice was not placed into the U.S. Postal Service, or, if placed, was prepared or addressed in a manner which the Insurer determines could preclude the likelihood of its being actually and timely received by the Insured prior to the due date for the renewal premium, the following procedures shall be followed:

In the event that the Insured or its agent notified the Insurer, not later than 1 year after the date on which the payment of the renewal premium was due, of a nonreceipt of a renewal notice prior to the due date for the renewal premium, which the Insurer determines was attributable to the above circumstance, the Insurer shall mail a second bill providing a revised due date, which shall be 30 days after the date on which the bill is mailed.

If the renewal payment requested by reason of the second bill is not received by the revised due date, no renewal shall occur and the *policy* shall remain as an expired *policy* as of the expiration date prescribed on the *policy*.

G. *Conditions Suspending or Restricting Insurance:* Unless otherwise provided in writing added hereto, the Insurer shall not be liable for loss occurring while the hazard is increased by any means within the control or knowledge of the Insured.

H. *Liberalization clause:* If during the period that insurance is in force under this *policy* or within 45 days prior to the inception date thereof, should the Insurer have adopted under the *Act,* any forms, endorsements, rules or regulations by which this *policy* could be extended or broadened, without additional premium charge, by endorsement or substitution of form, then, such extended or broadened insurance shall inure to the benefit of the Insured as though such endorsement or substitution of form had been made. Any broadening or extension of this *policy* to the Insured's benefit shall only apply to losses occurring on or after the effective date of the adoption of any forms, endorsements, rules or regulations affecting this *policy.*

I. *Alterations and Repairs:* The Insured may, at the Insured's own expense, make alterations, additions and repairs, and complete structures in the course of construction.

J. *Cancellation of Policy By Insured:* The Insured may cancel this *policy* at any time but a refund of premium money will only be made when:

1. The Insured cancels a *policy* having a term of 3 years, on an anniversary date, and the reason for the cancellation is that:

a. A *policy* of *flood* insurance has been obtained or is being obtained in substitution for this *policy* and the Insurer has received a written concurrence in the *cancellation* from any mortgagee of which the Insurer has actual notice, or

b. The Insured has extinguished the insured mortgage debt and is no longer required by the mortgagee to maintain the coverage. Refund of any premium, under this subparagraph 1. shall be pro rata but with retention of the *expense constant* and the *Federal policy fee.*

2. The Insured cancels because the Insurer has determined that the property is not, in fact, in a *special hazard area;* and the Insured was required to purchase *flood* insurance coverage by a private lender or Federal agency pursuant to P.L. 93–234, § 102 and the lender or agency no longer requires the retention of the coverage. In this event, if no claims have been paid or are pending, the premium payments will be refunded in full, according to applicable *National Flood Insurance Program* regulations.

K. *Loss Clause:* Payment of any loss under this *policy* shall not reduce the amount of insurance applicable to any other loss during the *policy* term which arises out of a separate occurrence of the peril insured against hereunder; provided, that all loss arising out of a continuous or protracted occurrence shall be deemed to constitute loss arising out of a single occurrence.

L. *Mortgage Clause:* (Applicable to *building* coverage only and effective only when the *policy* is made payable to a mortgagee or trustee named in the *application* and *declarations page* attached to this *policy.*)

Loss, if any, under this *policy,* shall be payable to the aforesaid as mortgagee or trustee as interest may appear under all present or future mortgages upon the property described in which the aforesaid may have an interest as mortgagee or trustee, in order of precedence of said mortgages, and this insurance, as to the interest of the mortgagee or trustee only therein, shall not be invalidated:

1. By any act or neglect of the mortgagor or owner of the described property; nor

2. By any foreclosure or other proceedings or notice of sale relating to the property; nor

3. By any change in the title or ownership of the property; nor

4. By the occupation of the premises for purposes more hazardous than are permitted by this *policy, provided,* that in case the mortgagor or owner shall neglect to pay any premium due under this *policy,* the mortgagee or trustee shall, on demand, pay the same.

Provided, also, that the mortgagee or trustee shall notify the Insurer of any change of ownership or occupancy of the *building* or increase of hazard which shall come to the knowledge of said mortgagee or trustee and, unless permitted by this *policy,* it shall be noted thereon and the mortgagee or trustee shall, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise, this *policy* shall be null and void.

If this *policy* is cancelled by the Insurer, it shall continue in force for the benefit of the mortgagee or trustee for 30 days after written notice to the mortgagee or trustee of such *cancellation* and shall then cease.

Whenever the Insurer shall pay the mortgagee or trustee any sum for loss under this *policy* and shall claim that, as to the mortgagor or owner, no liability therefor existed, the Insurer shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt, or may, at its option, pay to the mortgagee or trustee the whole principal due or to grow due on the mortgage with interest, and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities, but no subrogation shall impair the right of the mortgagee or trustee to recover the full amount of said mortgagee's or trustee's claim.

M. *Mortgagee Obligations:* If the Insured fails to render proof of loss, the named mortgagee or trustee, upon notice, shall render proof of loss in the form herein specified within 60 days thereafter and shall be subject to the provisions of this *policy* relating to appraisal and time of payment and of bringing suit.

N. *Loss Payable Clause (Applicable to contents items only:* Loss, if any, shall be adjusted with the Insured and shall be payable to the Insured and loss payee as their interests may appear.

O. *Requirements in Case of Loss:* Should a *flood* loss occur to the insured property, the Insured must:

1. Notify the Insurer in writing as soon as practicable;

2. As soon as reasonably possible, separate the damaged and undamaged property, putting it in the best possible order so that the Insurer may examine it; and

3. Within 60 days after the loss, send the Insurer a proof of loss, which is the Insured's statement as to the amount it is claiming under the *policy* signed and sworn to by the Insured and furnishing the following information:

a. The date and time of the loss;

b. A brief explanation of how the loss happened;

c. The Insured's interest in the property damaged (for example, "owner") and the interests, if any, of others in the damaged property;

d. The *actual cash value* of each damaged item of insured property and the amount of damages sustained;

e. The names of mortgagees or anyone else having a lien, charge or claim against the insured property;

f. Details as to any other contracts of insurance covering the property, whether valid or not;

g. Details of any changes in ownership, use, occupancy, location or possession of the insured property since the *policy* was issued;

h. Details as to who occupied any insured *building* at the time of loss and for what purpose; and

i. The amount the Insured claims is due under this *policy* to cover the loss, including statements concerning:

(1) The limits of coverage stated in the *policy;* and

(2) The cost to repair or replace the damaged property (whichever costs less).

4. The insurance adjuster whom the Insurer hires to investigate the claim may furnish the Insured with a proof of loss form, and she or he may help the Insured to complete it. However, this is a matter of courtesy only, and the Insured must still send the Insurer a proof of loss within 60 days after the loss even if the adjuster does not furnish the form or help the Insured complete it. In completing the proof of loss, the Insured must use its own judgment concerning the amount of loss and the justification for the amount.

The adjuster is not authorized to approve or disapprove claims or to tell the Insured whether the claim will be approved by the Insurer.

5. The Insurer may, at its option, waive the requirement for the completion and filing of a proof of loss in certain cases, in which event the Insured will be required to sign and, at the Insurer's option, swear to an adjuster's report of the loss which includes information about the loss and the damages needed by the Insurer in order to adjust the claim.

6. Any false statements made in the course of presenting a claim under this *policy* may be punishable by fine or imprisonment under the applicable Federal laws.

P. *Options After a Loss:* Options the Insurer may, in its sole discretion, exercise after loss include the following:

1. *Evidence of Loss:* If the Insurer specifically requests it, in writing, the Insured may be required to furnish a complete inventory of the destroyed, damaged and undamaged property, including details as to quantities, costs, *actual cash values,* amount of loss claims, and any written plans and specifications for repair of the damaged property which can reasonably be made available to the Insurer.

2. *Examination Under Oath and Access to the Condominium Association's Articles of Association or Incorporation, Property Insurance Policies, and Other Condominium*

Documents: The Insurer may require the Insured to:

a. Show the Insurer, or its designee, the damaged property;

b. Be examined under oath by the Insurer or its designee;

c. Sign any transcripts of such examinations; and

d. At such reasonable times and places as the Insurer may designate, permit the Insurer to examine and make extracts and copies of any *condominium* documents, including the Articles of Association or Incorporation, Declarations of the *condominium*, property insurance policies, and other *condominium* documents; and all books of accounts, bills, invoices and vouchers, or certified copies thereof if the originals are lost, pertaining to the damaged property.

3. *Options to Repair or Replace:* The Insurer may take all or any part of the damaged property at the agreed or appraised value and, also, repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving the Insured notice of the Insurer's intention to do so within 30 days after the receipt of the proof of loss herein required under paragraph O. above.

4. *Adjustment Options:* The Insurer may adjust loss to any insured property of others with the owners of such property or with the Insured for their account. Any such insurance under this *policy* shall not inure directly or indirectly to the benefit of any carrier or other bailee for hire.

Q. *When Loss Payable:* Loss is payable within 60 days after the Insured files its proof of loss (or within 90 days after the insurance adjuster files an adjuster's report signed and sworn to by the Insured in lieu of a proof of loss) and ascertainment of the loss is made either by agreement between the Insured and the Insurer in writing or by the filing with the Insurer of an award as provided in paragraph S. below.

If the Insurer rejects the Insured's proof of loss in whole or in part, the Insured may accept such denial of its claim, or exercise its rights under this *policy*, or file an amended proof of loss as long as it is filed within 60 days of the date of the loss or any extension of time allowed by the Administrator.

R. *Abandonment:* The Insured may not abandon damaged or undamaged insured property to the Insurer.

However, the Insurer may permit the Insured to keep damaged, insured property ("salvage") after a loss and reduce the amount of the loss proceeds payable to the Insured under the *policy* by the value of the salvage.

S. *Appraisal:* If at any time after a loss, the Insurer is unable to agree with the Insured as to the *actual cash value*—or, if applicable, replacement cost—of the damaged property so as to determine the amount of loss to be paid to the Insured, then:

1. On the written demand of either the Insurer or the Insured, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of such demand.

2. The appraisers shall first select a competent and disinterested umpire and failing, after 15 days, to agree upon such umpire, then on the Insurer's request or the Insured's request, such umpire shall be selected by a judge of a court of record in the State in which the insured property is located.

3. The appraisers shall then appraise the loss, stating separately replacement cost, *actual cash value* and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire.

4. An award in writing, so itemized, of any two (appraisers or appraiser and umpire) when filed with the Insurer shall determine the amount of *actual cash value* and loss or, should this *policy's* replacement cost provisions apply, the amount of the replacement cost and loss.

5. Each appraiser shall be paid by the party selecting him or her and the expenses of appraisal and umpire shall be paid by both parties equally.

T. *Action Against the Insurer:* No suit or action on this *policy* for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this *policy* shall have been complied with, and unless commenced within 12 months next after the date of mailing of notice of disallowance or partial disallowance of the claim. An action on such claim against the Insurer must be instituted, without regard to the amount in controversy, in the United States District Court for the district in which the property shall have been situated.

U. *Subrogation:* In the event of any payment under this *policy*, the Insurer shall be subrogated to all the Insured's rights of recovery therefor against any party, and the Insurer may require from the Insured an assignment of all rights of recovery against any party for loss to the extent that payment therefor is made by the Insurer. The Insured shall do nothing after loss to prejudice such rights; however, this insurance shall not be invalidated should the Insured waive in writing prior to a loss any or all rights of recovery against any party for loss occurring to the described property.

V. *Continuous Lake Flooding:* Where the insured *building* has been inundated by rising lake waters continuously for 90 days or more and it appears reasonably certain that a continuation of this flooding will result in damage, reimbursable under this *policy*, to the insured *building* equal to or greater than the *building policy* limits plus the deductible or the maximum payable under the *policy* for any one *building* loss, the Insurer will pay the Insured the lesser of these two amounts without waiting for the further damage to occur if the Insured signs a release agreeing to:

1. *Make no further claim* under this *policy*; and

2. *Not seek* renewal of this *policy*; and

3. *Not apply for any flood* insurance under the Act for property at the property location of the insured *building*.

If the *policy* term ends before the insured *building* has been flooded continuously for 90 days, the provisions of this paragraph V. still apply so long as the first building damage reimbursable under this *policy* from the continuous flooding occurred before the end of the *policy* term.

W. *Duplicate Policies Not Allowed:* Property may not be insured under more than one *policy* issued under the *Act*. When the Insurer finds that duplicate *policies* are in effect, the Insurer shall by written notice give the Insured the option of choosing which *policy* is to remain in effect, under the following procedures:

1. If the Insured chooses to keep in effect the *policy* with the earlier effective date, the Insurer shall by the same written notice give the Insured an opportunity to add the coverage limits of the later *policy* to those of the earlier *policy*, as of the effective date of the later *policy*.

2. If the Insured chooses to keep in effect the *policy* with the later effective date, the Insurer shall by the same written notice give the Insured the opportunity to add the coverage limits of the earlier *policy* to those of the later *policy*, as of the effective date of the later *policy*.

In either case, the Insured must pay the pro rata premium for the increased coverage limits within 30 days of the written notice. In no event shall the resulting coverage limits exceed the statutorily permissible limits of coverage under the *Act* or the Insured's insurable interest, whichever is less.

The Insurer shall make a refund to the Insured, according to applicable *National Flood Insurance Program* rules, of the premium for the *policy* not being kept in effect.

For purposes of this paragraph W., the term "*effective date*" means the date coverage that has been in effect without any lapse was first placed in effect. In addition to the provisions of this paragraph W. for increasing *policy* limits, the usual procedures for increasing limits by mid-term endorsement or at renewal time, with the appropriate waiting period, are applicable to the *policy* the Insured chooses to keep in effect.

Article 11—What Law Governs

This *policy* is governed by the *flood* insurance regulations issued by FEMA, the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001, *et seq.*) and Federal common law.

In witness whereof, the Insurer has executed and attested these presents.

C. M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

(The information required under the terms of this policy has been approved by the Office of Management and Budget under OMB control number 3067–0021).

12. Appendix A (1) of part 61 is proposed to be amended by the addition of three endorsements which may be purchased at the option of the Insured, as follows:

Optional Endorsement to Appendix A(1)—Federal Emergency Management Agency Federal Insurance Administration Standard Flood Insurance Policy

Dwelling Form Endorsement #1—Coverage for Increased Costs of Repair or Reconstruction Due to a Community Flood Plain Management Ordinance

For an additional premium, we cover any increased costs of repair or reconstruction you incur in complying with a determination by your local community's land use authority that the insured single family, detached dwelling sustained substantial damage in a flood and that the dwelling must be repaired or reconstructed in a manner required by the flood plain management ordinances or regulations adopted by the community pursuant to 44 CFR Part 60—Criteria for Land Management and Use—of the regulations of the National Flood Insurance Program.

This endorsement is subject to the following conditions:

1. For purposes of this endorsement "substantial damage" means damage sustained by a structure and caused by a flood whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

2. This endorsement applies only to the single family, detached building described in the application as the insured dwelling.

3. At the time of the loss, the insured dwelling must be insured for at least 80 percent of its replacement cost or the maximum amount of insurance available under the National Flood Insurance Program.

4. The deductible applicable to the additional coverage afforded by this endorsement for each building loss is the sum of $3,000 and is in addition to the deductible amount otherwise applicable under the policy to building coverage loss.

5. Any claim payment made under this endorsement, together with any claim payment made for direct physical damage to the building arising out of the same flood, cannot exceed the lesser of the limits of building coverage you have purchased or the statutorily permissible building coverage limits under the National Flood Insurance Program.

6. To the extent this endorsement applies, Paragraph A.5 of Article 3—Losses Not Covered is deleted.

7. All other Articles and provisions of this policy apply.

* * * * *

Optional Endorsement to Appendix A(1)—Federal Emergency Management Agency Federal Insurance Administration Standard Flood Insurance Policy

Dwelling Form Endorsement #2—Deletion of the Basement Coverage Limitation for Certain Buildings

For an additional premium, Paragraph F.2. is deleted with respect to the insured single family, detached dwelling, subject to the following conditions:

1. This endorsement applies only to the single family, detached dwelling, described in the application as the insured dwelling.

2. The insured dwelling was originally constructed with a finished floor, subgrade on all sides and containing, as originally constructed, a living room, dining room, and kitchen.

3. This endorsement is applicable only to buildings (a) constructed or substantially improved on or before December 31, 1974, or before the date of the initial Flood Insurance Rate Map (FIRM) of the community, whichever is later, or (b) located in flood zones A, AO, A99, B, C, D, or X, regardless of the date of construction.

4. The deductible applicable to the additional coverage afforded by this endorsement for each building and contents loss, separately, is the sum of $500, together with the deductible amount for building and contents coverage, as appropriate, which is otherwise applicable under Article 7 of this policy.

5. At the time of the loss, the insured dwelling must be insured for at least 80 percent of its replacement cost or the maximum amount of insurance available under the National Flood Insurance Program.

6. All other Articles and provisions of this policy apply.

* * * * *

Optional Endorsement to Appendix A(1)—Federal Emergency Management Agency Federal Insurance Administration Standard Flood Insurance Policy

Dwelling Form Endorsement #3—Amending the Land Subsidence, Seepage of Water and Sewer Backup Exclusions

For an additional premium in the case of a single family, detached dwelling, the following language is, as indicated, deleted from or added to Article 3—Losses Not Covered:

1. At Paragraph B.1., the words "land subsidence," are deleted.

2. At Paragraph B.3., the words "Sewer backup or seepage of water unless at the same time there has been actual physical contact between surface flood water and the insured property, or from" are deleted and the word "freezing" is changed to "Freezing".

This endorsement is subject to the following conditions in order that the language changes to Article 3, Paragraph B.1. and 3. can be given effect at the time of a loss:

a. There must be a general and temporary condition of flooding in the area, and

b. The flooding is the proximate cause of the land subsidence, sewer backup or seepage of water, and

c. The land subsidence, sewer backup, or seepage of water damage occurs no later than 72 hours from the onset of the flooding, and

d. The deductible applicable to the additional coverage afforded by this endorsement for each building and contents loss is, separately, the sum of $250, together with the deductible amount for building and contents coverage, as appropriate, which is otherwise applicable under this policy.

e. At the time of the loss, the insured dwelling must be insured for at least 80 percent of its replacement cost or the maximum amount of insurance available under the National Flood Insurance Program.

f. All other Articles and provisions of this policy apply.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: June 19, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-17514 Filed 7-29-92; 8:45 am]

BILLING CODE 6718-05-M

LEGAL SERVICES CORPORATION

45 CFR Part 1607

Governing Bodies

AGENCY: Legal Services Corporation.

ACTION: Proposed Rule; Withdrawal.

SUMMARY: This document proposes to withdraw proposed amendments to 45 CFR part 1607, which prescribes requirements for governing bodies of the Legal Services Corporation's ("LSC" or "Corporation") recipients. This proposed withdrawal is intended to implement congressional intent that the Corporation not impose requirements on recipient governing bodies that are additional to, or more restrictive than, the provisions of section 1007(c) of the LSC Act or LSC's FY 1992 appropriations act.

DATES: Comments must be received by August 31, 1992.

ADDRESSES: Office of the General Counsel, Legal Services Corporation, 750 First St., NE., Washington DC 20002-4250.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, Legal Services Corporation, (202) 336-8810.

SUPPLEMENTARY INFORMATION: On October 19, 1987, LSC published proposed revisions to 45 CFR Part 1607, which sets out requirements for the governing bodies of its recipients. See 52 FR 38,900 (Oct. 19, 1987). The Operations & Regulations Committee ("Committee") of the Corporation's Board of Directors ("Board") held hearings on the proposed changes on November 20, 1987, and on January 28-29, 1988. The Board heard public comment on February 26, 1988.

While the revisions were still under consideration, Congress included a proviso in LSC's FY 1988 appropriations act, Pub. L. 100-202, 101 Stat. 1329-33 (1987), which prohibited the Corporation from imposing requirements on its

recipients' governing bodies that are additional to, or more restrictive than, the provisions of section 1007(c) of the LSC Act. Although the LSC Board voted to accept several of the proposed revisions, they were never published as final, in part due to the fact that each subsequent appropriations act has included the restrictive proviso.

The consistent use of this restriction in LSC's appropriations acts demonstrates a congressional intent that LSC not impose requirements on recipient governing bodies that are additional to, or more restrictive than, the provisions of section 1007(c) of the LSC Act. Therefore, the Corporation is requesting comment on its proposal to withdraw the proposed revisions to the rule. For the revisions as proposed, see 52 FR 38,900 (Oct. 19, 1987).

Dated: July 24, 1992.

Victor M. Fortuno,

General Counsel.

[FR Doc. 92-17998 Filed 7-29-92; 8:45 am]

BILLING CODE 7050-01-M

45 CFR Part 1609

Fee-Generating Cases

AGENCY: Legal Services Corporation.

ACTION: Proposed Rule; Withdrawal.

SUMMARY: This document proposes to withdraw proposed amendments to 45 CFR part 1609, which governs acceptance of fee-generating cases by the Legal Services Corporation's recipients, to reflect congressional intent that LSC grantees not be subject to any amendments to part 1609 that were not in operational effect on October 1, 1988.

DATES: Comments must be received by August 31, 1992.

ADDRESSES: Office of the General Counsel, Legal Services Corporation, 750 First St., NE., Washington, DC 20002-4250.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, Legal Services Corporation, (202) 336-8810.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation ("LSC" or "Corporation") published at 52 FR 50982 (Dec. 19, 1988) proposed amendments to 45 CFR part 1609, LSC's regulation governing LSC recipients' acceptance of fee-generating cases. The Committee on Operations and Regulations ("Committee") of LSC's Board of Directors ("Board") heard public comment on the proposed regulation on January 20, 1989, at its meeting in Raleigh, North Carolina. At that time, the committee voted to recommend to the Board a revised version of Part 1609. On January 27, 1989, in Washington, DC, the Board considered the committee recommendation but deferred action on it until the next Board meeting, which was held on March 3, 1989, in Atlanta, Georgia. At the March meeting, the Board voted to accept the committee recommendation with amendments.

The revisions, however, were never published as final, largely due to a congressional prohibition against their implementation that first appeared in LSC's FY 1990 appropriations act, Pub. L. 101-162, 103 Stat. 1036-37 (1989). This prohibition, which has been retained in all subsequent appropriations acts covering LSC, provides that LSC grants and contracts "shall not be subject to any amendments to regulations relating to fee-generating cases (45 CFR part 1609) * * * not in operational effect on October 1, 1988." See Pub. L. 102-140, 105 Stat. 824 (1991), incorporating, Pub. L. 101-515, 104 Stat. 2153 (1990).

The consistent use of this restriction in LSC's appropriations acts since FY 1990 demonstrates a congressional intent that LSC not implement the proposed revisions. Therefore, the Corporation is requesting public comment on its proposal to withdraw the proposed revisions to the rule. For the proposed revisions, see 52 FR 50982 (Dec. 19, 1988).

Dated: July 24, 1992.

Victor M. Fortuno,

General Counsel.

[FR Doc. 92-17999 Filed 7-29-92; 8:45 am]

BILLING CODE 7050-01-M

45 CFR Parts 1610 and 1611

Use of Funds From Sources Other Than the Corporation; Eligibility

AGENCY: Legal Services Corporation.

ACTION: Proposed Rules; Withdrawal.

SUMMARY: This document proposes to withdraw proposed amendments to 45 CFR Parts 1610 and 1611 which govern Legal Services Corporation recipients' use of non-LSC funds and set guidelines for eligibility for LSC-funded legal assistance. This proposal is intended to reflect congressional intent that LSC grantees not be subject to any amendments to parts 1610 and 1611 that were not in operational effect on October 1, 1988.

DATES: Comments must be received by August 31, 1992.

ADDRESSES: Office of the General Counsel, Legal Services Corporation, 750 First St. NE., Washington DC 20002-4250.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, Legal Services Corporation, (202) 336-8810.

SUPPLEMENTARY INFORMATION: On January 3, 1989, the Legal Services Corporation ("LSC" or "Corporation") published proposed revisions to 45 CFR part 1610 on use of non-LSC funds, 54 FR 46 (Jan. 3, 1989); and to 45 CFR Part 1611 on eligibility, 54 FR 48 (Jan. 3, 1989). A total of 88 comments were received and considered. The LSC Board of Directors' ("Board") Committee on Operations and Regulations ("Committee") heard public comment on the proposed regulations at its meeting in Atlanta, Georgia, on March 2, 1989. The Committee voted to defer further consideration of the proposed revisions until its next meeting, which was held in Alexandria, Virginia, on April 13, 1989. At that meeting, the Committee voted to recommend the proposed revisions with amendments to the LSC Board. On April 14, 1989, the Board voted to accept the committee recommendations with amendments.

The amendments were never published as final, largely due to a congressional prohibition against their implementation that first appeared in LSC's Fiscal Year 1990 appropriations act, Pub. L. 101-162, 103 Stat. 1036-37 (1989). This prohibition, which has been retained in all subsequent appropriations acts for LSC, provides that LSC grants and contracts "shall not be subject to any amendments to regulations relating to * * * the use of private funds (45 CFR parts 1610 and 1611) * * * not in operational effect on October 1, 1988." See Pub. L. 102-140, 105 Stat. 824 (1991), incorporating Pub. L. 101-515, 104 Stat. 2153 (1990).

The consistent use of this restriction in LSC's appropriations acts since FY 1990 demonstrates a congressional intent that LSC grants or contracts not be subject to the proposed regulations. Therefore, the Corporation is requesting comment on its proposal to withdraw the proposed revisions to the rule. Revisions to part 1610 as proposed are at 54 FR 46 (Jan. 3, 1989). Revisions to Part 1611 as proposed are at 54 FR 48 (Jan. 3, 1989).

Dated: July 24, 1992.

Victor M. Fortuno,

General Counsel.

[FR Doc. 92-18000 Filed 7-29-92; 8:45 am]

BILLING CODE 4050-01-M

45 CFR Part 1612

Restrictions on Lobbying and Certain Other Activities

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends regulations to conform with a statutory proviso in the Legal Services Corporation's ("LSC" or "Corporation") appropriations act for the current fiscal year that limits the Corporation's ability to implement certain private funds provisions to those restrictions expressly set out in the LSC Act.

DATES: Comments must be received by August 31, 1992.

ADDRESSES: Office of the General Counsel, Legal Services Corporation, 750 First Street NE., Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, Office of the General Counsel, (202) 336–8810.

SUPPLEMENTARY INFORMATION: On July 29, 1987, LSC published at 52 FR 28434 its final lobbying rule, 45 CFR part 1612. At the same time, LSC requested public comments on part 1612's private funds provisions. See 52 FR 28441 (July 29, 1987). On August 27 and 28, the Committee on Operations and Regulations ("Committee") of the Corporation's Board of Directors ("Board") heard public comment at its meeting in Seattle, Washington. As a result of its deliberations in Seattle, the Board approved two clarifying changes to the rule but rejected arguments that LSC's regulation of private funds was unauthorized and unconstitutional. The approved revisions were never published as final.[1]

Congress soon thereafter imposed a restriction in the form of a proviso in LSC's appropriations act on the Corporation's authority to use any LSC funds to implement or enforce those private funds provisions in the 1987 rule that were not explicitly authorized by the LSC Act. Pub. L. No. 100–202, 101 Stat. 1329 (1987). This restriction was applicable to the already published 1987 rule. Publication of the clarifying amendments would not have satisfied the concerns of Congress. With some minor changes, Congress has continued to include in LSC's appropriations acts the restriction on part 1612's private funds provisions. *See* Pub. L. No. 100–459, 102 Stat. 2226–2227 (1988); Pub. L. No. 101–162, 103 Stat. 1036–1037 (1989); Pub. L. No. 102–140, 105 Stat. 824 (1991), incorporating Pub. L. No. 101–515, 104 Stat. 2152 (1990).

The consistent use of this restriction demonstrates a congressional intent that LSC not regulate a grantee's private funds for restrictions in LSC's appropriations acts that are not also included in the LSC Act. Therefore, the Corporation is soliciting comments on part 1612's private funds provisions.

There is an important distinction between the LSC Act and LSC's appropriations act. Section 1010(c) of the LSC Act prohibits the use of private funds by LSC grantees for activities prohibited by the Act. 42 U.S.C. 2996i(c). The appropriations act, on the other hand, generally applies only to LSC's grantees' federal funds. Part 1612 extends the application of section 1010(c) to activities prohibited by LSC's appropriations act that are allowed under the LSC Act.[2] Thus, part 1612 presently prohibits the use of private funds by LSC grantees for activities prohibited by LSC's appropriations act in addition to those activities prohibited by the LSC Act.

The above cited proviso prohibits application of part 1612's private funds provisions to activities prohibited by LSC's appropriations act but not prohibited by the LSC Act. LSC has identified three activities that are restricted by the appropriations act but not prohibited by the LSC Act. Under the LSC Act, recipients may:

(1) Engage in self-interest lobbying;

(2) Engage in grassroots lobbying on behalf of an eligible client; and

(3) Disseminate information about public policies and political activities.

These three activities are prohibited by LSC's appropriations act.

Only one revision to part 1612 is necessary to conform the rule to the appropriations act proviso since § 1612.13 already provides exceptions for two of these three activities. A new § 1612.13(e) is proposed to be added that would allow grassroots lobbying on behalf of an eligible client. An exception for self-interest lobbying already exists in § 1612.13(a), and § 1612.13(d) already provides an exception for the dissemination of information about public policies and political activities.

List of Subjects in 45 CFR Part 1612

Civil disorders, Legal services, Lobbying, Reporting and recordkeeping requirements.

For reasons set out in the preamble, 45 CFR part 1612 is proposed to be amended as follows:

PART 1612—RESTRICTIONS ON LOBBYING AND CERTAIN OTHER ACTIVITIES

1. The authority citation for part 1612 continues to read as follows:

Authority: Sec. 1006(b)(5), 1007(a) (5), (6) and (7), 1011, 1008(e), Legal Services Corporation Act of 1974, as amended (42 U.S.C. 2996e(b)(5), 2996f(a) (5), (6) and (7), 2996j, 2996g(e)); Pub. L. 95–431, 92 Stat. 1021; Pub. L. 96–68, 93 Stat. 416; Pub. L. 96–536, 94 Stat. 3166; Pub. L. 97–161, 96 Stat. 22; Pub. L. 97–377, 96 Stat. 1874; Pub. L. 98–166, 97 Stat. 1071; Pub. L. 99–180, 99 Stat. 1185.

2. Section 1612.13 is amended by adding paragraph (e) to read as follows:

§ 1612.13 Private funds.

* * * * *

(e) A recipient may use private funds to engage in grassroots lobbying at the request of a current eligible client of that recipient to the extent such activities are necessary to the provision of legal advice and representation with respect to such client's legal rights and responsibilities, but no recipient shall solicit a client for the purpose of making such representation possible.

Dated: July 24, 1992.

Victor M. Fortuno,

General Counsel.

[FR Doc. 92–18001 Filed 7–29–92; 8:45 am]

BILLING CODE 7050–01–M

[1] The Board voted approval of a revision to § 1612.13(c) that would have added the language emphasized below to provide that:

"A recipient may use private funds to pay reasonable annual dues to organizations which are tax exempt under section 501(c)(3) of the Internal Revenue Code, provided, however, that such funds may be used only for purposes otherwise permitted by the Act and all regulations adopted pursuant thereto that apply to private funds."

Second, the Board voted approval of a grandfather provision that provided as follows:

"(e) A recipient may use private funds to fulfill existing obligations under the grant or contract from a private donor entered into prior to February 21, 1986, if the activities could be carried out consistent with sections 1007(a)(5) and 1010(c) of the Act. This authority shall expire on February 21, 1988."

[2] Section 1612.2 provides that recipients may not use private funds for any legal assistance activities prohibited by the rule. 45 CFR § 1612.2. Exceptions to this prohibition are set out in § 1612.13.

45 CFR Part 1626

Restrictions on Legal Assistance to Aliens

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends regulations to allow representation of permanent amnesty aliens, *i.e.*, aliens who have adjusted their status to that of permanent resident alien under the provisions of the Immigration and Nationality Act ("INA").

DATES: Comments must be received by August 31, 1992.

ADDRESSES: Office of the General Counsel, Legal Services Corporation, 750 First St. NE., Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, Legal Services Corporation, (202) 336–8810.

SUPPLEMENTARY INFORMATION: On April 27, 1989, the Legal Services Corporation ("LSC" or "Corporation") published at 54 FR 18111 a final rule which, in part, prohibited LSC recipients from representing permanent amnesty aliens for a period of five years from the date they received their temporary resident status. The rule's prohibition on such representation was adopted pursuant to a provision in the 1986 amendments to the INA which disqualified amnesty aliens from being eligible for "programs of financial assistance furnished under Federal law (whether through grant, loan, guarantee, or otherwise) on the basis of financial need." 8 U.S.C. 1255a(h). Both the United States Department of Justice ("DOJ") and LSC interpreted the prohibition as disqualifying amnesty aliens from legal services funded by LSC. See DOJ Rule, 54 FR 29434–29438 (July 12, 1989).

However, the amnesty alien provision of LSC's rule was challenged in Federal court and the United States District Court for the Northern District of California issued a permanent injunction against implementation of that provision. *California Rural Legal Assistance, Inc.* v. *Legal Services Corp.*, 727 F. Supp. 553 (N.D. Cal. 1989), *aff'd*, 917 F.2d 1171 (9th Cir. 1990). Due to the injunction against enforcement of the rule's amnesty alien provision, amnesty aliens who gain permanent resident status remain eligible for LSC-funded legal assistance. LSC proposes amending § 1626.4(a) to bring the rule into conformity with these developments.

List of Subjects in 45 CFR Part 1626

Aliens, Legal services, Migrant labor, Reporting and recordkeeping requirements.

For reasons set out in the preamble, 45 CFR part 1626 is proposed to be amended as follows:

PART 1626—RESTRICTIONS ON LEGAL ASSISTANCE TO ALIENS

1. The authority citation for part 1626 continues to read as follows:

Authority: Sec. 1006(e); Pub. L. 93–355, 88 Stat. 378 (42 U.S.C. 2996g(e)); Pub. L. 99–603, 100 Stat. 3417; Pub. L. 100–459, 102 Stat. 2186.

2. Section 1626.4 is amended by revising paragraph (a) introductory text and paragraph (a)(1) to read as follows:

§ 1626.4 Alien status and eligibility.

(a) Subject to all other eligibility requirements of the Act, an alien who is present in the United States and who is within one of the following categories shall be eligible for legal services: (1) An alien lawfully admitted for permanent residence as an immigrant as defined by section 1101(a)(20) of the Immigration and Nationality Act (INA)(8 U.S.C. 1101(a)(20)).

* * * * *

Dated: July 24, 1992.

Victor M. Fortuno,

General Counsel.

[FR Doc. 92–18002 Filed 7–29–92; 8:45 am]

BILLING CODE 7050–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 34, 35, and 43

[CC Docket No. 92–145, FCC No. 92–285]

Elimination of and Revisions to the Commission's Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has adopted a Notice of Proposed Rulemaking which proposes to eliminate certain regulations contained in the Commission's Rules and also proposes to eliminate the related Annual Reports Form R and O. Finally, the Commission requires record carriers to file a letter each year on operating revenues and communications plant. We are proposing these changes because we do not see a need for these record carriers to continue accounting under uniform systems of accounts or to file extensive data with us. This proposal will provide effective and adaptive regulation for record carriers while eliminating regulations that are unnecessary or inimical to the public interest.

DATES: Comments must be filed on or before September 7, 1992, and reply comments must be filed on or before September 22, 1992.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 1919 M St. NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Stephen Steckler, Common Carrier Bureau, Accounting and Audits Division, 202–634–1861.

SUPPLEMENTARY INFORMATION: The Commission's Notice of Proposed Rulemaking eliminates the accounting systems in parts 34 and 35 of the Commission's Rules and also proposes to eliminate the associated annual reports filing requirements in part 43 of our Rules. Finally, we propose to requiring record carriers with annual revenue of over $100 million to file an annual letter on the value of total communications plant and revenue.

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Radio, Reporting and recordkeeping requirements, Telecommunications, Television.

47 CFR Part 34

Communications common carriers, Radio, Telegraph, Uniform Systems of Accounts.

47 CFR Part 35

Communications common carriers, Telegraph, Telephone, Uniform Systems of Accounts.

47 CFR Part 43

Communications common carriers, Radio, Reporting and recordkeeping requirements, Telegraph, Telephone.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–17811 Filed 7–29–92; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 90

[PR Docket No. 92–153; RM–7783, FCC 92–320]

Private Land Mobile Radio Services; 72–76 MHz Fire Radio Call Box Operations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has released a Notice of Proposed Rule Making that proposes amending its rules to permit the Fire Radio Service to conduct fire call box operations on ten low-power frequencies in the 72–76 MHz band on a shared basis with the Forest Products, Special Industrial, Manufacturers, and Railroad Radio Services. This action is necessary to obtain interference-free fire call operation and should result in more effective and efficient fire service.

DATES: Comments must be submitted on or before September 11, 1992, and reply

comments on or before September 28, 1992.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Eugene Thomson, Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634–2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making (Notice)*, PR Docket No. 92–153, adopted July 10, 1992, and released July 22, 1992. The full text of the Notice is available for inspection and copying during normal business hours in the FCC Dockets Branch, room 230, 1919 M Street NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street NW., Washington, DC 20036, telephone (202) 452–1422.

Summary of Notice of Proposed Rule Making

1. Section 90.21(c)(3) of the Commission's Rules, 47 CFR 90.21(c)(3), allocates frequencies in the 72–76 MHz band to the Fire Radio Service for fixed operations, including fire call box operations. These frequencies are shared with other radio services pursuant to 90.257(a) of the Commission's Rules, 47 CFR 90.257(a).

2. Fire call box operations are limited to a transmitter output power of one watt, but co-channel licensees in the other radio services may be authorized to transmit with a power level of up to 300 watts. These higher-power co-channel operations cause interference and adversely affect the operation of fire call box systems, thereby imperiling the safety of life and property. There are other shared frequencies in the 72–76 MHz band that are designated for low-power mobile use and can be useful for call box operations. These frequencies, while reserved for low power mobile use, may be operated as either mobile, base, or fixed stations.

3. The likelihood of interference could be reduced if fire call box operations were permitted on the ten low-power 72–76 MHz mobile frequencies used by other radio services. We, therefore, propose to modify the appropriate sections of part 90 of our Rules to include the Fire Radio Service as an eligible for the low-power 72–76 MHz frequencies available in the Forest Products, Special Industrial, Manufacturers, and Railroad Radio Services.

Initial Regulatory Flexibility Analysis

4. We certify that the Regulatory Flexibility Act of 1980 does not apply to this rule making proceeding because if the proposed rule amendments are promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by section 601(3) of the Regulatory Flexibility Act.

List of Subjects in 47 CFR Part 90

Administrative practice and procedure, Business and industry, Civil defense, Communications equipment, Emergency medical services, Individuals with disabilities, Radio, Reporting and recordkeeping requirements.

Amendatory Text

It is proposed to amend 47 CFR part 90 as follows:

1. The authority citation for part 90 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1082 as amended; 47 U.S.C. 154, 303 and 332 unless otherwise noted.

2. 47 CFR 90.21 is amended by adding to the Fire Radio Service Frequency Table in paragraph (b) ten additional frequencies from 72.44 MHz through 75.60 MHz, immediately following the 72.00 to 76.00 MHz entry, and adding paragraph (c)(19) to read as follows:

§ 90.21 Fire Radio Service.

* * * * *

(b) * * *

FIRE RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
*	* * * *	*
72.44	Mobile	19
72.48		19
72.52		19
72.56		19
72.60		19
75.44		19
75.48		19
75.52		19
75.56		19
75.60		19
*	* * * *	*

(c) * * *

(19) This frequency is available on a shared basis in the Manufacturers, Forest Products, Special Industrial, Railroad, and Fire Radio Services and interservice coordination is required. All communications on this frequency must be conducted by persons or organizations charged with specific fire protection responsibility. All operations on this frequency are subject to the provisions of § 90.257(b).

* * * * *

3. 47 CFR 90.67 is amended by revising the first sentence of paragraph (c)(34) to read as follows:

§ 90.67 Forest Products Radio Service.

* * * * *

(c) * * *

(34) This frequency is available on a shared basis in the Manufacturers, Forest Products, Special Industrial, Railroad, and Fire Radio Services and interservice coordination is required.

* * *

* * * * *

4. 47 CFR 90.73 is amended by revising the first sentence of paragraph (d)(7) to read as follows:

§ 90.73 Special Industrial Radio Service.

* * * * *

(d) * * *

(7) This frequency is available on a shared basis in the Manufacturers, Forest Products, Special Industrial, Railroad, and Fire Radio Services and interservice coordination is required.

* * *

* * * * *

5. 47 CFR 90.79 is amended by revising the first sentence of paragraph (d)(4) to read as follows:

§ 90.79 Manufacturers Radio Service.

* * * * *

(d) * * *

(4) This frequency is available on a shared basis in the Manufacturers, Forest Products, Special Industrial, Railroad, and Fire Radio Services and interservice coordination is required.

* * *

* * * * *

6. 47 CFR 90.91 is amended by revising the first sentence of paragraph (c)(2) to read as follows:

§ 90.91 Railroad Radio Service.

* * * * *

(c) * * *

(4) This frequency is available on a shared basis in the Manufacturers, Forest Products, Special Industrial, Railroad, and Fire Radio Services and interservice coordination is required.

* * *

* * * * *

7. 47 CFR 90.257 is amended by revising the introductory text of paragraph (b) and the first sentence of paragraph (b)(1) to read as follows:

§ 90.257 Assignment and use of frequencies in the band 72–76 MHz.

* * * * *

(b) The following criteria shall govern the authorization and use of frequencies within the band 72–76 MHz by mobile stations in the Special Industrial, Manufacturers, Forest Products, Railroad, and Fire Radio Services.

(1) Mobile operation on frequencies in the 72–76 MHz band is subject to the conditions that no interference is caused to the reception of television stations operating on Channel 4 or 5. * * *

* * * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–17814 Filed 7–29–92; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5, 7, 10, 15, 16, 17, 37, 44, 46, and 52

[FAR Case 91–85]

Federal Acquisition Regulation; Service Contracting

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing changes to FAR Part 37, Service Contracting, to: (1) Implement Office of Federal Procurement Policy Letter 91–2, Service Contracting, published at 56 FR 15112, April 15, 1991; and (2) to clarify and restructure part 37 as a result of recommendations made by members of the public and various Federal agencies. FAR parts 5, 7, 10, 15, 16, 17, 44, 46, and 52 were also affected as a result of these changes to part 37 and are accordingly amended.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before September 28, 1992, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4037, Washington, DC 20405. Please cite FAR case 91–85 in all correspondence related to this case.

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 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 91–85.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils decided to restructure and clarify part 37 as a result of revisions suggested by industry and various Federal agencies, including military departments, civilian and defense agencies, the Office of Personnel Management, the Office of Federal Procurement Policy, the Contract Services Association, the Professional Services Council, the Logistics Management Institute, and others.

In addition to revising part 37, this rule:

(1) Moves Subpart 5.5, Paid Advertisements, with minor revisions, to new subpart 37.7;

(2) Revises parts 7, 10, 15, 16, 37, 44, and 46 to implement OFPP Policy Letter 91–2 performance based contracting methods;

(3) Makes substantive revisions to Subpart 17.2, Options;

(4) Revises one existing clause in 52.217;

(5) Revises five clauses in 52.237 and adds a new provision, Identification of Uncompensated Overtime.

In addition, numerous minor editorial and technical changes were made to the language in parts 17 and 37.

B. Regulatory Flexibility Act

The proposed changes may 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 of the burden associated with identifying uncompensated overtime hours and rates included in proposals and subcontractor proposals under the new provision 52.237–XX, Identification of Uncompensated Overtime. An Initial Regulatory Flexibility Analysis has been prepared and is summarized as follows:

The proposed rule revises the Federal Acquisition Regulation (FAR) parts 5, 10, 15, 16, 17, 37, 44, 46, and 52 to implement the Office of Federal Procurement Policy (OFPP) Policy Letter 91–2, Service Contracting, and makes other revisions to part 37. One of the revisions implements the statutory requirements of section 834, Public Law 101–510, concerning uncompensated overtime. Although the statutory requirement applies only to DOD, both GSA and NASA have agreed the language is appropriate for Governmentwide use. The Regulatory Flexibility Act applies only to the language being added to the FAR concerning uncompensated overtime. The rule will affect all small businesses that submit offers for services estimated at $100,000 or more, that are acquired on the basis of number of hours to be provided rather than on the task to be performed. There are paperwork burden requirements associated with this rule. A request for Approval of a Collection of Information Under the Paperwork Reduction Act has been submitted to the Office of Management and Budget. The requirements concerning uncompensated overtime in this proposed rule are currently in the Defense Federal Acquisition Regulation (DFARS). When this proposed rule is implemented in the FAR as a final rule, the DFARS language will be removed. There are no alternatives. A copy of the Initial Regulatory Flexibility Analysis has been submitted to the Chief Counsel for Advocacy of the Small Business Administration.

A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR Case 91–85), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) is deemed to apply because the proposed rule contains information collection requirements. Accordingly, a request for approval of a new information collection requirement concerning Service Contracting/ Solicitation Provision, "Identification of Uncompensated Overtime", is being submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Public comments concerning this request will be invited through a subsequent **Federal Register** notice.

List of Subjects in 48 CFR Parts 5, 7, 10, 15, 16, 17, 37, 44, 46, and 52

Government procurement.

Dated: July 23, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR parts 5, 7, 10, 15, 16, 17, 37, 44, 46, and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 5, 7, 10, 15, 16, 17, 37, 44, 46, 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 5—PUBLICIZING CONTRACT ACTIONS

5.5 [Removed]

2. Subpart 5.5 is removed.

PART 7—ACQUISITION PLANNING

3. Section 7.101 is amended by adding the definition *Draft solicitation* to read as follows:

7.101 Definitions.

* * * * *

Draft solicitation means a solicitation issued for a known requirement, prior to finalization of the requirements definition and/or acquisition strategy, for the purpose of obtaining potential offerors' comments. Draft solicitations shall contain a notice stating that comments on the solicitation are being solicited, not offers, and that a subsequent solicitation for offers may be issued.

* * * * *

4. Section 7.102 is amended by designating the undesignated paragraph as "(a)" and adding paragraph (b) to read as follows:

7.102 Policy.

* * * * *

(b) Acquisition plans for service contracts shall describe the strategies, methods and techniques which will be used to integrate performance-based contracting methods (see subpart 37.2) into the acquisition, or provide rationale for use of other methods.

5. Section 7.103 is amended by redesignating paragraph (k) as paragraph (l), removing the word "Assuring" and inserting in its place "Ensuring"; and adding a new paragraph (k) to read as follows:

7.103 Agency-head responsibilities.

* * * * *

(k) Ensuring that experiences from prior acquisitions are used in defining requirements and acquisition strategies. For services, greater use of performance-based contracting methods should generally occur for follow-on acquisitions.

* * * * *

6. Section 7.105 is amended by revising paragraphs (a)(1), (a)(4), and (b)(6); redesignating paragraphs (b)(17) through (b)(19) as (b)(18) through (b)(20); and adding a new (b)(17) to read as follows:

7.105 Contents of written acquisition plans.

* * * * *

(a) *Acquisition background and objectives*—(1) *Statement of need.* Introduce the plan by a brief statement of need. Summarize the technical and contractual history of the acquisition. Discuss feasible acquisition alternatives, the impact of prior acquisitions on those alternatives, and any related in-house effort.

* * * * *

(4) *Capability or performance.* Specify the required capabilities or performance characteristics of the supplies or the performance standards of the services being acquired and state how they are related to the need.

* * * * *

(b) * * *

(6) *Product descriptions and descriptions of services to be performed.* In accordance with part 10, explain the choice of description types to be used in the acquisition.

* * * * *

(17) *Quality assurance.* For services, discuss:

(i) How the Government quality assurance surveillance plan will be developed and maintained;

(ii) How it will relate to the statement of work; and

(iii) Any clauses for deductions from payment for nonconforming services (see subpart 46.4).

PART 10—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

7. Section 10.002 is amended by revising paragraph (a)(4)(ii) to read as follows:

10.002 Policy.

* * * * *

(a) * * *

(4) * * *

(ii) Performance results required, to include identification of standards of performance; or

* * * * *

8. Section 10.004 is amended by revising the section heading; in paragraph (a) by inserting the paragraph heading "*General.*" after "(a)"; revising paragraphs (b) (1) and (2); removing the existing paragraph (b)(4); redesignating paragraph (b)(3) as (b)(4); and adding new paragraph (b)(3) to read as follows:

10.004 Selecting, tailoring, and preparing descriptions.

* * * * *

(b) *Purchase description.* (1) When authorized by 10.006, or when no other applicable product description exists, agencies may use a purchase description, subject to pertinent restrictions on repetitive use and consistent with the requirements at 10.002. An adequate purchase description should set forth the essential physical and functional characteristics of the materials required. Purchase descriptions shall not be written so as to specify a particular brand name product, or feature of a product, peculiar to one manufacturer, thereby precluding consideration of a product manufactured by another company, unless—

(i) The particular brand name, product, or feature is essential to the Government's requirements, and other companies' similar products, or products lacking the particular feature, would not meet the minimum requirements for the item; and

(ii) The authority to contract without providing for full and open competition is supported by the required justifications and approvals (see 6.302–1).

(2) As many of the following characteristics as are necessary to express the Government's minimum requirements should be used in preparing purchase descriptions:

(i) Common nomenclature.

(ii) Kind of material; i.e., type, grade, alternatives, etc.

(iii) Electrical data, if any.

(iv) Dimensions, size, or capacity.

(v) Principles of operation.

(vi) Restrictive environmental conditions.

(vii) Intended use, including—

(A) Location within an assembly; and

(B) Essential operating condition.

(viii) Equipment with which the item is to be used.

(ix) Other pertinent information that further describes the item or material required, stating requirements in terms of function or performance to the extent practicable.

(3) *Descriptions of services to be performed.* Descriptions of services to be performed (also called statements of work, work statements, or performance work statements) shall be written, in accordance with agency procedures, so that they, to the maximum extent practicable—

(i) Define the requirements in terms of the results required rather than how the work is to be performed,

(ii) Include measurable (i.e., in terms of quality, timeliness, quantity) performance standards for the required results, and

(iii) Include surveillance plans based on performance work statements to provide the basis for assessment of contractor performance and deductions from payments for services not conforming to requirements (see 46.407).

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

9. Section 15.102 is amended by adding a sentence at the end of the paragraph to read as follows:

15.102 General.

* * * Negotiation may be appropriate when the quality of performance is a significant factor or of greater importance than cost or price.

10. Section 15.404 is amended by revising the section heading and the introductory text of paragraph (a); and adding paragraph (d) to read as follows:

15.404 Presolicitation notices, conferences and draft solicitations.

(a) *General.* Presolicitation notices, conferences and draft solicitations may be used as preliminary steps in negotiated acquisitions in order to—

* * * * *

(d) *Draft solicitations.* If sufficient time is available and circumstances make it desirable, draft solicitations (7.101) may be used to assist in improving requests for proposals and purchase descriptions. For example, when an acquisition contains innovative incentive provisions, past performance problems have been encountered, or new, complex or critical services are required, a draft solicitation may be appropriate.

11. Section 15.605 is amended by adding a sentence at the end of paragraph (b); and revising paragraph (c) to read as follows:

15.605 Evaluation factors.

* * * * *

(b) * * * In acquisitions for professional and technical services, consideration shall be given to the inclusion of cost realism, particularly when proposals may include uncompensated overtime.

(c) While the lowest price or lowest total cost to the Government is properly the deciding factor in many source selections, in certain acquisitions the Government may select the source whose proposal offers the greatest value to the Government in terms of performance and other factors. In these cases, evaluation factors must reflect the relationship between technical and cost considerations. This may be the case, for example, in the acquisition of research and development of services, or when cost-reimbursement contracting is anticipated. In the acquisition of services, evaluation should be based, to the maximum extent practicable, on best overall value in terms of quality and other factors. The weighting of costs must be commensurate with the nature of the services being acquired. For example, it may be appropriate to award to an offeror, based on technical and quality considerations, at other than the lowest price if the effort being contracted for departs from clearly defined efforts or if highly skilled personnel are required. It may be appropriate to award to the technically acceptable offeror with the lowest price if the services are of a routine or simple nature, highly skilled personnel are not required, or the work product is clearly defined at the outset of the acquisition.

* * * * *

12. Section 15.608 is amended in paragraph (a) (1) by adding text to the end of the paragraph to read as follows:

15.608 Proposal evaluation.

(a) * * *

(1) * * * In acquisitions where services are being acquired on the basis of the number of hours provided, the contracting officer shall ensure that the use of uncompensated overtime will not degrade the level of technical expertise required to fulfill the Government's requirements. In such acquisitions, contracting officers shall conduct a risk assessment and use it to evaluate any proposal that reflects unrealistically low labor rates that may result in quality or service shortfalls or unbalanced distribution of uncompensated overtime among skill levels or its use in key technical positions.

* * * * *

13. Section 15.611 is amended in paragraph (c) by adding text to the end of the paragraph to read as' follows:

15.611 Best and final offers.

* * * * *

(c) * * * Before requesting an additional (second or subsequent) best and final offer, the contracting officer shall obtain approval from the source selection authority and the senior procurement executive for acquisitions under formal source selection or from the head of the contracting activity for all other acquisitions. Lower approval levels may be established in agency procedures.

14. Section 15.801 is amended by adding the definition *Cost realism* in alphabetical order to read as follows:

15.801 Definitions.

* * * * *

Cost realism means that a cost/price proposal is realistic for the work to be performed, reflects a clear understanding of the requirements and is consistent with various elements of the offeror's technical proposal.

* * * * *

PART 16—TYPES OF CONTRACTS

15. Section 16.104 is amended by adding paragraph (k) to read as follows:

16.104 Factors in selecting contract types.

* * * * *

(k) *Acquisition history.* Generally, the amount of risk to a contractor will decrease as the requirement is repetitively acquired. Also, product descriptions or descriptions of services to be performed can be more clearly defined. Therefore, contract types placing increasing risk on the contractor should be selected for follow-on contracts and product descriptions or descriptions of services to be performed should be more definitive than previous acquisitions for the same or similar requirements.

16. Section 16.202–2 is amended by revising the introductory paragraph to read as follows:

16.202–2 Application.

A firm-fixed-price contract is suitable for acquiring commercial products or commercial-type products (see 11.001), or for acquiring other supplies on the basis of reasonably definite functional or detailed product descriptions (see 10.001), or services with reasonably definitive descriptions (see 10.004(a)(5)) when the contracting officer can establish fair and reasonable prices at the outset, such as when—

* * * * *

17. Section 16.402–2 is amended by adding a new paragraph heading after (a); redesignating the existing text of paragraphs (a) through (d) as (a) (1) through (4); adding a new paragraph (b); redesignating paragraphs (e) through (g) as (c) (1) through (3); and inserting a new paragraph heading for (c) to read as follows:

16.402–2 Technical performance incentives.

(a) *Supply contracts.* (1) * * *

* * * * *

(b) *Services contracts.* Technical performance incentives for performance of objectively measurable tasks may be appropriate when quality of performance is critical and incentives are likely to motivate the contractor.

(c) *General.* (1) * * *

* * * * *

16.404–1 [Amended]

18. Section 16.404–1 is amended in the first sentence of paragraph (b)(1) by inserting the words "services or" after the word "for"; and in the second sentence of paragraph (b)(2) by removing the word "other" and inserting in its place "services or".

PART 17—SPECIAL CONTRACTING METHODS

19. Section 17.204 is amended in paragraph (e) by adding a new last sentence to read as follows:

17.204 Contracts.

* * * * *

(e) * * * For example, see Subpart 22.10 and section 37.104.

* * * * *

20. Section 17.205 is amended in paragraph (a) by adding a new last sentence to read as follows:

17.205 Documentation.

(a) * * * This documentation requirement does not apply to the use of the clause at 52.217–8, Option to Extend Services.

* * * * *

21. Section 17.207 is amended in paragraph (c)(3) by removing the word "The" and inserting in its place "For all options except those exercised under 52.217–8, Option to Extend Services,"; in paragraph (c)(4) by inserting a period after "part 5" and removing the remainder of the sentence; in the first sentence of paragraph (f) by inserting after "Before exercising an option," the words "except those exercised under 52.217–8, Option to Extend Services,"; redesignating the current paragraph "(g)" as "(h)"; and adding a new paragraph (g) to read as follows:

17.207 Exercise of options.

* * * * *

(g) When exercising the option under 52.217–8, Option to Extend Services, because a protest or mistake in bid precludes timely award of a new contract, no file documentation beyond that required for the protest or mistake in bid and by (c) (1), (2), and (4) of this section is required. When exercised in any other circumstances beyond the control of the contracting office, the contracting officer shall document the file as required by (c) (1), (2), and (4) of this section; describe the circumstances which caused the delay of the new contract; and provide rationale as to why the extension of the performance period of the existing contract is the most effective means of continuing performance of the services.

* * * * *

22. Section 17.208 is amended by revising paragraphs (f) and (g) to read as follows:

17.208 Solicitation provisions and contract clauses.

* * * * *

(f) The contracting officer shall insert a clause substantially the same as the clause at 52.217–8, Option to Extend Services, in solicitations and contracts for services when a follow-on contract is anticipated (see 37.106).

(g) The contracting officer shall insert a clause substantially the same as the clause at 52.217–9, Option to Extend the Term of the Contract, in solicitations and contracts when the inclusion of an option is appropriate (see 17.200 and 17.202) and it is necessary to include in the contract a requirement that the Government shall give the contractor a written notice of its intent to extend the contract, a stipulation that an extension of the contract includes an extension of the option, and/or a specified limitation on the total duration of the contract.

23. Part 37 is revised to read as follows:

PART 37—SERVICE CONTRACTING

Sec.
37.000 Scope of part.

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37.102 Policy.
37.103 Special aspects of service contracting.
37.104 Term and extension of service contracts.
37.105 Solicitation provisions and contract clauses.

Subpart 37.2—Performance-Based Contracting

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Subpart 37.7—Paid Advertisements

37.700 Scope of subpart.
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37.000 Scope of part.

This part prescribes policies and procedures which are specific to the acquisition of services by contract. This part applies to all contracts for services regardless of the type of contract or kind of service being acquired. Additional guidance for research and development services is in part 35; architect-engineering services is in part 36; information resources is in part 39; and transportation services is in part 47. Parts 35, 36, 39, and 47 take precedence over this part in the event of inconsistencies. This part includes, but is not limited to, contracts for services to which the Service Contract Act of 1965 applies (see subpart 22.10).

Subpart 37.1—Service Contracts—General

37.101 Definitions.

Nonpersonal services contract means a contract under which the personnel rendering the services are not subject, either by the contract's terms or by the manner of its administration, to the supervision and control usually prevailing in relationships between the Government and its employees.

Performance-based contracting means structuring all aspects of an acquisition around the purpose of the work to be performed as opposed to either the manner by which the work is to be performed or broad and imprecise statements of work. It requires the use of methods which describe requirements in terms of measurable performance standards (see subpart 37.2).

Personal services contract means a contract that, by its express terms or as administered, makes the contractor personnel appear, in effect, to be Government employees (see subpart 37.3).

Services means the expenditure of the time and effort of individuals or groups for the performance of identifiable tasks, rather than the delivery of an end item of supply. For purposes of this subpart, architect-engineer services acquired in

accordance with 40 U.S.C. 541–544, as amended, are excluded.

37.102 Policy.

(a) Agencies shall generally rely on the private sector for commercial services (see subpart 7.3), but in no event may a contract be awarded for the performance of an inherently governmental function.

(b) Agencies shall use performance-based contracting methods (see subpart 37.2), to the maximum extent practicable, for the acquisition of services, including those acquired under supply contracts, except:

(1) Architect-engineer services acquired in accordance with 40 U.S.C. 541–544, as amended (see part 36); and

(2) Construction (see part 36).

(c) Agencies shall not award personal service contracts (see subpart 37.3) unless specifically authorized by statute to do so (see 5 U.S.C. 3109).

37.103 Special aspects of service contracting.

(a) Contracting officers must use performance-based contracting for services or justify the use of any other method (see 37.203).

(b) Contracting officers must determine whether the services are personal or nonpersonal (see 37.303).

(c) Contracting officers should be alert to organizational conflict of interest situations when soliciting and awarding service contracts and, when appropriate, take action required by subpart 9.5.

(d) Service contracts may require contractors to deliver, store, use, or handle hazardous materials in the course of contract performance. When this is the case, the requirements of part 23 must be followed.

(e) Some service contracts require the contractor to obtain licenses or permits in order to perform. In those cases, solicitations and contracts, except those for mortuary services, must comply with 36.507.

(f) Contracting officers must verify that the contract file contains the certifications required of competing contractors, contracting officers, and procurement officials (see 3.104–9).

(g) Contracts with "Pinkerton Detective Agencies or similar organizations" are prohibited by 5 U.S.C. 3108. This prohibition applies only to contracts with organizations that offer quasi-military armed forces for hire, or with their employees. An organization providing guard or protective services does not thereby become a "quasi-military armed force", even though the guards are armed or the organization provides general investigative or detective services (see 57 Comp. Gen. 524).

37.104 Term and extension of service contracts.

(a) When contracts for services are funded by annual appropriations, the term of contracts so funded shall not extend beyond the end of the fiscal year of the appropriation except when authorized by law.

(1) See 32.703–2 for contracts conditioned upon the availability of funds.

(2) See 32.703–3 for contracts crossing fiscal years.

(b) Agencies with multiyear contracting authority shall consider the use of such authority in order to offer a more stable long-term contract (see subpart 17.1).

(c) The total duration of any service contract subject to the Service Contract Act of 1965 (41 U.S.C. 351–357) shall not exceed 5 years (see subpart 22.10).

(d) Award of contracts for recurring and continuing service requirements are often delayed due to circumstances beyond the control of contracting offices. Examples of circumstances causing such delays are bid protests and alleged mistakes in bid. To avoid negotiation of short extensions to existing contracts, the contracting officer may include an option clause (see 17.208(g)) in solicitations and contracts which will enable the Government to require continued performance of any services within the limits and at the rates specified in the contract. However, these rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance thereunder shall not exceed 6 months.

37.105 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 52.237–1, Site Visit, in solicitations for services to be performed on Government installations. If an organized site visit will be conducted, use the clause at 52.237–1, Site Visit, with its Alternate I.

(b) The contracting officer shall insert the clause at 52.237–2, Protection of Government Buildings, Equipment, and Vegetation, in solicitations and contracts for services to be performed on Government installations.

(c) The contracting officer may insert the clause at 52.237–3, Continuity of Services, in solicitations and contracts for services, when—

(1) The services under the contract are considered vital to the Government and must be continued without interruption and when, upon contract expiration, a successor, either the Government or another contractor, may continue them; and

(2) The Government anticipates difficulties during the transition from one contractor to another or to the Government. Examples of instances where use of the clause may be appropriate are services in remote locations or services requiring personnel with special security clearances.

(d) The contracting officer shall insert the clause at 52.237–8, Severance Payments to Foreign Nationals Employed Under a Service Contract Performed Outside the United States, in solicitations and contracts for services which may be performed in whole or in part outside the United States.

(e) When services estimated at $100,000 or more are acquired on the basis of the number of hours to be provided, rather than on the task to be performed, the contracting officer shall insert the provision at 52.237–XX, Identification of Uncompensated Overtime, in the solicitation. This provision requires offerors to identify uncompensated overtime hours and the uncompensated overtime rate for direct charge Fair Labor Standards Act-exempt personnel included in their proposals and subcontractor proposals. This includes uncompensated overtime hours that are in indirect cost pools for personnel whose regular hours are normally charged direct (see 15.608(a)(1)).

Subpart 37.2—Performance-Based Contracting

37.200 Scope of subpart.

This subpart prescribes policies and procedures for use of performance-based contracting in the acquisition of services. It implements Office of Federal Procurement Policy Letter 91–2, Service Contracting.

37.201 General.

Performance-based contracting methods provide the means to ensure that required performance quality levels are achieved and that payment is made only for services which meet contract standards. They—

(a) Describe the requirements in terms of results required rather than the method of performance of the work (see 10.002(a) (3) and 10.002(b));

(b) Use formal measurable (i.e., in terms of quality, timeliness, quantity, etc.) performance standards and quality assurance surveillance plans (see 10.004(a) (5), 46.103(a), and 46.401(a));

(c) Specify procedures for reductions to the contract price when services are not performed, or do not meet contract requirements (see 46.407(f));

(d) Include performance incentives based on quality (see Subpart 16.4); and

(e) Use acquisition strategies that provide for award of contracts which are most advantageous to the Government and best promote performance-based contracting (see 6.401, 7.102, 7.103, 7.105, 15.102, 15.404, 15.605, 15.801, 16.102, 16.103, 16.104, 16.202-2, 17.1 and 17.2)

37.202 Elements of performance-based contracting.

37.202-1 Statement of work.

Statements of work shall define the requirements in clear, concise language identifying specific tasks to be accomplished. They must be tailored individually to consider the period of performance, deliverable items, if any, and the desired degree of performance flexibility. When preparing statements of work, agencies shall, to the maximum extent practicable (see 10.004)—

(a) Describe the work in terms of "what" is to be the required output rather than either "how" the work is to be accomplished or the number of hours to be provided;

(b) Enable assessment of work performance against measurable performance standards (see 37.104(b));

(c) Rely on the use of measurable performance standards and financial incentives in a competitive environment to encourage competitors to develop and institute innovative and cost effective methods of performing the work;

(d) Consider issuing draft statements of work to assist in refining statements of work (see 15.405) and achieve the objectives of acquisition streamlining (see 7.105 (a)(8) and 10.002(d)); and

(e) Avoid combining requirements into a single acquisition which is too broad for the agency or a prospective contractor to effectively manage (see 37.104(d)(3)).

37.202-2 Quality assurance.

Agencies shall develop quality assurance surveillance plans when acquiring services (see Subpart 46.2). These plans shall recognize the responsibility of the contractor (see 46.105) to carry out its quality control obligations and shall contain measurable inspection and acceptance criteria corresponding to the performance standards contained in the statement of work. The quality assurance plans shall focus on the level of performance required by the statement of work, rather than the methodology used by the contractor to achieve that level of performance.

37.202-3 Solicitation considerations.

(a) Performance-based contracting can be accomplished either by sealed bid or negotiated procedures. Negotiated procedures are used when quality of performance is a significant factor, as is generally the case in professional and technical services.

(b) The prescription of contractor labor categories, levels of effort, and personnel qualifications should be avoided whenever possible to encourage innovative and efficient methods of performance.

(c) Requirements for services shall be supported by Government cost estimates. When using negotiated procedures, cost estimates shall include types of labor categories and their associated labor hours.

37.202-4 Contract type.

To the maximum extent practicable, performance incentives, either positive or negative or both, shall be incorporated into the contract to encourage contractors to increase efficiency and maximize performance (see Subpart 16.4). These incentives shall correspond to the specific performance standards in the quality assurance surveillance plan and shall be capable of being objectively measured.

37.202-5 Follow-on and repetitive requirements.

Agencies shall use experience gained from prior contracts to optimize the use of performance-based contracting methods in follow-on acquisitions by developing more definitive statements of work and performance standards, and in selecting contract types.

37.203 Justification.

When any method other than performance-based contracting is used, the contracting officer shall document the contract file with the justification for use of other methods in accordance with agency procedures.

Subpart 37.3—Personal Versus Nonpersonal Services

37.301 General.

(a) A personal services contract is characterized by the employer-employee relationship it creates between the Government and the contractor's personnel. The Government is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by the civil service laws. Obtaining personal services by contract, rather than by direct hire, circumvents those laws unless Congress has specifically authorized acquisition of the services by contract.

(b) An employer-employee relationship under a service contract occurs if, as a result of (1) the contract's terms or, (2) the manner of its administration during performance, contractor personnel are subject to the relatively continuous supervision and control of a Government officer or employee. However, giving an order for a specific article or service, with the right to reject the finished product or result, is not the type of supervision or control that converts an individual who is an independent contractor (such as a contractor employee) into a Government employee.

(c) Each contract arrangement must be judged on its own facts and circumstances, with the key question being: Will the Government exercise relatively continuous supervision and control over the contractor personnel performing the contract? The sporadic, unauthorized supervision of only one of a large number of contractor employees might reasonably be considered not relevant, while relatively continuous Government supervision of a substantial number of contractor employees would have to be taken strongly into account (see 37.303).

37.302 Contracting officer determination.

(a) The contracting officer is responsible for determining whether the proposed acquisition will result in a personal or nonpersonal services contract. In doubtful cases, document the file with—

(1) The opinion of legal counsel; and

(2) A memorandum of the facts and rationale supporting the conclusion that the contract does not violate the restriction against contracting for an inherently governmental function.

37.303 Guidelines for determining personal services.

Use the following descriptive elements as a guide in assessing whether a proposed contract is personal in nature:

(a) Performance in a government facility.

(b) Principal tools and equipment furnished by the Government.

(c) Services are applied directly to the integral effort of agencies or an organizational subpart in furtherance of assigned function or mission.

(d) Comparable services, meeting comparable needs, are performed in the same or similar agencies using civil service personnel.

(e) The need for the type of service provided can reasonably be expected to last beyond 1 year.

(f) The inherent nature of the service, or the manner in which it is provided, reasonably requires directly or indirectly, Government direction or supervision of contractor employees in order to—

(1) Adequately protect the Government's interest;

(2) Retain control of the function involved; or

(3) Retain full personal responsibility for the function supported in a duly authorized Federal officer or employee.

37.304 Experts or consultants.

The Office of Personnel Management (OPM) has established requirements which apply to acquiring the personal services of experts or consultants by contract. Therefore, the contracting officer shall coordinate with the cognizant civilian personnel office to ensure that OPM requirements are appropriately addressed.

37.305 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.

Subpart 37.4—Advisory and Assistance Services

37.400 Scope of subpart.

This subpart prescribes policies and procedures for acquiring advisory and assistance services by contract. The subpart regulates these contracts with individuals and organizations for both personal and nonpersonal services.

37.401 Definition.

Advisory and assistance services means services, other than those excluded or exempted in this subpart, to support or improve agency policy development, decision-making, management, and administration, or to support or improve the operation of management systems.

37.402 Policy.

(a) The acquisition of advisory and assistance services is a legitimate way to improve Government services and operations. Accordingly, advisory and assistance services may be used at all organizational levels to help managers achieve maximum effectiveness or economy in their operations.

(b) Subject to 37.405, agencies may contract for advisory and assistance services, when essential to the agency's mission, to—

(1) Obtain outside points of view to avoid too limited judgment on critical issues;

(2) Obtain advice regarding developments in industry, university, or foundation research;

(3) Obtain the opinions, special knowledge, or skills of noted experts;

(4) Enhance the understanding of, and development alternative solutions to, complex issues;

(5) Support and improve the operation of organizations;

(6) Ensure the more efficient or effective operation of managerial or hardware systems.

(c) Advisory and assistance services shall not be—

(1) Used in performing work of a policy, decisionmaking, or managerial nature which is the direct responsibility of agency officials;

(2) Used to bypass or undermine personnel ceilings, pay limitations, or competitive employment procedures;

(3) Contracted for on a preferential basis to former Government employees;

(4) Used under any circumstances specifically to aid in influencing or enacting legislation;

(5) Used to obtain professional or technical advice which is readily available within the agency or another Federal agency.

37.403 Types of advisory and assistance services.

Advisory and assistance services may take the form of information, advice, opinions, alternatives, conclusions, recommendations, training, or direct assistance. These services consist of—

(a) *Individual experts and consultants.* Individual experts and consultants are persons possessing special, current knowledge or skill that may be combined with extensive operational experience. This enables them to provide information, opinions, advice, or recommendations to enhance understanding of complex issues or to improve the quality and timeliness of policy development or decisionmaking.

(b) *Studies, analyses, and evaluations.* Studies, analyses, and evaluations are organized, analytic assessments needed to provide the insights necessary for understanding complex issues or improving policy development or decisionmaking. These analytic efforts result in formal, structured documents containing data or leading to conclusions and/or recommendations. This summary description is operationally defined by the following criteria:

(1) *Objective.* To enhance understanding of complex issues or to improve the quality and timeliness of agency policy development or decision-making by providing new insights into, understanding of, alternative solutions to, or recommendations on agency policy and program issues, through the applications of fact finding, analysis, and evaluation.

(2) *Areas of application.* All subjects, issues, or problems involving policy development of decision-making in the agency. These may involve concepts, organization, programs and other systems, and the application of such systems.

(3) *Outputs.* Outputs are formal structured documents containing or leading to conclusions and/or recommendations. Data bases, models, methodologies, and related software created in support of a study, analysis, or evaluation are to be considered part of the overall study effort.

(c) *Management and professional support services.* Management and professional support services take the form of advice, training, or direct assistance for organizations to ensure more efficient or effective operations of managerial, administrative, or related systems. This summary description is operationally defined in terms of the following criteria:

(1) *Objective.* To ensure more efficient or effective operation of management support or related systems by providing advice, training, or direct assistance associated with the design or operation of such systems.

(2) *Areas of application.* Management support or related systems such as program management, project monitoring and reporting, data collection, logistics management, budgeting, accounting, auditing, personnel management, paperwork management, records management, space management, and public relations.

(3) *Outputs.* Services in the form of information, opinions, advice, training, or direct assistance that lead to the improved design or operation of managerial, administrative, or related systems. This does not include training which maintains skills necessary for normal operations. Written reports are normally incidental to the performance of the service.

(d) *Engineering and technical service.* Engineering and technical services

(technical representatives) take the form of advice, training, or, under unusual circumstances, direct assistance to ensure more efficient or effective operation or maintenance of existing platforms, weapon systems, related systems, and associated software. All engineering and technical services provided prior to final Government acceptance of a complete hardware system are part of the normal development, production, and procurement processes and do not fall in this category. Engineering and technical services provided after final Government acceptance of a complete hardware system are in this category except where they are procured to increase the original design performance capabilities of existing or new systems or where they are integral to the operational support of a deployed system and have been formally reviewed and approved in the acquisition planning process.

37.404 Exclusions.

The following activities and programs are excluded or exempted from the definition of advisory or assistance services:

(a) Activities that are reviewed in accordance with the OMB Circular A–76, Policies for Acquiring Commercial or Industrial Products and Services Needed by the Government.

(b) Architectural and engineering services as defined in part 36.

(c) ADP/Telecommunications functions and related services that are controlled in accordance with 41 CFR Part 201, the Federal Information Resources Management Regulation.

(d) Research on theoretical mathematics and basic medical, biological, physical, social, psychological, or other phenomena.

(e) Engineering studies related to specific physical or performance characteristics of existing or proposed systems.

(f) The day-to-day operation of facilities (e.g., the Johnson Space Center and related facilities) and functions (e.g., ADP operations and building maintenance).

(g) Government-owned, contractor-operated (GOCO) facilities. However, any contract for advisory and assistance services other than the basic contract for operation and management of a GOCO shall come under the definition of advisory or assistance services.

(h) Clinical medicine.

(i) Those support services of a managerial or administrative nature performed as a simultaneous part of, and nonseparable from specific development, production, or operational support activities. In this context, nonseparable means that the managerial or administrative systems in question (e.g., subcontractor monitoring or configuration control) cannot reasonably be operated by anyone other than the designer or producer of the end-item hardware.

(j) Contracts entered into in furtherance of statutorily mandated advisory committees.

(k) Initial training, training aids, and technical documentation acquired as an integral part of the lease or purchase of equipment.

(l) Routine maintenance of equipment, routine administrative services (e.g., mail, reproduction, telephone), printing services, and direct advertising (media) costs.

(m) Auctioneers, realty-brokers, appraisers, and surveyors.

(n) The National Foreign Intelligence Program (NFIP).

(o) The General Defense Intelligence Program (GDIP).

(p) Tactical Intelligence and Related Activities (TIARA)

(q) Foreign Military Sales.

(r) Engineering and technical services as set forth in 37.403(d)

37.405 Management controls.

OMB Circular A–120 requires each agency to establish procedures for a written evaluation at the conclusion of the contract to assess the utility of the deliverables to the agency and the performance of the contractor.

37.406 Requesting activity responsibilities.

Requests for advisory and assistance services shall include—

(a) A statement certifying that the requirement is for advisory and assistance services as defined in this subpart.

(b) Written justification of need and certification that such services do not unnecessarily duplicate any previously performed work or services.

(c) Written approval for such services by an official at a level above the requesting office. However, in the case of requirements received by the contracting officer during the fourth quarter of the fiscal year, for award during the same fiscal year, the approval at the second level, or higher level if required by agency procedures, above the requesting office shall accompany the request for contract action.

(d) Properly chargeable funds certified by the cognizant fiscal/budget office.

37.407 Contracting officer responsibilities.

The contracting officer is responsible for determining whether any requested contractual action, regardless of dollar value, constitutes advisory and assistance services as described in this subpart. The contracting officer's determination shall be final. Before processing any contractual action for advisory and assistance services, the contracting officer shall verify that—

(a) Action is taken to avoid conflicts of interest in accordance with subpart 9.5;

(b) The applicable requirements of this subpart and 37.103 and 37.303 are met;

(c) The services being contracted for consist only of the types of services defined at 37.403;

(d) The request includes a statement of need and certification by the requesting official (see 37.406(a) and (b)); and

(e) Written approval for the requirement, including requests for contract modifications beyond the scope of the acquisition originally approved, has been obtained from the appropriate level(s) (see 37.406(c)).

Subpart 37.5—Dismantling, Demolition, or Removal of Improvements

37.500 Scope of subpart.

This subpart prescribes procedures for contracting for dismantling or demolition of buildings, ground improvements and other real property structures and for the removal of such structures or portions of them (hereafter referred to as "dismantling, demolition, or removal of improvements").

37.501 Labor standards.

Contracts for dismantling, demolition, or removal of improvements are subject to either the Service Contract Act (41 U.S.C. 351–358) or the Davis-Bacon Act (40 U.S.C. 276a–276a–7). If the contract is solely for dismantling, demolition, or removal of improvements, the Service Contract Act applies unless further work which will result in the construction, alteration, or repair of a public building or public work at that location is contemplated. If such further construction work is intended, even though by separate contract, then the Davis-Bacon Act applies to the contract for dismantling, demolition, or removal.

37.502 Bonds or other security.

When a contract is solely for dismantling, demolition, or removal of improvements, the Miller Act (40 U.S.C. 270a–270f) (see 28.102) does not apply.

However, the contracting officer may require the contractor to furnish a performance bond (see 28.103) or other security in an amount that the contracting officer considers adequate to (a) ensure completion of the work, (b) protect property to be retained by the Government, (c) protect property to be provided as compensation to the contractor, and (d) protect the Government against damage to adjoining property.

37.503 Payments.

(a) The contract may provide that the (1) Government pay the contractor for the dismantling or demolition of structures or (2) contractor pay the Government for the right to salvage and remove the materials resulting from the dismantling or demolition operation.

(b) The contracting officer shall consider the usefulness to the Government of all salvageable property. Any of the property that is more useful to the Government than its value as salvage to the contractor shall be expressly designated in the contract for retention by the Government. The contracting officer shall determine the fair market value of any property not so designated, since the contractor will acquire title to this property. The value of this property will therefore be important in determining payment amounts, if any, that will be made to the contractor as compensation in the event of contract termination.

37.504 Contract clauses.

(a) The contracting officer shall insert the clause at 52.237–4, Payment by Government to Contractor, in solicitations and contracts solely for dismantling, demolition, or removal of improvements if it is estimated that the net result of performance will be payment to the contractor.

(1) The basic clause shall be used if the compensation to be paid the contractor is partially in the form of the value of the property to which title will be conveyed to the contractor and partially in the form of payment. If the clause is used, separate contract line items for the value of the property to be conveyed to the contractor and for dismantling, demolition, or removal of improvements work should be used. This will allow computation of the net amount to be inserted in part (a) of the clause.

(2) Alternate I shall be used if the Government is to retain title to all property under the contract.

(b) The contracting officer shall insert the clause at 52.237–5, Payment by Contractor to Government, in solicitations and contracts for dismantling, demolition, or removal of improvements if it is estimated that the net result of performance will be a payment to the Government.

(c) The contracting officer shall insert the clause at 52.237–6, Incremental Payment by Contractor to Government, in solicitations and contracts for dismantling, demolition, or removal of improvements if the net result of performance will be a payment to the Government and it would be advantageous to the Government to receive payments in increments.

Subpart 37.6—Nonpersonal Health Care Services

37.600 Scope of subpart.

This subpart prescribes policies and procedures for obtaining health care services of physicians, dentists and other health care providers by nonpersonal services contracts, as defined in 37.101.

37.601 Policy.

Agencies may enter into nonpersonal health care services contracts with physicians, dentists and other health care providers. Each contract shall—

(a) State that the contract is a nonpersonal services contract, as defined in 37.101, under which the contractor is an independent contractor;

(b) State that the Government may evaluate the quality of professional and administrative services provided, but retains no control over the medical, professional aspects of services rendered (e.g., professional judgments, diagnosis for specific medical treatment);

(c) Require that the contractor indemnify the Government for any liability producing act or omission by the contractor, its employees and agents occurring during contract performance;

(d) Require that the contractor maintain medical liability insurance, in a coverage amount acceptable to the contracting officer, which is not less than the amount normally prevailing within the local community for the medical specialty concerned;

(e) State that the contractor is required to ensure that its subcontracts for provisions of health care services, contain the requirements of the clause at 52.237–7, including the maintenance of medical liability insurance.

37.602 Contracting officer responsibilities.

Contracting officers shall obtain evidence of insurability concerning medical liability insurance from the apparently successful offeror prior to contract award and shall obtain the certificate(s) of insurance evidencing the required coverage prior to commencement of performance.

37.603 Contract clause.

The contracting officer shall insert the clause at 52.237–7, Indemnification and Medical Liability Insurance, in solicitations and contracts for nonpersonal health care services. The contracting officer may include the clause in contracts for nonpersonal health care services when the contract amount is expected to be within the small purchase limitation in 13.000.

Subpart 37.7—Paid Advertisements

37.700 Scope of subpart.

This subpart prescribes policies and procedures for contracting out paid advertisements.

37.701 Definitions.

Advertisement, as used in this subpart, means any single message prepared for placement in communications media, regardless of the number of placements.

Publication, as used in this subpart, means the placement of an advertisement in the printed media or the broadcasting of an advertisement over radio or television.

37.702 Authority.

(a) *Newspapers.* Authority to approve the publication of paid advertisements in newspapers is vested in the head of each agency (44 U.S.C. 3702). This approval authority may be delegated (5 U.S.C. 302(b)). Written authorization, in accordance with agency procedures, must be obtained prior to contracting for advertising in newspapers.

(b) *Other media.* Unless the agency head determines otherwise, advance written authorization is not required to place advertising in media other than newspapers.

37.703 Procedures.

(a) *General.* Contracts and orders for paid advertisements may be placed directly with the media or through an advertising agency.

(b) *Rates.* Payment rates for advertisements shall not exceed the commercial rates charged private individuals, with the usual discounts (44 U.S.C. 3703).

(c) *Proof of advertising.* Every notice for advertising shall be accompanied by a copy of the advertisement or an affidavit of publication furnished by the publisher, radio or television station, or advertising agency concerned (44 U.S.C. 3703). Paying offices shall retain proof of

advertising until the General Accounting Office settles the paying office account.

(d) *Payment.* For paid advertisements requiring written authorization (see 37.702), the contracting officer shall attach a copy of the written authorization to the invoice and submit the invoice for payment in accordance with agency procedures.

37.704 Use of advertising agencies.

(a) *General.* Basic ordering agreements may be placed with advertising agencies for assistance in producing and placing advertisements when a significant number will be placed in several publications and national media. Services of advertising agencies include, but are not limited to, counseling the selection of the media, contacting the media in the interest of the Government, placing orders selecting and ordering typography, copy writing, and preparing rough layouts.

(b) *Use of commission-paying media.* The services of advertising agencies often can be obtained at no cost to the Government, over and above space costs, as many media give advertising agencies a commission or discount on the space cost that is not given to the Government.

(c) *Use of noncommission-paying media.* Some media do not grant advertising agencies a commission or discount, meaning that the Government can obtain the same rate as the advertising agency. If the advertising agency agrees to place advertising in noncommission-paying media as a no-cost service, the basic ordering agreement shall so state. If, however, the advertising agency will not agree to place advertisements at no cost, the agreement shall provide that the Government may place orders directly with the media or specify an amount that the Government will pay if the agency places the orders.

(d) *Art work, supplies, and incidentals.* The basic ordering agreement may provide for the furnishing by the advertising agency of art work, supplies, and incidentals, including brochures and pamphlets, but not their printing. "Incidentals" include telephone calls, telegrams, and postage incurred by the advertising agency on behalf of the Government.

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

24. Section 44.303 is amended by adding paragraph (j) to read as follows:

44.303 Extent of review.

* * * * *

(j) The use of performance-based contracting methods when subcontracting for services (see subpart 37.2).

PART 46—QUALITY ASSURANCE

25. Section 46.103 is amended by revising paragraph (a) to read as follows:

46.103 Contracting office responsibilities.

* * * * *

(a) Receiving from the activity responsible for technical requirements any specifications for inspection, testing, and other contract quality requirements essential to ensure the integrity of the supplies or services (the activity responsible for technical requirements is responsible for prescribing contract quality requirements, such as inspection and testing requirements or, for service contracts, a quality assurance surveillance plan);

* * * * *

26. Section 46.401 is amended by revising paragraph (a) to read as follows:

46.401 General.

(a) Government contract quality assurance shall be performed at such times (including any stage of manufacture or performance of services) and places (including subcontractors' plants) as may be necessary to determine that the supplies or services conform to contract requirements. Quality assurance surveillance plans are required for service contracts. They should be prepared in conjunction with the preparation of the statement of work. The plan shall specify—

(1) The work requirements to be surveilled, and

(2) The method of surveillance for each.

* * * * *

27. Section 46.407 is amended by revising paragraphs (c)(1) introductory text and (f) to read as follows:

46.407 Nonconforming supplies or services.

* * * * *

(c)(1) In situations not covered by paragraph (b) of this section, the contracting officer shall ordinarily reject supplies or services when the nonconformance adversely affects safety, health, reliability, durability, performance, interchangeability of parts or assemblies, weight or appearance (where a consideration), or any other basic objective of the product description. However, there may be circumstances (e.g., reasons of economy or urgency) when acceptance of such supplies or services is determined by the contracting officer to be in the Government's interest. The contracting officer shall make this determination, based upon—

* * * * *

(f) If nonconforming supplies or services are accepted as authorized in paragraph (c) of this section, an equitable price reduction, as authorized by the inspection clause, or other consideration, shall be made. However, when supplies or services involving minor nonconformances are accepted, an equitable price reduction shall not be made unless (1) it appears that the savings to the contractor in fabricating the nonconforming supplies or performing the nonconforming services will exceed the cost to the Government of processing the equitable price reduction, or (2) the Government's interests otherwise require an equitable adjustment. For services, the contract shall, to the maximum extent practicable, identify the value of the individual work requirement tasks which will be subject to price or fee reduction. This value shall be used, in accordance with agency procedures, to determine the equitable adjustment for nonconforming services.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

28. Section 52.217–9 is amended by revising paragraph (a) to read as follows:

52.217–9 Option to extend the term of the contract.

* * * * *

Option To Extend the Term of the Contract (XXX 1992)

(a) The Government may extend the term of this contract by written notice to the Contractor within (*insert in the clause the period of time in which the Contracting Officer has to exercise the option*); *provided,* that the Government shall give the Contractor a written notice of its intent to extend at least 60 days before the contract expires. The notice of intent does not commit the Government to an extension.

* * * * *

29. Section 52.237–1 is revised to read as follows:

52.237–1 Site visit.

As prescribed in 37.105(a), insert the following provision:

Site Visit (XXX 1992)

(a) Offerors or quoters are urged and expected to inspect the site where services are to be performed and to satisfy themselves regarding all general and local conditions

that may affect the cost of contract performance, to the extent that the information is reasonably obtainable. In no event shall failure to inspect the site constitute grounds for a claim after contract award.

(b) Site visits may be arranged during normal duty hours by contacting:

Name:_____

Address: _____

Telephone: (_____)

(End of provision)

Alternate I (XXX XXXX). As prescribed in 37.105(a), substitute substantially the following for paragraph (b) of the basic provision:

(b) A site visit and pre-solicitation conference has been scheduled for _____ (*insert date and time*). Participants will meet at _____ (*insert location*). No other site visit will be authorized.

30. Section 52.237–2 is amended by revising the introductory paragraph; and removing the derivation line following "(End of clause)" to read as follows:

52.237–2 Protection of Government buildings, equipment, and vegetation.

As prescribed in 37.105(b), insert the following clause:

* * * * *

52.237–3 [Amended]

31. Section 52.237–3 is amended in the introductory paragraph by removing "37.110(c)" and inserting in its place "37.105(c)";

32. Section 52.237–4 is amended by revising the introductory paragraph; in paragraph (d) by removing the last two sentences; and revising Alternate I to read as follows:

52.237–4 Payment by Government to contractor.

As prescribed in 37.504(a), insert the following clause:

* * * * *

Alternate I (APR 1984). As prescribed in 37.504(a)(2), remove paragraph (d) from the basic clause and renumber the remaining paragraphs.

33. Section 52.237–5 is amended by revising the introductory paragraph and paragraph (b) to read as follows:

52.237–5 Payment by contractor to Government.

As prescribed in 37.504(b), insert the following clause:

* * * * *

(b) The Contractor shall remove from the site all property acquired by the Contractor. The Government shall not permit storage of property on the site beyond the completion date.

* * * * *

34. Section 52.237–6 is amended by revising the introductory paragraph and paragraph (c) to read as follows:

52.237–6 Incremental payment by contractor to Government.

As prescribed in 37.504(c), insert the following clause:

* * * * *

(c) The Contractor shall remove from the site all property acquired by the Contractor. The Government will not permit storage of property on the site beyond the completion date.

(End of clause)

35. Section 52.237–7 is amended in the introductory paragraph by removing "37.403" and inserting in its place "37.603"; in paragraph (a) by revising the last sentence; by revising paragraph (b); and in paragraph (d) by revising the first sentence to read as follows:

52.237–7 Indemnification and medical liability insurance.

* * * * *

(a) * * * The Contractor shall require all health care providers performing under this contract to maintain, during the term of this contract, liability insurance issued by a responsible insurance carrier of not less than the following amount(s) per specialty per occurrence: _____ * _____.

(b) An apparently successful offeror, upon request by the Contracting Officer, shall furnish prior to contract award evidence of the insurability of all health care providers who will perform under this contract concerning the medical liability insurance required by paragraph (a) of this clause.

* * * * *

(d) Certificates of insurance evidencing the required coverage for each health care provider who will perform under this contract shall be provided to the Contracting Officer prior to the commencement of services under this contract. * * *

* * * * *

52.237–8 [Amended]

36. Section 52.237–8 is amended in the introductory paragraph by removing "37.110(f)" and inserting in its place "37.105(d)".

37. Section 52.237–XX is added to read as follows:

52.237–XX Identification of uncompensated overtime.

As prescribed in 37.105(e), insert the following provision:

Identification of Uncompensated Overtime (XXX 1992)

(a) *Definitions.* As used in this provision—

Uncompensated overtime means the hours worked in excess of an average of 40 hours per week, by direct charge employees who are exempt from the Fair Labor Standards Act, without additional compensation. Compensated personal absences, such as holidays, vacations, and sick leave, shall be included in the normal work week for purposes of computing uncompensated overtime hours.

Uncompensated overtime rate is the rate which results from multiplying the hourly rate for a 40-hour work week by 40, and then dividing by the proposed hours per week.

(b) For any hours proposed against which an uncompensated overtime rate is applied, the Offeror shall identify in its proposal the hours in excess of an average of 40 hours per week, at the same level of detail as compensated hours, and the uncompensated overtime rate per hour, whether at the prime or subcontract level. This includes uncompensated overtime hours that are in indirect cost pools for personnel whose regular hours are normally charged direct. The proposal shall include the rationale and methodology used to estimate the proposed amount of uncompensated overtime.

(c) The Offeror's accounting practices used to estimate uncompensated overtime must be consistent with its cost accounting practices used to accumulate and report uncompensated overtime hours.

(d) Proposals which include unrealistically low labor rates, or which do not otherwise demonstrate cost realism, will be considered in a technical and cost risk assessment and evaluated for award in accordance with that assessment.

(e) The Offeror shall include a copy of its policy addressing uncompensated overtime with its proposal, and the historical basis for the rate of uncompensated overtime proposed.

(End of provision)

[FR Doc. 92–17801 Filed 7–29–92; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 390 and 394

[FHWA Docket Nos. MC–90–2 and MC–92–12]

RIN 2125–AC48

Notification and Reporting of Accidents

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: The FHWA is proposing to eliminate the requirements that motor carriers submit accident reports to the FHWA and notify the FHWA of fatal accidents as currently required by 49 CFR part 394. Instead, the FHWA, in cooperation with the States, is proposing to implement a new accident reporting system based on State-required police accident reports, which will be electronically transmitted from the States to the FHWA. The FHWA is proposing to change the data which must be submitted and is proposing to revise the definition of "accident." Data obtained from this State-generated

source would replace data obtained from the current carrier self-reporting requirement.

DATES: Comments on this docket must be received on or before September 14, 1992.

ADDRESSES: Submit written, signed comments to GHWA Docket No. MC–90–2, Federal Highway Administration, Office of Chief Counsel, HCC–10, room 4232, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except legal Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard .

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Kozlowski or Mr. Jeff Van Ness, Office of Motor Carrier Standards, (202) 366–2981, or Ms. Allison Smith, Office of Chief Counsel, (202) 366—834, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The FHWA published a notice of proposed rulemaking (NPRM) in the Federal Register on October 15, 1990 (55 FR 41705, Docket MC–90–2), to revise 49 CFR part 394, Notification and Reporting of Accidents, by changing the accident reporting criterion from that of property damage ($4,400) to towaway. The FHWA proposed to define a reportable accident as one in which a motor vehicle was damaged to the extent that it could not be safely driven away from the scene of the accident under its own power after simple repairs.

Moreover, on February 7, 1992, the U.S. Department of Transportation (DOT) published a Request for Comments in response to the President's announcement of a moratorium and review of regulations (see 57 FR 4744, Docket 92–12). That notice requested public comments on which Departmental regulations substantially impede economic growth, may no longer be necessary, are unnecessarily burdensome, or impose needless costs or red tape. One hundred commenters recommended changes to the accident-reporting regulations.

Discussion of Comments

Commenters were concerned that the paperwork burden to motor carriers would increase because of the perceived increase in the number of accidents which, using the new definition, would have to be reported. Other commenters were equally concerned that there would be fewer accidents reported because of the proposed change. As stated in that NPRM, the FHWA estimated there would be an increase of about one additional accident report per motor carrier that would have to be submitted every three years. However, this rule would eliminate the requirement that carriers submit accident reports, thereby greatly reducing the paperwork burden concerns expressed by some of the commenters.

The FHWA proposed in the former NPRM, and is including in this NPRM, a definition of "disabling damage" which excludes situations where a motor vehicle is towed solely for the purposes of clearing the roadway. In response to the earlier NPRM, several commenters voiced concerns that an accident may occur in which no vehicle sustains disabling damage, but a vehicle is towed from the accident scene. This may include, for example, situations in which the commercial motor vehicle driver is found to be in violation of hours of service regulations. Those commenters believed that a "disabling damage" standard requiring accident reporting in such situations would increase the number of accidents required to be reported and, therefore, would result in increased reporting costs and potentially lower safety ratings for motor carriers.

The FHWA believes these comments have merit and proposes that accidents should only be considered reportable if they result in (1) the death of a person, (2) bodily injury to a person, who, as a result of the injury, immediately receives medical treatment away from the scene of the accident, or (3) one or more motor vehicles incurring disabling damage as a result of the accident requiring a vehicle to be transported away from the scene by a tow truck or other vehicle.

Other commenters were concerned by the voluntary nature of the current accident reporting procedures and the lack of specific information on how to complete forms MCS 50–T and MCS 50–B. Since the FHWA is proposing to eliminate the motor carrier-based reporting requirement from the Federal Motor Carrier Safety Regulations (FMCSRs), these comments would be satisfied.

Need for Accident Data

Accident data is important to the FHWA in support of its motor carrier safety regulatory program and is an element in the safety fitness rating procedure. However, the preparation handling and data processing of these accident reports (form MCS 50–T for trucks and form MCS 50–B for buses) is time consuming and expensive both for industry and government. The FHWA estimates that preparation of these forms costs industry at least 35,000 person hours per year, at an hourly rate of about $20. Handling and processing cost the FHWA about $783,000 annually, resulting in a total annual cost of about $1.5 million. In spite of these costly efforts, a great many accidents still go unreported, and the accuracy of self-reported accident information is sometimes questionable. For these reasons, the prioritization and safety rating processes do not currently use data from forms MCS 50–T or MCS 50–B, but rely instead on accidents reported as a part of an on-site safety or compliance review. With the implementation of State-submitted police reports via SAFETYNET, the information gathered will provide a higher level of accuracy, consistency and national uniformity.

A study entitled, "Truck and Bus Accidents: Getting the Facts" (1991), prepared by the National Governors' Association (NGA), established guidelines for a uniform and reliable national data base for truck and bus accidents. A copy of this report has been placed in the docket for review. Reviewers may also obtain a copy of the report from National Governors' Association Publications, P.O. Box 421, Annapolis Junction, Maryland 20701. The telephone number is 301–498–3738. The cost of the publication is $15.

That report recommends, which the FHWA is proposing to adopt, that data on an accident be collected when an accident meets one of the following criteria: (1) One or more persons are killed; (2) one or more persons are injured as a result of the accident and transported from the accident scene for medical treatment; or (3) one or more motor vehicles incurring disabling damage as a result of the accident and transported away from the scene by a tow truck or other vehicle. In addition, the FHWA is proposing to retain in the definition certain occurrences that would not be considered in the criteria for the purposes of this rule. These occurrences are: (1) An occurrence involving only boarding and alighting from a stationary motor vehicle; (2) an occurrence involving only the loading or unloading of cargo; (3) an occurrence in the course of farm-to-market agriculture transportation (as defined in § 390.5) by the motor carrier; or (4) an occurrence in the course of the operation of a passenger car (as defined in § 571.3 of title 49) by a motor carrier and is not transporting passengers for hire or

hazardous materials of a type and quantity that require the vehicle to be marked or placarded in accordance with § 177.823 of this title.

The NGA also recommended that the following data be collected:

1. Carrier Identification
   1a. Name
   1b. Mailing Address: Street or P.O. Box, City, State (two-letter code), Zip Code
   1c. Source of Name (please check)
   1. Shipping Papers (truck) or Trip Manifest (bus)
   2. Side of Vehicle
   3. Driver
   1d. Carrier's Identification Numbers; US DOT (6 digits); ICC MC (6 digits) If none of the above State (indicate state and number) No number
2. Vehicle Configuration
   1. Bus (seats for more than 15 people, including driver)
   2. Single-unit truck (2-axle, 6-tire)
   3 Single-unit truck (3-or-more axle)
   4. Truck/Trailer
   5. Truck Tractor (bobtail)
   6. Tractor/Semi-trailer
   7. Tractor/Doubles
   8. Tractor/Triples
   9. Unknown Heavy Truck, cannot classify
3. Total Number of Axles on Vehicle, Including Trailers
4. Cargo Body Type
   1. Bus (seats for more than 15 people, including driver)
   2. Ban/Enclosed Box
   3. Cargo Tank
   4. Flatbed
   5. Dump
   6. Concrete Mixer
   7. Auto Transporter
   8. Garbage/Refuse
   9. Other
5. Hazardous Materials Involvement
   5a. Did this vehicle have a hazardous materials placard? (yes, no) Answer the following questions ONLY if response to 5a. is yes.
   5b. Indicate from the hazardous materials placard: (1) 4-digit placard number or name taken from the middle of the diamond or from the rectangular box (yes, no)
   5c. Was hazardous cargo from the placarded truck released? (yes, no) (Do not count fuel from the vehicle tank.)
6. Gross Vehicle Weight Rating
7. Sequence of Accident Events (for this vehicle) Sequence Event
   1 2 3 4 Ran Off Road
   1 2 3 4 Jackknife
   1 2 3 4 Overturn (Rollover)
   1 2 3 4 Downhill Runaway
   1 2 3 4 Cargo Loss or Shift
   1 2 3 4 Explosion or Fire
   1 2 3 4 Separation of Units
   1 2 3 4 Collision involving Pedestrian
   1 2 3 4 Collision involving Motor Vehicle in Transport
   1 2 3 4 Collision involving Parked Motor Vehicle
   1 2 3 4 Collision involving Train
   1 2 3 4 Collision involving Pedalcycle
   1 2 3 4 Collision involving Animal
   1 2 3 4 Collision involving Fixed Object
   1 2 3 4 Collision involving Other Object
   1 2 3 4 Other

While the current form MCS 50–T and MCS 50–B contain more data items, the FHWA expects the new SAFETYNET accident database to be more reliable because it eliminates the motor carrier's self-reporting requirement and is based instead on police accident reports. Consequently, the SAFETYNET database would provide a higher level of accuracy, consistency and national uniformity.

As a result of the work of the NGA and for the reasons given earlier, the FHWA is proposing to implement a new accident reporting system, based on State-required police reports which will be electronically transmitted from the States, under the Motor Carrier Safety Assistance Program (MCSAP) as part of the SAFETYNET electronic data sharing program. Information on MCSAP and SAFETYNET has been placed in the docket. States will be required, as part of their MCSAP grant, to participate in SAFETYNET no later than January 1, 1994. This deadline was set in the Motor Carrier Act of 1991, which reauthorized MCSAP through FY 1997 (Title IV of the Intermodal Surface Transportation Efficiency Act of 1991, (ISTEA) Pub. L. 102–240, section 4002, 105 Stat. 2140, 49 U.S.C. app. § 2302).

The FHWA published a notice of proposed rulemaking on April 16, 1992, proposing revisions to the MCSAP to implement, among other items, the new requirements of the authorizing legislation, including the SAFETYNET implementation requirement. The comment period for that NPRM (Docket MC–92–17) closed on June 15, 1992. See 57 FR 13572. The FHWA and the States (through the MCSAP lead agency) will ensure that the annual State Enforcement Plan (SEP) provides for the submission of the accident data according to prescribed standards. The SEP is the document which serves as the basis for monitoring and evaluating performance of the State under its MCSAP grant.

Discussion of the Notice of Proposed Rulemaking

In light of the comments to these dockets, the FHWA is proposing to eliminate the requirement that motor carriers report accidents, to adopt the towaway criterion for accidents for which motor carriers must maintain certain information, and to eliminate other requirements included in part 394. This rule would relieve carriers of the burden of filing MCS 50–T and MCS 50–B accident forms and part 394 would be removed and reserved.

The FHWA is proposing to replace the requirements for preparation, retention and submittal of reports contained in part 394 with a requirement that motor carriers maintain a simplified list of those accidents meeting the proposed definition. The new list would include for each such accident: date, nearest city, state, driver name, number of injuries, number of fatalities, and whether hazardous materials were released (other than fuel spilled from fuel tanks of vehicles involved in the accident). This rule would also require motor carriers to maintain copies of accident reports required by States, other governmental authorities or insurers. The list and the reports would be maintained for 365 days after the date of the accident, instead of the current period of three years, and must be filed so that they may be systematically retrieved.

Currently, 27 States are submitting the NGA accident data to the FHWA. The proposed date for termination of the motor carrier data submitted under part 394 is December 31, 1992. Motor carriers would be required to file a form MCS 50–T or form 50–B for any reportable accident, as currently defined, that occurred in calendar year 1992, even if the report could not be submitted until 1993. Accidents occurring on or after January 1, 1993, would be reported only by the States, through SAFETYNET.

This proposed recordkeeping requirement would provide motor carriers with a current list of accidents, thereby assisting them in modifying their safety program, if warranted. It would also assist Federal and State MCSAP investigators in evaluating a motor carrier's safety program more efficiently and effectively by reducing the time needed to review motor carrier records. An investigator would also be able to compare the motor carrier accident list with the SAFETYNET data to ensure that all accidents as defined in this rule are accounted for.

The FHWA intends to maintain the substance of § 394.15, Assistance in

investigations and special studies, regarding the availability of records. This section would be revised and redesignated as § 390.15.

The FHWA is proposing to eliminate the requirement for motor carriers to submit accident reports at this time based on the comments received in response to docket MC 90–2 and the requirement in the ISTEA regarding full implementation of SAFETYNET by States. Many commenters requested that the accident reporting system be improved so that reliable and accurate data would be submitted to the FHWA. The FHWA believes that the procedures in this NPRM would accomplish this objective.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The action being taken by the FHWA in this document proposes to eliminate the requirement for motor carriers to submit accident reports to the FHWA and other requirements. The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the DOT. This rule is consistent with the objectives outlined in the President's memorandum of January 28, 1992, to Federal agencies on the subject of reducing unnecessary burdens of government regulations. An evaluation conducted pursuant to the President's memorandum estimated that relieving this reporting requirement would result in a cost savings of about $1.5 million annually, or about $750,000 annual cost savings each to the industry and the Federal government.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), the agency has evaluated the effects of this proposal on small entities and has determined that since this action reduces requirements it will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This proposed rule would reduce the amount of paperwork and other collection of information requirements under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* by about 35,000 two-page documents per year.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulatory identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Parts 390 and 394

Highway Safety, Motor Carriers, Reporting and recordkeeping requirements.

Issued on: July 24, 1992.

T.D. Larson,

Administrator.

In consideration of the foregoing, the FHWA proposes to revise subchapter B of chapter III of title 49, Code of Federal Regulations, as set forth below.

PART 390—[AMENDED]

1. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. App. 2503 and 2505; 49 U.S.C. 3102 and 3104; 49 CFR 1.48.

2. Section 390.5 is amended by adding two definitions, placing them in alphabetical order, as follows:

§ 390.5 Definitions.

In this subchapter:

Accident means

(1) Except as provided in paragraph (b) of this section, an occurrence involving a commercial motor vehicle which results in:

(i) The death of a person;

(ii) Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

(iii) One or more motor vehicles incurring disabling damage as a result of the accident requiring the vehicle to be transported away from the scene by a tow truck or other vehicle.

(2) The term *accident* does not include:

(i) An occurrence involving only boarding and alighting from a stationary motor vehicle; or

(ii) An occurrence involving only the loading or unloading of cargo; or

(iii) An occurrence in the course of farm-to-market agriculture transportation (as defined in § 390.5) by the motor carrier; or

(iv) An occurrence in the course of the operation of a passenger car (as defined in § 571.3 of this title) by a motor carrier and is not transporting passengers for hire or hazardous materials of a type and quantity that require the motor vehicle to be marked or placarded in accordance with § 177.823 of this title.

* * * * *

Disabling damage means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

(1) *Inclusions.* Damage to motor vehicles that could have been driven, but would have been further damaged if so driven.

(2) *Exclusions.*

(i) Damage which can be remedied temporarily at the scene of the accident without special tools or parts.

(ii) Tire disablement without other damage even if no spare tire is available.

(iii) Headlamp or taillight damage.

(iv) Damage to turn signals, horn, or windshield wipers which makes them inoperative.

* * * * *

3. Part 390 is amended by adding § 390.15 to read as follows:

§ 390.15 Assistance in investigations and special studies.

(a) A motor carrier shall make all records and information pertaining to an accident available to an authorized representative or special agent of the Federal Highway Administration upon request or as part of any inquiry within such time as the request or inquiry may specify. A motor carrier shall give an

authorized representative or special agent of the Federal Highway Administration all reasonable assistance in the investigation of any accident including providing a full, true and correct answer to any question of the inquiry.

(b) Motor carriers shall maintain for a period of one year following the accident, as defined in § 390.5, the following information:

(1) A list of accidents containing for each accident:

(i) Date of accident,

(ii) Location of nearest city and State of accident,

(iii) Driver name,

(iv) Number of injuries,

(v) Number of fatalities, and

(vi) Whether hazardous materials, other than fuel spilled from the fuel tanks of vehicles involved in the accident, were released.

(2) Copies of all accident reports required by State or other governmental authorities or insurers.

PART 394—[REMOVED AND RESERVED]

4. Part 394 is removed and reserved.

[FR Doc. 92–18037 Filed 7–29–92; 8:45 am]
BILLING CODE 4910–22–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 685

Pelagic Fisheries of the Western Pacific Region; Correction

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of a fishery management plan amendment and request for comments; correction.

SUMMARY: This document corrects an error in the notice of availability for Amendment 6 to the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP), which was published July 6, 1992 (57 FR 29692).

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Fisheries Management Division, Southwest Region, NMFS, Long Beach, California (310–980–4034) or Alvin Katekaru, Southwest Region, NMFS, Pacific Area Office, Honolulu, Hawaii (808–955–8831).

In proposed rule document 92–15727 on page 29692, in the issue of Monday, July 6, 1992, make the following correction:

Under "**FOR FURTHER INFORMATION CONTACT**", in the first column, in the third line of the paragraph, remove the words "Terminal Island, California (310–514–6660)" and replace them with the words "Long Beach, California (310–980–4034)".

Dated: July 24, 1992.

David S Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–17914 Filed 7–29–92; 8:45 am]
BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 57, No. 147
Thursday, July 30, 1992

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

Forms Under Review by Office of Management and Budget

July 24, 1992.

The Department of Agricultural has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Extension

Agricultural Stabilization and Conservation Service

7 CFR 707—Application for Payment Amounts Due Persons Who Have Died, Disappeared, or Who Have Been Declared Incompetent
ASCS–325
On occasion
Individuals or households; 3,000 responses; 1,500 hours
Enda I. Samons (202) 475–5700

New Collection

Food and Nutrition Service

Non-Application in the School Lunch and Breakfast Programs Among Potentially-Eligible Households and Non-Participation in the School Lunch and Breakfast Programs Among Students Approved for Benefits
Single time
Individuals or households; State or local governments; 28,593 responses; 6,039 hours
Cindy Long (703) 305–2340

Donald E. Hulcher,

Deputy Departmental Clearance Officer.

[FR Doc. 92–17995 Filed 7–29–92; 8:45 am]

BILLING CODE 3410–01–M

Federal Grain Inspection Service

Cancellation of Alva's Designation, Request for Comments on the Need for Official Services in the Geographic Area Assigned to Alva, and Request for Applications From Persons Interested in Designation To Provide Official Services in the Geographic Area Assigned to the Alva, (OK) Agency

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: Thomas Oller dba Alva Grain Inspection Department (Alva), advised FGIS that due to a decline in requests for official grain inspection services he plans to cease doing business on July 25, 1992, and is requesting voluntary cancellation of his designation. FGIS is cancelling the designation effective July 25, 1992, and is requesting comments on the need for official inspection services in the geographic area assigned to Alva. 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 sent by telecopier (FAX) by August 31, 1992.

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. Telecopier (FAX) users may send applications and comments to the automatic telecopier machine at 202–720–1015, attention: Homer E. Dunn. If an application is submitted by telecopier, FGIS reserves the right to request an original application. 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 202–720–8525.

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 FGIS' Administrator, 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 end not later than triennially and may be renewed according to the criteria and procedures prescribed in section 7(f) of the Act.

FGIS designated Alva, headquartered in Alva, Oklahoma, to provide official inspection services for the period beginning January 1, 1989, and ending December 31, 1992.

In the July 1, 1992, **Federal Register** (57 FR 29274), FGIS asked persons interested in providing official services in the Alva geographic area to submit an application for designation. Applications were to be due by July 31, 1992. Alva subsequently advised FGIS that they plan to cease operation on July 25, 1992, due to a decline in requests for official inspection services. Alva is requesting voluntary designation cancellation effective July 25, 1992. Persons wishing to obtain official inspection services in the Alva geographic area after July 25, 1992, should contact FGIS' Wichita Field Office at 316–269–7171 (FAX: 316–269–6163).

FGIS is requesting comments on the need for official inspection services in the geographic area served by Alva. At

the same time FGIS is extending the application period to August 31, 1992. FGIS will not designate an applicant unless it determines that there is a need for official services.

The geographic area assigned to Alva, in the State of Oklahoma, pursuant to section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation, if there is a need for official services, is as follows:

Alfalfa, Beckham, Caddo, Custer, Dewey, Ellis, Greer, Harper, Kiowa, Major, Roger Mills, Washita, Woods, and Woodward Counties.

Interested persons are hereby given an opportunity to submit comments on the need for official inspection services in the geographic area assigned to Alva, 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 Alva, Oklahoma area, is for a period not to exceed 3 years beginning about February 1, 1993. 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: July 21, 1992

J. T. Abshier

Director, Compliance Division

[FR Doc. 92–17884 Filed 7–29–92; 8:45 am]

BILLING CODE 3410–EN–F

Forest Service

Intent To Prepare an Environmental Impact Statement for the Adoption of a Conservation Strategy for the Mountain Plover (Charadrius montanus); Pawnee National Grassland, Weld County, CO

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare Environmental Impact Statement.

SUMMARY: The Pawnee National Grassland, Forest Service is proposing to develop a conservation strategy for the Mountain Plover (*Charadrius montanus*). A conservation strategy is needed to ensure that continued existence of Mountain Plover is not jeopardized by management activities on the Grassland. This conservation strategy will be implemented only on the Pawnee National Grassland at this time. Management direction resulting from this Conservation Strategy will be incorporated as an amendment to the Arapaho and Roosevelt National Forests and Pawnee National Grassland Land and Resources Management Plan of May 4, 1984.

The Forest Service invites comments and suggestions on the scope of the analysis to be included in the Draft Environmental Impact Statement (DEIS).

DATES: Comments concerning the scope of the analysis (issues, preliminary alternatives, etc.) should be received in writing by September 30, 1992.

ADDRESSES: Submit written comments, suggestions and questions to Jeffrey M. Losche, District Ranger, Pawnee National Grassland, 660 "O" Street, Greeley, Colorado, 80631.

FOR FURTHER INFORMATION CONTACT: Mark Ball, Project Coordinator, (303) 353–5004.

SUPPLEMENTARY INFORMATION:

In the fall of 1990 and the spring of 1991 the Forest Service received 35 applications for oil and gas lease of 38,423 acres on the Pawnee National Grassland from the oil and gas industry through the Bureau of Land Management. Law and regulation require Forest Service consent before BLM can offer leases for oil and gas under Forest Service managed lands. In accordance with requirements of the National Environmental Policy Act an Environmental Analysis (EA) was completed in October of 1991 and public meetings were held in Greeley, CO on June 27, 1991 and in Denver, CO on July 15, 1991. During the analysis of the issues and concerns raised at these scoping sessions and gathered from formal comments and letters it became apparent that a Finding of No Significant Impact (FONSI) could *not* be reached when the Mountain Plover's population decline was recognized. During the initial analysis it became evident that other management activities and uses of the Grassland may also have an adverse effect on the Mountain Plover, including recreation use, livestock management, wildlife management, travel management, etc.

The focus of the analysis was shifted from dealing with the oil and gas lease applications to preparing an Environmental Impact Statement (EIS) in order to disclose the impacts all Grassland management activities would have on the Mountain Plover as well as the limitations and effects a Mountain Plover conservation strategy would have on other Grassland resource activities.

Major, preliminary issues: Continuing Grassland uses and management activities such as livestock grazing, recreation, oil and gas development may have detrimental effects on Mountain Plover Population and habitat capability. Protecting the Mountain Plover and its habitat will have detrimental effects on activities such as livestock grazing, recreation, and oil and gas development. Should more be learned about the Mountain Plover before putting further restrictions on management activities or should the Forest Service act conservatively and restrict all activities until there is clear evidence that each activity has no adverse effect on Mountain Plover population or habitat?

All issues, concerns and comments gathered during the previous EA process have been retained. Additional issues, concerns and comments were gathered from a subsequent public meeting held in Greeley, CO on May 13, 1992 and comment period ending June 13, 1992.

Alternatives include continuing resource managements currently prescribed in the Forest and Grassland Resource Plan, managing resources to maintain Mountain Plover populations and habitat capability until the requirements of the species to maintain viable populations have been determined, or improve Mountain Plover habitat capability to reduce risk of the species becoming threatened or endangered.

The Deciding Official will be the Forest Supervisor, Arapaho and Roosevelt National Forests/Pawnee National Grassland, 240 West Prospect Road, Fort Collins, CO 80526–2098.

We expect to publish a Draft Environmental Impact Statement in December 1992, and to complete a Final Environmental Impact Statement in May, 1993.

The comment period on the Draft Environmental Impact Statement will be 45 days from the date the Environmental Protection Agency's "Notice Of Availability" appears in the **Federal Register**. It is very important that those interested in this proposed action participate at that time. To be most helpful, comments on the draft Environmental Impact Statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft Environmental Impact Statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an

agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the Final Environmental Impact Statement. *City of Angoon* v. *Hodel,* (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

Date: July 21, 1992.

M.M. Underwood, Jr.

Forest Supervisor.

[FR Doc. 92-18018 Filed 7-29-92; 8:45 am]

BILLING CODE 3410-11-M

Rural Electrification Administration

Northwest Iowa Power Cooperative; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations (40 CFR parts 1500-1508), and REA Environmental Policies and Procedures (7 CFR part 1794), has made a Finding of No Significant Impact (FONSI) with respect to a project proposed by Northwest Iowa Power Cooperative (NIPCO), of Le Mars, Iowa. The proposed project consists of rebuilding approximately 40 miles of 69 kV transmission line in Monona and Woodbury Counties, Iowa. The FONSI is based on a borrower's environmental report (BER) prepared by NIPCO and submitted to REA. REA conducted an independent evaluation of the impacts resulting from the proposed construction and concurs with its scope and content. In accordance with REA Environmental Policies and Procedures, 7 CFR 1794.61, REA has adopted the NIPCO BER as the Environmental Assessment (EA) for the project.

FOR FURTHER INFORMATION CONTACT: Nurul Islam, Environmental Protection Specialist, Environmental Compliance Branch, Electric Staff Division, room 1246, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 720-1784.

Copies of the EA and FONSI are available for review at, or can be obtained from REA at the address provided herein or from Mr. Philip A. Hauan, Manager, Northwest Iowa Power Cooperative, P.O. Box 240, Le Mars, Iowa 51031.

SUPPLEMENTARY INFORMATION: REA has reviewed the BER submitted by NIPCO and has determined that it represents an accurate assessment of the scope and level of environmental impacts of the proposed project. The BER, which includes input from certain State and Federal agencies, has been adopted by REA to serve as its EA.

REA has determined that the BER adequately considered the potential impacts of the proposed project and concluded that approval of the project would not result in a major Federal action significantly affecting the quality of the human environment. REA determined that the proposed project will have no effect on cultural resources, important farmland, floodplains, wetlands, water quality, threatened or endangered species, or critical habitat. REA has identified no other potential significant impact resulting from construction and operation of the proposed transmission line.

Alternatives examined for the proposed project include no action and relocating the transmission line to a new right-of-way. REA determined that the proposed project is an environmentally acceptable alternative that meets NIPCO's need with a minimum of adverse environmental impact. REA has concluded that project approval would not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, the preparation of an environmental impact statement is not necessary.

In accordance with REA Environmental Policies and Procedures, 7 CFR part 1794, NIPCO published notices in a newspaper of general circulation in the area and requested comments on the proposed project. The public was given 30 days to respond to the notices. No responses to the notices were received by NIPCO or REA.

Dated: July 21, 1992.

George E. Pratt,

Deputy Administrator—Program Operations.

[FR Doc 92-18035 Filed 7-29-92; 8:45 am]

BILLING CODE 3410-15-F

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-008]

Color Television Receivers From Korea; Court of International Trade Decision

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Court of International Trade Decision.

SUMMARY: On July 14, 1992, the United States Court of International Trade affirmed the Department of Commerce's redetermination on remand of the final results of the first administrative review of the antidumping duty order on color television receivers from Korea. *Daewoo Electronics Co., Ltd., et al.* v. *United States,* Slip Op. 92-107 (CIT July 14, 1992). If the Court's opinion in this case is not appealed, or is affirmed upon appeal, the final results of the first administrative review will be amended to reflect the margins found by the Department of Commerce in its remand results, which were affirmed by the Court of International Trade.

DATES: *Effective Date:* July 14, 1992.

FOR FURTHER INFORMATION CONTACT: Karin Price or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-2923.

SUPPLEMENTARY INFORMATION:

Background

On April 3, 1989, the Court of International Trade (CIT), in *Daewoo Electronics Co., Ltd. et al.* v. *United States,* 712 F. Supp. 931 (CIT 1989), remanded the final results of the fires administrative review of the antidumping duty order on color television receivers (CTVs) from Korea (49 FR 50420, December 28, 1984) to the Department of Commerce (the Department) for reconsideration. On April 6, 1990, the Department submitted the final results of the redetermination on remand. These results were revised on May 9, 1990 correct certain clerical errors.

On March 25, 1991, the CIT issued another remand order instructing the Department to reconsider the final results of its redetermination on remand, including the measurement of tax incidence, which the CIT held should be done on a disaggregated basis for each

respondent and for each type of CTV. the Department completed its second remand in accordance with the CIT's instructions, and submitted it to the CIT on September 24, 1991.

In its decision in *Timken Co.v. United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 USC 1516a(e), the Department must publish a notice of a court decision which is not "in harmony" with a Department determination, and must suspend liquidation of entries pending a "conclusive" court decision. the CIT's decision of July 14, 1992 constitutes a decision not in harmony with the Department's final results of the first administrative review. Publication of this notice fulfills the *Timken* requirement.

Accordingly, the Department will continue the suspension of liquidation of the subject merchandise. Further, absent an appeal, or, if appealed, upon a "conclusive" court decision affirming the CIT's opinion, the Department will amend the final results of the first administrative review of CTVs from Korea to reflect the margins of the Department's remand results, which were affirmed by the CIT.

Dated: July 23, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92–18043 Filed 7–29–92; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF DEFENSE

Department of the Army Corps of Engineers

Availability of a Joint Draft Environmental Impact Statement/ Environmental Impact Report (EIS/ EIR) for Arts Park LA, Los Angeles, CA

AGENCY: U.S. Army Corps of Engineers, Los Angeles District (Federal); City of Los Angeles, Department of Recreation and Parks (State).

ACTION: Notice of availability of a joint draft environmental impact statement/ environmental impact report (EIS/EIR).

SUMMARY: This draft EIS/EIR analyzes the potential environmental impacts associated with the proposed construction of Arts Part LA. The applicant, The Cultural Foundation, proposes construction of approximately 200,000 square feet of facilities on a 60-acre parcel of land in the Lake Balboa area of the Supulveda Basin in the City of Los Angeles, California. The proposed action is consistent with the development plan for the area based on the 1981 Sepulveda Basin Master Plan and Final Environmental Impact Report/ Statement.

This Draft EIS/EIR has been prepared to fulfill the requirements of the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA).

The overall analysis considers an array of alternatives developed to meet the primary planning objectives of providing a suitable cultural arts center in the San Fernando Valley. The Applicant's proposed action provides for the phase construction over a period of about ten years, beginning with development of a Performance Amphitheater and overall roadway infrastructure, then progressing to other proposed facilities, including the Natural History Museum, Performing Arts Pavilion, Arts Park Center, Artists' Outdoors Workshop, Children's Center for the Arts, Performance Grove, Demonstration Garden, Media Education Center and Parking Facilities. The anticipated impacts and cumulative effects of the construction of the Proposed Action, including mitigation measures, have been considered.

PUBLIC HEARING: Public hearings regarding this action are scheduled for August 27th 1992, at 2 p.m. and 7 p.m. in the Drill Room of the Marine Corps Reserve Center, 6337 Balboa Blvd., Encino, CA 91316–1584.

FOR FURTHER INFORMATION CONTACT: Comments concerning the Draft EIS/EIR should be received by September 14, 1992, and should be addressed to: U.S. Army Corps of Engineers, Los Angeles District, (Attn: Mr. Gene Seagle, CESPL–PD–RL), 300 North Los Angeles Street, Los Angeles, California 90012–2325. Telephone: (213)–894–5030. Fax: (213)–894–5312.

R.L. VanAntwerp,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 92–17975 Filed 7–29–92; 8:45 am]

BILLING CODE 3710–KF–M

U.S. Army Reserve Command Independent Commission; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee meeting:

Name of Committee: U.S. Army Reserve Command Independent Commission.

Date of Meeting: September 28 & 29, 1992.

Place: 1225 Jefferson Davis Highway, suite 1410, Arlington, Virginia 22202.

Time: 8 a.m.–5 p.m.

Purpose: The Commission was established to assess the progress and effectiveness of the United States Army Reserve Command since its establishment.

Summary of Agenda: This is the seventh meeting of the Commission. The Commission will review command and control alternatives and prepare recommendations for the Secretary of the Army.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Committee at the time and in the matter permitted by the committee. Anyone desiring to appear before the committee should contact the staff for procedures.

Ellis L. Pennington,

LTC, FA, U.S. Army Reserve Command, Independent Commission.

[FR Doc. 92–18013 Filed 7–29–92; 8:45 am]

BILLING CODE 3710–01–M

U.S. Army Reserve Command Independent Commission; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee meeting:

Name of Committee: U.S. Army Reserve Command Independent Commission.

Date of Meeting: September 3, 1992.

Place: 1225 Jefferson Davis Highway, Suite 1410, Arlington, Virginia 22202.

Time: 8 a.m.—5 p.m.

Purpose: The Commission was established to assess the progress and effectiveness of the United States Army Reserve Command since its establishment.

Summary of Agenda: This is the sixth meeting of the Commission. The Commission will examine opportunities for improvement in command control of the USAR.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the matter permitted by the committee. Anyone desiring to appear before the committee should contact the staff for procedures.

Ellis L. Pennington,

LTC, FA, U.S. Army Reserve Command, Independent Commission.

[FR Doc. 92–18014 Filed 7–29–92; 8:45 am]

BILLING CODE 3710–01–M

Military Traffic Management Command; Rules and Accessorial Services Governing the Movement of Department of Defense Freight Traffic by Air Carrier, Air Forwarder and Air Taxi

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice of procedural changes in DOD freight rate acquisition programs.

SUMMARY: The Military Traffic Management Command (MTMC), for the Department of Defense (DOD), intends to modify the procedures used to acquire rates and changes from the commercial air carrier industry for the movement of freight traffic. This modification is the issuance of a rules publication designed to standardize and simplify the procurement of rates and services for Government traffic moving by air transportation service under section 10721 of the Interstate Commerce Act. This publication, MTMC Air Rules Publication No. 20, is available in draft form for public review and comment. A copy of this publication may be obtained by writing HQ, Military Traffic Management Command, ATTN: MTIN–NG, room 629, 5611 Columbia Pike, Falls Church, VA 22041–5050 or telephone (703) 756–1585. Written comments concerning the proposed publication will be considered if received not later than September 14, 1992. Address comments to: Commander, Military Traffic Management Command, Attn: MTIN–NG, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Mr. Blaise J. Guzzardo, HQ, Military Traffic Management Command, Attn: MTIN–NG, 5611 Columbia Pike, Falls Church, VA 22041–5050, telephone (703) 756–1585.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92–17974 Filed 7–29–92; 8:45 am]

BILLING CODE 3710–08–M

Proposed Addition of Electronic Data Interchange (EDI) Verbiage to the Personal Property Traffic Management Regulation, DOD 4500.34R

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice of change.

SUMMARY: This is to advise all Department of Defense (DOD) approved domestic and international household goods, unaccompanied baggage, mobile home, and boat carriers of recommended changes to the Personal Property Traffic Management Regulation (PPTMR), DOD 4500.34R, pertaining to Electronic Data Interchange (EDI). Changes to the PPTMR may be obtained by writing HQ, Military Traffic Management Command, ATTN: MTPP–MA, 5611 Columbia Pike, Falls Church, VA 22150–5050.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Jebo, HQ Military Traffic Management Command, ATTN: MTPP–MA, 5611 Columbia Pike, Falls Church, VA 22150–5050, telephone: (703) 756–1600.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92–17973 Filed 7–29–92; 8:45 am]

BILLING CODE 3710–08–M

Military Traffic Management Command; Defense Transportation Tracking System

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice.

SUMMARY: The Department of Defense (DOD) is expanding its Defense Transportation Tracking System (DTTS) to track Security Risk Category (SRC) III and IV munitions effective 1 October 1992.

ADDRESSES: Military Traffic Management Command, ATTN: MT–SS, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Jones or CPT Irene Rosen, HQMTMC, 5611 Columbia Pike, Falls Church, VA 22041–5050, telephone (703) 756–1089.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to provide information on the expansion of the Defense Transportation Tracking System (DTTS).

The Military Services and the Assistant Secretary of Defense for Command, Control, Communications and Intelligence have approved expansion of DTTS. The expansion implements a phased plan that will eventually result in the tracking of all DOD Categorized and Uncategorized munitions under Satellite Motor Surveillance Service (SM).

Accordingly, beginning on 1 October 1992, DTTS will implement the second step of the 3-step expansion plan. On that date, the tracking of SRC III and IV Arms, Ammunition and Explosives (AA&E) will commence. SRC I and II AA&E shipments, totalling about 6,000 per year, are currently being tracked. Tracking of SRC III and IV will add approximately 16,000 shipments annually to the SM tracking volume. During this phase of the expansion, the Department of Defense will pay up to $0.22 per mile for SM service. Carriers may charge at or below this rate to provide SM.

Carriers participating in the transport of DOD AA&E are invited to provide MTMC any comments or concerns they may experience in regards to this expansion of operations.

Formats and data element requirements for SM are spelled out in a DOD standard rules publication. A copy of the SM rule may be obtained from HQs, Military Traffic Management Command, Directorate of Inland Traffic, Attn: MT–INNG, 5611 Columbia Pike, Falls Church, VA 22041–5050.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92–17976 Filed 7–29–92; 8:45 am]

BILLING CODE 3710–08–M

Availability for Non-exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Concerning Potentiation of Immunotoxin Action by Brefeldin A

AGENCY: U.S. Army Medical Research and Development Command, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFF 404.6, announcement is made of the availability of U.S. Patent No. 5,112,607 entitled "Potentiation of Immunotoxin Action by Brefeldin A" issued May 12, 1992 for licensing. This patent has been assigned to the United States of America as represented by the Secretary of the Army, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Moran, Patent Attorney, Office of the Command Judge Advocate, U.S. Army Medical Research and Development Command, Fort Detrick, Frederick, Maryland 21702–5012, telephone (301) 619–2065.

SUPPLEMENTARY INFORMATION: Ricin is a potent toxin which is essentially non-specific in the types of cells it kills. The toxin consists of two peptide chains:

(1) The B-chain binds to surface determinants found on virtually all cells and assists in inserting the A-chain into the cytosol of the cell.

(2) The A-chain enzymatically inactivates the protein synthetic machinery once it has entered the cytosol. Immunotoxins are designed to specifically kill predetermined target cells without harming other non-target cells in the population. This is accomplished by attaching ricin A-chain

to a monoclonal antibody directed to a surface determinant found exclusively on the selected target cell. While specificity is vastly increased, the target cell toxicities of immunotoxins have proven to be much lower than the native (A- B- chain) toxins. Brefeldin-A (BFA) has been shown to potentiate the specific, target cell toxicity of a number of immunotoxins. In addition, BFA blocks the non-specific toxicities of both native ricin and ricin A chain. The apparently low toxicity of BFA in animals suggests that the compound is a good candidate for potentiating the efficacy of immunotoxin therapy.

Kenneth L. Denton,

Army Federal Register, Liaison Officer.

[FR Doc. 92–17977 Filed 7–29–92; 8:45 am]

BILLING CODE 3710–08–M

Performance Review Boards; Membership

AGENCY: Senior Executive Service Office, Directorate of Civilian Personnel, Department of the Army, DOD.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of the Performance Review Boards for the Department of the Army.

EFFECTIVE DATE: July 27, 1992.

FOR FURTHER INFORMATION CONTACT: Jeanne Raymos, Senior Executive Service Office, Directorate of Civilian Personnel, Headquarters, Department of the Army, the Pentagon, room 2C670, Washington, DC 20310–0300.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of title 5, U.S. Code, requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Performance Review Board for the Office Secretary of the Army, are:

1. Mr. William K. Takakoshi, Special Assistant to the Under Secretary of the Army, Office of the Under Secretary of the Army
2. Mr. Walter W. Hollis, Deputy Under Secretary of the Army Operations Research, Office, Deputy Under Secretary of the Army (Operations Research)
3. Dr. Daniel Willard, Operations Research Analyst, Office, Deputy Under Secretary of the Army (Operations Research)
4. Dr. Robert N. Stearns, Deputy Assistant Secretary (Project Management), Assistant Secretary of the Army (Civil Works)
5. Mr. Morgan R. Rees, Deputy Assistant Secretary (Planning, Policy and Legislation), Assistant Secretary of the Army (Civil Works)
6. Ms. Erin J. Hausman, Assistant Deputy Assistant Secretary of the Army for Army Budget, Assistant Secretary of the Army (Financial Management)
7. Dr. Robert W. Raynsford, Special Advisor for Economic Policy and Productivity Programs, Assistant Secretary of the Army (Financial Management)
8. BG Roger Thompson, Director of Operations Directorate, Assistant Secretary of the Army (Financial Management)
9. Mr. Michael W. Owen, Principal Deputy Assistant Secretary of the Army (Installations, Logistics and Environment), Assistant Secretary of the Army (Installations, Logistics and Environment)
10. Ms. Patricia M. Hines, Deputy Assistant Secretary of the Army for Training, Education and Simulation, Assistant Secretary of the Army (Manpower and Reserve Affairs)
11. Mr. Robert M. Emmerichs, Deputy Assistant Secretary of the Army (Military Personnel Management and Equal Opportunity Policy), Assistant Secretary of the Army (Manpower and Reserve Affairs)
12. Mr. George E. Dausman, Deputy Assistant Secretary for Procurement, Assistant Secretary of the Army (Research, Development and Acquisition)
13. Mr. Keith Charles, Deputy Assistant Secretary for Plans and Programs, Assistant Secretary of the Army (Research, Development and Acquisition)
14. BG William H. Campbell, Deputy for Program Assessment and International Cooperation, Assistant Secretary of the Army (Research, Development and Acquisition)
15. BG John E. Longhouser, Assistant Deputy for Systems Management, Assistant Secretary of the Army (Research, Development and Acquisition)
16. Mr. William E. Grayson, Principal Deputy General Counsel/Chief of Legal Services, Office of the General Counsel
17. Mr. Darrel L. Peck, Deputy General Counsel (Military and Civil Affairs), Office of the General Counsel
18. Mr. Earl J. Holliman, Army Spectrum Manager, Director of Information Systems for Command, Control, Communications, and Computers
19. BG David J. Kelly, Director for Systems Management, Director of Information Systems for Command, Control, and Computers
20. Mr. Thomas Druzgal, Deputy Auditor General, Army Audit Agency
21. Mr. Henry J. Fischer, Jr., Regional Auditor General (Northeastern Region), Army Audit Agency

The members of the Performance Review Board for the Office Army Acquisition Executive are:

1. Mr. Melvin E. Burcz, Program Executive Officer, Combat Support
2. Mr. Dale G. Adams, Program Executive Officer, Armaments
3. Mr. George G. Williams, Program Executive Officer (Fire Support)
4. BG William H. Campbell, Deputy for Program
5. BG John E. Longhouser, Deputy for Systems Management, Office, Assistant Secretary of the Army (Research, Development and Acquisition)
6. Mr. George E. Dausman, Deputy Assistant Secretary of the Army for Procurement, Office, Assistant Secretary of the Army (Research, Development and Acquisition)
7. Mr. George T. Singley, III, Deputy Assistant Secretary of the Army for Research and Technology/Chief Scientist, Office, Assistant Secretary of the Army (Research, Development and Acquisition)
8. MG Dewitt T. Irby, Program Executive Officer, Aviation

The members of the Performance Review Board for the Office Consolidated Command Performance Review Board are:

1. Mr. William R. Lucas, Deputy to the Commander, Headquarters, Military Traffic Management Command
2. Mr. Thomas D. Collinsworth, Director, Military Traffic Management Command, Transportation Engineering Agency, Headquarters, Military Traffic Management Command
3. BG David A. Whaley, U.S. Army Commander, Military Management Traffic Command Eastern Area, Headquarters, Military Traffic Management Command
4. BG Daniel M. Kelleher, U.S. Army Commander, Military Management Traffic Command Western Area, Headquarters, Military Traffic Management Command
5. MG Henry M. Hagwood, Jr., Deputy Chief of Staff for Resource Management, U.S. Army Training and Doctrine Command

6. BG Paul Y. Chinen, Deputy Chief of Staff for Base Operation Support, U.S. Army Training and Doctrine Command
7. Mr. Mervin A. Frantz, Jr., Assistant Deputy Chief of Staff for Resource Management, U.S. Army Training and Doctrine Command
8. Dr. Eugene R. LaRocque, Jr., Director of Operations, TRADOC Analysis Command, U.S. Army Training and Doctrine Command
9. BG John G. Zierdt, Jr., Director, Resource Management, J8, Headquarter, Forces Command
10. Mr. William S. Fraim, Deputy Director for Personnel, J1, Headquarter, Forces Command
11. Dr. Michael L. Gentry, Technical Director, U.S. Army Information Systems Engineering Command, U.S. Army Information Systems Command
12. Mr. Leonard J. Mabius, Senior Technical Director/Chief Engineer, U.S. Army Information and Systems Command
13. MG Samuel A. Leffler, Deputy Commander, U.S. Army Information Systems Command
14. BG Robert E. Wynn, Commander, 7th Signal Command, U.S. Army Information Systems Command
15. Mr. Williams S. Rich, Jr., Deputy and Technical Director, U.S. Army Foreign Science and Technology Center, U.S. Army Intelligence and Security Command
16. BG Michael M. Schneider, Deputy Commander, HQ INSCOM, U.S. Army Intelligence and Security Command
17. Mr. Larry C. Hanson, Assistant Deputy Chief of Staff for Resource Management, Headquarters, U.S. Army Europe
18. Mr. Archie D. Grimmett, Assistant Deputy Chief of Staff for Personnel (Civilian Personnel)

The members of the Performance Review Board for the Office Chief of Staff Performance Review Board:

1. Ms. Janet C. Menig, Deputy Director of Management (Installation Management and Resourcing), Office, Chief of Staff of Army
2. Dr. J.J. Bellaschi, Deputy Director of Program Analysis and Evaluation, Office, Chief of Staff of Army
3. Mr. John A. Riente, Technical Advisor to the Deputy Chief of Staff for Operations and Plans, Deputy Chief of Staff for Operations and Plans
4. MG John H. Tilelli, Jr., Assistant Deputy Chief of Staff for Operations and Plans, Deputy Chief of Staff for Operations and Plans
5. Dr. Harold Booher, Director of MANPRINT, Deputy Chief of Staff for Personnel
6. MG Fred Gorden, Director of Military Personnel Management, Deputy Chief of Staff for Personnel
7. BG (P) Hubert G. Smith, Director, Transportation, Energy and Troop Support, Deputy Chief of Staff for Logistics
8. Mr. Arthur Keltz, Executive Director, Strategic Logistics Agency, Deputy Chief of Staff for Logistics
9. MG Cloyd H. Pfister, Assistant Deputy Chief of Staff for Intelligence, Deputy Chief of Staff for Intelligence
10. Dr. Shelba J. Proffitt, Director, Advanced Technology Directorate, U.S. Army Strategic Defense Command
11. Dr. Michael J. Lavan, Director, Directed Energy Weapons Directorate, U.S. Army Strategic Defense Command

The members of the Performance Review Board for the Army Materiel Command:

1. MG Dewitt T. Irby Jr., Program Executive Officer—Aviation
2. MG Thomas Prather, U.S. Army Troop Support Command
3. BG David J. Kelley, DCG U.S. Army Signal Center and Fort Gordon/Asst Cmdt, USA Signal School
4. BG J. W. Boddie, Jr., Deputy Commanding General for Procurement and Readiness, U.S. Army Armament, Munitions and Chemical Command, AMC
5. BG Robert T. Howard, Deputy Chief of Staff for Resource Management, U.S. Army Materiel Command
6. BG Richard W. Wharton, Jr., Commander, White Sands Missile Range, U.S. Army Test and Evaluation Command, AMC
7. Mr. Melvin E. Burcz, PEO, Combat Support, Army Acquisition Executive
8. Mr. John L. Byrd, Jr., Director, U.S. Army Defense Ammunition Center and School, U.S. Army Armament, Munitions, and Chemical Command
9. Dr. Richard Chait, Chief Scientist, U.S. Army Materiel Command
10. Mr. Jerry L. Chapin, Deputy PEO, Close Combat Vehicles, Army Acquisition Executive
11. Dr. Charles H. Church, Director, Advanced Concepts and Technology Assessments, HQDA
12. Mr. Walter W. Clifford, Chief, Air Warfare Division, U.S. Army Materiel Systems Analysis Activity, AMC
13. Mr. William C. Dee, Associate Project Manager for Binary Munition, CRDEC, U.S. Army Armament, Munitions and Chemical Command
14. Dr. Kenneth L. Davis, Head Electronics Division, Office of Naval Research
15. Mr. Edward G. Elgart, Director of Procurement, U.S. Army Communications-Electronics Command, AMC
16. Ms. Louann Elledge, Director, Systems Integration and Management Activity, AMC
17. Mr. James E. Emahiser, Deputy to the Commander, U.S. Army Troop Support Command, AMC
18. Mr. Victor J. Ferlise, Chief Counsel, U.S. Army Communications-Electronics and Command, AMC
19. Mr. Frank E. Fiorilli, Comptroller, U.S. Army Communications-Electronics Command, AMC
20. Mr. Michael F. Fisette, Asst Deputy for International Cooperative Programs, U.S. Army Materiel Command
21. Mr. James L. Flinn, III, Director, Integrated Materiel Management Center, U.S. Army Missile Command, AMC
22. Dr. John T. Frasier, Director, BRL, U.S. Army Laboratory Command, AMC
23. Mr. David V. Gaggin, Director, AMC Avionics Research and Development Activity, U.S. Aviation Systems Command, AMC
24. Mr. Feliciano Giordano, Associate Technical Director, RD&E Center, U.S. Army Communications-Electronics Command, AMC
25. Dr. Kelly V. Grider, Director, Systems Simulation and Development, U.S. Army Missile Command, AMC
26. Mr. Darold Griffin, Principal Assistant Deputy for Research, Development, and Acquisition, U.S. Army Materiel Command
27. Mr. James C. Hill, Assistant Deputy Chief of Staff for Policy and Procedures, U.S. Army Materiel Command
28. Dr. Joseph W. Holmes, Director, Missile and Space Intelligence Center, Defense Intelligence Agency
29. Mr. Thomas L. House, Technical Director, U.S. Army Aviation Systems Command, AMC
30. Mr. Henry B. Jones, Director of Procurement and Production, U.S. Army Tank-Automotive Command, AMC
31. Mr. James C. Kelton, Technical Director, Combat Systems Test Activity, U.S. Army Test and Evaluation Command, AMC
32. Mr. Robert V. Kennedy, Director, Electronics and Weaponization, U.S. Army Aviation Systems Command, AMC
33. Dr. Clarence W. Kitchens, Jr., Chief, Terminal Ballistics Division, BRL, U.S. Army Laboratory Command, AMC
34. Mr. Edward J. Korte, Command Counsel, U.S. Army Materiel Command

35. Dr. Robert W. Lewis, Technical Director, Natick RD&E Center, U.S. Army Troop-Support Command, AMC
36. Mr. Victor Lindner, Associate Technical Director, Systems Development and Engineering, ARDEC, U.S. Army Armament, Munitions, and Chemical Command, AMC
37. Mr. Colin F. MacDonnell, Jr., Director, Concurrent Engineering, U.S. Army Communications-Electronics Command, AMC
38. Mr. Daniel M. McEneany, Director, Engineering, U.S. Army Aviation Systems Command, AMC
39. Mr. A. David Mills, Assistant Deputy Chief of Staff for Supply, Maintenance, and Transportation, U.S. Army Materiel Command.
40. Mr. Douglas R. Newberry, Director of Resource Management, U.S. Army Tank-Automotive Command, AMC
41. Dr. Kenneth J. Oscar, Director, Research, Development and Engineering Center, U.S. Army Tank-Automotive Command, AMC
42. Mr. Michael Parker, Technical Director, CRDEC, U.S. Army Armament Munitions and Chemical Command, AMC
43. Dr. Bennie H. Pinckley, Deputy Program Executive Officer, Air Defense
44. Mr. Raymond G. Pollard, III, Technical Director, U.S. Army Test and Evaluation Command, AMC
45. Ms. Renata Price, Deputy Dir, ARDEC, U.S. Army Armament, Munitions, and Chemical Command, AMC
46. Mr. Joseph J. Pucilowski, Jr., Director, CECOM Center for C3 Systems, U.S. Army Communications-Electronics Command, AMC
47. Mr. Jerry L. Reed, Dir, HDL, U.S. Army Laboratory Command, AMC
48. Mr. Alfred D. Reeder, Director Acquisition Center, U.S. Army Missile Command, AMC
50. Mr. Daniel J. Rubery, Logistics Director, U.S. Army Aviation Systems Command, AMC
51. Mr. Michael Sandusky, Deputy Chief of Staff for Program Analysis and Evaluation, U.S. Army Materiel Command
52. Dr. Robert E. Singleton, Director, Engineering & Environmental Sciences Division, U.S. Army Research Office, AMC
53. Mr. James M. Skurka, Director, C3I Logistics and Readiness Center, U.S. Army Communications-Electronics Command
54. Mr. Gary E. Tagtmeyer, Assistant Deputy Chief of Staff for Resource Management, U.S. Army Materiel Command
55. Mr. Gary A. Tull, Acting Deputy Chief of Staff for Procurement, U.S. Army Materiel Command
56. Dr. Clarence G. Thornton, Director, ETDL, U.S. Army Laboratory Command, AMC
57. Mr. William T. Vomocil, Technical Director, Yuma Proving Ground, U.S. Army Test and Evaluation Command, AMC
58. Mr. William L. Vault, Director, Nuclear Survivability Laboratory, HDL, U.S. Army Laboratory Command, AMC
59. Dr. Horst R. Wittmann, Director, Electronics and Material Sciences, Air Force Office of Scientific Research
60. Mr. Morris J. Zusman, Technical Director, U.S. Army Belvoir RD&E Center, U.S. Army Troop-Support Command, AMC

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92-18103 Filed 7-29-92; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10552-002-Idaho]

Contractors Power Group, Inc.; Availability of Environmental Assessment

July 24, 1992.

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 minor license for the proposed Mile 28 Hydroelectric Project, to be located on Bureau of Reclamation's Milner-Gooding Canal, in Jerome County, near Eden, Idaho, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the project and has concluded that approval of the proposed project, with appropriate mitigation 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. 92-18030 Filed 7-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-59-000]

Chandeleur Pipe Line Co.; Conference

July 24, 1992.

Take notice that on August 11, 1992, a conference will be convened in the above-captioned docket to discuss Chandeleur Pipe Line Company's summary of its proposed plan for implementation of Order No. 636.

The conference will be held in a hearing or conference room of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. The conference will begin at 10 a.m. All interested persons are invited to attend. For additional information, contact Joan Dreskin at (202) 208-0738.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18031 Filed 7-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-33-000]

East Tennessee Natural Gas Co; Conference

July 24, 1992.

Take notice that on August 26, 1992, a pre-filing conference will be convened in the captioned restructuring docket. The purpose of this conference is to address the summary of proposal to comply with Order No. 636 prepared by East Tennessee Natural Gas Company. The pipeline was to serve all parties in the proceeding with the summary by July 7, 1992.

The conference will be held in Hearing Room 1 in the offices of the Federal Energy Regulatory Commission at 810 N. Capitol Street, Washington, DC 20426. The conference will begin at 10 a.m. on August 26, 1992. All interested parties are invited to attend. However, attendance at the conference will not confer party status.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18032 Filed 7-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-19-4-000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

July 24, 1992.

Take notice that on July 20, 1992, Granite State Gas Transmission, Inc., (Granite State) 300 Friberg Parkway, Westborough, Massachusetts 01581 tendered for filing the revised tariff sheets listed below in its FERC Gas Tariff, Second Revised Volume No. 1,

containing changes in rates for effectiveness on the dates indicated:

Proposed Effective Dates

Fifteenth Revised Sheet No. 25, July 1, 1992
Sixteenth Revised Sheet No. 25, September 1, 1992

According to Granite State, it provides a storage service for Bay State Gas Company under its Rate Schedule GSS with storage capacity provided in a facility operated by CNG Transmission Corporation (CNG). It is further stated that Granite State's Rate Schedule GSS tracks changes made by CNG under its Rate Schedule GSS pursuant to which Granite State obtains storage capacity from CNG.

Granite State further states that on June 30, 1992 and July 2, 1992, CNG filed changes in the charges for its Rate Schedule GSS service in Docket Nos. TM92-8-22-000 and TA92-1-22-000 for effectiveness on July 1 and September 1, 1992, respectively. According to Granite State, its filing tracks the same changes in its Rate Schedule GSS on the same effective dates proposed by CNG.

Granite State states that copies of its filing were served on Bay State Gas Company and the regulatory commissions of the states of Maine, Massachusetts and New Hampshire.

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 sections 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 July 31, 1992. 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. 92-17944 Filed 7-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-205-000]

Southern Natural Gas Co.; Petition for Waiver of Regulations

July 24, 1992.

Take notice that on July 20, 1992, Southern Natural Gas Company (Southern), petitioned the Commission for a limited waiver of § 154.16 of the Commission's Regulations and Rule 2010 of the Commission's Rules of Practice and Procedure so as to permit Southern to serve on customers electing such service an abbreviated copy of future tariff filings made by Southern.

Southern states that in the abbreviated version of its tariff filings, Southern would propose to serve only the transmittal letter, the proposed tariff sheets and the statement of nature, reason and basis. Southern states that the abbreviated version of the filing would be served only on customers that submit an election in the form contained in Exhibit A attached to the filing, demonstrating their agreement of the service of the abbreviated form of the filing. Southern states that any customers electing such service will be free, however, to request a complete copy of a particular filing if, upon review of the abbreviated filing, it desires the expanded version of the filing.

Southern states that copies of the filing were mailed on all of Southern's sales and transportation customers and interested state commissions.

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 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 31, 1992. 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-17942 Filed 7-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP86-119-022 and RP92-206-000]

Tennessee Gas Pipeline Co.; Withdrawal of Tariff Sheet and Corrective Filing

July 24, 1992.

Take notice that on July 22, 1992, Tennessee Gas Pipeline Company (Tennessee), filed to withdraw the following tariff sheet, which had been filed on July 13, 1992, to amend Fourth Revised Volume I of its FERC Gas Tariff:

Substitute Original Sheet No. 22

Tennessee asserts that the changes in the notice provisions of the settlement required by the Commission's April 10 order in the referenced docket, which modified its "cosmic" settlement agreement, make the tariff filing unnecessary. In addition, Tennessee states that it seeks to withdraw this sheet because it failed to specify Tennessee's posted price, which was $1.48 per dth (plus adjustments for fuel) as communicated to its sales customers on June 26 by written facsimile communication.

Tennessee requests permission to withdraw the tariff sheet and will follow the procedures in the Revised Sheet No. 344 included in the July 13, 1992 filing for the month of August and succeeding months. Tennessee argues that because the customers received actual notice of the Tennessee's price for the month, which was less than the ceiling price ($1.4848) that is equal to 102% of the weighted index ($1.4557), there is good cause for the Commission to allow the sheet to be withdrawn.

Alternatively, Tennessee states that it is filing the following replacement tariff sheet:

2nd Substitute Original Sheet No. 22 to clarify the applicable gas rate.

Tennessee states that copies of the filing is being mailed to all affected customers and state regulatory commissions.

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 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 31, 1992. 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-17941 Filed 7-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-391-012]

Transcontinental Gas Pipe Line Corp.; Compliance filing

July 24, 1992.

Take notice that on July 21, 1992, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing revised tariff sheets to Second Revised Volume No. 1, Third Revised Volume No. 1 and Original Volume No. 2 of its FERC Gas Tariff (tariff) which tariff sheets are enumerated in Appendix A attached to the filing. The tariff sheets are proposed to be effective as indicated on appendix A.

Transco states that the purpose of the instant filing is to implement revisions to its tariff necessitated by Commission orders issued June 4 and June 5, 1992 in Docket Nos. CP88-391-009, *et al.* and CP88-391-010, respectively. Such orders addressed, on rehearing, issues regarding Transco's Rate and GIC Settlements and Transco's compliance filing related thereto and also approved a Settlement filed February 14, 1992 by Transco and Sun Refining and Marketing Company which resolves all outstanding issues between Transco and Sun.

Transco states that copies of the instant filing were served to its customers, State Commissions and other interested parties to Docket No. CP88-391.

In accordance with provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

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 July 31, 1992. 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. 92-17913 Filed 7-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No.TM92-10-29-001]

Transcontinental Gas Pipe Line Corp.; Supplemental Filing

July 24, 1992.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on July 20, 1992 First Revised Original Sheet No. 61 and First Revised Original Sheet No. 62 to Third Revised Volume No. 1 of its FERC Gas Tariff. The proposed effective date of these tariff sheets is May 1, 1992.

Transco states that the purpose of the instant filing is to correct a pagination error reflected in Transco's filing of April 1, 1992 (April 1 Filing) in Docket No. TM92-10-29-000. The April 1 Filing, including Third Revised Sheet No. 61 and Second Revised Sheet No. 62, was accepted by the Commission to be effective May 1, 1992. In preparing a subsequent filing, Transco has discovered that Sheet Nos. 61 and 62 were mispaginated. Therefore, in the instant filing, Transco is resubmitting Sheet Nos. 61 and 62 with corrected pagination. Transco states that in all other respects, the tariff sheets included in the instant filing are identical to those accepted by the Commission in Docket No. TM92-10-29-000 to be effective May 1, 1992.

Transco states that it is serving copies of the instant filing to customers, State Commissions and other interested parties. In accordance, with provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any persons 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 July 31, 1992. 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. 92-18033 Filed 7-29-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 92-72-NG]

Intalco Aluminium Corp.; Application for Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt of an application filed on June 15, 1992, by Intalco Aluminum Corporation (Intalco) requesting the renewal of its existing blanket import authorization (ERA Docket No. 88-71-NG). Intalco proposes to import up to 2 Bcf of natural gas from Canada over a period of two years beginning September 28, 1992, the day after their current two-year blanket import authorization expires. The gas would be imported at a border crossing point near Sumas, Washington, which connects with Westcoast Energy Inc., and transported in the U.S. over the Ferndale Pipeline System which is jointly owned and operated by Intalco. Intalco plans to utilize the gas that it imports at its aluminum smelting plant in Ferndale, Washington.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, August 31, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Departmental of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478.

FOR FURTHER INFORMATION:

C. Frank Duchaine Jr., Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3H-087, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-8233.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Intalco, a Delaware corporation with its principle place of business in Ferndale, Washington asserts that the gas will be purchased under contracts of two years

or less with market-responsive price provisions. According to Intalco, it is dependent on Canadian gas for all of its supply requirements because there is no pipeline available to deliver domestic gas.

The decision on the request for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties should comment on the issue of competitiveness as set forth in the policy guidelines. Intalco asserts its proposed import transactions will be competitive. Parties opposing Intalco's request for import authorization bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Intalco's application is available for inspection and copying in the Office of Fuels Programs docket room, 3F–056, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on July 27, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–18042 Filed 7–29–92; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4190–4]

Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act; Wilson Drain Site

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to enter into a cost recovery settlement agreement under section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA). This proposed settlement is intended to resolve the liability of two parties for response costs incurred at the Wilson Drain Site in Westland, Michigan. Section 122(i) of CERCLA requires that notice of proposed settlements under section 122(h) of CERCLA be public in the **Federal Register**. This notice seeks to elicit public comments to the Wilson Drain Site Cost Recovery Settlement Agreement pursuant to Section 122(i) of CERCLA.

DATES: Comments must be received on or before August 31, 1992.

ADDRESSES: Comments should be addressed to Kurt Lindland, Assistant Regional Counsel (CS–3T), U.S. Environmental Protection Agency, Region V, 77 West Jackson Blvd., Chicago, Illinois, 60604, and should refer to: Wilson Drain Site in Westland, Michigan.

FOR FURTHER INFORMATION CONTACT: Kurt N. Lindland, U.S. Environmental Protection Agency, Office of Regional Counsel, CS–3T, 77 West Jackson Blvd., Chicago, Illinois 60604, (312) 886-7152.

SUPPLEMENTARY INFORMATION: In accordance with section 122(i)(1) of the CERCLA, notice is hereby given of a proposed administrative cost recovery settlement concerning the Wilson Drain site located in Westland, Michigan. The Settlement resolves an EPA claim under section 107 of CERCLA against two parties. The settlement requires the settling parties to pay $40,000 to the Hazardous Substances Superfund. This agreement was signed by EPA Region V on July 7, 1992. EPA may withdraw its consent if comments received disclose facts or considerations which indicate that the agreement is inappropriate, improper or inadequate.

EPA is entering into this agreement under the authority of section 122(h)(1) of CERCLA. Section 122(h)(1) authorizes compromise and settlement of a claim under section 107 of CERCLA for costs incurred by the United States Government if the claim has not been referred to the Department of Justice for further action. Under this authority, the agreement allows the Settling Parties to reimburse EPA for past response costs at the Wilson Drain Site.

For thirty (30) days following the date of publication of this notice, the EPA will receive written comments relating to the settlement. The Agency's response to comments received will be available for public inspection at the Office of Regional Counsel (CS–3T), U.S. Environmental Protection Agency, Region V, 77 West Jackson Blvd., Chicago, Illinois 60604.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the EPA's Region V Office of Regional Counsel. Requests for copies should be addressed to Kurt Lindland, Mail code: CS–3T, 77 West Jackson Blvd., Chicago, Illinois 60604. The Office of Regional Counsel is currently located on the third floor at 111 West Jackson, Chicago, Illinois 60604. Additional background information relating to the settlement is available for review at the EPA's Region V Office of Regional Counsel.

Authority: Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 *et seq.*

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 92–18044 Filed 7–29–92; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Announcement Number 278]

Grant To Develop Environmental Health Data Indicators for Community Assessments; Availability of Funds for Fiscal Year 1992

Introduction

The Centers for Disease Control (CDC), the Nation's prevention agency, announces the availability of funds in fiscal year (FY) 1992 for a grant to Washington State Department of Health (WSDH) to develop environmental health data for community assessment by local health agencies. These funds will be used to develop environmental health indicators and data for community health assessment purposes by establishing and pilot testing a data collection system to be used in conjunction with the CDC-sponsored "Assessment Protocol for Excellence in Public Health" (APEXHA). This system will be an invaluable aid to local public health officials and communities to focus and develop appropriate programs meeting relevant community-defined needs.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

Authority

This grant is authorized under the Public Health Service Act, section 301 [42 U.S.C. 241].

Eligible Applicants

Assistance will be provided only to the Washington State Department of Health for conducting this project. No other applications are solicited.

Washington State Department of Health (WSDH) is the most appropriate organization to conduct the work under this grant because:

1. WSDH, in conjunction with its local health departments, is the only state known to have developed a draft set of environmental health status indicators and environmental health process indicators upon which to base this project.

2. These indicators represent a totally innovative approach to community environmental health assessments for local health agencies and will serve as an important adjunct to CDC's major APEXPH initiative for local health agencies. The innovative character of these indicators is witnessed by the fact that they remained unaddressed in the APEXPH-development process because of the difficulty in formulating appropriate and sensitive indicators for environmental public health problems.

3. These draft indicators were developed in Washington by a committee of environmental health directors among Washington's local health departments. These local departments have already agreed to carry out this project and are familiar with its intent and requirements.

4. These indicators are to be a model, with nationwide applicability.

Availability of Funds

Approcimately $40,000 will be available in FY 1992 to support this grant. It is expected that the award will begin on or about September 30, 1992, and will be made for a 12-month budget period within a one-year project period.

Purpose

The purpose of this grant is to provide resources to a state health department to develop and refine, field test, and report the results of this field test, a set of health status indicators and environmental health process indicators. These indicators are expected to become an adjunct to APEXPH with nationwide applicability.

Program Requirements

The grantee must meet the following requirements:

1. Refine and field test a set of community environmental health status indicators and environmental health process indicators to enhance the ability of local health agencies to develop appropriate environmental health programs that meet relevant, community-defined needs.

2. Report findings to, and seek consultation as needed from, the Division of Environmental Hazards and Health Effects, National Center for Environmental Health, Centers for Disease Control.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. *Understanding of the Problem* (maximum 25 points)

Evidence of the applicant's understanding of the problem and the purpose of the grant.

2. *Measurable Objectives* (maximum 25 points)

The consistency of the measurable objectives with the stated purpose of the grant and the ability to meet the objectives and timetable within the specified period.

3. *Proposed Plan* (maximum 25 points)

The adequacy of the applicant's plan to carry out the activities proposed.

4. *Proposed Monitoring Plan* (maximum 25 points)

The adequacy of the applicant's plan to monitor progress toward meeting the objectives of the project.

5. *Budget* (not scored)

The extent to which the budget is reasonable, adequately justified, and consistent with the intended use of the grant funds.

Executive Order 12372 Review

The Intergovernmental Review Requirements of Executive Order 12372, as established by DHHS regulations in 45 CFR part 100, are not applicable to this program.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number assigned to this program is 92.283.

Application Submission and Deadline

A signed original and two copies of the application PHS Form 5161–1 must be submitted to Henry S. Cassell, III,

Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mail Stop E–14, Atlanta, Georgia 30305, on or before August 7, 1992.

1. *Deadline:* The application shall be considered as meeting the deadline if it is either:

a. Received on or before the deadline date; or,

b. Sent on or before the deadline date and received in time for submission to the independent review group. The applicant must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or postal service. Private metered postmarks shall not be accepted as proof of timely mailing.

2. *Late Applications:* Applications which do not meet the criteria in 1.a. or 1.b. are considered late applications. A late application will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please refer to Announcement Number 278 and contact Lisa G. Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Mail Stop E–14, Atlanta, Georgia 30305, (404) 842–6796 for business management technical assistance. Programmatic technical assistance may be obtained from Art Schletty, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, Centers for Disease Control, Mail Stop F–28, Atlanta, Georgia 30333, (404) 488–4772.

A copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, (Telephone 202–783–3238).

Dated: July 23, 1992.

Ladene H. Newton,

Acting Associate Director for Management and Operations, Centers for Disease Control.

[FR Doc. 92–18011 Filed 7–29–92; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 90D–0428]

Human-Labeled Drugs Distributed and Used in Animal Medicine; Compliance Policy Guide; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised Compliance Policy Guide (CPG) 7125.35 entitled "Human-Labeled Drugs Distributed and Used in Animal Medicine." The revision was made in response to comments and experience with the first issue of CPG 7125.35.

ADDRESSES: Submit written requests for single copies of revised CPG 7125.35 to the Industry Information Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Requests should be identified with the docket number found in brackets in the heading of this document. Send two self-addressed adhesive labels to assist that office in processing your requests. CPG 7125.35 is available for public examination in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Edward J. Ballitch, Center for Veterinary Medicine (HFV–230), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8728.

SUPPLEMENTARY INFORMATION: FDA has revised CPG 7125.35 entitled "Human-Labeled Drugs Distributed and Used in Animal Medicine." The CPG formerly was entitled "Human Drugs Distributed to Veterinarians for Animal Use," and was issued on March 19, 1991. The revised CPG expresses FDA's intent with respect to the distribution and use of human-labeled drug products for use in animals to eliminate promotion by manufacturers, distributors, and pharmacies; ensure that distribution and dispensing are made only in response to requests by veterinary practitioners; refrain in ordinary circumstances from enforcement actions when human drugs are used or dispensed by veterinarians in treating nonfood producing animals; take enforcement action against veterinarians who cause illegal residues in food producing animals; limit use of human-labeled drugs in treating food producing animals to very narrow circumstances; and prohibit use, except by or on the order of a licensed veterinarian in the course of his or her practice. The guideline has been reviewed and commented on by members of the Center for Veterinary Medicine Advisory Committee and by others. The revisions have been made in response to comments and experience with the first issue of CPG 7125.35.

The statements made in the CPG are not intended to create or confer any rights, privileges, or benefits on or for any private person, but are intended merely for internal guidance.

Dated: July 20, 1992.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 92–18020 Filed 7–29–92; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F of the Statement of Organizations, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (FR Vol. 52, No. 108, p. 21377, dated Friday, June 5, 1987, Vol. 53, No. 45, p. 7402, dated Tuesday, March 8, 1988, Vol. 54, No. 219, p. 47581, dated Wednesday, November 15, 1989, Vol. 55, No. 122, p. 25888, dated Monday, June 25, 1990, and Vol. 56, No. 200, p. 51908, dated Wednesday, October 16, 1991) is amended to reflect a minor realignment within the Office of Budget and Administration (OBA), Office of the Associate Administrator for Management.

The specific changes to part F are:

• Section FH.20.A.4., Management Planning and Analysis Staff (FHA–1) is amended by deleting the functional statement in its entirety and replacing it with the following functional statement:

4. Management Planning and Analysis Staff (FHA–1)

• Provides Agency-wide services, policy direction, and coordination with respect to HCFA's management analysis, planning, and control programs including: workplanning, management analysis, productivity improvement, Privacy Act, internal controls, Office of the Inspector General audit resolution functions, advisory and assistance services certification, contracting of commercial and industrial activities, the administrative issuances system, memorandum of understanding and interagency agreements, delegations of

authority, and paperwork reduction programs.

• Conducts special studies and analyses concerning Agency-wide and cross-cutting OBA issues and other broad-based administrative issues.

• Advises the OBA Director in management analysis activities.

• Develops, reviews, analyzes, and maintains existing or proposed Agency-wide delegation of authority.

• Provides services, policy direction, and coordination regarding the HCFA paperwork reduction activities.

• Section FH.20.A.1., Office of Human Resources (FHA6) is amended by deleting the functional statement in its entirety and replacing it with the following functional statement:

1. Office of Human Resources (FHA6)

• Provides services, leadership, direction, and control with respect to personnel and related services within HCFA.

• Serves as the principle advisor to the Director of the Office of Budget and Administration on the operation of HCFA's personnel system, including recruitment and placement, position classification, personnel management evaluation, performance appraisal, employee development and training, employee relations, ethics functions, and labor relations.

• Administers the Agency special emphasis placement and executive personnel programs.

• Serves in a leadership role in providing authoritative advice and assistance to management officials in carrying out their position management responsibilities.

• Provides for an employee counseling service for employees in HCFA Central Office.

• Provides services, policy direction, and coordination with respect to the organizational analysis activities.

• Provides direct service and establishes policy for other HCFA components with respect to health and activities related to health matters.

• Section FH.20.A.1.a., Division of Information and Organizational Management (FHA61) is amended by deleting the functional statement in its entirety and replacing it with the following functional statement:

a. Division of Information and Organizational Management (FHA 61)

• Coordinates all personnel information management activities for the Office of Human Resources. Administers and operates the Department's automated personnel/payroll system, Improved Management of Personnel Administration through Computer Technology, as it applies to HCFA components.

• Develops human resource functional requirements for and access to HCFA's Comprehensive Personnel System. Provides systems support and technical assistance on all other automated data processing and office automation activities that relate to human resources functions.

• Plans, directs and implements a comprehensive HCFA position classification and position management program for all positions GS–15 and below in the Central and Regional Offices. Inputs data into the automated personnel system and prepares statistical information and reports relating to the position management and classification program.

• Conducts the HCFA-wide organizational analysis program. Studies HCFA's organizational and functional arrangements and develops plans for assimilating new or modified functions into the HCFA organization.

• Conducts in-depth analyses of new legislation affecting HCFA for the purposes of determining the affect on HCFA's organizational structure. Develops recommendations for organizational changes, and submits proposals to upper management's consideration.

• Section FH.20.A.2, Office of Financial Management (FHA1) is amended by deleting the functional statement in its entirety and replacing it with the following functional statement:

2. Office of Financial Management (FHA1)

• Provides financial and accounting services, leadership, and policy direction for HCFA's financial management programs. Operates the Agency's accounting and financial reporting activities and processes all obligations and expenditure documents including employee payroll and travel costs.

• Prepares, justifies, and executes the HCFA program and administrative budget. Coordinates with officials at the Department and at the Office of Management and Budget to resolve budget issues. Provides advice and assistance to HCFA components in the development and justification of their annual budgets.

• Manages the HCFA financial and manpower resource allocation activities. Prepared reports and other resource allocation control mechanisms for the Director, OBA and other senior HCFA staff.

• Section FH.20.A.2.a., Division of Budget (HFA15) is amended by deleting the functional statement in its entirety and replacing it with the following functional statement:

a. Division of Budget (FHA15)

• Consolidates, prepares, and executes HCFA's budget and operates HCFA's budget system. Serves as the central information point for all budgetary matters including interagency agreements impacting on HCFA's funding and transfer of funds to and from other agencies. Provides advice on the reporting of program and financial data necessary for the presentation and defense of budget requests.

• Provides advice, guidance, and assistance to HCFA components in the development of budget justification materials and analysis including current services budgeting and other budgetary principles required by the Office of the Secretary, HHS, the Office of Management and Budget, and the Congress. Provides technical direction to HCFA regional components on all budgetary matters.

• Develops budget control systems necessary to ensure that appropriate measures are in place to prevent violations of the Anti-Deficiency Act.

• Maintains and monitors an allotment and allowance system sufficient to pinpoint responsibility and accountability for Federal funds.

• Provides staff expertise in the review and analysis of budgetary, operational, legislative, or regulatory proposals by HCFA operating components. Reviews these proposals to determine the fiscal impact on, and consistency with, HCFA and departmental management and programmatic objectives.

• Develops financial management policy as it relates to HCFA's programmatic objectives. Certifies the cost of all proposed program and demonstration waivers.

• Reviews financial data and makes recommendations as to the effectiveness of the waiver and potential termination or nonrenewal actions.

• Directs the allocation of HCFA's staffing resources among HCFA components, issues employment ceilings, and directs HCFA's manpower management system. Assures the validity of cost allocation data and monitors adherence to financial management policies among HCFA components.

Dated: July 21, 1992.

William Toby, Jr.,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 92–17932 Filed 7–29–92; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project 1076–0059, Washington, DC 20503, telephone 202–395–7340.

Title: Tribal Participation Budget Planning Forms.
OMB approval number: 1076–0059.
Abstract: As set forth by Congress and Department/Bureau policy, these forms are needed to assure maximum Indian participation in the planning, administration, and direction of Indian programs. The forms enable tribal officials to participate in establishing program priorities and setting program funding levels at each tribe/agency budget location.
Bureau form number: BIA 4256, 4257, 5259.
Frequency: Annually.
Description of respondents: Tribal Officials.
Estimated completion time: 6.625 hours.
Annual responses: 400.
Annual burden hours: 2,650.
Bureau clearance officer: Gail Sheridan 202–208–2685.

Dated: July 21, 1992.

Lynn Ashe,

Acting Chief, Division of Program Development and Implementation.

[FR Doc. 92–18010 Filed 7–29–92; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[CA–066–4333–12]

Closure; Palm Springs-South Coast Resource Area Riverside County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of closure of public entry to public lands.

SUMMARY: Notice is hereby given that Public Lands adjacent to Canyon Lake in Riverside County, California will be closed to public entry from the hours of 10 a.m. to 5:30 a.m. This closure will not apply to emergency response agencies conducting official business or to land or resource management agencies conducting studies under permit from the Bureau of Land Management, U.S. Fish and Wildlife Service, California Department of Fish and Game, City of Canyon Lake, Riverside County and any local agency charged with the management of the water in Canyon Lake. This use restriction covers those Public Lands within the City of Canyon Lake.

EFFECTIVE DATE: This order is effective upon signature of the authorized officer, July 1, 1992.

SUPPLEMENTARY INFORMATION: The purpose of this use restriction is to provide protection to the water quality of Canyon Lake. The lake is the major domestic water supply for municipalities in the area. The City of Canyon Lake has stated that due to the lack of proper sanitary facilities along the shoreline, water quality of the lake is being impacted. The greatest use impacting the quality is the utilization of the shoreline for uncontrolled camping purposes and the resultant remains of human waste and debris.

ORDER: Notice is hereby given that effective on the date of signature by the authorized officer of this notice, the following use restriction will be permanently in effect on Public Lands within the City of Canyon Lake.

1. No person may enter or remain on public lands, described below, between the hours of 10 p.m. and 5:30 a.m. Emergency agencies on official business, employees and permittee of the Bureau of Land Management, U.S. Fish and Wildlife Service, California Department of Fish and Game, City of Canyon Lake, County of Riverside and Lake Elsinore Water District will be exempt from this order if those persons are conducting official resource management duties.

San Bernardino Meridian, California

T. 5 S., R. 4 W.,
Secs. 26, 34

Authority for this use restriction may be found in 43 CFR 8364.1. Violations of this closure are punishable by a fine not to exceed $10,000 and/or 12 months in jail.

FOR FURTHER INFORMATION CONTACT: Russell L. Kaldenberg, Area Manager, Palm Springs-South Coast Resource Area, 63–500 Garnet Ave., P.O. Box 2000, North Palm Springs, CA 92258–2000, (619) 251–0812.

Dated: July 1, 1997.

Russell Kaldenburg,

Area Manager.

[FR Doc. 92–18005 Filed 7–24–92; 8:45 am]

BILLING CODE 4310–40–M

[AZ–020–00–4332–11; AZA 25479, AZA 25480]

Intent To Prepare Two Wilderness Management Plans and Associated Environmental Documents and Invitation To Participate in the Identification of Issues; Phoenix District Office, Phoenix Resource Area, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare wilderness management plans and environmental documents.

SUMMARY: Notice is hereby given of intent to prepare two wilderness management plans. This notice also constitutes the scoping notice required by the National Environmental Policy Act (40 CFR 1501.7).

(1) *Description of proposed planning action:* In accordance with Bureau of Land Management wilderness management policy guidance, two Wilderness Management Plans will be developed for two wilderness areas: Hassayampa River Canyon and Hell's Canyon Wilderness Areas. An Environmental Assessment of the impacts of the proposed actions and alternatives will be prepared prior to approval of each plan.

The plans will define the management practices and actions to be used to maintain each area's wilderness resources and will consider those issues and alternatives identified in a number of public open house and work group meetings. The public is invited to participate in open house meetings beginning in August 1992.

(2) *Geographic areas involved:* The two wilderness areas are located in the Sonoran Desert of south central Arizona, located in southern Yavapai and extreme northern Maricopa Counties, within a 30 mile radius of Wickenburg, Arizona.

(3) *Types of issues anticipated:* Wilderness values such as naturalness solitude and primitive recreational opportunities must be preserved. Use of these areas for developed public recreation and education, research, wildlife management and legal private purposes will be assessed. Acceptable levels of these uses as well as primitive

recreational activities will be identified. Actions necessary to administer the areas, e.g., signing, compliance enforcement, search and rescue, wild burro removal, and fire suppression will also be identified and acceptable levels of these activities determined.

(4) *Disciplines to be represented in the preparation of the management plans will include:* Wilderness, Recreation, Cultural, Wildlife, Range and Livestock Grazing, Lands and Minerals, and Fire Management.

(5) *The kind and extent of public participation opportunities to be provided:* Two public scoping meetings will be held to identify issues in managing both areas. These will be held in Phoenix and Wickenburg, Arizona at the following times and locations:

Thursday, August 27, 1992, 6 p.m.—9 p.m., Phoenix District Office Conference Room, Bureau of Land Management, 2015 West Deer Valley Road, Phoenix, Arizona.

Wednesday, September 9, 1992, 6 p.m.—9 p.m., Wickenburg Community Center, 160 North Valentine, Wickenburg, Arizona.

Written comments regarding issues will also be accepted until September 30, 1992. Comments should be sent to: Bureau of Land Management, Phoenix District Office, Attn: Arthur E. Tower, 2015 West Deer Valley Road, Phoenix, Arizona, 85027.

In addition, two Advisory Groups, one for each Wilderness Planning Area, made up of interested public and agency personnel, will be formed to assist in the development of each plan. Participation in these groups will be solicited through mailings, news releases, and personal contracts.

Interested publics will be sent copies of the completed draft Wilderness Management Plans and will have 45 days in which to comment. Interest in this mailing will be solicited and a mailing list maintained at the Phoenix District Office.

ADDRESSES: The location and availability of documents relevant to these management plans will be available for public review at the Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona.

FOR FURTHER INFORMATION CONTACT: William Gibson, Phoenix Resource Area, Telephone (602) 863–4464.

SUPPLEMENTARY INFORMATION: The plans which will cover both areas mentioned, includes a combined total of 21,040 wilderness acres. The areas were added to the Wilderness Preservation System by Public Law 101–628, of November 28, 1990, known as the Arizona Desert Wilderness Act of 1990. The management and use of these areas is directed by this law as well as the Federal Land Policy and Management Act of 1976 and the Wilderness Act of 1964.

Descriptions of the Hassayampa River Canyon and Hell's Canyon Wilderness Areas can be found in the Phoenix Final Wilderness Environmental Impact Statement of 1985.

Dated: July 21, 1992.

William T. Childress,

Acting District Manager.

[FR Doc. 92–18007 Filed 7–24–92; 8:45 am]

BILLING CODE 4310–32–M

[OR120–6310–02 GPO 2–331]

Advisory Council Meeting

ACTION: Notice of meeting of the Coos Bay District Advisory Council.

SUMMARY: Notice is hereby given in accordance with Public Law 94–579 and 43 CFR, part 1780, that a meeting of the Coos Bay District Advisory Council will be held on August 27, 1992 at 1 p.m. in the conference room of the Coos Bay District Office at 1300 Airport Lane, North Bend, Oregon.

The agenda will include information about ongoing programs on the Coos Bay District, and provide the Council with a briefing on the preferred alternative currently being analyzed in the Coos Bay District Resource Management Plan.

The Coos Bay District Advisory Council is composed of 10 individuals with expertise in a wide variety of program areas including renewable resources, recreation, environmental protection and transportation and rights-of-way. The function of the Council is to provide the Coos Bay District Manager with advice on the management of district programs.

The meeting is open to the pubic and time will be provided for public comments. Individuals wishing to address the Council should notify Alan Hoffmeister, BLM Public Affairs Officer in the Coos Bay District Office, 1300 Airport Lane, North Bend, Oregon 97459. Phone 756–0100.

Melvin E. Chase,

District Manager.

[FR Doc. 92–18008 Filed 7–29–92; 8:45 am]

BILLING CODE 4310–33–M

[NM–030–92–4212–13; NMNM 82703]

Termination of Segregation and Opening Order; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the segregative effect upon a portion of the public lands identified in the Notice of Realty Action published in the Federal Register, Volume 56, No. 180, dated September 17, 1991, and opens the lands to the operation of the public land laws including location under the mining laws.

FOR FURTHER INFORMATION CONTACT: Harlen Smith, Area Manager, Socorro Resource Area, Bureau of Land Management, 198 Neel Avenue, Socorro, New Mexico 87801, (505) 835–0412.

SUPPLEMENTARY INFORMATION: In accordance with 43 CFR 2201.1(b), the following described public lands were segregated from appropriation under the public land laws:

New Mexico Principal Meridian

T. 2 N., R. 4 E.,
Sec. 3, lots 1 and 2;
Sec. 10, lots 1 to 4, inclusive, E½NE¼, and SE¼.
T. 1 N., R. 12 W.,
Sec. 19, lot 3 and NE¼SW¼.
T. 1 N., R. 13 W.,
Sec. 13, SE¼SW¼ and S½SE¼;
Sec. 24, NE¼, NE¼NW¼, N½SE¼, and SE¼SE¼.
T. 1 N., R. 16 W.,
Sec. 29, SE¼NW¼.
T. 3 N., R. 17 W.,
Sec. 31, NE¼, E½NW¼, AND N½SE¼.
T. 3 S., R. 1 W.,
Sec. 25, W½E½ (portion).
T. 2 S., R. 4 W.,
Sec. 21, NW¼SE¼, N½SW¼, and SW¼SW¼;
Sec. 25, lots 11 and 18;
Sec. 29, NW¼NE¼ and N½NW¼;
Sec. 30, lots 1,2,3, NE¼, E½NW¼, and NE¼SW¼
Sec. 36, lots 6 to 9, inclusive, 11 and 12.
T. 2 S., R. 5 W.,
Sec. 25, E½NE¼, E½SW¼, and SE¼.
T. 2 S., R. 9 W.,
Sec. 19, S½SE¼;
Sec. 20, SW¼, W½SE¼, and SE¼SE¼;
Sec. 21, S½SW¼;
Sec. 28, W½;
Sec. 29;
Sec. 30, E½;
Sec. 33, W½.
T. 2 S., R. 10 W.,
Sec. 13, W½SW¼ and SE¼SW¼;
Sec. 14, N½SE¼SE¼, N½SW¼SE¼SE¼, SE¼SW¼SE¼SE¼, and SE¼SE¼SE¼;
Sec. 24, N½NW¼ and SE¼NW¼.
T. 5 S., R. 16 W.,
Sec. 8, tracts 37, 40, 41, and 46.
T. 2 S., R. 1 E.,
Sec. 31, lot 11.

T. 4 S., R. 1 E.,
Sec. 18, lot 21;
Sec. 33, lot 17.
T. 5 S., R. 1. E.,
Sec. 4, lot 38, 40, and 41.

Upon publication of the Notice of Realty Action, the subject lands became segregated from all forms of appropriation under the public land laws and location under the mining laws, as they were being considered for disposal as part of the Boyd Ranch Land Exchange Proposal. Since these lands were eventually omitted from the final exchange package their segregation is no longer appropriate.

Pursuant to 43 CFR 2091.2–2(a)(2), the segregation effect on the above described lands will terminate on August 1, 1992. At 10 a.m. on August 1, 1992, the land will be open to the operation of the public land laws, generally subject to valid existing rights and requirements of applicable law.

Dated: July 17, 1992.

Monte G. Jordan,

Associate State Director.

[FR Doc. 92–18006 Filed 7–24–92; 8:45 am]

BILLING CODE 4310–FB–M

[G–010–4212–13/G2–0117; NM87609]

Realty Action; Exchange of Lands in New Mexico

AGENCY: Bureau of Land Management, Farmington Resource Area, Interior.

ACTION: Notice of Realty Action on Proposed Land Exchange NM 87609. Exchange of public and withdrawn public land for private and trust land in San Juan, McKinley, Sandoval, Cibola and Rio Arriba Counties, New Mexico.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under the authority of section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

Withdrawn Public Land New Mexico Principal Meridian

	Acres
T. 21 N., R. 8 W.,	
Sec. 25: All	640.00
Sec. 27: Lots 1–4, N½, SE¼	645.59
T. 15 N., R. 11 W.,	
Sec. 3: S½N½, S½	480.00
Sec. 7: NE¼, Lots 3, 4, E½SW¼	308.79
Sec. 9: NE¼, S½	480.00
Sec. 13: All	640.00
Sec. 23: NW¼, SE¼	320.00
Sec. 31: Lots 1–4, E½W½	305.60
T. 16 N., R. 11 W.	
Sec. 3: S½	320.00
Sec. 5: Lots 3, 4, S½NW¼	163.57

Withdrawn Public Land New Mexico Principal Meridian—Continued

	Acres
Sec. 11: S½	320.00
Sec. 19: Lots 1, 2, E½NW¼, E½	475.17
Sec. 23: NE¼, S½	480.00
Sec. 27: All	640.00
Sec. 33: SW¼NE¼,N½NW¼S E¼	60.00
T. 17 N., R. 11 W.,	
Sec. 3: Lots 3, 4, S½NW¼, S½	480.84
Sec. 5: Lots 1–4, S½N½, S½	639.32
Sec. 7: Lots 1–4, E½W½, E½	637.92
Sec. 9: All	640.00
Sec. 17: NW¼, S½	480.00
Sec. 19: Lots 1, 2, E½NW¼, E½	479.68
Sec. 21: NE½, S¼	480.00
Sec. 23: All	640.00
Sec. 27: N½, SW¼	480.00
Sec. 29: E½	320.00
Sec. 33: N½, SW¼	480.00
Sec. 35: All	640.00
T. 18 N., R. 12 W.,	
Sec. 3: SW¼	160.00
Sec. 33: S½	320.00
T. 19 N., R. 12 W.,	
Sec. 1: Lots 1–4. S½N½, S½	645.88
Sec. 3: Lots 1–4, S½N½, SE¼	490.36
Sec. 11: All	640.00
Sec. 13: NE¼, S½	480.00
Sec. 15: N½, SE¼	480.00
Sec. 19: Lots 1, 2, E½NW¼, E½	477.85
Sec. 21: All	640.00
Sec. 23: NW¼, S½	480.00
Sec. 25: SE¼	160.00
Sec. 27: NW¼, S½	480.00
Sec. 29 NE¼	160.00
Sec. 33: E½	320.00
Sec. 35: W½	320.00
T. 17 N., R. 13 W.,	
Sec. 25: S½	320.00
Sec. 27: SW½	160.00
Sec. 29: S½	320.00
Sec. 35: All	640.00
T. 19 N., R. 13W.,	
Sec. 7: Lots 1, 2, E½NW¼	152.60
Sec. 9: SE¼	160.00
Sec. 15: N½, N½S½	480.00
Sec. 17: NW¼	160.00
Sec. Sec 19: Lots 3–8, E½SW¼, E½	620.50
T. 23N., R. 13 W.,	
Sec. 29: All	640.00
T. 14N., R. 18 W.,	
Sec. 1: Lots 1–4, S½N½, S½	640.80
Sec. 25: SW¼	160.00
T. 11N., R. 19W.,	
Sec. 5: Lots 1–4, S½N½, SE¼	480.32
T. 13 N., R. 20 W.,	
Sec. 13: NW¼	160.00
Sec. 15: NW¼, S½	480.00
T. 14 N., R. 20 W.,	
Sec. 21: N½, S½SW¼, SE¼	560.00
T. 12 N., R. 21 W.,	
Sec. 25: All	640.00
T. 13 N., R. 21 W.,	
Sec. 1: Lots 1–4, S½N½, SW¼	480.38
T. 14 N., R. 21 N.,	
Sec. 25: S½N½, S½	480.00
Subtotal	26,665.17

Withdrawn Public Land New Mexico Principal Meridian—Continued

	Acres
Public Land	
T. 9 N., R. 14 W.,	
Sec. 32: S½NW¼	80.00
T. 13 N., R. 12 W.,	
Sec. 10: SW¼	160.00
Subtotal	240.00

Comprising 29,905.17 acres of public and withdrawn public land. In exchange for these lands, the United States will acquire some or all of the following described lands from the Navajo Tribe (Tribe) under the authority of the Indian Land Consolidation Act, 25 USC 2201.

New Mexico Principal Meridian	
T. 22 N., R. 6 W.	
Sec. 1: Lots 1, 2, 3, 4, S½N½, S½	641.00
Sec. 11: NE¼, S½SE¼, E½NW¼, N½S½, SE¼SW¼	520.00
Sec. 12: NW¼, N½SW¼, SW¼SW¼	280.00
T. 23 N., R. 6 W.,	
Sec. 2: SW¼NW¼	40.00
Sec. 3: S½NE¼, SE¼NW¼	120.00
Sec. 5: E½, E½W½, W½SW¼	560.00
Sec. 6: SE¼, S½SW¼	240.00
Sec. 7: All	640.00
Sec. 8: N½, SW¼, SE¼SE¼	520.00
Sec. 9: S½SW¼, S½NW¼, NE¼SW¼, NW¼SE¼	240.00
Sec. 15: SW¼NE¼, NW¼SE¼, NE¼SW¼, SE¼NW¼	160.00
Sec. 17: NE¼NE¼	40.00
Sec. 18: Irregular Tract	602.00
Sec. 20: N½NE¼, SW¼NE¼, NW¼, SE¼SW¼, S½SE¼	400.00
Sec. 21: NW¼NW¼, SW¼SW¼	80.00
Sec. 22: S½, E¼, SE¼ (Partial Irregular Tract)	160.00
Sec. 24: All	640.00
Sec. 25: All	640.00
Sec. 27: N½NE¼	80.00
Sec. 29: N½NE¼, E½NW¼	160
T. 23 N., R. 7 W.,	
Sec. 3: N½	320.00
Sec. 11: S½, S½N½, N½NE¼	560.00
Sec. 12: N½, SE¼, NW¼SW¼	520.00
Sec. 13: Irregular Tract	625.00
Sec. 14: Irregular Tract	290.00
T. 24 N., R. 6 W.,	
Sec. 1: All	640.00
Sec. 3: Lots 3, 4, 5, 6, 11, 12	180.00
Sec. 4: Lots 1–5, 8–10, W½SE¼, E½SW¼, SW¼SW¼	398.20
Sec. 5: Lots 1, 2, 7, 8, 10, 11, 12 N½SW¼	207.13
Sec. 6: Lots 5, 9, 11–14, E½SW¼, NE¼SE¼	359.00
Sec. 7: Lots 1–4, E½W½, E½	638.00
Sec. 8: E½NE¼, SE¼	240.00
Sec. 9: NW¼NW¼, S½SE¼, NE¼SE¼	160.00
Sec. 10: S½, S½N½, NE¼NW¼	520.00
Sec. 12: S½SE¼	80.00
Sec. 13: E½NE¼	80.00
Sec. 15: S½NE¼, N½SE¼	160.00
Sec. 17 W½E½, NE¼NE¼, E½W½, W½NW¼, NW¼SW¼	480.00

Withdrawn Public Land New Mexico Principal Meridian—Continued

	Acres
Sec. 18: SW¼	160.00
Sec. 20: W½	320.00
Sec. 22: NE¼	160.00
Sec. 29: NW¼	160.00
Sec. 30: E½NE¼, SW¼NE¼, NW¼SE¼	160.00
Sec. 35: N½NE¼, NE¼NW¼	120.00
T. 24 N., R. 7 W.,	
Sec. 1: E½SE¼, SW¼SE¼, S½SW⅛	200.00
Sec. 7: Lots 3, 4	81.00
Sec. 12: NE¼NE¼, W½NW¼, NW¼SW¼	160.00
Sec. 13: SE¼	160.00
Sec. 18: Lots 1, 2	81.00
Sec. 19: SE¼NW¼, NE¼SW¼, NW¼SE¼	120.00
Sec. 23: N½SW¼, SE¼SW¼, SE¼	280.00
Sec. Sec. 24: N½	320.00
Sec. 26: NE¼NE¼	40.00
Sec. 34: All	640.00
Sec. 35: All	640.00
T. 24 N., R. 8 W.,	
Sec. 10: All	640.00
Sec. 11: E½SW¼, W½SE¼, NE¼SE¼	200.00
Sec. 12: N½SW¼, SE¼SE¼	120.00
Sec. 13: E½NE¼, SE¼NE¼, S½	440.00
Sec. 14: N½, NE¼SE¼	360.00
T. 25 N. R. 6 W.,	
Sec. 15: S½SW¼	80.00
Sec. 21: W½NE¼, N½SE¼	160.00
Sec. 22: N½NW¼	80.00
Sec. 23: SE¼NE¼, NE¼SE¼	80.00
Sec. 24: SW¼NW¼, NW¼SW¼	80.00
Sec. 27: W½SW¼	80.00
Sec. 28: E½SE¼	80.00
Sec. 33: SW¼NE¼, NE¼SW¼, S½SW¼, NW¼SE¼	200.00
Sec. 34: NE¼SE¼	40.00
Sec. 35: SE¼NW¼, N½SW¼	120.00
T. 25 N., R. 7 W.,	
Sec. 17: S½NE¼, E½SW¼, SE¼	320.00
Sec. 20: NE¼, E½NW¼, N½SE¼	320.00
T. 25 N., R. 8 W.,	
Sec. 10: SW¼SW¼	40.00
Sec. 15: N½NW¼, NW¼NE¼	120.00
T. 25 N., R. 9 W.,	
Sec. 25: W½SW¼, NE¼NW¼, S½NW¼	200.00
Sec. 26: NE¼SE¼, S½SE¼	120.00
Sec. 35: N½	320.00
T. 26 N., R. 8 W.,	
Sec. 28: All	640.00
Sec. 33: All	640.00
T. 26N., R. 9W.,	
Sec. 4: W½SW¼, SE¼SW¼	120.00
Sec. 22: NE¼SE¼	40.00
Sec. 24: E½	320.00
Sec. 25: NE¼, W½	480.00
Sec. 26: NE¼NE¼, SE¼SE¼	80.00
T. 26 N., R. 10 W.,	
Sec. 8: E½NW¼, S½NE¼	160.00
Sec. 24: NW¼	160.00
T. 27 N., R. 8 W.,	
Sec. 21: SE¼SE¼	40.00
Sec. 22: N½SW¼, SW¼SW¼	120.00

Withdrawn Public Land New Mexico Principal Meridian—Continued

	Acres
T. 27 N. R. 10 W.,	
Sec. 7: S½SE¼, SE¼SW¼	120.00
Sec. 8: W½SW¼, SW¼NW¼, SE¼SW¼, SW¼SE¼	200.00
Sec. 17: NW¼NE¼, N½NW¼	120.00
Sec. 18: E½E½	160.00
Sec. 19: NE¼NE¼	40.00

Comprising 24,662.33 acres of private and trust lands.

This exchange is in the public interest. Benefits to be derived include:

1. All of the lands to be acquired by the United States are in the area designated for retention in the Farmington Resource Management Plan. Their acquisition will help consolidate Federal ownership and assist the BLM in future management of the areas for their wildlife, recreation and other values.

2. The Tribe will be acquiring parcels located in areas of high Indian ownership. This exchange will help in blocking up land ownership.

3. Most of the lands that the Tribe will acquire were withdrawn for Indian use and a land consolidation and exchange program. This exchange will help fulfill the intent of that withdrawal.

4. The two parcels of unappropriated public land are currently used by members of the Navajo Tribe. One parcel is used as a cemetery, the other has homes on it. Tribal ownership of the parcels will help secure rights for the occupants to remain.

The value of the lands being exchanged will be approximately equal. Equalization will be achieved by a cash equalization payment not to exceed 25 percent of the total value of lands to be transferred out of Federal ownership or by adjusting the acreages transferred. If an acreage adjustment is used to equalize the values, the authorized officer may waive the cash equalization payment if it is less than three percent of the value of the lands being transferred out of Federal ownership or $15,000, whichever is less, in accordance with Section 9 of the Federal Land Exchange Facilitation Act of 1988 (Pub. L. 100–409).

Lands to be transferred from the United States will be subject to the following reservations, terms and conditions:

1. All mineral deposits shall be reserved to the United States along with the right to prospect for, mine and remove such deposits under applicable law.

2. The right to construct ditches and canals across said lands under authority of the Act of August 30, 1890 (43 U.S.C. 945).

3. All valid existing rights (e.g., rights-of-way and leases of record).

Publication of this notice in the Federal Register segregates the public lands from the operation of the public land laws and the general mining laws, but not the mineral leasing laws. The segregative effect will end upon issuance of patent or two years from the date of publication, whichever occurs first.

For further information contact: Bob Moore, Farmington Resource Area (505) 327–5344. Information relating to the exchange is available for review at the Farmington Resource Area Office, 1235 La Plata Highway, Farmington, New Mexico 87401.

For a period of 45 days from the date of first publication of this notice interested parties may submit comments to the Area Manager, Farmington Resource Area, Bureau of Land Management at the above address. Objections will be reviewed by the State Director, who may sustain, vacate or modify this realty action. In the absence of objections, this realty action will become the final determination of the Department of the Interior.

Dated: July 8, 1992.

Mike Pool,

Area Manager.

[FR Doc. 92–16937 Filed 7–29–92; 8:45 am]

BILLING CODE 4310–FB–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–331]

In the Matter of Certain Microcomputer Memory, Components Thereof and Products Containing the Same; Commission Determination Denying an Application for Interlocutory Appeal

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has determined to deny an application for interlocutory appeal of the presiding administrative law judge's (ALJ's) Order No. 16 finding that complainant Chips and Technologies, Inc. ("Chips") had not met its burden of proof as to its claims of attorney-client privilege or work product immunity for several withheld documents.

FOR FURTHER INFORMATION CONTACT: Daniel Hopen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436; telephone: (202) 205–3108. Copies of the Commission order and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436; telephone (202) 205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205–1810.

SUPPLEMENTARY INFORMATION: On May 5, 1992, the presiding ALJ issued Order No. 16 ruling on claims of privilege and immunity for documents withheld by complainant Chips. The ALJ found that Chips had not carried its burden of proof in establishing privilege or immunity for 46 documents. Chips subsequently reduced the number of withheld documents to 40.

On May 19, 1992, in response to a motion by Chips, the ALJ granted leave for Chips to file an application for interlocutory review of Order No. 16 with the Commission. On June 1, 1992, Chips filed its application for interlocutory review with the Commission. On June 5, 1992, respondent OPTi opposed Chips' application.

This action is taken pursuant to section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Commission interim rule 210.70 (19 CFR 210.70, as amended).

Issued: July 24, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92–17928 Filed 7–29–92; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–572 (Preliminary)]

Certain Special Quality Carbon and Alloy Hot-Rolled Steel Bars and Rods and Semifinished Products From Brazil

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Brazil of certain special quality carbon and alloy hot-rolled steel bars and rods and semifinished products,[3] covered by subheadings/statistical reporting numbers 7207.11.00, 7207.12.0010, 7207.19.0030, 7207.20.0025, 7207.20.0075, 7214.30.00, 7214.40.00, 7214.50.00, 7214.60.00, 7224.10.0075, 7224.90.0045, 7224.90.0065, and 7228.30.80 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value.

Background

On June 9, 1992, a petition was filed with the Commission and the Department of Commerce by Republic Engineered Steels, Inc., Massillon, OH, and The Timken Company, Canton, OH, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of certain special quality hot-rolled and semifinished carbon and alloy steel products from Brazil. Accordingly, effective June 9, 1992, the Commission instituted preliminary antidumping investigation No. 731–TA–572. Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 17, 1992 (57 FR 27064). The conference was held in Washington, DC, on June 30, 1992, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 24, 1992. The views of the Commission are contained in USITC Publication 2512 (June 1992), entitled, "Certain Special Quality Hot-rolled and Semifinished Carbon and Alloy Steel Products from Brazil: Determination of the Commission in Investigation No. 731–TA–572 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: July 24, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92–18040 Filed 7–29–92; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 731–TA–539–A through 539–F (Final)]

Uranium From Kazakhstan, Kyrgystan, Russia, Tajikistan, Ukraine, and Uzbekistan

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigations.

DATES: Effective Date: July 24, 1992.

FOR FURTHER INFORMATION CONTACT: Tedford Briggs (202–205–3181), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION: On June 2, 1992, the Commission instituted the subject investigations and established a schedule for their conduct (57 FR 27065, June 17, 1992). Subsequently, the Department of Commerce extended the date for its final determinations in the investigations from August 11, 1992, to October 16, 1992 (57 FR 30946, July 13, 1992). The Commission, therefore, is revising its schedule in the

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[1] The record is defined in § 207.2(f) of the Commissions's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioners Brunsdale and Crawford voted in the negative. Commissioner Rohr voted in the negative regarding finished free-machining bars.

[3] For purposes of this investigation, the imports subject to investigation are certain hot-finished carbon and alloy (other than stainless, high speed, silico-manganese, and tool steel) steel bars and rods, which have a uniform solid cross-section along their whole length and are in the shape of circles, segments of circles, ovals, rectangles, or other convex polygons. The subject bars and rods are of special bar quality engineered steel,that are described in Society of Automotive Engineers (SAE) standards J403, J404, J411, J1081, J1249, J1268, and modifications thereof. Also included are certain alloy ingots (other than stainless steel, high-speed steel, silico-manganese steel, tool steel, and high-nickel alloy steel), and semifinished products of carbon and alloy steel (other than stainless steel, high-speed steel, silico-manganese steel, tool steel, and high-nickel alloy steel), of circular or rectangular (including square) cross-section with a width measuring less than four times thickness, of special bar quality engineered steel. Excluded from the scope of the investigation are imports of semifinished products or hot-rolled bars and rods which contain by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth; nonalloy steel ingots or other primary forms; semifinished or hot-rolled products of merchant quality steels (American Iron and Steel Institute (AISI) grades M 1000 through M 1044); hot-rolled bars and rods in coiled form; forged bars; and reinforcing bars and rods.

investigations to conform with Commerce's new schedule.

The Commission's new schedule for the investigations is as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than October 5, 1992; the prehearing conference will be held at the U.S. International Trade Commission Building on October 13, 1992; the prehearing staff report will be placed in the nonpublic record on October 5, 1992; the deadline for filing prehearing briefs is October 13, 1992; the hearing will be held at the U.S. International Trade Commission Building on October 20, 1992; and the deadline for filing posthearing briefs is October 28, 1992.

For further information concerning these investigations see the Commission's notice of investigations cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: July 24, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-18039 Filed 7-29-92; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Johnnie Davis or Ms. Victoria Dettmar, Interstate Commerce Commission, Section of Energy and Environment, room 3219, Washington, DC 20423, (202) 927-5750 or (202) 927-6211.

Comments on the following assessments are due 15 days after the date of availability:

AB-167 (Sub-No. 1100X), Consolidated Rail Corporation—Abandonment Exemption—In Alliance, Ohio. EA available 7/24/92.

AB-167 (Sub-No. 1101X), Consolidated Rail Corporation—Abandonment Exemption—In Middletown, Orange County, New York. EA available 7/24/92.

AB-55 (Sub-No. 429X), CSX Transportation, Inc.—Abandonment in Harrison County, West Virginia. EA available 7/24/92.

Comments on the following assessment are due 30 days after the date of availability:

AB-3 (Sub-No. 103), Missouri Pacific Railroad Company—Abandonment—In Douglas, Champaign and Vermilion Counties, Illinois (Westville-Jamaica Branches). EA available 7/21/92.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-18049 Filed 7-29-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging a Final Judgment by Consent Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on July 23, 1992, a proposed Consent Decree in *United States of America* versus *Allied Signal, Corporation, et al.* and *United States* versus *Warren Car Company et al.* consolidated at Civil Action No. 89-89 E ("*Allied Signal*" and "*Warren Car*"), was lodged with the United States District Court for the Western District of Pennsylvania.

The *Allied Signal* complaint filed by the United States in October 1989, and the complaint in *Warren Car* filed in April 1989, seek recovery of response costs incurred and to be incurred by the United States in responding to the release of hazardous substances alleged to have emanated from the Warren Car Company facility at the Starbrick Area Site in Starbrick, Pennsylvania pursuant to section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9607(a). Named as defendants in *Allied Signal* are a former operator and generators who are alleged to have contracted with the former operators for the cleaning or servicing of railroad tank cars which resulted in the disposal of hazardous substances from the tank cars at the facility. The *Warren Car* complaint District of Pennsylvania, 633 USPO & Courthouse, 7th and Grant Street, Pittsburgh, Pennsylvania 15219. Copies of the Consent Decree may also be examined and obtained in person at the Consent Decree Library, 601 Pennsylvania Avenue NW., Washington, DC 20044. A copy of the proposed Consent Decree may be obtained by mail from the Consent Decree Library. When requesting a copy, please present or enclose a check in the amount of $2.90 (ten cents per page reproduction costs) payable to the Consent Decree Library.

Roger Clegg,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92-17929 Filed 7-29-92; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that three proposed consent decrees in *United States* versus *Resource Conservation and Recovery of America, Inc.*, CV 0239-RLV, were lodged with the United States District Court for the Northern District of Georgia on July 8, 1992. This action was brought by the United States pursuant to section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607.

Under the proposed consent decrees, Eugene Baggett, Raymond Bass, and Everett Harwell agree to pay $5,000, $12,000, and $15,000, respectively, to the United States to resolve the civil claims of the United States against these defendants for response costs incurred as the result of a removal action which took place at the Davis Farm site, in Gordon County, Georgia.

The Department of Justice will receive, for a period of 30 days from the date of this publication, comments relating to the proposed consent decrees for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue, Washington, DC 20530, and should refer to *United States* versus *Resource Conservation and Recovery of America, Inc.*, D.J. Ref. 90-11-3-283.

The proposed consent decrees may be examined at the office of the United States Attorney, Richard Russell Building, room 1800, 75 Spring Street, Atlanta, Georgia 30335; the Region IV Office of the Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365; and at the Consent Decree Library, 601 Pennsylvania Avenue Building NW., Washington, DC 20004 (202-347-2072). A copy of the proposed consent decrees

may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue NW., Box 1097, Washington, DC 20004. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $3.00, $3.50, and $3.50, respectively, (25 cents per page reproduction costs) payable to the Consent Decree Library.

John C. Cruden,

Chief, Environment and Natural Resources Division.

[FR Doc. 92-17933 Filed 7-29-92; 8:45 am]

BILLING CODE 4410-01-M

Membership of the Department of Justice's 1992 Senior Executive Service Performance Review Boards

AGENCY: Department of Justice.

ACTION: Notice of the Department of Justice's 1992 Senior Executive Service Performance Review Boards.

SUMMARY: Pursuant to the requirements of 5 U.S.C. 4314(c)(4), the Department of Justice announces the membership of its Senior Executive Service (SES) Performance Review Boards (PRBs). The purpose of the PRBs are to provide fair and impartial review of SES performance appraisals and bonus recommendations. The PRBs will make recommendations to the Deputy Attorney General regarding the final performance ratings to be assigned and SES bonuses to be awarded.

FOR FURTHER INFORMATION CONTACT: John C. Vail, Director, Personnel Staff, Justice Management Division, Department of Justice, Washington, DC 20530, (202) 514-6788.

Paul W. Mathwin,

Executive Secretary, Senior Executive Resources Board.

1992 Performance Review Board Members

Antitrust Division

Anthony V. Nanni, Chief, Litigation I Section.
Catherine G. O'Sullivan, Chief, Appellate Section.

Civil Division

Robert E. Kopp, Director, Appellate Staff.
JoAnn J. Bordeaux, Deputy Director, Torts Branch.
Helene M. Goldberg, Director, Torts Branch.

Civil Rights Division

Gerald W. Jones, Counsel to the Assistant Attorney General.
John Wodatch, Director, Office on the Americans with Disabilities Act.
David Flynn, Chief, Appellate Section.

Community Relations Service

Jeffery L. Weiss, Deputy Director.

Criminal Division

George W. Proctor, Director, Office of International Affairs.
Lee J. Radek, Director, Asset Forfeiture Office.
George T. Gilinsky, Senior Counsel, Office of Professional Development and Training.

Environment and Natural Resources Division

William J. Kollins, Chief, Land Acquisition Section.
William Cohen, Chief, General Litigation Section.
Anne Shields, Chief, Policy, Legislation & Special Litigation Section.

Justice Management Division

Robert F. Diegelman, Director, Management and Planning Staff.
James W. Johnston, Director, Procurement Services Staff.
Warren Oser, Senior Policy Advisor.

Office of Policy Development

Kevin R. Jones, Deputy Director.

Tax Division

John J. McCarthy, Senior Litigation Counsel.
Steven Shapiro, Chief, Civil Trial Section.
Mildred L. Seidman, Chief, Claims Court Section.

Burau of Prisons

Arthur Beeler, Deputy Assistant Director, Health Services Division.
Thomas R. Kane, Assistant Director, Information Systems, Policy & Public Affairs Division.
M. Wayne Huggins, Director, National Institute of Corrections.
Patrick R. Kane, Assistant Director, Correctional Programs Division.

Executive Office for U.S. Attorneys

Richard DeHaan, Deputy Director, Relocation.

Executive Office for U.S. Trustees

Jeffrey M. Miller, Associate Director.

Immigration and Naturalization Service

Kenneth W. Rath, Associate Commissioner for Finance.
Joan C. Higgins, Assistant Commissioner, Detention and Deportation.
Michael D. Cronin, Assistant Commissioner, Inspections.
Kenneth E. Lopez, Director of Security.

Office of Justice Programs

Charles Lauer, Special Assistant to the Assistant Attorney General.

U.S. Marshals Service

G. Wayne Smith, Associate Director for Operations.

[FR Doc. 92-17931 Filed 7-29-92; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Washington State Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under Section 18 of the Occupational Safety and Health Act by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On January 26, 1973, notice was published in the **Federal Register** (38 FR 2421) of the approval of the Washington plan and the adoption of subpart F to part 1952 containing the decision.

The Washington plan provides for the adoption of State standards that are at least as effective as comparable Federal standards promulgated under section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective as status of the State program, a program change supplement to a State plan shall be required.

In response to Federal standards changes, the State has submitted by letters dated September 5, 1985, from G. David Hutchins, and July 31, 1987, from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, State standard amendments comparable to the Federal standard amendments 29 CFR 1910.35, 29 CFR 1910.37, 29 CFR 1910.38, 29 CFR 1910.107, and 29 CFR 1910.108, subpart E: Means of Egress and subpart H: Hazardous Materials, as published in the **Federal Register** (45 FR 60703) on September 12, 1980. The State standard amendments are contained in WAC 296-24. The State standard amendments were adopted on December 24, 1981, and effective January 23, 1982, pursuant to RCW 34.04.040(2), 49.17.040, 49.17.050, Public

Meetings Act RCW 42.30, Administrative Procedures Act RCW 34.04, and the State Register Act RCW 34.08 as ordered and transmitted under Washington Administrative Order No. 81–32. The original State standards, subpart E: Means of Egress, received approval on August 8, 1975 (40 FR 33500), and subpart H: Hazardous Materials, received approval on August 9, 1977 (42 FR 40279). The Means of Egress amendment contains the following significant differences: Freezer and refrigerator rooms must be capable of opening from the inside, whether the outside is locked or not; and any doorway adjacent to railroad or trolley tracks must have warning signs to prevent people from exiting into tracks.

In response to a Federal standard, final rule and a rule revision, the State has submitted by letters dated August 31, 1990, and September 4, 1990, from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a State standard comparable to the Federal standard at 29 CFR 1910.1450, Occupational Exposure to Hazardous Chemicals in Laboratories, as published in the **Federal Register** (55 FR 3300) on January 31, 1990. The State's laboratory standard, which is contained in WAC 296–62–400, contains several minor editorial differences. It was adopted by Washington Administrative Order 90–10 on August 13, 1990, and became effective on September 24, 1990.

In response to Federal standards changes, the State submitted by letter dated September 26, 1986 from G. David Hutchins, Assistant Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a State standard amendment comparable to the amended Federal standard, 29 CFR 1910.1043, Occupational Exposure to Cotton Dust, as published in the **Federal Register** (50 FR 51173) on December 13, 1985. The Washington Cotton Dust amendment, adopted July 25, 1986, effective August 25, 1986, by Washington Administrative Order 86–28, is contained in WAC 296–62–14533. Region X of the Occupational Safety and Health Administration returned this submittal on November 19, 1986, and requested that the State provide additional information. The State resubmitted by letter dated February 23, 1988 from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, a second amendment comparable to the amended Federal standard, 29 CFR 1910.1043, Occupational Exposure to Cotton Dust, Final Rule, as published in the **Federal Register** (50 FR 51173) on December 13 1985 and Corrections published (51 FR 24324) on July 3, 1986. This State standard amendment modifies the original State standard adoption and adds sections 14537, 14539, and 14541 to make the adoption and adds sections 14537, 14539, and 14541 to make the State standard at least as effective as the OSHA standard. It was adopted on November 30, 1987, and became effective on December 30, 1987, pursuant to RCW 34.04.040(2), 49.17.040, 49.17.050, Public Meetings Act RCW 42.30, Administrative Procedures Act RCW 34.04, and the State Register Act RCW 34.08 as ordered and transmitted under Washington Administrative Order number 87–24. The State standard includes these minor differences: A more inclusive definition of the term "blow down," a requirement to institute engineering and work practice controls "immediately" to reduce employee exposure to or below the permissible exposure limit, a compliance program description of each operation or process resulting in any level of exposure to Cotton Dust, and a semi-annual update requirement for the compliance program.

On its own initiative, the State of Washington has submitted by letter dated April 24, 1990, from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a State-initiated amendment to WAC 296–62–07107, Permissible Practice. The standard was modified to require employers to ensure that employees use respirators when required. This minor amendment was adopted on April 10, 1990, effective May 25, 1990, pursuant to RCW 34.04.040(2), 49.17.040, 49.17.050, Public Meetings Act RCW 42.30, Administrative Procedures Act RCW 34.04, and the State Register Act RCW 34.08, as ordered and transmitted under Washington Administrative Order 90–01.

In response to Federal standards changes, the State has submitted by letter dated February 23, 1988, from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a State housekeeping amendment comparable to the Federal standard 29 CFR 1926.55(c), Construction, Gases, Vapors, Fumes, Dust, and Mists, published in the **Federal Register** (51 FR 22756) on June 20, 1986. In addition, the State on its own initiative submitted amendments to WAC 296–155–775(90), Demolition, in the same February 23, 1988, letter. Both State standards originally received approval on February 9, 1982 (47 FR 5956). Both State amendments were adopted on November 10, 1987, and became effective on December 30, 1987, under Washington Administrative Order 87–24. The administrative order was adopted pursuant to RCW 34.04.040(2), 49.17.040, 49.12.050, Public Meetings Act RCW 42.30, Administrative Procedures Act RCW 34.04, and the State Register Act RCW 34.08. In both amendments the State corrected references to its asbestos standards. The State also submitted by letter dated May 10, 1989, a State housekeeping amendment comparable to the Federal standard 29 CFR 1926.55(d), Construction, Gases, Vapors, Fumes, Dust, and Mists, published in the **Federal Register** (52 FR 46312) on December 4, 1987. It was adopted on July 6, 1988 and became effective on August 4, 1988. The amendment adds a reference to the State's formaldehyde standard.

In response to Federal standards changes, the State has submitted by letter dated May 13, 1987, from Richard A. Davis, Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a State standard amendment comparable to the Federal standard 1910.145(f) and appendixes A and B, Accident Prevention Tags, published in the **Federal Register** (51 FR 33260) on September 19, 1986. The original State standard, Accident Prevention Tags, received approval on January 30, 1976 (41 FR 4688). The State subsequently submitted a State-initiated amendment adopted on March 1, 1976, effective April 1, 1976, under Washington Administrative Order 76–6. A second State standard amendment was adopted on March 12, 1987, and became effective on April 11, 1987, under Washington Administrative Order 87–01. These administrative orders were adopted pursuant to RCW 34.04.040(2), 49.17.040, 49.17.050, Public Meetings Act RCW 42.30, Administrative Procedures Act RCW 34.04, and the State Register Act RCW 34.08. The standard contains the following significant differences which were either adopted in May 1973 or in March 1976: (1) The State uses portions of ANSI Z35.1–1968, Specifications for Accident Prevention Signs, that are not part of the OSHA standard, specifically examples of signs and symbols and standard proportions for safety instruction signs; (2) the State uses portions of ANSI Z35.2–1968, Specification for Accident Prevention Tags, that are not part of the OSHA standard, specifically an explanation of the use of tags in general, the use of "do not start" tags and the use of "out of order" tags, instruction to employees, the design and color of radiation tags and illustration of various tags. The State also includes requirements for the

construction of tags. In addition, the State's March 12, 1987 amendment did not include the requirements because the State's maritime standards do not have comparable tag requirements; there was, thus, nothing to exempt. OSHA considers this latter difference to be a minor administrative difference.

2. Decision

Having reviewed the State's submission in comparison with Federal Standards, it has been determined that the State's standards amendments for Means of Egress and Accident Prevention Tags are at least as effective as the Federal standard amendments. The Means of Egress amendment has been in effect since January 23, 1982, and the significant differences in the Accident Prevention Tags standard have been in effect since April, 1976. During this time OSHA has received no indication of significant objection to these different State standards either as to their effectiveness in comparison to the Federal standards or as to their conformance with product clause requirements of section 18(c)(2) of the Act. (A different State standard applicable to a product which is distributed or used in interstate commerce must be required by compelling local conditions and not unduly burden interstate commerce.) OSHA therefore approves these amendments; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

OSHA has also determined that the differences between the State and Federal amendments for Occupational Exposure to Hazardous Chemicals in Laboratories; Cotton Dust; Permissible Practice; Construction, Gases, Vapors, Fumes, Dust and Mists; and Demolition are minimal and that the State Standards amendments are thus substantially identical. OSHA therefore approves these amendments; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary. OSHA has also determined that the State's amendment for Hazardous Materials is identical to the comparable Federal standard, and therefore approves the amendment.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 1111 Third Avenue, Suite 715, Seattle, Washington 98101–3212; Department of Labor and Industries, General Administration Building, Olympia, Washington 98504; and the Office of State Programs, Occupational Safety and Health Administration, room N–3476, 200 Constitution Avenue, NW, Washington, 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable law. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Washington State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason:

1. The standards were adopted in accordance with the procedural requirements of State law and further public participation would be repetitious.

This decision is effective July 30, 1992. (Sec. 18, Pub. L. 91–596, 84 STAT. 1608 (29 U.S.C. 667)).

Signed at Seattle, Washington, this 31st day of October 1991.

James W. Lake,

Regional Administrator.

[FR Doc. 92–17898 Filed 7–29–92; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Endowment for the Arts

Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Challenge/Advancement Advisory Panel (Locals Challenge Section) to the National Council on the Arts will be held on August 18, 1992 from 9 a.m.–4 p.m. in room M–09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 9 a.m.–10 a.m. The topics will be introductory remarks and overview of Challenge III.

The remaining portion of this meeting from 10 a.m.–4 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, this session will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: July 24, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92–18034 Filed 7–29–92; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182 b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on August 6–8, 1992, in Room P–110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the **Federal Register** on June 22, 1992.

Thursday, August 6, 1992

8:30 a.m.–8:45 a.m.: Opening Remarks by ACRS Chairman (Open)—The ACRS Chairman will make opening remarks and comments briefly regarding items of current interest.

8:45 a.m.–11:00 a.m.: Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC) (Open)—The Committee will review and report on selected ITAAC for the GE ABWR.

Representatives of the NRC staff and GE will participate, as appropriate.

11:00 a.m.–12:30 p.m.: Supplement to Generic Letter 83–28, Required Actions Based on

Generic Implications of Salem ATWS Events (Open)—The Committee will review and report on a proposed supplement to Generic Letter 83–28 and a Differing Professional Opinion regarding this matter.

Members of the NRC staff and the nuclear industry will participate, as appropriate.

1:30 p.m.–2:30 p.m.: Emergency Planning and Preparedness (Open)—The Committee will review and report on proposed revision 3 to Regulatory Guide 1.101, Emergency Planning and Preparedness for Nuclear Reactors. Representatives of the NRC staff will participate, as appropriate.

2:30 p.m.–6:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports regarding matters considered during the 387th ACRS meeting (July 9–11, 1992), including the NRC Severe Accident Research Program Plan; policy issues pertaining to certification of evolutionary and passive light-water reactor plants; schedule/plans for review of the GE ABWR design; and proposed resolution of Generic Issue 106, Piping and Use of Highly Combustible Gases in Vital Areas.

6:00 p.m.–6:30 p.m.: Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS positions regarding matters considered during this meeting, including ITAAC and proposed supplement to Generic Letter 83–28.

Friday, August 7, 1992

8:30 a.m.–10:00 a.m.: EPRI Requirements for Evolutionary LWRs (Open)—The Committee will review and comment on requirements proposed by the Electric Power Research Institute for evolutionary light-water reactors.

Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

10:15 a.m.–11:30 a.m.: Regulatory Requirements Marginal to Safety (Open)—The Committee will review and comment on proposed elimination of NRC regulatory requirements marginal to safety.

Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

11:30 a.m.–12:15 p.m.: Future ACRS Activities (Open)—The Committee will discuss matters proposed for consideration by the ACRS.

1:15 p.m.–3:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports regarding matters considered during the 387th ACRS meeting (July 9–11, 1992) and this meeting, including the NRC Severe Accident Research Program Plan; the proposed Standard Review Plan for Nuclear Power Plant License Renewal; and reactor component fatigue considerations for license renewal.

3:30 p.m.–5:00 p.m.: Meeting with Director, NRC Office of Nuclear Reactor Regulation (Open)—The Committee will discuss topics of mutual interest, including the status of actions regarding nuclear plant inspections resulting from the NRC Regulatory Impact Survey, NRR action regarding the IPE for the FitzPatrick Nuclear Plant, use of PRA by the regulatory staff, and other regulatory matters, as appropriate.

5:00 p.m.–6:15 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports regarding matters considered during the 387th ACRS meeting (July 9–11, 1992) and this meeting, including a proposed supplement to Generic Letter 83–28, Required Actions Based on Generic Implications of Salem ATWS Events.

6:15 p.m.–6:45 p.m.: Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS positions regarding items considered during this meeting, including regulatory requirements marginal to safety and EPRI requirements for evolutionary LWRs.

Saturday, August 8, 1992

8:30 a.m.–11:30 a.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports regarding items considered during the 387th ACRS meeting and this meeting as noted above.

11:30 a.m.–11:45 a.m.: Appointment of ACRS Members (Open/Closed)—The Committee will discuss the status of appointment of members nominated for ACRS membership and qualifications of candidates proposed for consideration.

Portions of this session will be closed as necessary to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

11:45 a.m.–1:00 p.m.: ACRS Subcommittee Activities (Open/Closed)—The Committee will hear reports and discuss activities of cognizant subcommittees regarding designated assignments, including use of computers in nuclear power plant control and safety systems, and personnel matters related to the management and support of Committee activity.

Portions of this session will be closed as necessary to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

1:00 p.m.–1:30 p.m.: Miscellaneous (Open)—The Committee will discuss proposed reaction to ACRS comments and recommendations by the NRC Executive Director for Operations, and matters related to ACRS activities as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 1, 1991 (56 FR 49800). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those open portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director, Mr. Raymond F. Fraley, as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d) Public Law 92–463 that it is necessary to close portions of this meeting noted above to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552(c)(6).

Further information regarding topics to be discussed, whether the meeting has been cancelled or resecheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301–492–8049), between 8:00 a.m. and 4:30 p.m. e.s.t.

Dated: July 24, 1992.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 92–18019 Filed 7–29–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–445]

TU Electric Co., Comanche Peak Steam Electric Station, Unit 1; Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations Correction

In notice document 92–12330 beginning on page 22271, in the issue of Wednesday, May 27, 1992, make the following correction:

In the third full paragraph, in the third column, on page 22271, in line 15, the statement "conducted at 4°C not 4°F" should be corrected to read "conducted at 40°C not 40°F."

Dated at Rockville, Maryland, this 22nd day of July 1992.

For the Nuclear Regulatory Commission.

Thomas A. Bergman,

Project Manager, Project Directorate IV-2, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-18021 Filed 7-29-92; 8:45 am]

BILLING CODE 7590-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2571]

Arkansas: Declaration of Disaster Loan Area

Clark County and the contiguous counties of Dallas, Hot Spring, Montgomery, Nevada, Ouachita, and Pike in the State of Arkansas constitute a disaster area as a result of damages caused by high straight line and tornadic winds which occurred on June 14 and 19, 1992. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on September 8, 1992 and for economic injury until the close of business on April 8, 1993 at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155, or other locally announced locations.

The interest rates are:

For Physical Damage

Homeowners With Credit Available Elsewhere—8.000%.

Homeowners Without Credit Available Elsewhere—4.000%.

Businesses With Credit Available Elsewhere—6.500%.

Businesses and Non-Profit Organizations Without Credit Available Elsewhere—4.000%.

Others (Including Non-Profit Organizations) With Credit Available Elsewhere—8.500%.

For Economic Injury

Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere—4.000%.

The number assigned to this disaster for physical damage is 257111 and for economic injury the number is 765900.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 8, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92-18022 Filed 7-29-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Loan Area #2570]

Florida; Declaration of Disaster Loan Area

DeSoto and Sarasota Counties and the contiguous counties of Charlotte, Glades, Hardee, Highlands, and Manatee in the State of Florida constitute a disaster area as a result of damages caused by severe storms, heavy rains, and flooding beginning on June 25 and continuing. Applications for loans for physical damage may be filed until the close of business on Sept. 8, 1992 and for economic injury until the close of business on April 8, 1993 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, suite 300, Atlanta, GA 30308, or other locally announced locations:

The interest rates are.

For Physical Damage

Homeowners With Credit Available Elsewhere—8.000%.

Homeowners Without Credit Available Elsewhere—4.000%.

Businesses With Credit Available Elsewhere—6.500%.

Businesses and Non-Profit Organizations Without Credit Available Elsewhere—4.000%.

Others (Including Non-Profit Organizations) With Credit Available Elsewhere—8.500%.

For Economic Injury

Business and Small Agricultural Cooperatives Without Credit Available Elsewhere—4.000%.

The number assigned to this disaster for physical damage is 257006 and for economic injury the number is 765800.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 8, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92-18023 Filed 7-29-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2564]

Minnesota; Amendment #1; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with an amendment dated July 1, 1992, to the President's major disaster declaration of June 26, to include Nobles County, Minnesota, as a disaster area as a result of damages caused by severe storms flooding, and tornadoes which occurred June 16 through 20,1992.

In addition, small business located in the contiguous counties of Lyon and Osceola in the State of Iowa may file applications until the specified date at the aforementioned location. The economic injury number for Iowa is 766200.

All other information remains the same, i.e., the termination date for filing applications for physical damage is August 26, 1992, and for economic injury until the close of business on March 26, 1993.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: July 6, 1992.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 92-18024 Filed 7-29-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Economic Injury Disaster Loan Area #7660]

Oklahoma; Declaration of Disaster Loan Area

LeFlore, Payne and Tulsa Counties and the contiguous counties of Creek, Haskell, Latimer, Lincoln, Logan, McCurtain, Noble, Okmulgee, Osage, Pawnee, Pushmataha, Rogers, Sequoyah, Wagoner, and Washington in the State of Oklahoma, and Polk, Scott, and Sebastian Counties in the State of Arkansas constitute an economic injury disaster area as a result of damages caused by severe storms and high winds in Payne and Tulsa Counties and severe storms, high winds, and an LP gas explosion in LeFlore County which occurred on June 14–20, 1992. Eligible small businesses with credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on April 8, 1993 at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., suite 102, Ft. Worth, TX 76155,
or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

The economic injury number assigned to this disaster for the State of Arkansas is 766100.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: July 8, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92-18025 Filed 7-29-92; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council; Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Hartford, will hold a public meeting at 8:30 a.m. on Monday, August 24, 1992, at the Days Inn, 900 East Main Street,

Meriden, Connecticut, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Carol A. White, District Director, U.S. Small Business Administration, 330 Maine Street, Hartford, Connecticut 06106, (203) 240–4670.

Dated: July 17, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92–18026 Filed 7–29–92; 8:45 am]

BILLING CODE 8025–01–M

Region IX Advisory Council; Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of Honolulu, will hold a public meeting at 9:30 a.m. on Thursday, August 27, 1992 at the Prince Kuhio Federal Building, 300 Ala Moana Boulevard, Conference Room 4113A, Honolulu, Hawaii, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Andrew K. Poepoe, District Director, U.S. Small Business Administration, 300 Ala Moana Boulevard, Room 2213, Honolulu, Hawaii 96850, (808) 541–2990.

Dated: July 17, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92–18027 Filed 7–29–92; 8:45 am]

BILLING CODE 8025–01–M

Region VI Advisory Council; Public Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of the Lower Rio Grande Valley, will hold a public meeting at 3 p.m. on Thursday, August 20, 1992, at the Texas State Bank Board Room, 521 N. 77 Sunshine Strip, Harlingen, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Miguel A. Cavazos, Jr., District Director, U.S. Small Business Administration, 222 E. Van Buren Street, Suite 500, Harlingen, Texas 78550, (512) 427–8625.

Dated: July 17, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92–18028 Filed 7–29–92; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Transport Airplane and Engine Subcommittee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Transport Airplane and Engine Subcommittee of the Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on August 11–12, 1992 at 8 a.m. Arrange for oral presentations by July 30, 1992.

ADDRESSES: The meeting will be held at the McDonnell Douglas Corporation, McDonnell Room, suite 1200, 1735 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Ball, Aircraft Certification Service (AIR–1), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8235.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Transport Airplane and Engine Subcommittee to be held on August 11–12, 1992, at McDonnell Douglas Corporation, McDonnell Room, suite 1200, 1735 Jefferson Davis Highway, Arlington, VA 22202. The agenda for the meeting will include:

- Opening Remarks
- Review of the Systems Review Task Force Document
- Review of Airworthiness Assurance Working Group Structural Fatigue Audit
- Reports of established working groups
- Status of harmonization activities and organization of working groups

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by July 30, 1992, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on July 15, 1992.

William J. Sullivan,

Executive Director, Transport Airplane and Engine Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92–18017 Filed 7–29–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

Date: July 24, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0126.
Form Number: IRS Form 1120F.
Type of Review: Revision.
Title: U.S. Income Tax Return of a Foreign Corporation.
Description: Form 1120F is used by foreign corporations that have investments, or a business, or a branch in the United States. The IRS uses Form 1120F to determine if the foreign corporation has correctly reported its income, deductions and tax and if it has paid the correct amount of tax.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents/Recordkeepers: 18,000.
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—103 hours, 4 minutes.
Learning about the law or the form—38 hours, 41 minutes.
Preparing the form—66 hours, 16 minutes.
Copying, assembling, and sending the form to the IRS—6 hours, 58 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 3,869,640 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92–17996 Filed 7–29–92; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

Date: July 23, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Departmental Offices

OMB Number: 1505–0017.
Form Number: International Capital Form BC and International Capital Form BC(SA).
Type of Review: Extension.
Title: Treasury International Capital Form BC/BC(SA)—Reporting Bank's Own Claims and Selected Claims of Broker or Dealer, to Foreigners, Payable in Dollars.
Description: This report is required by law (22 U.S.C. 95a, 286f and 3103) for timely and accurate information on U.S. international capital movements including data on the dollar claims of banks, other depository institutions, brokers and dealers in the U.S. *vis-a-vis* foreigners.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 875.
Estimated Burden Hours Per Response: 7 hours.
Frequency of Response: Monthly and Semi-annually.
Estimated Total Reporting Burden: 73,500 hours.
OMB Number: 1505–0019.
Form Number: International Capital Form BL–1 and International Capital Form BL–1(SA).
Type of Review: Extension.
Title: Treasury International Capital Form BL–1/BL–1(SA)—Reporting Bank's Own Liabilities and Selected Liabilities or Broker or Dealer, To Foreigners, Payable in Dollars.
Description: This report is required by law (22 U.S.C. 95a, 22 U.S.C. 286f and 3103) for timely and accurate information on U.S. international capital movements, including data on the dollar liabilities of banks, other depository institutions, brokers and dealers *vis-a-vis* foreigners.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 900.
Estimated Burden Hours Per Response: 7 hours.
Frequency of Response: Monthly and Semi-annually.
Estimated Total Reporting Burden: 75,600 hours.
Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92–17997 Filed 7–29–92; 8:45 am]

BILLING CODE 4810–25–M

Office of Thrift Supervision

Cherokee Valley Federal Savings Association Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in Section 5(d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Cherokee Valley Federal Savings Association, Cleveland, Tennessee, on June 12, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–17959 Filed 7–29–92; 8:45 am]

BILLING CODE 6720–01–M

Coastal Federal Savings Bank, New London, Connecticut; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Coastal Federal Savings Bank, New London, Connecticut, on June 18, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–18962 Filed 7–29–92; 8:45 am]

BILLING CODE 6720–01–M

Columbia Banking Federal Savings Association, Rochester, NY; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Coproation as sole Conservator for Columbia Banking Federal Savings Association, Rochester, New York, on June 11, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–17958 Filed 7–29–92; 8:45 am]

BILLING CODE 6720–01–M

Cooper River Federal Savings Association; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Cooper River Federal Savings Association, North Charleston, South Carolina, OTS No. 2481, on June 5, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–17955 Filed 7–29–92; 8:45 am]

BILLING CODE 6720–01–M

First Home Federal Savings Association Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in Section 5 (d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for First Home Federal Savings Association, Pittsburgh, Pennsylvania, on June 19, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–17945 Filed 7–29–92; 8:45 am]

BILLING CODE

First American Federal Savings Bank; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for First American Federal Savings Bank, Greensboro, North Carolina, on June 5, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–17954 Filed 7–29–92; 8:45 am]

BILLING CODE 0720–01–M

First Newport Federal Savings Bank Newport Beach, CA; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for First Newport Federal Savings Bank, Newport Beach, California, on June 19, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington.

Corporate Secretary.

[FR Doc. 92–17960 Filed 7–29–92; 8:45 am]

BILLING CODE 6720–01–M

First Federal Savings Association Lewiston, Maine; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for First Federal Savings Association, Lewiston, Maine, on May 21, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–17951 Filed 7–29–92; 8:45 am]

BILLING CODE 6720–01–M

Home Federal Savings Bank

Notice is hereby given that, pursuant to the authority contained in Section 5 (d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Home Federal Savings Bank, Norfolk, Virginia, on July 9, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–17949 Filed 7–29–92; 8:45 am]

BILLING CODE 6720–01–M

Homefed Bank, FA; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for HomeFed Bank, FA, San Diego, California, on July 6, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–17950 Filed 7–29–92; 8:45 am]

BILLING CODE 6720–01–M

Home Unity Federal Savings and Loan Association; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Home Unity Federal Savings and Loan Association, Lafayette Hill, Pennsylvania, on June 4, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–17953 Filed 7–29–92; 8:45 am]

BILLING CODE 6720–01–M

Jacksonville Federal Savings Association; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Jacksonville Federal Savings Association, Jacksonville, Florida, on June 25, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–17947 Filed 7–29–92; 8:45 am]

BILLING CODE 6720–01–M

Republic Federal Savings Bank, Chicago, IL; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Republic Federal Savings Bank, Chicago, Illinois, on June 5, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–17956 Filed 7–29–92; 8:45 am]

BILLING CODE 6720–01–M

San Clemente Federal Savings Bank; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for San Clemente Federal Savings Bank, Irvine, California, on June 11, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–17961 Filed 7–29–92; 8:45 am]

BILLING CODE 6720–01–M

Southern Federal Savings Association of Georgia; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Southern Federal Savings Association of Georgia, Atlanta, Georgia, on July 10, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–17946 Filed 7–29–92; 8:45 am]

BILLING CODE 6720–02–M

Transohio Federal Savings Bank; Appointment of Conservator

Notice is hereby given that, pursuant to the authority, contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Transohio Federal Savings Bank, Cleveland, Ohio, on July 10, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–17948 Filed 7–29–92; 8:45 am]

BILLING CODE 6720–01–N

Volunteer Federal Savings Association; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Volunteer Federal Savings Association, Little Ferry, New Jersey, on June 5, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–17952 Filed 7–29–92; 8:45 am]

BILLING CODE 6720–01–M

Cherokee Valley Federal Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners's Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Cherokee Valley Federal Savings Bank, Cleveland, Tennessee, on June 12, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–17978 Filed 7–29–92; 8:45 am]

BILLING CODE 6720–01–M

Coastal Savings Bank, FSB, New London, CT; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Coastal Savings Bank, FSB, New London, Connecticut, OTS No. 3633, on June 18, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–17979 Filed 7–29–92; 8:45 am]

BILLING CODE 6720–01–M

Columbia Banking Federal Savings and Loan Association, Rochester, NY; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Columbia Banking Federal Savings and Loan Association, Rochester, New York, OTS No. 4209, on June 11, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–17980 Filed 7–29–92; 8:45 am]

BILLING CODE 6720–01–M

Cooper River Federal Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Cooper River Federal Savings Bank, North Charleston, South Carolina, OTS No. 2481, on June 5, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–17981 Filed 7–29–92; 8:45 am]

BILLING CODE 6720–01–M

First American Savings Bank, F.S.B.; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First American Savings Bank, F.S.B., Greensboro, North Carolina, OTS No. 3722, on June 5, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–17982 Filed 7–29–92; 8:45 am]

BILLING CODE 6720–01–M

First Federal Savings Bank, Lewiston, MA; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First Federal Savings Bank, Lewiston, Maine, OTS No. 3823, on May 21, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–17983 Filed 7–29–92; 8:45 am]

BILLING CODE 6720–01–M

First Home Savings Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(C) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First Home Savings Association, Pittsburgh, Pennsylvania, OTS. No. 1233, on June 19, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–17984 Filed 7–29–92; 8:45 am]

BILLING CODE 6720–01–M

First Newport Bank, F.S.B. Newport Beach, CA; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First Newport Bank, F.S.B., Newport Beach, California, OTS No. 8277, on June 19, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–17985 Filed 7–29–92; 8:45 am]

BILLING CODE 6720–01–M

First Security Federal Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First Security Federal Savings Bank, Pinehurst, North Carolina, OTS No. 0513, on May 21, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–17986 Filed 7–29–92; 8:45 am]

BILLING CODE 6720–01–M

Homefed Bank, Federal Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for HomeFed Bank, Federal Savings Bank, San Diego, California, OTS No. 3143 on July 6, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–17989 Filed 7–29–92; 8:45 am]

BILLING CODE 6720–01–M

Home Savings Bank FSB; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Home Savings Bank FSB, Norfolk, Virginia OTS No. 4728, on July 9, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–17987 Filed 7–29–92; 8:45 am]

BILLING CODE 6720–01–M

Home Unity Savings and Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(C) of the Home Owner's Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Home Unity Savings and Loan Association, Lafayette Hill, Pennsylvania, OTS No. 2521, on June 4, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–17988 Filed 7–29–92; 8:45 am]

BILLING CODE 6720–01–M

Jacksonville Federal Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Jacksonville Federal Savings Bank, Jacksonville, Florida, OTS No. 5108, on June 25, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc 92–17990 Filed 7–29–92; 8:45 am]

BILLING CODE 6720–01–M

Republic Savings Bank, F.S.B., Chicago, IL; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Republic Savings Bank, F.S.B., Chicago, Illinois, OTS NO. 8213 on June 5, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–17991 Filed 7–29–92; 8:45 am]

BILLING CODE 6720–01–M

Office of Thrift Supervision

San Clemente Savings Bank, F.S.B.; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for San Clemente Savings Bank, F.S.B., Irvine, California, OTS No. 6991, on June 11, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–17992 Filed 7–29–92; 8:45 am]

BILLING CODE 6720–01–M

Office of Thrift Supervision

Southern Federal Savings and Loan Association of Georgia; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Southern Federal Savings and Loan Association of Georgia, Atlanta, Georgia, on July 10, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–17993 Filed 7–29–92; 8:45 am]

BILLING CODE 6720–01–M

Transohio Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(C) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Transohio Savings Bank, Cleveland, Ohio, OTS NO. 1482, on July 10, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–17965 Filed 7–29–92; 8:45 am]

BILLING CODE 6720–01–M

Volunteer Savings Bank, SLA; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(C) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Volunteer Savings Bank, SLA, Little Ferry, New Jersey, OTS No. 0182, on June 5, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–17994 Filed 7–29–92; 8:45 am]

BILLING CODE 6720–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–80]

Action Concerning Canadian Practices Affecting Canadian Imports of Beer

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of implementation of action pursuant to section 305 of the Trade Act of 1974, as amended, 19 U.S.C. 2411 *et seq.* (Trade Act).

SUMMARY: Pursuant to section 301(a)(1) of the Trade Act, the United States Trade Representative (USTR) has imposed a 50 percent *ad valorem* duty upon all imports of beer (provided for in Harmonized Tariff Schedule of the United States heading 2203.00.00) produced in the province of Ontario, Canada. The increased duties will remain in effect for such time as is necessary to offset the harm caused by Canada's denial of U.S. rights under the General Agreement on Tariffs and Trade (GATT). The USTR also has instructed the interagency section 301 Committee to monitor imports of beer from all Canadian provinces in order to detect any diversion of shipments or production from Ontario to other provinces. If imports of beer from any other province increase significantly beyond historical levels, the USTR will consider whether to modify this action pursuant to section 307 of the Trade Act to increase duties upon imports from that province.

DATES: The increased duties will be assessed upon beer from Ontario that is imported, withdrawn from warehouse for consumption, or entered from a foreign trade zone or subzone on or after July 24, 1992.

ADDRESS: Section 301 Committee, Office of the United States Trade Representative, room 223, 600 17th Street, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David A. Weiss, Deputy Assistant United States Trade Representative for North American Affairs (202) 395–3412, or Edward Reisman, Office of the General Counsel (202) 395–7305.

SUPPLEMENTARY INFORMATION: On June 29, 1990, the USTR initiated an investigation pursuant to section 302 of the Trade Act in response to a petition filed by the G. Heileman Brewing Company regarding Canadian provincial liquor board practices. On September 14, 1990, the Stroh Brewery Company filed a similar petition concerning pricing and distribution practices of the province of Ontario. In accordance with section 304(a)(2) of the Trade Act, the USTR was required to issue its determination in the investigation by December 29, 1991.

On December 27, 1991, the USTR determined that Canadian provincial practices denied U.S. rights under a trade agreement (specifically, the GATT) and that action was therefore mandated by section 301(a). 57 FR 308 (January 3, 1992). This determination followed the adoption by the GATT Council of a dispute resolution panel report that found Canada's provincial practices concerning beer imports to conflict with the GATT. Over three years earlier, a prior GATT panel convened at the request of the European Community had concluded that these same Canadian provincial practices violated the GATT.

The USTR also determined on December 27, 1991, that the requisite action should be in the form of substantially increased duties on Canadian beer sufficient to offset fully the denial of U.S. rights under the GATT resulting from Canada's import restrictions concerning beer. Pursuant to section 305(a)(2) of the Trade Act, the USTR further determined that it was desirable to delay implementation of action until April 10, 1992, in order to provide Canada with a full opportunity to comply with the recommendations of the GATT panel.

On March 31, 1992, Canada submitted to the GATT Contracting Parties a proposal that purported to address the recommendations of the GATT panel report. The proposal failed to conform to the panel's recommendations, however, and would have been implemented over an excessive period of time (three years). Nevertheless, in order to make every effort to obtain a mutually satisfactory solution without the imposition of increased duties, the United States continued to consult with Canada in a spirit of compromise and flexibility. The USTR also determined that it was desirable to delay implementation of action to the maximum extent allowed by law (*i.e.*, until July 24, 1992) to provide Canada a final opportunity to remove its discriminatory beer practices. 57 FR 14,440 (April 20, 1992).

On April 25, 1992, the United States and Canada reached an "Agreement in Principle," in which Canada committed to bring some of its practices into conformity with the GATT. The "Agreement in Principle" also was intended to serve as a framework for a final agreement consistent with the GATT panel report. However, subsequent negotiations failed to result in the removal of many of the discriminatory practices, or even an agreement to remove them in the future. Some provinces have proposed ways in which their restrictive practices could be modified, at least in part, to comply with the GATT. The provinces of Ontario and Quebec, however, have insisted on maintaining discriminatory distribution systems, which require an extra warehousing step for imported beer with all its attendant costs.

Additionally, Ontario, which is the largest Canadian market for imported beer, has adopted a new beer pricing system that includes cost-of-service charges for imported beer only, exorbitantly high in-store cost-of-service charges, and other pricing mechanisms that serve disproportionately to raise the retail price of U.S. beer. These additional charges effectively prevent price competition and clearly contravene the conclusions of the GATT dispute settlement panel. Ontario also recently doubled a levy that applies to cans containing beer (primarily U.S. beer), thus exacerbating its GATT-inconsistent practices.

On July 14, 1992, during a meeting of the GATT Council, the United States addressed Canada's failure to bring its beer practices into conformity with the GATT, notwithstanding two adverse panel reports concerning those practices during the past four years. The United States representative to the GATT specifically noted that Canada's failure to make serious, persistent and convincing efforts to ensure observance by its liquor boards with the GATT left

the United States with very few practical options for resolving the dispute through the multilateral process.

Thus, despite the United States' concerted efforts to address this matter through bilateral negotiations and formal dispute settlement, Canada continues to deny U.S. rights under a trade agreement to the substantial detriment of U.S. beer producers and exporters. None of the provisions set forth in section 301(a)(2) of the Trade Act has been satisfied, and section 305(a)(2) requires the implementation of action by July 24, 1992.

Accordingly, the USTR has determined that the action announced on December 27, 1991, shall be implemented in the form of increased duties at the rate of 50 percent *ad valorem* on beer (provided for in Harmonized Tariff Schedule of the United States heading 2203.00.00) produced in the province of Ontario, Canada. The Harmonized Tariff Schedule of the United States will been modified to insert the following new heading in subchapter III of chapter 99, with the language inserted in the columns entitled "Heading/ Subheading", "Article Description", "Rates of Duty 1-General", and "Rates of Duty 1-Special", respectively:

9903.22.03	Beer made from malt, the foregoing the product of the province of Ontario, Canada (provided for in heading 2203.00.00)	50%	50% (CA)

The increased duties will be effective with respect to articles of the subject merchandise imported, withdrawn from warehouse for consumption, or entered from a foreign trade zone or subzone on or after July 24, 1992. The duties will remain in effect for such time as is necessary to offset fully the denial of U.S. rights under the GATT resulting from the Canadian practices.

The USTR also has instructed the interagency section 301 Committee to monitor imports to beer from Canada to determine whether imports from provinces other than Ontario are increasing significantly, which would indicate that beer is being diverted from Ontario to other provinces for exportation to the United States. If it appears that beer is being diverted from Ontario to other provinces, the USTR may issue a modified determination pursuant to section 307 of the Trade Act to impose additional duties upon imports of beer from those provinces.

Jeanne E. Davidson,

Chairman, Section 301 Committee.

[FR Doc. 92-17926 Filed 7-29-92; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF VETERANS AFFAIRS

Disciplinary Appeals Board Panel

AGENCY: Department of Veterans Affairs.

ACTION: Notice with request for comments.

SUMMARY: Section 203 of the Department of Veterans Affairs Health-Care Personnel Act of 1991 (Pub. L. 102-40), dated May 7, 1991, revised the disciplinary, grievance and appeal procedures for employees appointed under 38 U.S.C. 7401(1). It also required the periodic designation of employees of the Department who are qualified to serve on Disciplinary Appeals Boards. These employees constitute the Disciplinary Appeals Board Panel from which Board members in a case are appointed. This notice announces that the roster of employees on the panel is available for review and comment. This revision of MP-5, part II, chapter 8, "Disciplinary and Grievance Procedures," which incorporates these changes, was effective on April 21, 1992.

DATES: Names that appear on the panel may be selected to serve on a Board or as a grievance examiner 30 days after publication of this notice.

ADDRESSES: Send request for the list of the names of employees on the panel and written comments to: Secretary of Veterans Affairs (058A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: Robert J. Clayton, Chief, Employee Relations Division (058A), Office of Personnel and Labor Relations, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 535-8884.

SUPPLEMENTARY INFORMATION: Previously, VA policy under 38 U.S.C. 4110 provided employees with the opportunity for a pre-decisional review by a Disciplinary Board. The members of these Boards were recommended, selected and appointed on an as-needed basis. No preestablished list existed. In accordance with Public Law 102-40, the VA policy in VA manual MP-5, part II, chapter 8 was rewritten to provide for the use of Disciplinary Appeals Boards to hear post-decisional appeals from employees on major adverse actions arising in whole or in part from issues of professional conduct or competence. MP-5, part II, chapter 8 also provides for the Disciplinary Appeals Board Panel, which is a preestablished list of individuals from which Disciplinary Appeals Boards are selected. Employees, employee organizations, and other interested parties shall be provided (without charge) a list of the names of employees on the panel upon request and may submit comments concerning the suitability for service on the panel of any employee whose name is on the list.

Approved: July 22, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

[FR Doc. 92-18003 Filed 7-29-92; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 147
Thursday, July 30, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, August 4, 1992, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, August 6, 1992, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor.)

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Title 26 Certification Matters
Advisory Opinion 1992–26: Mr. Rainer K. Kraus on behalf of EZ Communications, Inc
Fiscal Year 1994 Budget
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219–4155.

Delores Harris,

Administrative Assistant.

[FR Doc. 92–18197 Filed 7–28–92; 3:18 pm]

BILLING CODE 6715–01–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–92–21A; Emergency Notice]

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 57FR32843—dated: July 23, 1992.

CHANGE OF TIME OF MEETING:

ORIGINAL TIME: July 30, 1992 at 2:30 p.m.

NEW TIME: July 30, 1992 at 10:30 a.m.

Notice is given that a Commission meeting was scheduled at 2:30 p.m., on July 30, 1992 and in conformity with 19 C.F.R. § 201.37(a), Commissioners Newquist, Nuzum, Crawford, Brunsdale, Rohr, and Watson have voted to change the time of the meeting to 10:30 a.m.

Commissioners Newquist, Nuzum, Crawford, Brunsdale, Rohr, and Watson determined by circulation of an action jacket that Commission business requires the change in the time of this meeting, affirmed that no earlier notice of the change was possible, and directed the issuance of this notice at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION: Paul R. Bardos, Acting Secretary, (202) 205–2000.

Dated: July 28, 1992.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92–18171 Filed 7–28–92; 2:22 pm]

BILLING CODE 7070–02–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Audit and Appropriations Committee Meeting

TIME AND DATE: A meeting of the Board of Directors Audit and Appropriations Committee will be held on August 9, 1992. The meeting will commence at 6:30 p.m.

PLACE: The Sir Francis Drake Hotel, 450 Powell Street, The Carmel Room, San Francisco California, (415) 392–3500.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of Minutes of July 13, 1992 Meeting.
3. Consideration and Review of Budget and Expenses For the Nine-Month Period Ending June 30, 1992.
4. Consideration and Review of Nine-Month Projections for the Period of July 1, 1992 to September 30, 1992.
   a. Consideration of Need for Internal Budgetary Adjustments.
   b. Consideration of Reallocation of Fiscal Year 1992 Consolidated Operating Budget.
5. Consideration of Status Report on the Leasing of the Corporation's Former Headquarters Office Space.

OPEN SESSION: (Continued)

6. Consideration of Whether the Corporation's Annual Financial Audit Should be Conducted In Accordance With Generally Accepted Governmental Auditing Standards.
7. Consideration of Proposed Application For Funding Form that Solicits Data Regarding Grantee Property Insurance Coverage.
8. Consideration of Status of Management's Effort to Incorporate 1990 Census Data into Program Area Poverty Population Statistics for use by Congress and/or the Corporation in Making 1993 Grants, Including a Report from Management Concerning the Methods Used by Congress During the 1980's to Equalize Program Funding and the Impact on Programs (at Various 1993 Funding Levels) of Instantly Equalizing Funding for 1993 Grants.

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 336–8896.

Date Issued: July 28, 1992.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 92–18211 Filed 7–28–92; 3:54 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Operations and Regulations Committee Meeting

TIME AND DATE: A meeting of the Board of Directors Operations and Regulations Committee will be held on August 9, 1992. The meeting will commence at 4:30 p.m.

PLACE: The Sir Francis Drake Hotel, 450 Powell Street, The Carmel Room, San Francisco, California 94101, (415) 392–3500.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of July 13, 1992 Meeting.
3. Consideration of Report By Staff Regarding Competition Demonstration Projects.
4. Consideration of Notices Submitted to the **Federal Register** Regarding Proposed Amendments to Certain of the Corporation's Regulations.

CONTACT PERSON FOR INFORMATION: Patricia Batie, Executive Office, (202) 336–8896.

Date Issued: July 28, 1992.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 92–18210 Filed 7–28–92; 3:54 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Provision for the Delivery of Legal Services Committee Meeting

TIME AND DATE: A meeting of the Board of Directors Provision for the Delivery of Legal Services Committee will be held on August 8, 1992. The meeting will commence at 12:00 p.m.

PLACE: The Marine Memorial Hotel, 609 Sutter Street, The Commandant's Room,

San Francisco, California; (415) 673–6672.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of May 17, 1992 Meeting Minutes.
3. Consideration of Status Report on the Innovative and Meritorious Grant Award Project.
4. Presentation by Steven Moore, Executive Director, Indian Law Support Center, Regarding Native American Issues.

CONTACT PERSON FOR INFORMATION: Patricia Batie, Executive Office, (202) 336–8896.

Date Issued: July 28, 1992.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 92–18209 Filed 7–28–92; 3:54 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Office of the Inspector General Oversight Committee Meeting

TIME AND DATE: A meeting of the Board of Directors Office of the Inspector General Oversight Committee will be held on August 10, 1992, commencing at 8:00 a.m.Q02

PLACE: The Plan Pacific Hotel, 500 Post Street, The Olympic Ballroom A, San Francisco, California 94102, (415) 771–8600.Q02

STATUS OF MEETING: *Open,* except that a portion of the meeting will be closed pursuant to a majority vote of the Board of Directors to be taken prior to the Committee meeting. During the closed session, the Committee will discuss with the Inspector General his job performance during the past eleven month period and will consider and assess the Inspector General's performance. In addition, the Committee will approve the minutes of the executive session held by the Committee on July 13, 1992.[1] The closing will be authorized by the relevant section of the Government in the Sunshine Act [5 U.S.C. Section 552(b)(6)], and the corresponding regulation of the Legal Services Corporation [45 CFR Section 1622.5(e)]. The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, N.E., Washington, D.C. 20002, in its two reception areas, and will otherwise be available upon request.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of July 13, 1992 Meeting.
3. Consideration of Inspector General's Report on the General Activities of the Office of the Inspector General.

CLOSED SESSION:

4. Approval of Minutes of July 13, 1992 Executive Session.
5. Consideration and Assessment of the Inspector General's Job Performance During the Period of September 17, 1992 to Date.

OPEN SESSION: (Resumed)

6. Consideration of Motion to Adjourn Meeting.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Executive Office, (202) 336–8896.

Date Issued: July 28, 1992.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 92–18212 Filed 7–28–92; 3:54 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Meeting

TIME AND DATE: A meeting of the Board of Directors will be held on August 10, 1992. The meeting will commence at 9:00 a.m.

PLACE: The Pan Pacific Hotel, 500 Post Street, The Olympic Ballroom A, San Francisco, California 94102, (415) 771–8600.

STATUS OF MEETING: *Open,* except that a portion of the meeting may be closed if a majority of the Board of Directors votes to hold an executive session. At the closed session, pursuant to receipt of the aforementioned vote, the Board of Directors will consider and vote on approval of the draft minutes of the executive session held on July 14, 1992. In addition, the Board of Directors will hear and consider the report of the General Counsel on litigation to which the Corporation is a party. The Board of Directors will also receive and consider a status report on several investigations from the Inspector General. Further, and in connection with its two-phase performance assessment process related to the Inspector General, the Board of Directors will consider a recommendation by the Office of the Inspector General Oversight Committee regarding the assessment of the Inspector General's job performance. Consistent therewith, the Board of Directors will consider the reports received previously from the Corporation President and the Inspector General concerning activities of their respective offices over the past twelve-month period, as well as the activities planned for the next twelve-month period. In this regard, the Board of Directors will assess and hold separate discussions with the President and Inspector General regarding their respective job performances. A portion of the executive session will consist of briefings conducted by Corporation staff.[3] The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b(c)(2), (6), (7)(c), (d) and (10)], and the corresponding regulation of the Legal Services Corporation [45 C.F.R. Sections 1622.5(a), (e), (f)(3), (4) and (h)].[4] The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, N.E., Washington, D.C., 20002, in its two reception areas, and will otherwise be available upon request.

MATTERS TO BE CONSIDERED:

OPEN SESSION: [5]

1. Approval of Agenda.
2. Approval of Minutes of July 14, 1992 Meeting.
3. Chairman's and Members' Reports.
   a. Consideration of Proposal to Permit Board Members to be Compensated for Attending Annual Conferences Conducted by the Corporation's Board of Directors.

OPEN SESSION: (Continued)

4. Consideration of Operations and Regulations Committee Report.
5. Consideration of Office of the Inspector General Oversight Committee Report.
6. Consideration of Provision for the Delivery of Legal Services Committee Report.
7. Consideration of Audit and Appropriations Committee Report.
   a. Consideration of Reallocation of Fiscal Year 1992 Consolidated Operating Budget.

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[1] As to the Committee's consideration and approval of the draft minutes of the executive session held on July 13, 1992, the closing is authorized as noted in the **Federal Register** notice corresponding to that committee meeting.

[3] That portion of the closed session which will consist of briefings does not come within the definition of a meeting for purposes of the Government in the Sunshine Act. 5 U.S.C. Section 552b(a)(2). The requirements of the Act, therefore, do not apply to this portion of the closed session. 5 U.S.C. Section 552b(b). *See also* 45 C.F.R. Sections 1622.2 and 1622.3.

[4] As to the Board's consideration and approval of the draft minutes of the executive session held on July 14, 1992, the closing is authorized as noted in the **Federal Register** notice corresponding to that Board meeting.

[5] The Board of Directors meeting will recess at 11:30 a.m. and reconvene at 2:00 p.m. in closed session.

b. Consideration of the Method To Be Proposed to Congress to Incorporate 1990 Census Data in Making 1993 Grants.

c. Consideration of Proposed Application for Funding Form That Solicits Data Regarding Grantee Property Insurance Coverage.

8. Consideration of Reauthorization Committee Report.

9. Consideration of Adoption of Proposed Guidelines for the Conduct of the Corporation's Annual Financial Audit.

10. Consideration of Proposal to Retain an Independent Insurance Consultant for the Corporation.

11. Consideration of the Frequency, Costs and Locations of Meetings of the Board of Directors.

12. President's Report.

13. Inspector General's Report.

CLOSED SESSION: [6]

14. Consideration of Recommendation of Office of the Inspector General Oversight Committee Regarding the Committee's Annual Assessment of the Inspector General's Job Performance.

15. Consideration and Annual Assessment of the Job Performances of the Corporation's:

a. President; and

b. Inspector General.

16. Consideration of Status Report by the Inspector General on Several Ongoing Investigations Involving Allegations of Violations of Criminal Laws.

17. Consideration of the General Counsel's Report on Pending Litigation to Which the Corporation is a Party.

18. Briefings Conducted by Corporation Staff.

19. Approval of Minutes of Executive Session Held on July 14, 1992.

OPEN SESSION: (Resumed)

20. Consideration of Other Business.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Executive Office, (202) 336–8896.

Date issued: July 27, 1992.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 92–18095 Filed 7–27–92; 4:27 pm]

BILLING CODE 7050–01–M

[6] It is anticipated that the closed session will conclude at approximately 4:05 p.m. The Board of Directors will reconvene the open session immediately thereafter.

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [57 FR 33235 July 27, 1992].

STATUS: Open/closed meetings.

PLACE: 450 Fifth Street NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Wednesday, July 22, 1992.

CHANGE IN THE MEETING: Deletion/time change.

The following open item will not be considered on Wednesday, July 29, 1992, at 10:00 a.m.

Consideration of whether to amend Regulation E under the Securities Act of 1933. Regulation E provides a conditional exemption from registration under the 1933 Act for securities issued by small business investment companies that are registered under the Investment Company Act of 1940 and by business development companies that elect to be regulated under the 1940 Act. The amendments would increase the aggregate offering price of: (a) Securities of a small business investment company that may be offered within a twelve-month period from $5 million to $15 million and (b) securities of a small business investment company or business development company offered by a person other than the issuer from $100,000 to $1.5 million. For further information, please contact Kathleen K. Clarke at (202) 272–2097.

A closed meeting schedule for Thursday, July 30, 1992, at 10:00 a.m., has been rescheduled for Monday, August 3, 1992, at 10:00 a.m.

Commissioner Roberts, as duty officer, determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Steve Luparello at (202) 272–2100.

Dated: July 28, 1992.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–18166 Filed 7–28–92; 2:21 pm]

BILLING CODE 8010–01–M

federal register

Thursday
July 30, 1992

Part II

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone; Final Rule



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL-4158-2]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With this action, EPA promulgates stratospheric ozone protection regulations (40 CFR part 82) required under title VI of the Clean Air Act Amendments of 1990, Public Law 101–549. Today's action promulgates regulations implementing the 1992 and later requirements of section 604, as well as the related provisions of sections 603, 607 and 616, in a manner consistent with the United States' continuing obligations under the Montreal Protocol on Substances that Deplete the Ozone Layer as revised.

Through this action, EPA (1) Apportions baseline allowances to produce or import ozone depleting substances to companies that produced or imported certain ozone depleting substances in the baseline years; (2) allocates decreasing amounts of those allowances to the companies according to the phaseout schedule prescribed by section 604; (3) applies an 18-month cap from July 1, 1991, to December 31, 1992, on production and consumption as required under the Protocol; (4) permits transfers of allowances provided the transferor's remaining allowances are reduced by the amount it transferred plus one percent of the amount transferred; (5) permits production in excess of the amount authorized by the original allocation of allowances in order to supply developing countries that are operating under Article 5 of the Protocol, so long as producers provide adequate assurances that the production supplied to the developing country will not be reexported; (6) permits transfers of allowable production with other Protocol Parties under certain conditions; (7) changes procedures to facilitate the transformation of carbon tetrachloride without requiring extensive trading of allowances; (8) imposes minimal reporting and recordkeeping requirements, including those needed to include several newly regulated chemicals in the phaseout programs, as well as recordkeeping and reporting requirements by companies that transform carbon tetrachloride; and (9) requires that companies that produced controlled substances as by-products and did not destroy them with maximum available control technology (MACT) in 1989 but did not report their production in response to the section 114 information request in the November 26, 1990 **Federal Register** supply EPA with this information within 45 days of the publication of this document.

EFFECTIVE DATE: January 1, 1992.

ADDRESSES: Materials relevant to this rulemaking are contained in Air Docket No. A–91–50. The docket is located at U.S. Environmental Protection Agency (LE–131), 401 M Street, SW., Washington, DC 20460 in room M–1500, First Floor Waterside Mall and is open from 8:30 a.m. until noon and from 1:30 p.m. until 3:30 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Martha Dye, Stratospheric Ozone Protection Branch, Global Change Division, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation, 6202J, 401 M Street, SW., Washington, DC 20460, (202) 233–9093.

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I. Background

A. Overview of the Ozone Depletion Problem

Stratospheric ozone shields the earth's surface from dangerous ultraviolet (UV–B) radiation. In response to growing scientific evidence, a national and international consensus has developed that certain human-made halocarbons deplete stratospheric ozone. To the extent depletion occurs, it is believed that penetration of UV–B radiation will increase, resulting in potential health and environmental harm including increased incidence of certain skin cancers and cataracts, suppression of the immune system, damage to crops and aquatic organisms, increased formation of ground-level ozone, and increased weathering of outdoor plastics.

Different chlorine- and bromine-containing substances vary in their potential to deplete stratospheric ozone. The fully halogenated chlorofluorocarbons (CFCs), halons, and carbon tetrachloride, for example, are such stable molecules that they reach the stratosphere largely intact and only there are degraded by high energy solar radiation. The chlorine or bromine from these chemicals is then released in forms (or chemical precursors of forms) which are extremely effective in depleting ozone. In contrast, methyl chloroform has a substantially shorter atmospheric lifetime but is used in such large quantities that it too contributes significantly to total atmospheric chlorine levels.

Hydrochlorofluorocarbons (HCFCs) also have relatively short atmospheric lifetimes and are only beginning to be introduced as substitutes for fully halogenated CFCs. Future use of HCFCs must be carefully evaluated on the basis of both their potential volumes and their atmospheric lifetimes. The relative ability of a substance to contribute to ozone depletion is its "ozone depletion potential."

B. Scientific Evidence of Ozone Depletion

The initial hypothesis linking CFCs and depletion of the stratospheric ozone layer was published in 1974. A paper by research scientists Molina and Rowland suggested that industrial halocarbons could react in the stratosphere and destroy stratospheric ozone.

Between 1974 and 1987, the scientific community made remarkable advances in understanding atmospheric processes affecting stratospheric ozone. In response to this growing threat, the international community negotiated the Montreal Protocol, which limited the production and consumption of a narrow set of ozone depleting substances.

Significant ozone loss was first reported over Antarctica in 1985. In 1987, an international team of scientists collected and analyzed evidence linking the Antarctic ozone hole to ozone depleting chemicals. This report also suggested that some depletion of global ozone levels had already occurred (Ozone Trends Panel Report: Executive Summary, 1988). In response, the Parties to the Protocol agreed to accelerate the assessment process required under Article 6 of the Protocol. The results of the initial Protocol assessment were issued in 1989 and further heightened concern that chlorine- and bromine-containing substances had already led to a greater depletion of stratospheric ozone than had been expected.

This scientific assessment resulted in a call to strengthen national and international controls on ozone depleting chemicals. Adjustments adopted by the Parties to the Protocol in June of 1990 and Amendments to the Clean Air Act signed into law in November 1990 require a full phaseout of the most significant ozone depleting chemicals by the turn of the century.

The process of scientific review has continued since the 1989 Protocol assessments. In April 1991 the Executive Summary of the second assessment report was issued. This report stated that ozone depletion has occurred in the summertime over northern mid-latitudes. This new information will be examined in the context of possible further amendments to the Protocol in 1992 and in reference to a petition for a faster phaseout of controlled substances that EPA received under section 606 of the Clean Air Act on December 3, 1991 from the Natural Resources Defense Council, Friends of the Earth and the Environmental Defense Fund.

C. Past Efforts to Control Ozone Depleting Substances

1. Vienna Convention and 1987 Montreal Protocol

Recognizing the global nature of this issue, EPA participated in negotiations organized by the United Nations Environment Programme (UNEP) to develop an international agreement to protect the ozone layer. These negotiations successfully concluded with the signing of the Vienna Convention in 1985 and the signing of the original Montreal Protocol in 1987. Currently, 81 nations representing over 90 percent of the world's consumption of CFCs and halons are Parties to the Protocol (*see* appendix C to subpart A of 40 CFR part 82).

The 1987 Protocol required nations who join to restrict their production and consumption (defined as production plus imports minus exports of bulk chemicals) of CFC–11, CFC–12, CFC–113, CFC–114, and CFC–115 and halons 1211, 1301 and 2402. It did not regulate specific uses or emissions of these "controlled substances," but limited their production and importation instead. It also did not place limits on each of the substances, but instead grouped the substances (i.e., the CFCs listed above were placed in Group I and the halons were placed in Group II), and placed separate limits on the total ozone depletion potential (ODP) of each group. The Protocol thus allowed a nation to change the mix of controlled substances within each group that it produced and consumed, so long as the total ODP of the mix did not exceed the specified limits. The phrase "calculated level" was used to refer to this weighting of controlled substances based on their relative ODP.

As originally drafted, the Protocol called for annual production and consumption of the five most ozone depleting CFCs (i.e., Group I substances) and halons (i.e., Group II substances) to be frozen at 1986 levels beginning July 1, 1989 and January 1, 1992, respectively, and for CFCs to be reduced to 50 percent of 1986 levels by 1998. It also allowed for limited increases in production beyond the caps described above for the purposes of supplying

developing country Parties that are operating under Article 5 of the Protocol or trading allowable levels of production ("industrial rationalization") between Parties. In addition, the Protocol provided that after January 1, 1993 only exports to Parties would be subtracted from a Party's consumption, and it banned imports of controlled substances from nations which neither join nor comply with the Protocol.

2. 1988 Final Rule

a. *Overview.* EPA promulgated regulations implementing the requirements of the 1987 Protocol through a system of tradeable allowances. The Agency ensured compliance with the Protocol by creating production and consumption allowances equal to the quantity of production and consumption allowed under the Protocol. The Protocol's separate treatment of Group I and Group II controlled substances was reflected in separate allowances for each group of substances. Similarly, the Protocol's application of limits to the ODP of the groups of controlled substances ("calculated level") was carried over into the definition of allowances. Thus, allowances were specified in terms of a calculated level of a particular group of controlled substances, so that holders of allowances could select any mix of controlled substances within each group, provided that the total calculated level of the mix did not exceed the calculated levels of the allowances held.

b. *Baseline allowances.* EPA apportioned allowances to producers and importers of controlled substances based on their 1986 levels of production and imports. It then allocated percentages of the allowances according to the reduction schedule specified in the Protocol. For example, for the control periods during which CFC production and consumption were to be frozen at 1986 levels, EPA allocated 100 percent of baseline allowances.

c. *Interrelationship of Consumption and Production Allowances.* To reflect the interrelationship of the production and consumption limits, the Agency provided that a producer needed both production and consumption allowances to produce these chemicals (since production counted against both production and consumption limits), while importers needed only consumption allowances to import (since imports counted only against consumption).

To illustrate, a company that intended to manufacture a controlled substance had to have sufficient production allowances for the group of controlled substances to which the particular substance belongs in order to cover its level of production. Furthermore, since production is also included in the calculation of consumption, that company must also have had at least the same number of consumption allowances in order to produce the same controlled substances. For example, prior to producing one kilogram of CFC–12, a company must have had both a one-kilogram production allowance for Group I substances and a one-kilogram consumption allowance for the same group of substances. In producing that one kilogram, the company expended both the production allowance and consumption allowance.

A company could import controlled substances with consumption allowances alone, since imports were included in the definition of consumption but not of production. Like the producer, however, the importer had to hold prior to importing sufficient consumption allowances specific to the group of controlled substances to which the substance being imported belongs. Once the import occurred, the consumption allowances needed to cover the import were expended.

Exporters of controlled substances were not required to obtain allowances in order to export. Through the export of a controlled substance, a company decreased the volume of controlled substance available for consumption in the United States. Consequently, if certain conditions were met, an exporter could obtain additional consumption allowances from EPA after the controlled substances had been exported to a Party to the Montreal Protocol (see Additional Allowances). To obtain additional allowances, the company had to verify to the EPA that the export had occurred. EPA then granted additional allowances equal to the calculated level of the export.

The following specific examples further illustrate the interrelationships between these allowances:

1. A producer had 20 kilograms of Group I (CFCs) production allowances and 15 kilograms of Group I consumption allowances. Since both production allowances and consumption allowances were needed to produce, a producer could make only 15 kilograms of Group I substances, expending the 15 of its 20 production allowances and all of its 15 consumption allowances in the process. However, if the producer then exported 5 kilograms of Group I substances to a Party nation, it could receive 5 additional Group I consumption allowances from EPA upon proof of export. With the additional 5 Group I consumption allowances, the company could produce 5 more kilograms of Group I substances, expending its remaining 5 Group I production allowances and the 5 additional consumption allowances.

2. An importer had Group I consumption allowances equal to 20 kilograms. The importer imported 20 kilograms of Group I substances using the 20 kilograms of consumption allowances, and then repackaged 10 kilograms for re-export. Once these 10 kilograms had been exported, the importer could report the export to EPA and request additional allowances. Upon proof of export the company would receive 10 additional Group I consumption allowances.

Under EPA's 1988 rule, once any allowance was used to produce or import a controlled substance, that allowance was "expended" and could not be used again. In addition, allowances were only valid for the control period for which they were issued. Consistent with the twelve-month control requirements contained in the Protocol, allowances could never be carried over to the next control period.

d. *Additional allowances.* EPA's final rule also provided for granting additional allowances under certain circumstances. Exporters could receive additional consumption allowances for controlled substances exported to any nation before January 1, 1993 or to any other Protocol Party beginning January 1, 1993. Producers could receive additional production allowances for exporting controlled substances to developing country Parties to the Protocol or upon the transfer of production rights from another Party to the Protocol. In accordance with the regulations, allowances could also be obtained through trading.

e. *Reporting requirements.* To monitor industry's compliance with the production and consumption limits, EPA also required that producers and importers maintain records of their activities and report their production and import levels every quarter.

Since the original rule was promulgated in 1988, minor revisions have been issued on February 9, 1989 (54 FR 6376), April 3, 1989 (54 FR 13502), July 5, 1989 (54 FR 28062), July 12, 1989 (54 FR 29337), February 13, 1990 (55 FR 5005), June 15, 1990 (55 FR 24490) and June 22, 1990 (55 FR 25812).

3. 1990 Revision of Montreal Protocol

As noted earlier, the Protocol's 1989 scientific assessment confirmed that stratospheric ozone was being depleted more quickly than originally believed. In response to the assessment, the Parties

decided at their June 1990 meeting in London to completely phaseout by January 1, 2000, the CFCs and halons already subject to the Protocol's control requirements and carbon tetrachloride and the "other" fully halogenated CFCs not originally regulated by the Protocol. They also agreed to phaseout methyl chloroform by 2005. In addition, the Parties decided to shift from July-through-June control periods to calendar-year control periods, beginning with the 1993 control period. They provided for an 18-month transitional control period from July 1, 1991, to December 31, 1992, during which Parties would be obligated to limit their production and consumption of the already regulated CFCs and halons to 150 percent of baseline levels.

The changes in reduction requirements applicable to the already regulated CFCs and halons were made as "adjustments" to the Protocol and so became binding on the Parties six months after the receipt of formal notification under the terms of the Protocol. The 1990 adjustments accordingly took effect on March 7, 1991. The addition of carbon tetrachloride, methyl chloroform and the other CFCs was adopted as an "amendment" to the Protocol, which will take effect 90 days after 20 Protocol Parties ratify the Amendments. Under the Protocol, amendments bind only the Parties that ratify them. The U.S. has ratified the amendments. As a result, a nation that is a Party for purposes of the originally regulated CFCs and halons would not be a Party for purposes of carbon tetrachloride, methyl chloroform and the other CFCs until it has ratified the Amendments.

To encourage all nations to ratify or at least comply with the Protocol and the London Amendments, the Parties also adopted additional trade sanctions against nations that fail to join or comply with all or part of the Protocol. Article 4 originally required that Parties ban imports of controlled substances from non-Parties. Amendments to Article 4 require that Parties also ban exports of controlled substances to non-Parties and defines non-Parties for purposes of Article 4 as including, with respect to a particular controlled substance, a nation that has not agreed to be bound by the control measures in effect for that substance. Under amended Article 4, a nation that is a Party only for the original controlled substances will not be able to import the newly regulated controlled substances from other Parties or export the newly regulated controlled substances to other Parties beginning January 1, 1993.

The issue of what Parties are operating under Article 5 of the Protocol was addressed by the Parties, as well. Article 5 permits any developing country whose consumption of the original controlled substances is less than 0.3 kilograms per capita when it joins the Protocol to delay its compliance with the Protocol's control measures by ten years. The Parties originally delayed designating Article 5 nations on the basis that many countries had not submitted data showing that they were under the 0.3 kilogram cap. At their meeting in Nairobi in June, 1991, however, the Parties agreed on a list of Article 5 countries.

4. The Clean Air Act Amendments of 1990

Shortly after the Protocol Parties' London meeting, the United States Congress passed the Clean Air Act Amendments of 1990. The restrictions on production and consumption of ozone depleting substances found in title VI of the Clean Air Act are similar to those in the London Amendments, although interim targets are more stringent and the phaseout of methyl chloroform occurs earlier.

The Amendments to the Act also require EPA to promulgate regulations to ensure the "lowest achievable levels" of emissions in all use sectors, to ban nonessential products, to approve the use of safe substitutes only, and to mandate warning labels. Today's notice promulgates limits on production and consumption and is one of several regulations that will implement the Amendments' title VI provisions.

5. Temporary Final Rule

On March 6, 1991 (56 FR 9518), EPA published temporary regulations to implement the 1991 limits on the production and consumption of ozone depleting chemicals required by section 604 of the Act. The regulations took effect on January 1, 1991, and were to remain in effect only during 1991. Today's regulations pertain to all control periods beginning with the 1992 calendar year.

The temporary final rule revised EPA's regulations implementing the Montreal Protocol as needed to implement the 1991 production and consumption limits under section 604 in a manner consistent with the United States' obligations under the Protocol.

II. Statutory Authority

Title VI of the Clean Air Act as amended in 1990 provides for the phaseout of ozone depleting substances through provisions contained in several sections. Section 602 directs EPA to issue within 60 days after enactment of the 1990 Amendments two lists of ozone depleting chemicals. One list is to include the chemicals already regulated under the Protocol and EPA's regulations (i.e., the five CFCs and three halons), as well as the chemicals to be regulated under the revised Protocol (i.e., all other fully halogenated CFCs, carbon tetrachloride and methyl chloroform) and their isomers (except 1,1,2-trichloroethane, an isomer of methyl chloroform). The chemicals on that list are collectively called "class I" substances. The second list is to include all the HCFCs and their isomers; these chemicals are referred to as "class II" substances. For each of the chemicals listed, EPA must also assign an ozone depletion potential, a chlorine or bromine loading potential, an atmospheric lifetime and, within one year after enactment, a global warming potential (the relative ability of a controlled substance to contribute to global warming). EPA published the required initial listing notice, including ODPs, on January 22, 1991 (56 FR 2420).

Section 603 directs EPA to amend its regulations to implement new requirements regarding monitoring and reporting of class I and class II substances. Included in this section are requirements for industry reports on production, import, and export levels of class I and class II substances and periodic EPA reports to Congress on specified industry activities, atmospheric conditions, and the status of substitute technology.

Section 604(a) makes it unlawful for any person to produce any class I substance in an annual quantity greater than the specified percentages of the quantity of the substance produced by that person in the baseline year. (Section 601(2) defines baseline year as 1986 for the already regulated chemicals and 1989 for the newly regulated chemicals.) The provision is self effectuating. The first control period in the reduction schedule began on January 1, 1991, and ran through the end of 1991. Section 604(a) requires in the first control period a freeze on carbon tetrachloride and methyl chloroform at 1989 production levels and a 15 percent reduction for all remaining class I substances.

Section 604(c) calls for EPA to promulgate within ten months after enactment regulations to implement the production controls described above and to "insure" that United States consumption of the class I chemicals is reduced on the same schedule as production. Section 601(b) defines consumption as production plus imports

minus exports to nations which are Parties to the Montreal Protocol.

Section 607 requires EPA to promulgate within ten months after enactment rules "providing for issuance of allowances" for production and consumption of class I and II substances and governing the transfer of such allowances. The transfer rules are to require that each trade result in less overall production or consumption than would have occurred absent the trade.

Section 604(e) authorizes EPA to permit, after notice and opportunity for comment, production in excess of the limits for export to, and use in, developing countries that are operating under Article 5 of the Protocol. Like the Protocol, section 604(e) provides that such excess production must be solely for the purpose of supplying the basic domestic needs of such countries.

Section 616 requires EPA to promulgate, within two years after enactment, regulations authorizing trades of allowable production with other Parties to the Protocol. The regulations are to require, among other things, that trades do not result in more production than would have otherwise occurred.

Finally, section 614(b) addresses the relationship between the statute and the Protocol, stating that "in the case of conflict between any provision of this title and any provision of the Montreal Protocol, the more stringent provision shall govern." It also provides that the title "shall not be construed, interpreted, or applied to abrogate the responsibilities or obligations of the United States to implement fully the provisions of the Montreal Protocol."

III. September 30, 1991 Proposal

In a **Federal Register** notice published on September 30, 1991, the Agency published proposed regulations for the implementation of the phaseout of ozone depleting substances as required by title VI of the Clean Air Act for 1992 and later. The notice included the proposed implementation of the requirements of section 604 of the Act as well as of the related provisions of sections 603, 607, and 616 in a manner consistent with the United States' continuing obligations under the Montreal Protocol. A detailed description of those provisions, the issues they raise, and EPA's proposed implementation of them may be found in the NPRM at 45 FR 49548.

Among the more significant issues addressed in the proposal was the reduction schedule for production and consumption of ozone depleting substances. The Act sets forth a phaseout schedule for the regulated chemicals. For 1992, production and consumption of CFCs and halons are limited to 80 percent of baseline levels, methyl chloroform is frozen at baseline levels and carbon tetrachloride is reduced to 90 percent of baseline levels. The limits on the production and consumption of ozone depleting chemicals are gradually reduced until 2000 (2002 for methyl chloroform), when the chemicals are to be phased out.

An additional cap on production and consumption to ensure compliance with the Protocol's somewhat different requirements was also proposed. As explained above, the temporary final rule shifted the control period to coincide with the calendar year, as required by the 1990 Amendments to the Clean Air Act. EPA proposed to safeguard against non-compliance with the Protocol's 150 percent cap for July 1991 through December 1992 by prohibiting any company from exceeding more than 150 percent of its baseline production and consumption of Group I (CFCs) substances from July 1, 1991 through December 31, 1992, except to the extent the company has received allowances authorizing additional production or consumption through intercompany trading, exports to Parties, and transfers of allowable production from other Parties. This prohibition is in addition to the prohibition against any person exceeding the allowances allocated to that person for the calendar-year control period established pursuant to section 604(a) of the Clean Air Act.

In the NPRM, EPA also proposed revisions to the trading provisions of the stratospheric ozone protection regulations as required under title VI. Section 607 of the Act requires that any trade between chemicals or companies result in less overall production or consumption than would have occurred absent the trade. In the notice the Agency proposed to permit transfers of allowances provided the transferor's remaining allowances are reduced by the amount it transferred plus one percent of the amount transferred. A one-percent offset was proposed as an amount large enough to provide a net environmental benefit without discouraging trading necessary to meet market demands.

Exports to Article 5 Parties were also addressed by the proposed regulations. Section 604 of the Act permits production in excess of the amount otherwise allowed in order to supply the basic domestic needs of developing countries that are operating under Article 5 of the Protocol. In the NPRM, the Agency proposed to implement this provision by requiring that producers provide adequate assurances that the production supplied to a developing country will not be re-exported.

The Agency also proposed to permit increases or decreases in production through transfers of allowable production with other Protocol Parties under certain conditions. Section 616 authorizes EPA to issue regulations providing for trades of allowable production with other Protocol Parties. If EPA approves a trade to another Party, it must revise the "production limits for the United States" such that the revised limits are the lesser of (a) the maximum production that the country is allowed under the Protocol minus the amount transferred, (b) the maximum production that is allowed under the country's applicable domestic law minus the amount transferred or (c) the average of the country's actual national production level for the three years prior to the transfer minus the production allowances transferred. In the case of a transfer to the United States, it was proposed that the principal diplomatic representative in the transferring country's embassy attest that the transferring country has revised its production limits in a similar manner.

In the NPRM, a change to the approach to granting additional allowances for transforming ozone depleting substances was proposed for carbon tetrachloride. Since over 81 percent of the carbon tetrachloride produced in this country is used to produce CFCs, the original system of approving additional allowances only after a chemical has been transformed is less workable for carbon tetrachloride. The proposed scheme provided allowances "up-front" prior to transformation, thus avoiding an unnecessarily burdensome stop-start production cycle.

IV. Summary of Changes to Proposed Rule

A. Definitions

1. Importer

The Agency proposed the following definition of "importer:" "the importer of record listed on U.S. Customs Service Form 7501 or 7512 for imported controlled substances." This definition is identical to that used in the past in 40 CFR part 82 (53 FR 30566), with the addition of the words "or 7512."

Comments received on the definition of importer stated that the importer of record should not be the party required to possess consumption allowances. These commenters were concerned that shipping agents and customs brokers who routinely put up Customs bonds for other companies are often listed as the

importer of record, and therefore would be held responsible for the import of controlled substances in which they have no economic interest. The commenters maintained that the existing regulations are in this way unfair and virtually impossible for brokers to comply with. As a result, they suggested that the definition of importer for purposes of compliance during the control period be the same as that used for purposes of granting baseline allowances, or "the first United States owner who is a supplier to or a member of the domestic industry that uses the controlled substances."

The Agency previously considered using this definition for enforcement purposes and rejected it (see 53 FR 18803 and 53 FR 30583). The Agency agrees that limiting the definition of importer to the importer of record could cause brokers to be held liable for imports of controlled substances although they were not granted baseline consumption allowances. However, as discussed in previous rulemakings (e.g., 53 FR 18803 and 53 FR 30583), the Agency must choose a definition that will make compliance monitoring administratively feasible. In general, requiring the importer of record to be the party that holds the consumption allowances has proved to be effective for compliance-monitoring purposes, as it allows the Agency to rely on data gathered from Customs entry summary forms to verify importer quarterly reports and to identify imports for which consumption allowances were not expended. EPA also does not believe that its definition of import puts Customs brokers or shipping agents in an impossible position. As several companies have demonstrated, one way to deal with the definition is for companies that have an economic interest in imported controlled substances and thus were granted baseline consumption allowances to ensure that they are designated as the importer of record on the entry summary form. Customs brokers and shipping agents can similarly require that the holder of allowances be designated the importer of record or that the needed allowances be transferred to them by the time the import occurs. In spite of the large volume of trade that brokers may handle, they remain responsible for the content of material that crosses the border into the United States under their bond. Clearly, many regulations ban the import of certain products or materials and brokers must be sure that the material they are importing is not prohibited. In the same way, they are responsible for ensuring that controlled substances under this subpart are not imported without the proper authorization.

One of the commenters also noted that the definition of importer is inconsistent with the definition of that term in a recent regulation promulgated by the Internal Revenue Service (IRS). The Agency, however, need not define importer in a manner consistent with IRS regulations, if, as is the case here, a different definition is more suitable to EPA's regulatory purposes.

Upon examining the definition of importer and its relation to Customs practices, the Agency determined that several different forms may be used when importing material into the United States. For example, Customs Form 3461 may be used for low value shipments in place of Form 7501. In order to guarantee that any person bringing controlled substances into the United States is subject to the import restrictions, which is and has been the objective of these restrictions, the Agency has determined that the definition of importer should read "the importer of record listed on U.S. Customs Service forms for imported controlled substances."

2. Production

a. *Exemption for immediately-destroyed by-products that are controlled substances.* The Agency proposed that carbon tetrachloride that is produced as a coincidental, unavoidable by-product (CUBP) of a manufacturing process and then immediately contained and destroyed be exempted from regulation under this subpart. This proposal was based on language in the Joint Explanatory Statement of the Committee of Conference that accompanied the Clean Air Act Amendments. The Agency requested comment on several issues relating to the definition of a (CUBP), immediate containment and destruction, and maximum available control technologies.

One commenter believed that this exemption should take the form of an alteration in the definition of production under the regulations. This company maintained that by restructuring the regulations in this manner, the inadvertent manufacture of a controlled substance immediately contained and destroyed is exempt from the definition of production rather than from the control of production.

The Agency, however, does not believe that it is appropriate to exempt CUBP production of Groups IV and V controlled substances from the definition of production. The Agency believes that it is more appropriate to include this exemption in § 82.4, Prohibitions, than under § 82.3, Definitions, because the exemption is not permanent and categorical, but rather is subject to case-by-case annual review by the Agency. CUBP production of controlled substances in Groups IV and V is therefore exempted from the production restrictions in today's regulations. This exemption is discussed in more detail below as part of the discussion of exemptions to the phaseout.

Another commenter argued that carbon tetrachloride that is used for explosion prevention in the manufacture of chlorine and subsequently destroyed should be exempted from the definition of production because it is essential for human safety.

The Agency does not believe that this use of carbon tetrachloride falls within the parameters of the CUBP exemption described in the Joint Explanatory Statement of the Committee of Conference on the 1990 Clean Air Act Amendments, because it does not involve the inadvertent manufacture of a controlled substance. Although the Protocol allows for controlled substances to be excluded from production if they are destroyed using destruction methods approved by the Parties, the Clean Air Act does not contain such an exclusion and the Joint Explanatory Statement specifically states that the Protocol's exclusion does not apply under domestic law except where the destroyed material is CUBP.

b. *Used and entirely consumed (Except for Trace Quantities).* The definition of production in the statute and in the proposed regulations excludes from production "the manufacture of a substance that is used and entirely consumed (except for trace quantities) in the manufacture of other chemicals." In the NPRM, the Agency suggested that although the parenthetical phrase "except for trace quantities" does not appear in the Montreal Protocol definition, it is implicit because it is a law of chemistry that no chemical can ever be entirely consumed in the manufacture of another chemical. Thus, EPA found that the addition of the phrase in the regulations is warranted and not incongruous with the Protocol.

The only comment the Agency received on this point agreed that the exception for trace amounts is implicit in the Montreal Protocol's exclusion from "production" for amounts "entirely used as a feedstock in the manufacture of other chemicals."

3. Transformation—Distinction Between Transformation and Destruction

In the NPRM, the Agency discussed the difference between transformation and destruction. Essentially, the proposed definition of transformation was the use and entire consumption of a chemical in a process that produces another commercially useful chemical. The proposed definition of destruction was any process that results in the "expiration" of the chemical without any commercially useful end product being produced.

One company commented that defining "transformation" as a process that produces a commercial product that is sold, or an intermediate substance that is used in further manufacture limits transformation to only those processes where a commercial product is the direct product of the transformation reaction. This company stated that such a limitation would unnecessarily restrict commercial manufacturing use of controlled substances since, in many commercial processes, a controlled substance is used and entirely consumed but is not transformed into a commercial product (e.g., use of controlled substances as reaction inhibitors, solvents, or inert direct coolants). The same company argued that the proposed definition would force some processes where controlled substance use is essential to shut down. It contended that even where substitute chemicals are available, large sums of money would be spent on process retrofits without environmental benefit.

The commenter gave as an example of a process which it believed would not meet the proposed definition of transformation a process in which (1) The reaction process results in a commercial product or intermediate substance that could not otherwise be produced without the presence of the ozone depleting chemical; (2) the ozone depleting chemical is entirely consumed in the production process via a combustion reaction that transforms the controlled substance to a non-controlled substance; (3) the combustion device is a necessary and integral part of the commercial process where the ozone depleting chemical is used; (4) there is no storage of the ozone depleting substance between the use in the production of the commercial product and the controlled substance combustion because they are both parts of the same production process; (5) these operations cannot be characterized as a Resource Conservation and Recovery Act (RCRA) waste destruction operation; and (6) the ozone depleting chemical is generally burned as part of a process to vent steam and is not a solid waste as defined by RCRA. The commenter noted that although the process described above did not result in the transformation of the ozone depleting substance into a commercial product, it does meet the strict requirement that the substance be used and entirely consumed. Furthermore, the commenter stated, there is no practical difference between processes where the controlled substance is transformed directly to a commercial product and those where the ozone depleting chemical is used to produce a commercial product and is then transformed to a noncommercial chemical.

The Agency's definition of transformation would not necessarily exclude the process described above. EPA is aware of several transformation situations in which the manufacturing process requires that the controlled substance be broken down or chemically changed, without the ozone depleting substance actually forming part of the intended commercial product. One example is the use of carbon tetrachloride as a chlorine source for rejuvenating the catalyst in certain refinery or isomerization processes. In these cases, although the gasoline or isobutane being produced does not contain the reaction products of carbon tetrachloride, the carbon tetrachloride was transformed to produce chlorine atoms which were commercially useful when they rejuvenated the catalyst. Thus, EPA's proposed definition of transformation does not require that the reaction products become part of a saleable product.

In order for a process in which the reaction products do not become part of a saleable product to satisfy the definition of transformation, the following must be true. It must be essential for the manufacturing process that the controlled substance be broken down, and it must be physically impossible to recover the ozone depleting chemical after its use and still have it serve its purpose in the process. If it is not essential for the manufacturing process that the controlled substance be broken down, the "expiration" of the controlled substance is incidental and would most likely be as the result of destruction. The controlled substance is clearly not being incorporated into a commercially useful chemical. If it is physically possible to recover the ozone depleting chemical after it has served its purpose in the process, then it is not being transformed in the process and is only expiring in a separate, destruction step. If it is essential that the material be broken down, and as a result it is not recoverable, the process probably qualifies as transformation, as long as the actual reaction that is taking place clearly results in a commercially useful intermediary as one step in the manufacturing process. If it is not essential for the manufacturing process that the controlled substance be broken down, i.e., it is recoverable after performing its function in the process, it is probably not being transformed. This would be true if the material served as a solvent in the process, even if it were fed directly into an incinerator after completing its function.

The Agency cannot allow the definition of transformation to include manufacturing processes where controlled substances are used and then moved directly into an incinerator after use. Clearly, the purpose of the incinerator is simply to destroy the material. This is true even if the incinerator is attached to a vent in order to capture and destroy volatile emissions. If the Agency were to include these processes in the definition of transformation, a company using an ozone-depletor as a solvent could simply send the waste solvent directly to an incinerator and claim it as transformation. The Protocol, however, distinguishes between transformation of controlled substances in the production of another commercial chemical and destruction. As explained above, the Agency believes the key questions for determining whether a substance has been transformed is whether the substance has undergone a change in chemical composition in order to become a commercial product or intermediary as a necessary step in a production process. The Agency is providing exemptions in this rulemaking for production of controlled substances that are by-products of manufacturing processes, and is participating in a working group established by the Parties that is exploring issues related specifically to destruction.

One company supported the definition adopted by the Agency for transformation. Two other commenters, however, maintained that the definition of "transform" refers to manufacture of other chemicals "for commercial purposes", and that the regulations should clarify that commercial purposes means for sale by producers or for use by producers that would otherwise have to purchase it.

As a general rule, the phrase "commercial purposes" would have the meaning the commenters suggest. However, in the catalyst-rejuvenation

case discussed above, the chlorine atoms that activate the catalyst could not necessarily be sold or purchased in that form, and so although the product of the transformation is commercially useful, it could not otherwise have been sold or purchased. Thus EPA has decided not to restrict "commercial purposes" (as suggested by the commenters) to sale or use in place of purchased material.

One commenter asserted that the definition of transformation should be clarified because there are situations where both transformation and destruction occur in the same process (i.e., transformation where the controlled substance "expires" in the manufacture of another commercial chemical, and destruction where the "expiration" of the controlled substance results in the creation of another chemical which is a waste product). They maintained that this situation meets the exclusion from the definition of "production" since the controlled substance is essential to the reaction (in very small amounts relative to the commercial chemical), but is not itself incorporated into the molecules of the commercial chemical. In assisting the reaction, the controlled substance is broken into simpler compounds that are waste products. According to this company, the chemical is thus used and entirely consumed (except for trace quantities) in the manufacture of other chemicals, and meets the definition of transformation even if the actual atoms of the controlled substance end up as waste products after assisting the reaction. This commenter suggested that EPA either clarify the definition of transformation to include this type of process or expand the definition of transformation itself.

The Agency believes that the process described by this commenter would qualify as transformation. The key point in the above description is that "in assisting the reaction, the controlled substance is broken into simpler compounds." If it is necessary for the ozone depleting chemical to be broken down in order to serve its purpose in the reactor, it is being transformed. This again differs from the situation where the ozone depleting substance serves its purpose, remains intact, and only as a separate step is destroyed.

One commenter was generally in agreement with EPA's proposed distinction between transformation and destruction, and believed that specific processes including thermal oxidizers and halogen acid furnaces should be identified as transformation.

In applying the "commercial purposes" test to these processes, the Agency concludes that halogen acid furnaces would qualify as transformation because the resulting halogen acid is used or sold and not disposed of as a waste. Thermal oxidizers, however, would not qualify because the product of the controlled substance being broken down is not another chemical, but simply energy. In no way is the controlled substance being chemically changed to become a commercially useful chemical; the substance is destroyed in order to produce heat.

In summary, a controlled substance is transformed if it is used and entirely consumed (except for trace quantities) in the manufacture of other chemicals. The "other chemicals" manufactured must be commercially useful. This includes uses in manufacturing processes and is not limited to commercial sale. Processes where the atoms that make up the controlled substance are rearranged to form only a waste product are destruction processes, not transformation.

B. Baseline Allowances

1. Class II Baseline

The Agency proposed to reserve the baselines for class II chemicals, because under § 605 the phaseout of those chemicals does not begin until 2015, and it will take some time for the market to determine what representative production levels for these substances would be. This proposal was supported by commenters.

2. Selection of Baseline Year and Baseline Allowances for Chemicals Added Later

In the NPRM, the Agency requested suggestions regarding the appropriate method for determining the baseline year and allowances for new chemicals to be added to the class I list of ozone depleting substances. The allocation of such allowances is subject to the provisions of sections 604 and 607 of the Clean Air Act.

One company responded with a suggestion on how to calculate the baseline allowances for CHF_2Br (Halon 1201, or bromodifluoromethane), a chemical that EPA intends to add to the list of ozone depleting substances and a potential substitute for Halons 1211 and 1301. The suggested approach for this particular substance will be discussed in the proposal to list Halon 1201 as a class I chemical and allocate baseline production and consumption levels for this chemical.

Since no other comments were received on the method for determining the baseline year and allowances, the Agency will continue to evaluate each substance on a case-by-case basis in order to determine a representative baseline year.

3. Method of Calculation of Baseline Allowances

EPA proposed baseline allowances for the Class I substances based on each company's production and consumption of each of the substances in the baseline year. Information on baseline-year activities was gathered under two information requests. The first request, dated December 14, 1987 (52 FR 47486), collected information on the amount of Group I and II controlled substances that firms had produced, imported or exported in 1986. More recently, the same information was requested for Groups III through V (other CFCs, carbon tetrachloride, and methyl chloroform) on November 26, 1990 (55 FR 49116). The Agency calculated a company's baseline production of a controlled substance by subtracting from the amount manufactured the amount of that company's product that was transformed or used as a feedstock in the baseline year. Consumption was calculated in a similar fashion, adding imports to the calculated production and subtracting baseline-year exports attributed to the company. A correction factor was applied to all baseline calculations to account for exported and transformed material that could not be attributed to a particular producer or importer.

Two companies commented that after the regulations are adopted, companies should be given an opportunity to challenge the baseline allowances and verify correct computation. In addition, these corporations believed that problems were created by the 1991 temporary final regulations because EPA collected information before defining key terms. These companies maintained that EPA should consider re-examining data in light of new definitions and reviewing data in cases in which definitions have changed. Another commenter also maintained that EPA may need to examine the process used to set baseline allowances for carbon tetrachloride, especially if it changes the method of applying production and consumption limits for that chemical.

The Agency has already given an opportunity for companies to challenge the baseline allowances by including them in the NPRM, and a lengthy description of the calculation method was provided to all involved. Although issues such as destruction versus transformation have required

clarification in this rulemaking, the Agency has recalculated the allowances to account for the changes in the definitions. The Agency received the additional information that was needed to make the changes since the publication of the proposal. The only issue concerning which the Agency may need additional information is that of controlled substances produced as by-products. As discussed below, the Agency is requesting the necessary information.

Comments from two companies mentioned that baseline allowances should reflect the percentage of a company's baseline-year production that will not be exported or transformed. These companies asserted that with the proposed EPA system, inventories can make baseline numbers artificially low or high. One company offered an alternative approach that would rely on emissive uses to set baseline allowances for heavily transformed substances.

EPA recognizes that the effect of subtracting 1989 exports and transformations from 1989 production and imports is not the same as calculating the actual amount of 1989 production and imports that were not and will not be exported or transformed. The Agency submits that it would be impossible to trace each molecule of 1989 controlled substances to ascertain its ultimate use or destination when there had been no requirement at that time to track the fate of the compound. In addition, it is possible that some amounts of controlled substances produced in 1989 will yet be transformed or exported at some future date. Again, it is not possible for EPA to determine the fate of all 1989 production. As a result, 1989 transformation and exports were used as a reasonable approximation.

The emissive uses approach would necessitate a supplementary survey of users that would cause a significant delay in the implementation of the provisions of the Act. Furthermore, the suggested method would depart from the Clean Air Act requirements by changing its most basic definitions, whereas the current method's assumptions are consistent with those definitions while making certain mathematical approximations in order to render its requirements achievable. EPA notes, moreover, that the Agency has calculated allowances in this manner beginning with the original phaseout regulations in 1988, and has reported U.S. baseline-year levels to the Protocol Secretariat using these calculations.

One company maintained that because of business cycles and economic factors, the same amount of carbon tetrachloride is not produced and used every year. As a result, the assumption that current-year transformations equal the amount of current-year production eventually transformed does not hold true. This company presented an example of two companies that produced the same amount of carbon tetrachloride in the baseline year, with the same amount eventually exported and transformed but a different amount sold to emissive uses. The example showed that inventories distort the numbers to create identical baselines for the two companies.

Another example mentioned by the same company shows how a producer that did not sell to emissive users in 1989 could receive baseline allowances, unlike another producer that did sell to emissive users. This situation could occur if the first company's sales for non-emissive uses were not transformed until 1990, and the second company had a high level of inventory at the end of 1988 that was sold or exported in 1989. The commenter stated that the results, as shown by these examples, are unfair and inconsistent with the goal of the Clean Air Act to eliminate emissive uses of ozone depleting substances.

These examples show that inventory can indeed affect the calculation of the baseline. However, as discussed above, it would be administratively burdensome and in many cases impossible to actually trace the fate of 1989 production. The new method of tracking carbon tetrachloride transformation as discussed below should remove any compliance difficulties that producers of this controlled substance for feedstock experienced during calendar year 1991 arising from idiosyncrasies of the carbon tetrachloride market in 1989.

One company commented that the Clean Air Act does not require EPA to use the proposed baseline calculation method, and that this method is inconsistent with the Act's definition of production. The company pointed out that the definition excludes only the amount transformed from the amount produced, as opposed to excluding the transformation of controlled substances that may have been produced in the previous year.

As noted earlier, the Agency has concluded that only the amount of each chemical transformed in the baseline year can be accurately ascertained and that calculating baseline allowances on this basis is consistent with the definition of production. As stated above, it would not be possible to trace later transformation of 1989-produced controlled substances. A simplifying assumption was necessarily made that the amount of previous-year production transformed in 1989 would be similar to the amount of 1989 production transformed in 1990. Although the Agency recognizes that business may fluctuate from year to year, the proposed approach is readily calculated and consistent with the relevant definitions.

One company remarked that EPA has changed allowance allocations from 1991 without stating so in the preamble, or explaining why the change was made. This company believed that the regulations should clarify that the allocations do not apply to 1991.

In the preamble to the NPRM, EPA discussed the calculations that caused a change in the baseline allowances between March 6, 1991 and this rulemaking. Some changes were made because of new information on companies' activities in the baseline year. Another change resulted from the distribution of two companies' negative Group IV consumption allowances over the rest of the companies receiving consumption allowances for carbon tetrachloride. These companies' baseline-year consumption was negative because the amount of carbon tetrachloride produced by them that was exported and transformed during 1989 was greater than the amount of carbon tetrachloride that they produced and imported during 1989. The resulting changes of the baseline allowances are not effective for 1991, as stated in the section of today's rule on Effective Date.

Another commenter maintained that re-allocation of the negative consumption is not needed in order to satisfy the Clean Air Act, which the commenter asserted sets limits on a per-person basis depending on the person's baseline-year production and consumption. Therefore, the company asserted that the allocation of the negative amounts should be deferred until Montreal Protocol provisions for carbon tetrachloride go into effect in 1995.

In response, the Agency notes that section 604(c) requires EPA "to promulgate regulations to insure that the consumption of class I substances in the United States is phased out" on the same schedule as is applicable to the production of class I substances (emphasis added). While section 604(a) defines production limits in terms of a percentage of a company's baseline-year production, section 604(c) requires EPA to define consumption limits that will insure that United States' consumption as a whole is subject to the same percentage reduction. Section 607 provides that allowances be granted in a

manner consistent with the applicable reductions prescribed by section 604. Thus, consumption allowances must be allocated in such a way that the total number of allowances granted equals total allowable U.S. consumption. For the aggregate number of consumption allowances to reflect U.S. consumption in the baseline year, the "negative" consumption accrued by some companies in the baseline year must be taken into account in this rulemaking.

Another comment explained one situation where a customer sought allowances for transformations, and EPA ruled the customer's process to be destruction. If this company were treated as a transformer in computing the 1989 baseline allowances, other companies' allocations would be too low. This commenter maintained that there is no check on EPA since the information upon which the allowances are based is not made available to the public.

The Agency is familiar with the case to which the commenter refers, and responds that in any case for which a company's designation may have changed, the baseline allowances have been adjusted accordingly. Many of the companies submitting baseline information filed claims of confidentiality, and, as such, the Agency cannot at this time make the information available to the public. EPA believes, however, that producers of controlled substances that wish to check the information submitted by their customers could do so by contacting those companies. EPA has provided companies with detailed spreadsheets describing exactly how their allowance allocations were affected by second-party reports.

One suggestion was made that EPA should resurvey customers after it issues final regulations in order to rectify potential problems. This company believed that a resurvey would not be a major impediment because it needs to be done in any event to make sure the feedstock numbers are correct.

EPA has examined the information collected on transformation and believes that the data set is consistent with the definitions set forth in this rulemaking. In addition, the comment period allowed companies the opportunity to submit additional data for EPA to revise their baseline numbers if they found them to be inaccurate in the proposed rule. Since the additional information resulting from refined definitions was submitted after the proposed rule was published, baseline numbers have changed slightly from those published in the proposed rule. The Agency does not anticipate that these changes will cause affected firms any difficulty in complying with today's regulations.

C. Implementation of Exemptions to the Phaseout

1. Exemption for Immediately-Destroyed By-Products That Are Controlled Substances

a. The exemption. EPA proposed that carbon tetrachloride that is a coincidental, unavoidable by-product (CUBP) of a manufacturing process that is immediately contained and destroyed by the producer using maximum available control technology be exempted from the limits on production of controlled substances. This exemption was based on statements made in the Joint Explanatory Statement of the Committee of Conference of the 1990 Clean Air Act Amendments, indicating that EPA should grant such exemptions on a case-by-case basis. The proposal stated that requests for such an exemption would be considered on a case-by-case basis, and if the exemption were not granted, the Agency would grant the requesting company baseline allowances (subject to the phaseout) based on the company's production of the chemical as a by-product in 1989.

One company supported EPA's observation in the NPRM that it would be unworkable to control companies that coincidentally produce and then destroy carbon tetrachloride through the proposed allowance system. Another company commented that EPA should exempt destroyed coincidentally-produced carbon tetrachloride and not provide allowances to its producers since the allowance system would not work in the long term because all of this production would then have to be phased out. This company contended that providing allowances could lead to the shutdown of facilities producing non-controlled substances.

In response to this comment, the Agency clarifies that it would only allot baseline allowances to by-product producers in situations where it could not grant an exemption. This would occur in cases where the chemical was produced intentionally, where as a by-product it was not destroyed with an appropriate destruction technique, or if the Protocol restrictions on carbon tetrachloride took effect before approved destruction techniques were defined. EPA notes that in such cases, having baseline allowances that are being phased down would stimulate the producer to arrange for the transformation of the chemical, or seek out an approved method of destroying the chemical, thus preventing damage to the ozone layer caused by its release. To ensure that all destruction technologies are considered by the Parties for approval, the Agency is actively participating in a UNEP working group on destruction technologies.

If companies eligible for this exemption have previously reported carbon tetrachloride by-product generation as production for the determination of their baseline, they should include that information with their request for the exemption. If the exemption is granted, their baseline will be reduced accordingly.

Another company suggested an amendment to the recordkeeping requirements in § 82.13(l) as follows: (1) If the Administrator's designated representative finds, based on the submitted information, that the carbon tetrachloride for which the exemption from the definition of "produced" is sought is an unavoidable, coincidental by-product of the production of another chemical and that MACT will be used to destroy it, he or she will exempt this manufacture from the definition of "produced."

The Agency does not agree that the exemption should take the form of an exclusion from the definition of production, because such a categorical exclusion from production would be inconsistent with the Joint Explanatory Statement of the Committee of Conference which is the basis for providing the exemption. The Agency believes that in light of the Joint Explanatory Statement it is more appropriate to exempt companies from the production limits on a case-by-case basis.

b. *First come, first served policy and interplay with the Montreal Protocol.* The proposal included the provision that exemptions for carbon tetrachloride that is CUBP be granted only up to the level of the U.S. production limit for carbon tetrachloride under the Montreal Protocol. The definition of production under the Montreal Protocol includes an exemption for material that has been destroyed by technologies approved by the Parties, but as of this writing no technologies have been so approved. As a result, there is a cap on the total amount of exemptions that could be given, set by the difference between the Protocol limits and total U.S. production and consumption. EPA proposed that the exemptions be granted on a first come, first served basis.

A number of companies pointed out that control of carbon tetrachloride under the Montreal Protocol does not begin until 1995, and thus there is no Protocol cap on the amount of

exemptions that can be granted until 1995. The Agency agrees and will grant unlimited exemptions until 1995. In 1995, if destruction techniques are not yet approved by the Parties, EPA will be unable to grant any further exemptions.

Another commenter stated that EPA should allow for the exclusion subsequent to 1995 since the Montreal Protocol includes an exclusion for destroyed controlled substances and the Clean Air Act conference report allows for such exclusion. Moreover, this company maintained that exclusion is appropriate because destroyed ozone depleting substances do not damage the ozone layer.

EPA cannot grant exemptions from Protocol limits, and thus from Clean Air Act limits, that are not sanctioned by the Montreal Protocol. The Clean Air Act Amendments specifically state that in situations where the Act and the Protocol are in conflict, the more stringent of the two should govern. Although the Montreal Protocol does allow for exemptions for destroyed controlled substances, it only allows them to the extent that the destruction technology has been approved by the Parties. To date, no technologies have been approved. Again, the Agency is working to assist the Parties in determining acceptable destruction technologies. The Agency notes that the exclusion for destroyed CUBPs discussed in the Joint Explanatory Statement of the Committee of Conference is more limited than the potential exclusion for destruction allowed under the Protocol. Therefore, even for control period prior to 1995, the Agency is permitting only a narrow exemption for destroyed CUBPs.

One company believed that EPA should re-open the matter for public comment well in advance of 1995 because exclusions will not be permitted starting in 1995, possibly forcing expensive alterations of production processes and costs not factored into the Regulatory Impact Analysis (RIA) before that date. Another commenter maintained that if an exemption for destruction is not allowed, companies that coincidentally produce and then destroy carbon tetrachloride would be forced eventually to alter their production processes at great cost and without measurable benefit to the environment.

EPA agrees that this could be an undesirable outcome if the Parties do agree on approved destruction technologies before 1995. The Agency anticipates that these technologies will be defined by that date.

One commenter stated that Congress and EPA did not mean to restructure the chemical industry (i.e., preclude the manufacture of non-controlled substances that create carbon tetrachloride as a coincidental by-product) when they approved the phaseout. The Agency recognizes the importance of the exclusion provision and intends to grant exemptions for inadvertent production to the greatest extent allowed by the statute and the international treaty.

The Agency is educating the Parties on this subject and will explore whether the Montreal Protocol should be amended to deal with this issue.

c. *Definition of maximum available control technology.* The Agency requested comment in the NPRM on how to define "maximum available control technology" (MACT), as used in the Clean Air Act Conference Report to describe the appropriate destruction technique for the purposes of granting a CUBP exemption. EPA suggested that for carbon tetrachloride, current RCRA requirements for the incineration of carbon tetrachloride as a hazardous waste would be an appropriate definition of MACT. Regulations under RCRA require in most cases that carbon tetrachloride be treated as a hazardous waste. The typical treatment method would be combustion in an incinerator, boiler or industrial furnace that has a 99.99 percent destruction or removal efficiency rating (40 CFR 264.343(a), 40 CFR 266.104).

One commenter stated that defining MACT on the basis of RCRA requirements is appropriate, but that EPA should consider expanding the definition to allow the use of a vent incinerator with 98 percent efficiency for several years, because it is the best technology reasonably available in certain process operations.

Although the use of a vent incinerator with 98 percent destruction efficiency may be allowable under other EPA regulations when carbon tetrachloride is not classified as a hazardous waste, the Agency believes that it is not sufficient for obtaining a CUBP exemption under the stratospheric ozone protection program. Congress in its Joint Explanatory Statement specified that maximum available control technology be used to destroy CUBP, and RCRA-permitted combustion devices with 99.99 percent efficiency are available. Requiring the maximum, as opposed to the reasonably, available control technologies also fits with the goal of the EPA stratospheric ozone protection regulations and title VI, which is to minimize emissions of ozone depleting substances that lead to atmospheric harm.

One company asserted that the MACT definition should be made to include any destruction technologies approved by the Parties of the Montreal Protocol. Another company stated that the definition of MACT should be consistent with the standards that will be established pursuant to section 112 of the Act, but that the definition should focus on specific compounds rather than on categories of sources. This commenter also stated that although RCRA standards for incineration of carbon tetrachloride would probably prevail, the Agency should allow for the consideration of other techniques that are equally or more efficient and cost effective.

The Agency agrees that destruction techniques that are as efficient as the RCRA combustion requirements for carbon tetrachloride should also qualify for the exemption. To the extent that any emissions standards under section 112 of the Clean Air Act require the use of technologies that have a destruction efficiency equal to or greater than 99.99 percent, EPA will consider them to be sufficient for the granting of the exemption for carbon tetrachloride produced as a by-product. When the Parties to the Protocol complete their analysis of destruction techniques, EPA will evaluate these to determine if they reflect MACT. As noted previously, the Clean Air Act exemption for destroyed controlled substances is narrower than the Protocol's potential exemption, and thus it does not necessarily follow that destruction techniques approved by the Parties will meet the MACT criterion for the destruction exemption under the Act.

Another company agrees that incineration with an efficiency of 99.99 percent should qualify as MACT for the destruction of carbon tetrachloride, but that a more inclusive definition including alternative technologies should be considered. This commenter stated that EPA should establish procedures to allow for the demonstration of treatment and destruction techniques with removal efficiencies that are equivalent to an incinerator permitted under RCRA.

EPA will consider each exemption request on a case-by-case basis, allowing for the possibility of other efficient destruction procedures with 99.99 percent efficiency in addition to combustion. For alternative destruction technologies, however, the requester must provide adequate documentation for the Agency to be able to make a determination that the destruction efficiency of the technique is at least 99.99 percent.

d. *Criteria for determining if controlled substances are unavoidable, coincidental by-products.* Two commenters suggested definitions of a coincidental, unavoidable by-product (CUBP), stating that a product is a CUBP if it is unintentionally manufactured in the course of manufacturing another product. One example provided was that carbon tetrachloride would be a CUBP of a production process if the amount of carbon tetrachloride produced could not be varied independently of the intended product (i.e., the quantity of a CUBP manufactured varies proportionately with the production of the intended product, and ceases when the intended product's production is stopped). Similarly, these companies asserted that if carbon tetrachloride is not manufactured for commercial purposes (i.e., sale or use in place of carbon tetrachloride that otherwise would be purchased), then it is a CUBP.

The Agency believes that requiring both the commercial test and the dependent-variable test is appropriate for determining if a substance is a coincidental, unavoidable by-product.

One company observed that identifying individual chemical processes that result in the CUBP of carbon tetrachloride would not be practical. Another company stated that a number of chlorination processes could result in the coincidental generation of small amounts of carbon tetrachloride that, under the proposed regulatory scheme, would be prohibited. As an example, this company noted that the chlorination of a municipality's drinking water supply could result in the formation of many organic chemicals such as carbon tetrachloride or other controlled substances.

The Agency does not have sufficient information to identify at this time all the chemical processes that result in the production of controlled substances as by-products. To the extent they are numerous, the Agency is concerned about their contribution to ozone depletion and believes that until more is known, this type of production should be subject to phaseout requirements unless the CUBP substances are destroyed by appropriate destruction techniques, in which case an exemption could be granted. In any case, companies that produced controlled substances as by-products and did not destroy them with MACT in 1989 should have reported their production in response to the section 114 information request in the November 26, 1990 **Federal Register**. Those companies that did not must supply EPA with this information within 45 days of the publication of this notice. Baseline production and consumption allowances will then be calculated for them by EPA. As producers of controlled substances, companies in this situation are subject to the phaseout provisions until such time as they begin providing for the destruction or transformation of their carbon tetrachloride production in accordance with the regulations promulgated today.

The Agency recognizes that very small quantities of carbon tetrachloride may be formed in water treatment plants if a municipality has chlorinated its water, but it does not believe that carbon tetrachloride so formed is covered by the definition of production. Chlorination does not involve "production" of a controlled substance even as a coincidental unavoidable by-product of a manufacturing process, since chlorination is not typically considered manufacturing. A specific exemption from the regulations is thus not necessary for the chlorination of water.

One commenter acknowledged that EPA correctly recognized that carbon tetrachloride can be a CUBP in the production of methylene chloride and methyl chloroform. In addition, this company wrote that carbon tetrachloride can be a CUBP in the high temperature, catalytic trimerization of cyanogen chloride to cyanuric chloride, which is a feedstock for numerous valuable chemicals.

Although the Agency has not developed an exhaustive list of chemical processes that create controlled substances as by-products, all of the above-mentioned processes would qualify for the exemption if they meet the commercial test and the dependent-variable test laid out in the definition of a CUBP.

e. *Interpretation of "immediately contained and destroyed by the producer"*—(i) *Immediately contained and destroyed.* EPA proposed that the phrase "immediately contained and destroyed" as used in the Joint Explanatory Statement be defined to allow for a 90-day storage period before destruction is required. This requirement would be similar to RCRA restrictions on the storage of hazardous waste prior to destruction.

Two commenters mentioned that the 90-day period is reasonable, but stated that where there is a shortage of incineration capacity a longer period should be allowed if the material is stored in RCRA-permitted tanks. These companies maintained that this exception may be necessary to make best use of MACT without over-building incinerators. This is particularly true of the period from 1995 to 1997 when MACT for eliminating CUBP carbon tetrachloride may not yet be widely available, but production allowances are reduced to 15 percent of the baseline. Moreover, one company asserted that the 90-day period should refer to the time that the carbon tetrachloride may remain at the producer's site before it must be shipped off-site for destruction (assuming that it is not destroyed on-site); and that at the destruction site it may be stored as long as necessary in accordance with RCRA. This company maintained that the 90-day period should refer to the time allowed until destruction or shipment to a destruction facility, and that the producer should not be held responsible for delays in off-site incinerator destruction.

Another company discussed an example of CUBP carbon tetrachloride that was not listed as hazardous waste and thus would not be subject to RCRA requirements for storage/destruction. The commenter stated that the Agency should allow at least 15 months for the material's eventual destruction and not limit the storage period to 90 days.

The Agency is concerned primarily that the controlled substance not be released to the atmosphere. This concern is largely alleviated if the CUBP is contained immediately after it was produced or left the reactor. As long as the material is contained, the actual time of destruction is less crucial. Indeed, the Joint Explanatory Statement arguably reflects such an approach, as "immediately" clearly modifies "contained" but does not necessarily modify "destroyed."

The Agency will thus grant a CUBP exemption if a company can show that it can adequately contain the chemical and that it has made definite provisions for its destruction. Although under these regulations there is no specific time period during which the destruction must take place, companies will of course still be subject to the RCRA limits to the extent that the material is a hazardous waste (e.g., 90 days for a non-RCRA-permitted generator or 180 days for a small quantity generator) and must provide documentation that they are in compliance with the relevant statute(s) (RCRA, Clean Air Act, Clean Water Act) when applying for the exemption, by providing EPA with copies of permits, manifests, exemptions, or other official documents.

One company stated that the term "immediately contained" should refer to the capture and containment of carbon

tetrachloride after it is removed from the process in which it is inadvertently generated. This company maintained that although in general the 90-day period would be appropriate, for continuous, closed-loop processes, this criterion is meaningless. The company suggested that in these instances, the continuous purge of the closed-loop process should also be considered immediately contained and destroyed.

The Agency agrees that such a process would be eligible for a CUBP exemption if the material is completely contained at all times, and the destruction device removes the chemical with at least 99.99 percent efficiency. This treatment of closed-loop processes is consistent with the definition of solid waste under RCRA (40 CFR part 261), which exempts materials reprocessed in closed-loop systems.

One company maintained that an adequate time must be allotted for the storage and destruction of the coincidentally produced by-product. This company stated that if a 90-day time limit were imposed, it should not begin to elapse until a reasonable quantity (e.g., 1,000 lbs) had been collected and packaged for safe transport to the destruction facility. The small quantity of carbon tetrachloride produced daily may not be enough for economical destruction. This company suggested that the time limit would commence after 1,000 pounds had been collected.

Again, insofar as the company is operating in compliance with applicable statutes (e.g., CAA, RCRA, CWA), containment is complete, and an appropriate destruction strategy is planned, these regulations allow the storage of approved CUBP material until an adequate quantity has been accumulated for destruction. Companies should include in their request for exemption a description of their handling of the CUBP an estimation of the amount accumulated and the period of time for which it is stored.

(ii) *Destruction by the producer: On-site versus off-site.* In the proposal, the Agency also discussed the meaning of "immediately contained and destroyed by the producer" from the standpoint of where the destruction must occur. EPA suggested that small generators of carbon tetrachloride might currently ship their waste off-site and requested comment on whether the phrase could be interpreted to permit both off-site and on-site destruction.

Several commenters maintained that EPA should permit off-site destruction or contracting with another firm for destruction because in some cases adequate incineration capacity is not available on-site, and it would be unfair to require that each producer have an incinerator. These comments also stated that if transport and destruction of carbon tetrachloride are conducted in a manner consistent with RCRA, it should be sufficient for title VI as well, and that EPA should clarify that "destroyed by the producer" is not being interpreted restrictively. One company noted that there may be many small generators who require incineration off-site. Another company agreed that off-site incineration should be allowed in light of the difficulty of burning or incinerating halogenated hydrocarbons and the difficulty of constructing new incinerators. This company maintained that as long as the release of carbon tetrachloride is controlled and the material is destroyed by a technology meeting the level of destruction efficiency identified in the applicable RCRA regulation, it should not matter whether such destruction occurs on-site or off-site.

The Agency has determined that there would be no measurable environmental benefit to restricting the exemption to on-site destruction by the producer itself. Furthermore, the Joint Explanatory Statement does not necessarily require that the producer destroy the chemical itself, but only that it be responsible for its destruction. Since carbon tetrachloride emissions and treatment are already tracked under RCRA, allowing the material to be destroyed off-site does not entail a loss of accountability. EPA has determined that if the manufacturer can show that it has made provisions for sufficiently efficient destruction of the carbon tetrachloride (off-site, on-site, or through a contractor) it will be eligible for the exemption.

One commenter stated that since the carbon tetrachloride is produced as a result of a chemical manufacturing operation, EPA should require that it be destroyed on-site and under strictly controlled conditions. This company contended that to send the carbon tetrachloride off-site, considering that it has no commercial value, would constitute an unnecessary exposure to the general public of its harmful properties

EPA currently regulates carbon tetrachloride waste generation, transport, and treatment under RCRA. The regulations under this statute give standards for each handler of the carbon tetrachloride and require that safeguards be taken in order to avoid unnecessary exposure to the general public. In the absence of any claims that these precautions are inadequate to protect the public welfare, the Agency finds that it would be inappropriate to make any further restrictions in this rulemaking. Thus by-product carbon tetrachloride produced and destroyed on-site or off-site is eligible for consideration for an exemption.

f. *Extension of the exemption.* In the NPRM, the Agency requested comment on what other controlled substances should be considered for exemptions in addition to carbon tetrachloride.

One company suggested that the destroyed-CUBP exemption be allowed for methyl chloroform as well. It was estimated that three percent of the 1987 methyl chloroform production was destroyed by incineration, and that as the availability of control equipment increases, methyl chloroform incineration will also increase.

Since methyl chloroform is currently produced as a CUBP in several production processes and is frequently destroyed, the Agency is allowing an exemption for coincidentally produced, incinerated methyl chloroform as well. The same destruction techniques are available for methyl chloroform and carbon tetrachloride, neither of which contain fluorine or bromine that can attack the refractive materials in incinerators, and RCRA standards for destruction of methyl chloroform that is a hazardous waste are the same as those for destruction of carbon tetrachloride. All the standards discussed above for determining whether or not a particular case qualifies for an exemption will apply for methyl chloroform, as well as carbon tetrachloride.

The Agency recognizes that Montreal Protocol controls take effect for methyl chloroform in 1993, and that Clean Air Act requirements are more stringent than the Protocol controls until 1995. The Agency is not promulgating a system for distributing exemptions during these control periods at this time. If no more methyl chloroform is destroyed during the 1993 and 1994 control period than is the case now (about three percent), the gap between the Montreal Protocol limit (100 percent of the baseline) and the Clean Air Act limit (90 percent of the baseline) should be more than enough to allow all companies with qualifying processes to be exempted. If, in 1992, requests for exemptions greatly exceed expectations and total more than ten percent of production in the baseline year, EPA will propose a method for distribution of exemptions for destroyed-CUBP methyl chloroform in a separate notice. As for 1995 and beyond, the Agency believes that appropriate destruction techniques will have been defined by 1995, when

Montreal Protocol controls and Clean Air Act controls coincide. If the Parties do not define appropriate destruction techniques by 1995, however, the Agency will no longer grant exemptions at that time.

Several commenters also suggested that other controlled substances produced as by-products be exempted. Another commenter asserted that any listed compound that meets the exemption criteria should be provided the exemption. Another company wrote that the definition of coincidentally-produced material should include other compounds in addition to carbon tetrachloride because during the manufacture of halons and other halocarbons, for instance, certain CFCs may be produced in small quantities as by-products.

Since CFC and halon production is currently restricted under the Montreal Protocol, and these substances can be destroyed only with difficulty and under special circumstances, the Agency will not at this time grant exemptions for them. Although destruction techniques have been identified, destruction facilities are not widely available for these substances, due to their tendency to corrode incinerator walls, and the Agency does not believe that it is appropriate to approve exemptions for their destruction prior to the Protocol Parties' designation of approved destruction techniques. When the Parties to the Protocol complete their analysis of destruction techniques, EPA will again examine the issue of granting the exemption for all controlled substances that are incidentally produced and destroyed by the techniques approved by the Parties.

2. Exemptions for De Minimis By-Product Production of Controlled Substances in Groups I–III

One company commented that the Agency has insufficient information relating to the incidental generation of controlled substances and is focusing only on the companies producing these materials as mainstream products in its proposal to exempt incidental, destroyed carbon tetrachloride. The commenter noted that a number of chlorination processes could result in the coincidental generation of small amounts of carbon tetrachloride. These processes would be prohibited by EPA's proposed regulations (e.g. a municipality chlorinating its drinking water supply). This company maintained that this is not a reasonable position for CUBPs generated as part of manufacturing or chlorination processes and stated that the Agency should obtain information concerning the environmental impacts of halogen chemistry in order to fashion a rational program to exclude from the regulations such de minimis generation until it is shown to pose an environmental problem. The suggestion was made in this comment that the Agency should investigate the unintended impacts of its regulations beyond the ozone depleting compound producing industry.

The Agency agrees that an exemption for de minimis by-product production whether or not it is destroyed could potentially be warranted in order to efficiently implement the phaseout. However, EPA has insufficient information on the subject at this time and thus will be requesting information from the regulated community in an upcoming **Federal Register** notice. The Agency has determined that additional study will be necessary to determine whether de minimis generation should be exempt from the phaseout. Persons that produce controlled substances in Group I, II or III as by-products of manufacturing processes will be required to provide information on the processes and the quantities of by-products being produced. In addition, companies that have fugitive emissions of any of the class I substances will be asked to report the annual amount that is emitted from each of their plants. For those companies that have this type of manufacturing process but that did not report it as production under the November 26, 1990 information request and thus have no allowances to cover their production, the Agency requests that this data be submitted as soon as possible so that allowances may be allotted or the issue may be otherwise resolved.

A suggestion was made by one company that the Agency should allow some de minimis generation of CFCs during the production of HCFCs and HFCs, such as a one-percent de minimis level in the production stream for exclusion from the scope of the regulations. Another company commented that a by-product that is not destroyed after production, or sold as feedstock and transformed, should be subject to the production phaseout.

The Agency is considering such an exemption from the phaseout for controlled substances in Groups I, II, and III that are produced as coincidental, unavoidable by-products of a manufacturing process. However, the Agency must investigate appropriate technologies and appropriate de minimis levels and the environmental impact of de minimis production for these groups of chemicals before a final decision can be reached. Persons that possess relevant information on this subject will be asked to submit it in an upcoming **Federal Register** notice.

3. Other Exemptions

In the NPRM, EPA requested comment on how some of the exemptions provided for in the Clean Air Act, but not in the Montreal Protocol, could be implemented in the future. The Agency noted, however, that under the exemption provisions themselves as well as section 614(b), it could not implement these exemptions unless and until it could do so in a way that was consistent with the Protocol. Since the Protocol does not yet permit these exemptions from its requirements, the Agency may not implement them, except to the extent that the Clean Air Act's limits are more stringent than the Protocol's. In such cases, the Clean Air Act creates a margin in which exemptions could be granted without running afoul of the Protocol. Even within this "compliance margin," the Agency is not making provisions for granting the exemptions because they are not warranted at this time, given the likely availability of the controlled substances under the Clean Air Act limits in at least the near term. The Agency is particularly hesitant to grant exemptions that are not currently vital since the Parties to the Protocol have not yet made provision for such exemptions. Furthermore, The Agency believes that these exemptions will for the most part not be needed until the time that the U.S. approaches the phaseout date. A summary and analysis of the comments received on the need for and implementation of the exemptions follows.

a. *Halons.* Section 604(g)(1) allows the Administrator to grant limited exemptions from the percentage reduction requirements for certain halons for purposes of fire suppression or explosion prevention where no safe and effective substitute has been developed. Paragraph (3) of that subsection also allows a limited exemption from the phaseout for halons needed for the same purposes in association with energy production on the North Slope of Alaska.

On the issue of implementing the exemptions to the extent that differences in the stringency between the Clean Air Act and the Protocol allow, one company commented that there is no guarantee that halon demand and production will continue to remain below allowable levels. It stated that, because there is no national halon recycling or banking infrastructure and no known substitute for Halon 1301 in

situations requiring the inertion of an occupied enclosed space for explosion prevention, demand could require new halon production in amounts greater than those allowed by the interim reduction requirements.

The Agency has monitored halon production, and to date, production is well below the allowed amount. In addition, halon demand is expected to decrease over the next few years as companies adopt alternative fire protection methods or chemical substitutes and as a bank for the storage and recycling of halons is established.

Another company commented that it is inappropriate to prohibit halon production exemptions in association with domestic crude oil or natural gas production on the North Slope of Alaska because the Parties have yet to agree to any such exemptions after the phaseout year. Two companies suggested that EPA should convene a STOPAC (Stratospheric Ozone Protection Advisory Committee) subcommittee of users and manufacturers to advise EPA on how exemptions should be implemented and maintained that EPA should acknowledge that the exemptions contained in the Clean Air Act may be applicable if at some future date the Parties amend the Protocol such that both it and the Clean Air Act are consistent.

In response, the Agency notes that it is not in any way eliminating the possibility of future exemptions, but at present does not believe that they are warranted, given the likely continued availability of controlled substances under Clean Air Act limits. For this reason, EPA believes that it would be premature to convene a STOPAC meeting on exemption implementation at this time.

b. *Methyl chloroform.* Section 604(d)(1) provides for another exemption specifically for essential uses of methyl chloroform, for which no safe and effective substitute is available.

One commenter asserted that methyl chloroform is an important transitional substance because of its low ODP and believed that when it is used as a replacement for CFCs it should be considered for exemption from the phaseout.

The Agency is required to phaseout methyl chloroform according to a specified schedule under the Clean Air Act and the Montreal Protocol, and substitution for CFCs could not be construed to be an "essential use" per se. EPA concurs with another commenter's view that exemptions should be left open until the availability of methyl chloroform is far more constrained and until the Parties have agreed on whether they are appropriate and if so in what applications.

c. *Analytical and research purposes.* One commenter requested an exemption for the use of carbon tetrachloride and CFCs for analytical and research purposes. This company maintained that they are unable to purchase carbon tetrachloride due to the current production and consumption limits. This company distributes carbon tetrachloride in small packages to laboratories for chemical analytical purposes and research, uses that are considered emissive. The comment provided the following example: Carbon tetrachloride and other CFCs are necessary as standards in testing for trace levels of contamination in drinking water, and no alternative products can be used to prepare standard solutions for this application. This comment proposes an exemption of the continued manufacture and use of these chemicals for use as analytical reagents in small quantities.

The Agency believes that such exemptions are not currently necessary, given the continued availability of production and consumption allowances for the ozone depleting chemicals. Since these research and analytical uses require only small quantities of the chemical, exemptions from the phaseout should not be needed to satisfy laboratory needs at this time. Since production and consumption of carbon tetrachloride is currently limited, but has yet to be completely phased out, EPA does not believe that companies should experience difficulties in locating suppliers of small quantities of the material.

D. Basic Prohibitions

1. Compliance

The September 30, 1991 proposal included a section on basic prohibitions (§ 82.4), which stipulated that no person may produce controlled substances at any time during any control period in excess of the amount of unexpended production allowances held by that person at that time, and that no person may produce or import controlled substances at any time during any control period in excess of the amount of unexpended consumption allowances held by that person at that time. For all the controlled substances except carbon tetrachloride, these requirements are identical to those that were originally promulgated in the August 12, 1988 rule limiting the production and consumption of CFCs and halons.

Two companies commented that the final regulations should apply production and consumption limits annually, rather than daily. These companies maintained that the Clean Air Act Amendments and the Montreal Protocol both provide for annual limits, and, therefore, that EPA has no statutory authority to require that companies have allowances before they produce or import instead of having sufficient allowances at the end of the control period to cover their total production and imports for the period.

The Agency does not agree that it lacks authority to require persons to possess allowances before they may produce or import ozone-depleting substances. While § 604's limits may be enforced on an end-of-year basis only as the commenters suggest, the statute itself does not require that they be so enforced. Section 604(b) calls on EPA to issue regulations implementing the phaseout in accordance with that and other applicable sections of the statute. Section 607(a) provides for issuance of allowances, as the Agency had done in its original phaseout regulations, and section 614(b) provides that Title VI provisions are to be construed in a manner that does not abrogate the U.S. obligations under the Protocol. In its original rule, the Agency required persons to hold allowances before they produced or imported to minimize the potential for exceedances that could cause the U.S. to exceed its Protocol limits. While the Protocol's limits were (and remain) annual, EPA judged that requiring allowances to be held at the time a person produced or imported was a worthwhile precaution against U.S. noncompliance with the Protocol. Nothing in title VI or its legislative history suggests that Congress disagreed with or intended to change the Agency's approach to implementing reductions in ozone-depleting substances. Indeed, Congress' adoption of EPA's allowance system suggests its satisfaction with EPA's approach to implementing the Protocol. If Congress had meant to prohibit EPA from requiring allowances to be held "up-front," surely it would have specified such a change to EPA's program.

Two companies asserted that the proposed rule, even if within the Agency's authority, represents overregulation and reflects an unfounded distrust of controlled substance producers. They commented that a daily test constitutes excessive interference in business practices and places an enormous accounting burden on producers without benefit to EPA or the environment. One company maintained that daily accounting creates problems for ozone depleting chemical producers that sell their products for

export or transformation and expect to receive production and consumption allowances in the future as the result of such uses.

The Agency disagrees with these comments. As stated above, requiring compliance by requiring the holding of allowances prior to production and consumption is appropriate in view of the U.S. obligations under the Montreal Protocol. Moreover, neither EPA nor producers of the original controlled substances have had difficulties with this system in the past.

This compliance mechanism is also necessary for EPA to track allowances throughout the control period in order to ascertain whether trades can be carried out without endangering compliance. Since companies can trade allowances at any time during a control period, the Agency must be aware of their compliance status in order to ensure that the trade will not result in a company's expending more allowances than it holds.

In general, the commenters on this subject appeared to be concerned with recouping allowances expended in the production of controlled substances for export or transformation. To the extent that the system for the tracking of carbon tetrachloride will no longer require this cycling of allowances, as described later, EPA believes that companies should have little difficulty remaining in compliance with the regulations.

One company stated that EPA would be able to assess compliance or stop drastic non-compliance without imposing a daily test. This company suggested that the Agency use quarterly reports to assess compliance and, if a company exceeds its allowances during a given quarter, require the company to submit evidence (such as its customers' IRS Certifications) that it would be able to retrieve enough allowances by the year's end.

EPA believes that the requirement for quarterly reports as well as the requirement for companies to have allowances before they produce or import are both necessary to ensure compliance with the production and consumption limits. In addition, the suggested control system would make it impossible for the Agency to monitor trading of allowances during the course of each quarter. Consequently, the Agency is continuing to follow the system established in the 1988 regulations and is requiring that companies keep records on a daily basis and report quarterly and that companies hold adequate unexpended allowances to cover their activities.

2. Consumption Limits

The proposed regulations required that companies that import controlled substances must hold consumption allowances, and may not import controlled substances in amounts that exceed their level of unexpended consumption allowances at any time. A controlled substance is imported at such time that it enters U.S. territory, with the exception of Maquiladora transactions where controlled substances of U.S. origin are imported into Mexico in-bond and then re-imported into the U.S. The regulations apply to any bulk quantity of the listed chemicals, including recycled material or that intended for recycling.

One company commented that, from a policy perspective, it is inappropriate to require a party to use consumption allowances for the import of used controlled substances that will be recycled. According to the company, it should be apparent that any quantity of used controlled substance that is recycled will be used in place of new production, thereby reducing controlled substance production. The same company maintained that the siting of recycling facilities should not be artificially affected by the need to use consumption allowances for imports. This company stated that this issue will be important in later phases of the phaseout when it is likely that the quantity of consumption allowances will not be sufficient to allow for both production of virgin material and for import of used controlled substances for reclamation. An alternative approach suggested by this company would be to allow used controlled substances to be transported across national boundaries for the purposes of reclamation without counting them towards the recipient country's consumption limit.

The Agency first notes that there is no assurance that recycled controlled substances will be used in place of new production. Indeed, the Agency expects that as the phaseout progresses, recycled substances will be used as a supplement to new production. In any event, the Protocol requires that imports of used controlled substances be included in the calculation of consumption, because of the practical difficulty of distinguishing between used and new substances. Exempting imports of controlled substances from applicable consumption limits would create a strong incentive to mislabel new controlled substances as used. Moreover, EPA does not believe that the expenditure of consumption allowances for imports of used controlled substances for recycling constitutes a disincentive or an obstacle to recycling. The domestic use and recycling of controlled substances is not restricted under these regulations and consumption allowances are not required to recycle controlled substances. Only used or recycled material crossing international borders is affected by the availability of consumption allowances. However, if this material is then re-exported, consumption allowances expended for the imports may be recovered upon export of the material through a request for additional consumption allowances. Thus, there may be no net loss in consumption allowances. Even under the phaseout, controlled substances could still be imported as long as at least an equal amount is exported (annual consumption must equal zero). To the extent that the suggestion is that material would leave the country, be recycled, and returned (or vice versa) this should not be a problem.

E. General Stringency of Regulations and Phaseout Schedule

The Agency proposed the phaseout schedule Congress set forth in the Act. In the NPRM, EPA noted that recent scientific evidence suggested a need to accelerate the phaseout schedule. The Agency explained, however, that the tight statutory deadline to which this rulemaking is subject did not permit the Agency to consider such an acceleration within the scope of the rulemaking.

One commenter stated that the rules should be formulated to be as stringent as possible in eliminating the production of controlled substances and preventing their emission to the atmosphere, and that there are too many provisions in the proposal for companies to increase their production allowances and not enough incentives for companies to reduce the world market of ozone depleting chemicals. The commenter urgently recommended revisions to the rule to accelerate the phaseout and to broaden the list of ozone depleting chemicals.

For the reasons cited above, today's regulations implement the phaseout schedule specified by the Clean Air Act. The Agency notes, though, that the production of ozone depleting chemicals is being further decreased due to the effects of the excise tax implemented by the IRS. Currently no companies are increasing their production of ozone-depletors and significant efforts are underway to find substitutes. However, as new scientific and technology developments occur, and in response to petitions received under the Clean Air Act Section 606, EPA will reassess the schedules contained in this rule. As mentioned previously, the Agency is

currently evaluating one such petition, received on December 3, 1991.

F. Recordkeeping and Reporting Requirements

1. Daily Production Records

The proposed regulations require producers to keep dated production records. One commenter claimed that daily mass balancing is unworkable because although daily production records exist, they contain only rough measurements. This company maintained that monthly rather than daily documentation should be used for mass balancing. This is because it takes several days for material to be completely processed and only then can it be measured for the purpose of a mass balance. In addition, this company asserted that improving the daily accounting would cost hundreds of thousands of dollars per plant, and still would not be as accurate as monthly documentation.

This comment is similar to comments received in response to the NPRM implementing the Montreal Protocol in 1987. At that time EPA determined that daily recordkeeping is important and that it is common business practice to keep daily records. Based on its review of data submitted by producers, EPA believes that current methods of daily recordkeeping will be sufficient to satisfy the requirements. Daily mass balancing is not required. The Agency recognizes that daily records may consist of rough measurements and as such are generally used by inspectors, not for a direct mass balance, but primarily as a check when discrepancies in other records are found.

2. Class II Reporting

The Agency proposed that, as required by the Clean Air Act, producers, importers, and exporters of Class II chemicals report their activities to the Agency on an annual basis.

One company's comments expressed support for quarterly Class I reports and annual Class II reports. Moreover, the company believed that the Agency should maintain all reports of HCFC activity in confidence until such time as it has established baseline levels for each of the producers.

The Agency follows the procedures outlined in 40 CFR subpart 2 when companies submit information with a confidentiality claim. Unless a specific finding is made that the information is not entitled to confidential treatment, the Agency will maintain it as such until disclosure is needed to carry out a Clean Air Act provision, including section 607 which requires the establishment of baselines. Aggregate production and consumption information on the HCFCs will be submitted to the Protocol secretariat at UNEP in fulfillment of EPA's reporting requirements to that body under the Montreal Protocol once the amendments enter into force.

G. Exchanges

1. Domestic Trading—Environmental Offset

a. *Offset amount.* Section 607 of the Clean Air Act provides for trading of allowances between chemicals in the same group. It requires, however, that any trade must "result in greater total reductions in production in each year of class I and class II substances than would occur in that year in the absence of such transactions." In the NPRM, the Agency proposed an implementation strategy for this environmental offset. EPA argued that it could not predict what would have occurred in the absence of the trade, and proposed that the assumption be made that all allowances available would be used in the absence of the trade. Based on this assumption, the required offset could be calculated every time a trade occurred, by subtracting a certain percentage of the amount of the trade from the transferor's unexpended allowances. EPA proposed that this percentage be based on the level of measurement error that companies would likely build into their compliance margin and upon the level of environmental benefit resulting from the offset, and arrived at a one-percent offset, although comment was requested on offset amounts of 0.1 percent and on two percent.

A number of commenters maintained that EPA had taken a satisfactory approach to the offset requirement by presuming reasonably that companies would have used allowances being transferred if a trade did not occur. An industry group noted that the evaluation of whether allowances would have been used in the absence of trades would have been highly subjective, even in the case of plant-closings, because a company may have kept its plant open if it had known that it could not trade its allowances.

One company commented that EPA should review the impact of the one-percent offset on the ability of the producing companies to supply both the needs of the U.S. and those of its trading partners. According to this company, as the phaseout schedules take effect and less virgin material is available to service the needs of the U.S., the Agency may need to revisit its decision.

The Agency believes that a one-percent offset will not cause any shortages or difficulties in supplying the country's needs for ozone depleting chemicals. If at some future date the offset becomes a significant problem, the Agency can revisit the issue.

The same industry group commented that the analysis on the margin of error in the NPRM was not relevant to the calculation of an appropriate environmental offset. The Agency had stated that the offset amount should be related to the measurement error present in companies' production estimations. The commenter stated that the margin of error moves rather than disappears when allowances are transferred, and thus the level of the offset does not need to be related to the level of measurement error.

EPA's concern was that if the percentage selected for the environmental offset were smaller than companies' actual production measurement error, there could be no guarantee that the trades would result in lower overall production. The Agency agrees that to a large extent, the margin of error would move with a transfer of allowances, since a cushion for measurement error would have to be maintained and production would be reduced accordingly. For example, if a company had 200 production allowances (authorizing 200 kg of production), and had a production measurement error of one percent, the company would probably not plan to produce more than 198 ± 1.98 kg of controlled substances. If the company traded away 100 allowances with a one-percent offset, it would only have 99 allowances left, and would likely only produce 98 ± 0.98 kg. The receiving company would similarly produce only 99 ± 0.99 kg, so the total production would only reach 197 ± 1.97 kg; the environmental offset would have effectively reduced total production by one kilogram. At the same time, the Agency notes that permitting allowances to be traded increases the value of any compliance cushion that companies build in and thus creates an incentive to share it. Overall, however, the Agency believes that regardless of particular companies' measurement errors, a one-percent offset will be sufficient to ensure an overall production reduction as a result of allowance transfers.

The group accepted EPA's conclusion that the offset should be at least 0.1 percent in order to satisfy the statutory requirement. Another commenter also agreed that 0.1 percent is quantifiable and enforceable and commented that one percent is excessive and unnecessary. The industry group stated that a one-percent offset is more than

sufficient to satisfy statutory requirements. but that the greater the percentage, the more trading will be discouraged.

None of the commenters presented compelling evidence that a one-percent offset would be damaging to industry or to trading, however. Therefore, the Agency does not believe that a reduction of the proposed one-percent offset is warranted. EPA analysis shows that one percent is an appropriate number to ensure a measurable environmental benefit while not harming business unnecessarily.

Several commenters endorsed the proposed one-percent offset factor, and believed that higher offset penalties will only discourage and hinder trading between chemicals, thereby resulting in less efficient utilization of production facilities and in increased costs to the economy.

The Agency agrees that an offset larger than one percent would be likely to discourage trading and could be harmful to small businesses. For this reason, it is adopting the proposed offset factor of one percent.

Two companies stated that although EPA explained in the preamble to the proposed regulations that a single trade between parties and chemicals should only be subject to one offset, the proposed regulations were unclear on this point. This company suggested that the language in § 82.12 be clarified to remove any doubt.

The Agency has added language to § 82.12 clarifying this point. It has also added language to specify that only trades of consumption and production allowances are subject to the offset. As discussed in the NPRM, trades of "authorizations to convert" or "potential production allowances" are not subject to the offset.

b. *Intra-company trading.* One comment stated that EPA should make it clear that the offset does not apply to intra-company transfers, citing section 607(c) of the Clean Air Act, which refers to trades between "2 or more persons."

The Agency notes that section 607(a) requires that the Agency promulgate rules for trading that "shall insure that the transactions under the authority of this section will result in greater total reductions in the production in each year of class I and class II substances than would occur in that year in the absence of such transactions." Among the transactions authorized under this section are interpollutant transfers (section 607(b)) which permit allowances for one type of controlled substance to be exchanged for another type within the same group. These are the types of trades that would occur within a company as well as between companies. Although section 607(a)'s general statement could be interpreted to allow other methods of calculating the offset than set forth in section 607(c), using two different offset systems for trades between different companies and trades within the same company would be unnecessarily complex. Since both types of trades must be subject to an offset, the Agency finds that it is most logical to use the same offset for both.

Another company commented that where a trade occurs within the same corporate organization, domestically or internationally, it should not be necessary for a company to obtain advance authorization of the trade. This company asserted that the administration of this requirement would be burdensome on EPA and industry. Moreover, since the same company is on both sides of the trade, it is fully responsible for compliance and thus there is no need for EPA to pre-approve a company's production schedule. The company maintained that quarterly reports should be adequate.

The Agency does not agree that requiring EPA notification of intra-company trades is administratively burdensome. The number of such trades will be small. For the NPRM, the Agency analyzed of the trades of chemical-specific allowances that would have been necessary in the first control period, and found that fewer than five trades would have been needed for a large ozone depleting substance producer. In addition, the Agency's past experience with the ozone depleting chemical industry indicates that production plans do not change from day to day. Thus, the number of trades during the year is not expected to be large. The Agency notes that only towards the end of the control period, when allowances are being used up, would intra-company trading activity be likely to pick up. Even then, EPA believes its experience with trades and its commitment to communicate objections to trades within three days of receipt will ensure that trades late in the control period will be processed quickly.

The same commenter stated that requiring Agency pre-approval of each shift in the mix of chemicals produced by a single company is wasteful of resources and does little to accomplish improved compliance with the Clean Air Act and the Montreal Protocol.

If U.S. treaty obligations were not at stake, EPA non-objection might not be regarded by EPA as worthwhile. As a leader in the phaseout of ozone-depleting substances and with the existence of an international agreement, however, EPA believes it must take extra care that compliance is achieved. In this context, the Agency disagrees that the requirement to notify EPA prior to intra-company trades does little to improve prospects for compliance with the Clean Air Act and the Montreal Protocol. Since companies may trade allowances at any time during the control period, the Agency must be aware at all times of the number of allowances held by each company. For example, if a company internally traded all its allowances from CFC–114 to CFC–115 and then proposed to trade CFC–115 allowances to another company, EPA would not know that the company has CFC–115 allowances to trade and would object to the trade. Likewise, if the company did not have any CFC–114 allowances left, yet proposed to trade them, the Agency would not object to the trade and the second company could produce CFC–114 without there being any actual allowances to cover the production. In this way, compliance with the Montreal Protocol and the Clean Air Act would be endangered. The Agency also notes that EPA has only three business days in which to object to a trade, and thus companies would not be hindered by a paperwork bottleneck that could hinder the implementation of production plans.

c. *Transformer trading.* One commenter maintained that the proposed rule subjecting feedstock purchasers to the "offset" requirement when allowances necessary for the purchase of feedstocks are traded is unlawful and serves no legitimate purpose. This company also stated that the non-manufacturing feedstock users would be forced to compete in the market for increasingly scarce allowances. This company noted that each time a feedstock purchaser attempted to exchange his regenerated allowances with a manufacturer in order to facilitate the purchase of additional feedstocks it would be subject to a one-percent reduction. After 20 such cycles in one control period, the purchaser's allowances would be reduced by 17 percent. If product use expands, which may occur, the effect of repetitively applied offsets combined with diminishing allowances would create a shortage of allowances and feedstock. One of the most disturbing effects, according to this company, is that new feedstock uses, such as for CFC substitutes, would never be launched. Furthermore, this company commented that feedstock purchasers would gradually suffocate from lack of supply, while feedstock manufacturers would be awash with excess feedstock material.

The Agency agrees that placing an offset on trades, the purpose of which is to replenish allowances expended in feedstock production, is not mandated by the Act. Section 607 requires that allowance trades result in lower production than otherwise would have occurred. Under current market conditions, transformers receive allowances and trade them back to feedstock producers on the basis that the chemical originally produced was used as a feedstock, and, therefore, does not count as production. In that way, allowances expended to produce substances later transformed are only temporarily expended. As such, the "trade" of these allowances is simply an allowance reimbursement.

The same commenter asserted that the offset applied to transformers is classically anti-competitive in that it requires feedstock users to compete for diminishing supplies, thus driving the market price up unnecessarily and bestowing further advantage on those who manufacture their own feedstocks. This anti-competitive and economically damaging spiral of prices is not intended or sanctioned by the legislation and is sufficient reason, standing alone, to adopt an alternative regulatory scheme, according to this company. The commenter stated that the language employed in section 607 shows that the drafters did not envision that offsets would be required for trades by non-producers. This commenter argued that since all allowances expire at the end of the control period, this language can logically only apply to those with who are allocated baseline allowances, and not purchasers who only have allowances they have acquired.

Although EPA doubts that the potentially catastrophic consequences predicted by this commenter would actually take place in the event that an offset were placed on allowance transfers from transformers to producers, it concedes that this would not be a desired result of the Act. As explained earlier, the Agency believes it appropriate not to apply the offset to transfers of production and consumption allowances from transformers to producers. The Agency however does not agree that *all* trades by non-producers should be exempt from the offset. Although section 607(c) states specifically that "the transferor of such allowances will be subject, under such rules, to an enforceable and quantifiable reduction in annual *production*," subsection (d) states that "the rules under this section shall also provide for the issuance of *consumption* allowances in accordance with the requirements of this title and for the trading of such allowances *in the same manner as is applicable under this section to the trading of production allowances*" (emphasis added). EPA interprets this language to mean that transferors of consumption allowances should be subject to a reduction in annual consumption. For this reason, the Agency is only exempting traders of allowances from the offset in cases where it is clear that the purpose of the trade is to reimburse a producing or importing company for allowances expended in the production or import of feedstock material or material that is later exported. All other trades of production and consumption allowances are subject to a one-percent offset.

2. International Trades

a. *The proposal.* Section 616 of the Clean Air Act provides that trades of production between Parties to the Protocol also be subject to specific conditions. "Consistent with the Montreal Protocol, the United States may engage in transfers with other Parties to the Protocol under the following conditions:

(1) The United States may transfer production allowances to another Party if, at the time of such transfer, the Administrator establishes revised production limits for the United States such that the aggregate national United States production permitted under the revised production limits equals the lesser of (A) The maximum production level permitted for the substance or substances concerned in the transfer year under the Protocol minus the production allowances transferred, (B) the maximum production level permitted for the substance or substances concerned in the transfer year under applicable domestic law minus the production allowances transferred, or (C) the average of the actual national production level of the substance or substances concerned for the three years prior to the transfer minus the production allowances transferred.

(2) The United States may acquire production allowances from another Party if, at the time of such transfer, the Administrator finds that the other Party has revised its domestic production limits in the same manner as provided with respect to transfers by the United States in subsection (a)."

Under section 616, then, trades of allowable production between the U.S. and a Protocol Party cannot result in an increase in production over what would have occurred in the absence of the trade. In the case of a trade to a U.S. company, the trading Party must agree to reduce its production to the extent prescribed by section 616. In the case of a U.S. company trading production to other Parties, the U.S. must likewise reduce its production.

The Agency considered various methods of reducing overall U.S. production as called for in trades from U.S. companies to companies abroad, but proposed that the only fair way of distributing the offset would be to decrease the transferor's balance of production allowances by the amount required under section 616. Thus, the formula for calculating the transferor's revised production limit would be "the lesser of. (i) The unexpended production allowances held by the person * * * minus the amount transferred; or (ii) the unexpended production allowances held by the person * * * minus the amount by which the U.S. average annual production for the three years prior to the transfer is less than the United States' production allowable under this Part minus the amount transferred."

b. *Trades from the U.S. to other Montreal Protocol parties.* One commenter stated that although the proposal for intra-company international trades would appear to be workable under today's market conditions, as the phaseout moves forward and substitutes are developed, the formula will become unworkable. This is because the three-year average would be very low due to the rapid adoption of substitutes in some end uses and to the recent economic slowdown which has led to reduced demand for ozone depleting chemicals. The commenting company provided an example of how applying the offset could lead to severely diminished supplies of controlled substances in the U.S. If the U.S. were producing and consuming controlled substances at about 50 percent of its allowable levels, and that allowable level was 80 percent of baseline levels, the commenter claimed that a company transferring ten percent of its production rights to another country would severely restrict future production (i.e., only 80 percent minus 50 percent minus ten percent of the company's limits).

The Agency acknowledges that the U.S. production of some of the controlled substances has been well below allowable levels and agrees that implementation of section 616 could result in a severe curtailment of future production if a company were to transfer away its baseline production rights under the kind of scenario described above. The Agency notes, however, that under its proposed approach to implementing section 616, a trade could only take place if the U.S.

transferor had enough allowances to permit the reduction in actual U.S. production to be reflected in the transferor's adjusted allowance balance. In short, using the example given above, the transferor would have to have allowances equal to at least 30 percent of U.S. baseline production for it to trade its allowances abroad. In this way, any resulting curtailment in production would be for the transferor to absorb and would not directly affect other companies' ability to produce. EPA also points out that if the U.S. were already operating well below its allowable production in a future control period, it would not need the full amount of allowable production during that control period and trades of allowances would not necessarily result in such severe cutbacks at least for that period. In any event, regardless of the effect on future production, the Act clearly requires these adjustments to the U.S. production limit and the need to make such adjustments should be considered by those contemplating trades.

The same commenter stated that under the Agency's proposal, no company other than itself may be able to transfer production rights because the potential shortfall in national production could easily exceed the total production allowances held by any other producer. The company suggested as trades will become increasingly necessary under the phaseout, and that it would be uneconomical and bad policy for the U.S. to undertake a program that would effectively prohibit international trades.

One company also maintained that the first company requesting a transfer to another Party would be disproportionately penalized by having to absorb the entire national difference between the allowable production quantity and the three-year average of actual annual production.

The Agency agrees that its proposal could have the effect of unfairly limiting the availability of trading and that such a result should be avoided. The Agency has thus changed its requirement so that if more than one company trades production of a controlled substance to another Party or Parties, they will equitably share the burden of absorbing any shortfall in national production. Thus, the allowance balance of the company to trade first would be reduced by the full amount of its trade plus the difference between the allowable production and the three-year national average. If another company were then to trade away its production allowances for the same controlled substance, the first company would recoup part of what it lost and the second company's allowance balance would be reduced. The exact percentage of the required reduction levied on each company would be proportional to the amount of each company's trade. Since allowances are calculated in kilograms, the offset would also be determined in kilograms.

According to several commenters, the implementation of this requirement of the Clean Air Act as proposed would act as a severe disincentive to early cutbacks beyond those required by the Montreal Protocol, and would have a "chilling effect" on the free market's distribution of production of controlled substances throughout the world. They also contended that EPA's proposal regarding transfers to other Protocol Parties could be onerous and unworkable as it would seriously discourage any company from entering into a transfer with another Party.

The Agency believes that the commenters' problem is with the terms of section 616 itself, not with the Agency's manner of implementing it. That section clearly calls for U.S. production to be reduced not only by the amount being transferred but by any shortfall between U.S. actual and allowable production. Congress called for the required reduction to be calculated this way in order to ensure that the production being transferred was not production that would have otherwise gone unused, thereby sparing the ozone layer that amount of potential depletion. The Agency, required to implement the Clean Air Act requirements, has simply codified the most equitable method of distributing the effect of this requirement.

The same commenters suggested that EPA take under advisement and further consider its proposed approach to section 616, and not finalize it with the rest of the rule. The Agency notes, however, that until it implements section 616, no trades of production with Protocol Parties could be undertaken. The regulations that were effective in 1991 expired at the end of that year. Section 616 sets forth the basis on which EPA may allow international trades. In the absence of regulations implementing that provision, there could be no trades. As noted above, while section 616 may make international trades less attractive, EPA has no choice but to implement its requirements.

The Agency has altered its approach to section 616 in this final regulation in response to comments to make it more equitable and less burdensome on any individual firm. As the Act is very specific on this point, EPA does not believe that postponing this section's implementation would lead to a more satisfactory solution.

c. *Trades to the U.S. from other Montreal Protocol parties.* Section 616 also allows for transfers of production from other countries to the United States. If the Party nation agrees to reduce its production limit according to the provisions set forth in the Act, the U.S. may increase its production by the amount transferred.

One commenter asserted that transfers of methyl chloroform and carbon tetrachloride production from Parties do not make sense because other countries do not have limits yet. This company commented that EPA should clarify this point, and declare that a statement to UNEP proving a country's reduction in production would be sufficient to satisfy the Clean Air Act.

While section 616 appears to presume the existence of Protocol limits on the controlled substances being transferred, EPA does not believe that Protocol limits need exist for it to apply and be applied. The purpose of section 616 is to permit the U.S. to transfer production to or from other Parties so long as the total actual production of the U.S. and the Party engaged in the transfer does not increase. Before Protocol limits apply, the same purpose can still be served so long as the Party engaged in the transfer has placed or will place limits on the controlled substances being transferred and revises or sets those limits to reflect the adjustment required by section 616.

Section 616(a) provides that the transferring Party adjust its production level based on its allowable production under the Protocol, its allowable production under domestic law or its average annual production for the three years prior to the transfer. Before Protocol limits take effect, then, adjustments can be calculated based on domestic limits or average production levels. What is essential, though, is that the adjustment be binding on the transferring Party. If it has domestic limits, it must reduce them by the amount transferred. If it has no limits, it must establish limits equal to the average of its actual production in the last three years less the amount transferred.

For EPA to approve transfers of controlled substances, including those that are not yet subject to Protocol limits, the transferee must submit to the Agency a signed document from the principal diplomatic representative in the transferring nation's embassy in the United States stating that the appropriate authority within the nation has revised or established production limits as described. The Agency submits

that in cases where the compounds involved in the trade are not yet regulated under the Montreal Protocol, no purpose is served by sending a statement to UNEP that the country has reduced its production.

An industry group commented that it is unrealistic to expect other countries to revise their production limits as required by section 616 if the resulting limits were more stringent than the applicable Protocol limits. It argued that the Agency should not place the burden of negotiating lower national production limits on the U.S. company seeking the transfer and maintained that if the Agency did not act on a government-to-government basis to negotiate production reductions, no allowance trades from other countries could be carried out. Unless the Agency took part in negotiations, the group stated, allowances would flow only away from the U.S., resulting in lower U.S. employment and balance of trade without environmental gain.

The Agency does not believe that it is the U.S. government's place to negotiate with foreign governments on behalf of U.S. companies that wish to receive production rights from other nations. The Act is clear in requiring that the government of a Party restrict its production if a U.S. company is to receive production from that Party. If a foreign company wishes to transfer production rights, it must work with its government to achieve national reductions in production. Although the U.S. will continue to act on an international level to encourage nations to join the Protocol and phaseout ozone depleting substances, the Agency will act as an agent for U.S. firms wishing to carry out allowance transfers.

In addition, the Agency does not agree that this provision of the regulations will result in a one-way transfer of allowances away from the U.S. with negative economic consequences. Under the regulations, before trades of production from the U.S. can occur, EPA may evaluate the economic ramifications and, in cases where negative consequences are anticipated, disapprove the transfer.

H. Obtaining Additional Allowances—Transformation

1. Carbon Tetrachloride Transformation

a. *Summary of today's final rule.* EPA decided to change the provisions for the tracking of carbon tetrachloride production and transformation from those proposed in the September 30, 1991 notice in light of the comments received during the rulemaking proceeding. Under today's regulations, any company that produces carbon tetrachloride to be used as feedstock may do so without expending production and consumption allowances under certain conditions. In order for the company to avoid the prohibition against producing without allowances, however, the same amount of material it reports to EPA as "production for feedstock use" in a control period must be transformed by the end of the first quarter of the next control period. No "transformation allowances" or up-front commitments will be necessary for companies to produce carbon tetrachloride for feedstock. Instead, recordkeeping and reporting requirements needed to make this added flexibility for producers of carbon tetrachloride and feedstock users possibly have been promulgated.

b. *The proposal.* The Agency proposed a new system of "transformation" allowances for the production of carbon tetrachloride to be used as a feedstock. Under the system in effect in 1991, producers of carbon tetrachloride, like the producers of the other controlled substances, were not allowed to produce the chemical unless they had adequate production and consumption allowances to cover their production. After the chemical was transformed, the transforming company would be eligible to receive additional production and consumption allowances that could then be used to further produce or import additional carbon tetrachloride. Since a large percentage of the carbon tetrachloride produced is transformed, however, and two of the producing companies received no baseline consumption allowances, the 1991 system proved cumbersome and generated a large amount of paperwork while creating a stop-start production cycle.

The proposed system would provide for the allocation of allowances before the actual transformation occurred, upon the producer's proving to the Agency's satisfaction that it had sales commitments with companies that promised to transform the carbon tetrachloride received. Producers could use these transformation allowances to produce carbon tetrachloride for feedstock use within the same control period. Transformers would report their activities quarterly. Any amount of carbon tetrachloride produced pursuant to transformation allowances and not transformed by year-end would be considered a violation of the regulations.

c. *Proposed system versus 1991 system.* The Agency requested comment on the proposed system as well as the 1991 system. Two commenters commended EPA for developing a new approach, but said that the proposed system would not solve some problems of the 1991 system and would exacerbate other problems. Another commenter remarked that the proposed system would be an improvement from the current system in that would solve the problems of stop-start production and of requiring producers to have allowances before producing carbon tetrachloride for exempt uses (in 2000). However, according to this company, the proposed scheme still had several flaws, which are discussed in more detail below.

In preparing the final regulations, the Agency has taken these comments into account, and altered the proposed transformation allowance system so that it will work more smoothly while maintaining an effective compliance monitoring mechanism.

d. *Allowances for the production of feedstocks.* Two companies asserted that since the manufacture of controlled substances used for feedstock is not deemed production under EPA's regulations, no allowances of any kind should be required to manufacture carbon tetrachloride for that purpose. One company commented that the word "production" found in the Protocol and the Act does not include the manufacture of controlled substances that are wholly used and consumed in the manufacture of other substances, and thus that EPA's proposed regulations unjustifiably and without authority would prohibit the sale of controlled substances for feedstock purposes except to the extent permitted by existing production and consumption allowances. One commenter also contended that EPA's interpretation of production denies the plain and ordinary meaning of the words contained in the statute, cannot be reconciled with other parts of the statute, and is neither required nor suggested by the Montreal Protocol. According to this company, since the effect of EPA's interpretation is to place a restriction on trade in these chemicals that is not authorized or required by the Statue or the Protocol, the Agency's position is unlawful. One comment indicated that it would be less disruptive of business to interpret the feedstock exclusion as covering the current year's production that has been or will be used as feedstock, requiring only a certification that the material will be transformed eventually.

The Agency continues to believe that the Clean Air Act and Protocol definitions of production may be read to include any amount of feedstock chemical manufactured until it actually

is transformed. The Clean Air Act, after all, excludes from production those controlled substances that are "used and entirely consumed" in the manufacture of other chemicals (emphasis added). At the same time, EPA concedes that the use of the past tense does not necessarily connote that the substance must have been used and consumed before it may be excluded from production. There are strong policy reasons for interpreting production as the Agency has in the past, to ensure that controlled substances are not produced in amounts greater than the Protocol and Clean Air Act allow and then not transformed.

In the case of controlled substances largely used as feedstocks, however, EPA's past interpretation can be unwieldy to implement. To address this concern, the Agency believes that it is permissible to interpret the definition of production in such a way that any chemical transformed at any point in time is never deemed "produced" within the context of the Protocol and Act. For reasons discussed in the following sections, EPA has determined that the allocation of transformation allowances for the production of carbon tetrachloride as feedstock (a system premised on the first interpretation) would not provide significant compliance monitoring advantages, while it would increase industry's and EPA's administrative burden. Consequently, this rulemaking provides that companies may produce carbon tetrachloride for feedstock use without expending allowances.

One commenter stated that within the same company, EPA excludes the transformed chemical from production, and there is no compelling reason for treating transformation by other companies differently.

The Agency's response is that prior to today's rule, all production, including feedstock production required the expenditure of consumption and production allowances and was not excluded directly from production. The commenter is most likely referring to the Agency's suggested format for the producer's quarterly report, which is simplified by netting out the amount transformed during that quarter from the amount produced during that quarter (the regulations promulgated today do not change this reporting system for internal transformation). It has been under past rulemakings and continues to be prohibited, however, to produce controlled substances for feedstock use without expending production and consumption allowances to cover that production, so in-house transformation is treated the same as second-party transformation. This rulemaking alters that system for carbon tetrachloride only.

One commenter also remarked that with few producers and transformers involved, enforcement would be just as easy for second party transformation as for producer transformation. Therefore, according to the commenter, the two systems should be treated in the same manner, as Congress intended.

To date, however, the Agency has identified at least 30 companies that transform carbon tetrachloride, in addition to six companies that produce it as well. The tracking of second party transformation thus is not as simple as tracking internal producer feedstock use. Therefore, the Agency is placing specific controls on producing and transforming companies to ensure compliance, which are outlined below.

e. *Written contracts and commitments to transform.* One company and an industry group commented that the proposed requirement for written fixed-amount contracts before transformation allowances could be granted would alter current business practices. In addition, they stated that sending each new purchase order to EPA would involve considerable paperwork without corresponding benefits. These commenters were also concerned that the production limits would still be exceeded if customers do not take the amount of carbon tetrachloride ordered or do not transform it by the year-end.

These commenters maintained that elements of EPA's proposed requirements do not take account of everyday business practices, as contracts are often only for estimated amounts. These three companies stated that the proposed system would prevent production without advance orders, which would make the production process slow to respond to immediate or emergency needs.

Responding to these concerns, the Agency has removed the requirement that a producer obtain up-front commitments from purchasers to transform carbon tetrachloride. Since EPA is not establishing a system based upon the provision of "up-front" allowances for carbon tetrachloride, EPA does not believe it is necessary to require producers to obtain the up-front commitments, the purpose of which (as explained in the NPRM) would be to determine the precise amount of carbon tetrachloride intended for transformation so that the appropriate amount of allowances could be granted. Instead, a producer must report every quarter its sales of carbon tetrachloride to each feedstock-user and provide the IRS certificates of the customers involved. The certificate shows the customer's intent to transform and substantiates the producer's claim that its feedstock production in excess of its production allowances will be transformed. Thus, industry will have more flexibility in responding to emergency orders, while EPA will still have adequate assurance that the carbon tetrachloride will be transformed.

f. *Year-end problem.* Several commenters expressed concern about the provision in the proposed rule that all of the carbon tetrachloride produced pursuant to transformation allowances for one control period must be transformed within the same control period or be counted as production. This provision stemmed from the Agency's interpretation of production as excluding the quantity manufactured and already used as a feedstock, but including any quantity manufactured and not yet used as a feedstock, even if that is its intended use. This means that at year-end, any inventory of the chemical remaining (even if intended for transformation) would be counted as production. The proposed system would be advantageous for compliance monitoring because it would assure that transformation occurs before additional allowances are granted. However, in light of these comments and its experience implementing carbon tetrachloride controls in 1991, EPA believes that the disruptive effects of this approach outweigh the compliance monitoring advantages in the case of carbon tetrachloride. The broader interpretation of production discussed earlier, allowing the amount of chemical transformed after the control period in which it was produced (not just within the same year) to be excluded from production, avoids the problem of year-end shutdown. In order to avoid plant shut-downs at year end, the Agency has decided that carbon tetrachloride transformed by the end of the first quarter in the control period following the control period in which it was produced may be excluded from the previous control period's production. Producers will be required to report production separately from production-for-transformation, for which no allowances will be expended. The effect of these rules will be the same as dividing the carbon tetrachloride manufactured into "produced" and "transformed" quantities.

The final regulations allow for two types of carryovers. First, a three-month grace period for transformation after the

end of the control period in which it was produced is established. Second, the producing company must show only that an amount equivalent to the amount it produced during the control period without the expenditure of production and consumption allowances for that control period was transformed. This means that production from one control period that is transformed at the beginning of the following control period could count towards the amount that must be transformed during the current period. For those companies that do not have baseline consumption allowances, this second type of carryover could provide them with a needed cushion. For all companies, the carryover period will provide flexibility needed to deal with the unpredictable instances of untransformed inventory.

One company maintained that by 1996 it will have the capability to transform carbon tetrachloride produced as by-product with a superior, environmentally sound technology. This company proposes that EPA allow coincidentally produced carbon tetrachloride to be stored in 1995 and 1996. The commenter noted that this would not violate the Clean Air Act and Montreal Protocol because production for feedstock is not production.

If the Agency were to allow indefinite storage of production-for-feedstock, it would not be able to effectively monitor companies' compliance. Even if a company's production far exceeded its internal or its customers' transformation, it could always claim that the material was intended for future transformation. The Agency has determined that there must be some transformation cutoff date in order to ensure compliance with the Act and Protocol.

The Agency considered all of the carryover time periods suggested by commenters, ranging from 30 days to one year, and selected three months, or one quarter, as the most workable. Although some commenters indicated that any carryover from one year's production could be completely transformed by the end of the following January, a carryover period equal to one quarter reduces the reporting burden on companies by allowing them to provide information on the transformation in the first quarterly report. Six-month and one-year grace periods were rejected as being unnecessarily long, since previous-year compliance could not be determined until much later, in the case of the one-year grace period, up to 14 months after the end of the relevant control period.

Under the one-quarter carryover system, every transformer of carbon tetrachloride must report each quarter the amounts of carbon tetrachloride it has transformed. Each quarter, every producer will report its production intended for transformation and its non-feedstock production, and provide sales data and IRS certificates for each customer to which feedstock production was sold. After the end of the first quarter of the following control period, EPA will compute a mass balance. Compliance would be monitored for 1992 as follows: Amount Transformed in '92 + Amount Transformed in first quarter of '93 must be $\geq$ Amount Produced-for-Transformation in '92.

The next year, the mass balance will be calculated as follows: Amount Transformed in '93 − Amount Transformed in first quarter '93 that was attributed to '92 produced + Amount Transformed in first quarter of '94 must be $\geq$ the Amount Produced for Transformation in '93.

Under this system, companies may allot a certain amount of first quarter transformation to justify previous-year production for-feedstock uses. Any amount of first quarter transformation that exceeds what is needed to cover previous-year production will count towards transformation of feedstock production in the same year. All second, third and fourth quarter transformation will be attributed to production in the same year, along with as much of the next year's first quarter transformation as is necessary. Companies will be out of compliance if their first quarter transformation is not large enough to account for the previous year's remaining production-for-transformation.

An industry group inquired what would happen if a transformer starts a control period with inventory and ends the year with an untransformed inventory. For example, would a portion of any transformation that took place be allocated to the preexisting inventory and thus not be counted toward the current year's production? This commenter also asked what would happen if a transformation occurred early in the control period before carbon tetrachloride was actually purchased during that control period.

Under the feedstock tracking system, no transformation will be allotted to specific sources. A transformer beginning a year with inventory and ending the year with inventory does not present a problem because the amount transformed in that year could still be precisely calculated and matched against the producers' feedstock production. As a result, it does not matter if transformation of past-year purchases occurs, as this type of carryover is allowable if the total amount transformed in one control period plus the following carryover period minus the previous year's carryover is equal to or less than the amount produced in that year for feedstock.

One commenter maintained that transformation documentation should be based upon changes in bulk inventory, and not be tied to carbon tetrachloride in a specific shipment. This company stated that material received in bulk (e.g., by tank truck or rail car) would not be stored by discrete shipment, but would be combined in a single storage tank or battery of tanks.

The tracking system promulgated in this regulation allows for treatment of transformation reporting in a manner similar to the reporting of production, based on inventories, shipments and other pertinent information. The system thus avoids the problems of tracking the fate of individual shipments in a continuous manufacturing process.

g. *Liability if production for feedstock exceeds transformation.* Under the proposed rule, a carbon tetrachloride producer that produced no more than its transformation allowances permitted would still be liable if the carbon tetrachloride produced pursuant to the transformation allowances was not transformed in the same control period as it was produced. Several commenters objected that producers should not be held liable for the failure of purchasers who agreed to transform the production to do so. They maintained that as long as a carbon tetrachloride producer does not exceed its production allowances, the Agency should consider it in compliance.

In the final rule, the Agency has maintained the basic tenet of this aspect of its proposal—that producers remain ultimately liable for production not transformed. Under this rule, a company that produces without allowances a given quantity of carbon tetrachloride for feedstock use during a control period must ensure that at least that amount has been transformed by the end of the first quarter of the next control period. Any amount that is not transformed will be counted as production and production and consumption allowances will be deemed to have been expended. To the extent that a company's total production, including that not transformed, does not exceed its production and consumption allowances, it will be in compliance with the regulations. To the extent that its total production does exceed its allowances, it will be in violation.

The Agency has placed liability on the producer because the Act restricts production, not transformation. The specter of potential liability gives producers an incentive to ensure that their customers' claims that the carbon tetrachloride will be transformed are fulfilled. Since it is the producer who takes the first step in deciding whether or not to produce the chemical, and assures the Agency that this production will be transformed, it is clearly the producer's responsibility to see that the transformation is in fact carried out. Such liability is not only required by the statute, but also assures the protection of the environment. At the same time, producers may enter into contracts with transforming companies that contain clauses providing that the transforming companies will compensate the producer for any financial consequences of liability.

Several commenters maintained that EPA has the authority to hold customers liable because of its authority to limit production and transformation. One company contended that if the customer's action causes the carbon tetrachloride to be classified as production, then the customer becomes the de facto producer and as such is liable. Another commenter stated that if the Agency does not believe it has this authority, it could still place liability on transformers by granting transformation allowances only to companies that have signed a liability statement.

The Agency believes at this time that even if it has the legal authority to place liability on transformers, this would not be an effective way of ensuring compliance. As noted earlier, the number of transformers far exceeds the number of producers, and the monitoring of transformers thus presents greater difficulties than does the monitoring of producers.

One commenter remarked that for cases of failure to transform due to "Acts of God," there should be a provision allowing EPA to issue an enforceable consent order requiring the customer to transform or destroy the carbon tetrachloride within 180 days. If a customer does not comply, EPA should fine the customer and arrange for the destruction at the customer's expense.

The Agency is providing a 90-day grace period in which a producer and transformer can arrange for transformation of untransformed inventory, whether it is due to "Acts of God" or any other cause. If the material is not transformed within the first quarter after year-end, the Agency will take enforcement action and collect fines from the producer of the chemical. Producers may pass fines and costs onto their customers as they see fit through contract provisions.

Another company commented that the proposed liability system ensures that transformation will take place. This company suggested that compliance will be effected through normal contract procedures since the EPA is clearly placing the burden on the producers. Therefore, producers will establish adequate contract and other control mechanisms to assure that the transformation occurs because they would be exposed to substantial noncompliance penalties.

By contrast another company responded to the Agency's suggestion in the NPRM that producers could use provisions for liquidated damages in contracts in order to avoid the costs of fines for transformers' failure to transform. They stated that liquidated damages provisions are inadequate for two reasons: (1) a customer would not sign the contract, and (2) damages might be uncollectible (i.e., in the case of bankruptcy, the security interest would not cover the fines, and other creditors would be harmed). A supplementary comment added that it is not commercially realistic to believe that a company would agree to manufacture carbon tetrachloride even though it would be held liable if the purchaser did not transform the chemical. This company commented that there is no reason why the onus of the prohibitions cannot focus on the buyer.

The Agency believes that if a customer were already certifying on IRS certificates that it would transform the material and it could not obtain carbon tetrachloride without signing a contract containing the provisions discussed above, then it would not be difficult to reach an agreement on liquidated damages in cases of failure to transform. The Agency also submits that the risk that a customer will declare bankruptcy or otherwise default, is a risk normally encountered and that if a producer perceives the risk to be too high, it would not be prudent to continue selling feedstock to that customer. Producing companies, in addition to making responsible decisions about to whom to sell the material, could make provisions for transforming the remaining material at another company's or one of their own plants. Thus, liquidated damages provisions should prove to be an effective method by which producers can ensure that their customers are financially accountable for failure to transform.

In sum, the Agency continues to believe its proposed liability system will be the most effective in ensuring compliance. Although the Agency is not requiring fixed contracts between producers and transformers, it is likely that producers will arrange for these types of agreements in order to guard against being penalized for untransformed material.

One commenter asked which producer would be penalized if a customer of two producers failed to transform within the control period. Under the scheme for carbon tetrachloride transformation promulgated in this rulemaking, transformers are required to report exactly how much carbon tetrachloride from each producer was transformed in each quarter. In cases where product from several producers is mixed in tanks, the governing assumption for whose carbon tetrachloride was transformed first would be "first in, first out" (FIFO), unless the transformer indicates that it plans to use an alternate method. This method is widely-used in industry and has in the past been the basis of some companies' distinction between imported and domestically-produced material that is mixed before sale to transformers. Thus if a transformer received a shipment from one producer on the first of the month, and a shipment from another producer on the fifteenth of the month, the assumption would be that the first producer's material was transformed first. In this way, it could be determined to whom any untransformed material should be attributed. If a transformer does not wish to use the FIFO method, the company should submit a description of the alternate calculation method and a justification as to why FIFO is not satisfactory prior to submitting its first quarter report. The Agency will either approve or disapprove the request for the use of an alternate method, based on whether it can be reconciled with other transformers' calculation methods and FIFO.

Although today's rule makes the producer liable in cases where feedstock production exceeds transformed amounts during the five-quarter period, EPA will continue to monitor the effectiveness of relying solely on this compliance mechanism. If the Agency determines in the future that transforming companies are acting in bad faith by failing to transform, it will consider proposing regulations making transformers also liable pursuant to its statutory authority under section 615 of the Act. That section grants EPA broad authority to regulate practices or activities (such as failing to transform) that may reasonably be anticipated to contribute to ozone depletion and endanger public health or welfare.

h. *Provision for the export of carbon tetrachloride.* Two commenters remarked that elements of the proposed rule could eliminate their ability to produce for export because they cannot produce without consumption allowances. The commenters stated that two producers, including one of the commenters, have zero consumption allowances. That company commented that if the proposed system is adopted, it should be expanded to provide special export allowances under rules analogous to the rules for obtaining transformation allowances.

For exports, the Agency will use a process similar to that set up in 1991 for companies that needed up-front allowances in order to produce for transformation. Production of carbon tetrachloride for export does not present the same problems as production for transformation, as only a small percentage of the carbon tetrachloride manufactured in the U.S. is exported. Nevertheless, EPA recognizes the need for a mechanism for companies that did not receive baseline consumption allowances to enable them to produce and then export. These companies will be granted consumption allowances each year, equal to their production allowances for that year in order to produce for export. Companies must hold at least this number of consumption allowances at the end of the control period; they will receive consumption allowances equal to the number they expended to produce upon exporting their production. The Agency will allow companies to continue to process paperwork demonstrating that exports took place in the proper control period for up to 45 days after the end of the control period.

i. *Recordkeeping and reporting for the carbon tetrachloride transformation system.* Recordkeeping and reporting requirements have been changed from the proposal to be consistent with the carbon tetrachloride transformation system adopted here. Producers will be required to keep on-site records of:

- The type of information required under the 1991 rules; and
- Sales of material (invoices) to transformers.

Producers will also have to file quarterly reports registering:

- The same type of information required under the 1991 rules, with "production" including only carbon tetrachloride manufactured and not intended for transformation;
- The amount of "feedstock production" (carbon tetrachloride manufactured and intended for transformation);
- The amount of feedstock production sold to each transforming company; and
- IRS certificates for each transformer.

Transformers will be required to keep on-site records of:

- The same type of information required under the 1991 rules for companies that request additional allowances for the use of a controlled substance as feedstock;
- All purchases of carbon tetrachloride for feedstock;
- Shipments received and the date and quantity of material received;
- The source of all purchases and shipments; and
- Quarter-start inventories of carbon tetrachloride.

Transformers will also have to file quarterly reports including:

- A list of producers or importers from whom material was purchased; and
- The amount of each producer's or importer's material that was transformed during that quarter. If material from several producers or importers was mixed, the transformer should use the first in, first out (FIFO) method for determining whose production was transformed, unless the Agency has approved an alternate method for that company.

2. Transformation of Other Controlled Substances

One company commented that producers of methyl chloroform should also be allowed to exclude methyl chloroform that is transformed from production because in the future the use of methyl chloroform as a feedstock will increase. It presented the example of the production of HCFCs, which in 1995 may run into the same problems of allowance recycling delays and year-end problems as are experienced currently for carbon tetrachloride.

EPA recognizes that as the phaseout progresses, it may be appropriate to expand the carbon tetrachloride transformation system to other chemicals and to exports. To date, however, the burden of allowance cycling for chemicals other than carbon tetrachloride has not been large enough to warrant expanding the transformation system, which provides less assurance that production for feedstock purposes is actually transformed.

Another company remarked that it and a number of other companies use controlled substances as manufacturing feedstocks, including for HFCs being developed as CFC substitutes, and that their need for such feedstocks is expected to increase in the future. According to this commenter, these companies would be placed at an unnecessary and unauthorized competitive disadvantage simply because they buy, instead of make, their feedstock chemicals. It asserted that the proposed rules would place a "choke-hold" on companies that must purchase controlled substance feedstocks and products made with them, giving an enormous advantage to manufacturers who produce their own feedstocks. The commenter maintained that this aspect of the proposal was unnecessary to protect the ozone layer, and was not authorized or required by the Clean Air Act. Moreover, this company argued that the differential treatment of second-party transformers significantly injure the U.S. and individual companies. It added that at the conclusion of the phaseout period it would no longer be possible to purchase controlled substance feedstocks (except for carbon tetrachloride) because there would be no more allowances. Moreover, this company maintained that in the interim, supplies would be scarce and prices would be unnecessarily high, without environmental benefit.

The Agency has been monitoring allowance cycling for second-party feedstock use of CFC feedstocks since July of 1989 and has yet to encounter any situation where companies had difficulties purchasing feedstock chemicals because of a "choke-hold" on allowances. Indeed, to date there has been a surplus of allowances at the end of each control period. Again, as the phaseout begins to take effect, this situation could change. The Agency prefers, however, to continue with the current system, which has been effective and has not presented problems for chemicals other than carbon tetrachloride, until it is determined that the carbon tetrachloride transformation system as promulgated in these regulations is effective and can reasonably ensure compliance with international production and consumption limits. At that time, the Agency will reconsider switching other controlled substances over to this control system. It is not the Agency's intention to disadvantage second-party transformers or to stifle the production of CFC substitutes. The commenter has presented no compelling evidence that this is currently taking place.

3. Provision for the Import of Feedstock Carbon Tetrachloride

One company asserted that under the 1991 and proposed rules, importation of controlled substances for feedstock use can only be accomplished by expending

consumption allowances, which will become unavailable in 2000. In the interim, this company maintained that transfers of allowable production between Parties (to permit greater domestic production of controlled substances for feedstock use) would be subject to an even greater offset than that applied in the case of domestic transfers. As certain feedstock materials needed for industry are in short supply (e.g., Halon 2402), the company inquired as to why American industry should be denied the opportunity to import these feedstocks.

This comment raises several issues. The first is how the import of feedstock substances should be treated. The Agency has provided that companies that wish to import carbon tetrachloride for feedstock use do not need to expend consumption allowances. In this way the import of carbon tetrachloride feedstocks is treated in the same manner as the production of the same. The offset for inter-Party trading of allowable production should not directly affect importation of controlled substances. Second, other controlled substances (such as Halon 2402) are not being considered for this type of treatment currently for the reasons discussed above. However, if at a later date the Agency were to establish a similar system for the other controlled substances as well, provision would also be made for imported feedstocks and of these substances.

4. Transformation in Foreign Countries

One commenter maintained that after a Party transfers to the U.S. some amount of its allowable production, U.S. companies should be able to get production and consumption (or transformation) allowances for exporting the actual production that results when the exports are used as feedstocks in other countries upon submitting proof of export, transformation, and the importer's intended use.

EPA at this time cannot grant additional allowances for, or exempt from production limits, controlled substances that are manufactured for transformation abroad. The Parties to the Protocol have specifically addressed this issue and decided that the country in which the transformation takes place should be able to exclude from its limits the amount transformed. (*See* 55 FR 24491 June 15, 1990.) Moreover, the Agency could not inspect transformation facilities in other countries, and, therefore, would not be able to enforce production limits adequately.

I. Obtaining Additional Allowances—Exports

I. Proof That Exports to Article 5 Countries are Not Reexported

The Clean Air Act allows producing companies to increase their production by up to ten percent of their baseline for the purpose of supplying the basic domestic needs of developing countries operating under Article 5 of the Montreal Protocol. The Agency's proposed method of tracking this production is to create potential production allowances equal to ten percent of each company's baseline that can be converted into actual production allowances if companies can prove that they have exported to Article 5 countries for the purposes of supplying their basic domestic needs. The Agency proposed to define "basic domestic needs" as the parties have thus far defined it. This definition presumes that controlled substances supplied to developing countries are used for basic domestic needs to the extent that they are not re-exported in bulk form. The Agency proposed that companies that wish to convert potential production allowances to production allowances submit to EPA documentation verifying that the export has occurred, as well as proof that the material will not be re-exported. As proposed, the documentation could be in the form of a contract providing for liquidated damages equal to the resale price of the chemical in the event the provision not to re-export is breached or could reflect other means to guarantee that the goods would not be re-exported. The Agency requested comments on other forms this proof could take.

One company asserted that re-export should be allowed if it can be demonstrated that re-export is to serve the basic domestic needs of another Article 5 country and also that one test of basic domestic needs could be the fact that there is greater economic value in re-exportation than in internal use. This company stated that to dictate otherwise would disrupt free market forces.

The Agency responds that under the Protocol and section 614 of the Act it does not have the authority to broaden the definition of basic domestic needs as suggested. The Parties clearly indicated in the discussions accompanying the London Amendments that basic domestic needs are not defined to include bulk re-export of any kind.

The same commenter also suggested an alternative scheme for determining basic domestic needs under which EPA would determine the percentage of imports by each Article 5 country that typically is re-exported, and apply this factor to the U.S. exports in order to determine how many authorizations to convert should be given.

EPA does not believe that basing authorizations to convert on past re-exportation statistics would guarantee that countries would not re-export controlled substances in the future. In addition, the Agency finds that determining the re-export rates of all 43 Article 5 countries would be administratively and financially burdensome. This is particularly apparent in light of the fact that the Protocol's Secretariat, which has already requested these data, has not been able to fully determine past export rates for the developing countries.

The Agency is thus finalizing its proposed system, which allows companies to request only additional consumption allowances for exports to Parties that are not operating under Article 5, but allows companies that export to Article 5 countries that have submitted appropriate documentation to receive both consumption allowances and authorizations to convert potential production allowances.

2. Exports to Non-Party Complying Nations

The same company commented that the Agency should allow exports to nations that are not Parties to the Protocol but are complying with its terms to be subtracted from consumption.

Under the Protocol, the Agency may grant additional allowances for exports to non-Party complying nations if they have been identified as such by the Protocol Parties. To date, no non-Party countries have been identified as complying. As countries identified, the Agency will begin granting additional allowances for exports to these countries.

J. Comments on the Impact of the Action

The Agency prepared a Regulatory Impact Analysis (RIA) for this regulation. It discusses the costs and benefits of the action, including benefits resulting from a decrease in ozone depletion. The RIA also contains an analysis of companies' average burden for fulfilling the recordkeeping and reporting requirements.

Two commenters wrote that the RIA was flawed, particularly the sections linking ozone depletion to adverse human health effects. They suggested that the RIA be submitted to the Science Advisory Board for review and comment.

In 1988, the Agency prepared an extensive risk assessment which served as the basis for its original regulations implementing the provisions of the Montreal Protocol. This document included detailed information about the adverse human health effects associated with excess UV–B radiation and ozone depletion. This information was reviewed by the Science Advisory Board and forms much of the basis for the current RIA.

One company also stated that the industry burden estimated for the recordkeeping and reporting requirements was too small. The Agency believes, however, that although the estimate may be too low or too high for any one company, it accurately represents the average number of hours that would be spent by an affected industry entity to fulfill the requirements of this regulation.

V. Section-by-Section Description

A. Authority Citation

The statutory sections implemented by the regulations are sections 603, 604, 605, 607 and 616 of the Clean Air Act as amended by the Clean Air Act Amendments of 1990 (42 U.S.C. 7671 *et seq.*).

B. Section 82.1—Purpose and Scope

This section states that the purpose of the regulations is to implement the Montreal Protocol and sections 603, 604, 605, 607 and 616 of the Clean Air Act.

C. Section 82.2—Effective Date

As proposed, January 1, 1992 is the effective date of these regulations. EPA has determined that it is necessary to maintain the January 1, 1992 effective date even though that will result in these regulations having a retroactive effective date because that effective date is necessary to avoid a period in which there are no regulations containing production and consumption restrictions in force. The temporary final rule promulgated by EPA was effective January 1, 1991 and established requirements only for the 1991 control period, which ended December 31, 1991. Thus, unless the regulations promulgated with this notice go into effect on January 1, 1992, there would have been a period running from December 31, 1991 until their effective date during which no regulations would have been effective. This would present a serious danger of being out of compliance with the Montreal Protocol, as no consumption limits would be in place during that period. Furthermore, it would mean that the Clean Air Act's production limits for 1992, which are self-effectuating, would have been in place without any implementing regulations, a situation that would create uncertainties with respect to producers' compliance with the production limits. (EPA determined that it was necessary to promulgate the temporary final rule concerning the 1991 control period with retroactive effect for similar reasons. See 56 FR 9518 (March 6, 1991).)

EPA does not believe that in the weeks between January 1, and today, any company has produced or imported in excess of the limits established by today's rule. All affected companies were notified of the upcoming regulations, were able to review the proposal and in general were made aware of the production and consumption restrictions through the requirements of the temporary final rule in 1991. The Agency contacted these companies by mail and sent each one a copy of the temporary final regulations, the subsequent NPRM, and the direct final amendment to the temporary final rule, published on December 30, 1991. The changes that have been made here to the proposal do not include any requirements that are more stringent than those in the proposed rule. Accordingly, the retroactive nature of the regulations should not pose a problem for the regulated community. For the reasons given in the temporary final rule regarding its retroactive effective date, including the fact that it is highly unlikely that any company would have exceeded its allocation of allowances for the whole year in the short period since January, EPA does not believe that any member of the regulated community will be placed out of compliance with the regulations as a result of their retroactive effect.

A savings clause has been included in the regulations so that enforcement action can continue to be taken for violations of the requirements of the temporary final rule.

D. Section 82.3—Definitions

Several definitions are revised to conform to the definitions set forth in section 601 of the Clean Air Act. In particular, the terms "import" and "production" are changed to conform to their section 601 counterparts, and "control period" is redefined to include the calendar-year period specified in this section. Several other refinements of definitions are included as well.

"Production" includes spills that may occur, as discussed in a previous rulemaking on spills promulgated by the Agency (55 FR 24490).

The proposed regulatory language concerning the exemption from the definition of import for Maquiladora transactions has been modified to reflect more accurately the nature of Maquiladora arrangements. Consequently, instead of providing an exemption for imports "from Mexico by companies operating under the Maquiladora Accord," the new regulatory language provides an exemption for "[b]ringing controlled substances into the U.S. from Mexico where the controlled substance had been admitted into Mexico in-bond and was of U.S. origin." The new language better reflects the reality of the arrangement, which is that controlled substances crossing the border from the U.S. into Mexico "inbond" (i.e., under a bond insuring that the controlled substances will remain in Mexico only on a temporary basis) will be returned to the U.S. For the purposes of this regulation, therefore, the Agency will not require those persons importing controlled substances from a facility in Mexico operating under a Maquiladora arrangement to expend consumption allowances nor will the Agency grant allowances for an export to such a facility. The Agency believes that because allowances are expended when such controlled substances are initially produced in the United States, compliance with the Montreal Protocol will not be adversely affected by this exemption.

Section 601(7) does not define "importer." For the purposes of these regulations the Agency defines an importer as the person listed as the importer of record on U.S. Customs Service forms for the import of a controlled substance into the United States.

The Amendments also do not define "export" or "exporter." EPA is retaining its current regulatory definitions of these terms.

EPA is also retaining its definition of "controlled substance." This definition, which is based on its Protocol counterpart and includes elaboration adopted by the Parties, distinguishes between bulk chemicals, which are regulated, and products, which are not regulated under section 604. "Controlled substance" means any substance listed in appendix A to this part, whether existing alone or in a mixture, but excluding any such substance or mixture that is in a manufactured product other than a container used for the transportation or storage of the substance or mixture. Any amount of a listed substance that is not part of a use system containing the substance is a controlled substance. If a listed substance or mixture must first be

transferred from a bulk container to another container, vessel, or piece of equipment in order to realize its intended use, the listed substance or mixture is a controlled substance.

All of the above revisions to the definitions are being adopted as proposed, with the exception of the definition of importer. Several alterations have been made to the proposed definitions of calculated level, production and transformation for clarification purposes. Since the transformation allowance system is not being adopted, the definition of transformation allowances has been dropped. Definitions of CUBP and MACT have been added. The CUBP definition incorporates the commercial test and the dependent-variable test discussed above, and the MACT definition includes a requirement for 99.99 percent destruction efficiency.

E. Section 82.4—Prohibitions

In this section, EPA prohibits persons from producing or importing controlled substances in excess of the production allowances and consumption allowances they hold, with the exception of the production of carbon tetrachloride for feedstock and CUBP carbon tetrachloride and methyl chloroform. In addition, this section prohibits persons from producing or importing more than 150 percent of their baseline levels of Group I chemicals between July 1, 1991, and December 31, 1992, except to the extent they have obtained additional allowances by exporting to Parties in general or Article 5 countries in particular, by transforming Group I substances, or by obtaining allowable production from another Protocol Party during the same period. This added restriction on Group I chemicals ensures that the United States continues to meet its obligations under the Montreal Protocol. Companies are also prohibited from importing controlled substances in Groups I and II from non-Party countries.

Exemptions from the production and consumption restrictions have been added here as discussed above. These include the exemption for the production of carbon tetrachloride for feedstock that is transformed by the end of the first quarter of the next control period and the exemption for immediately contained and destroyed CUBP production of controlled substances in Groups IV and V.

Companies that wish to qualify for the exemption for immediately contained and destroyed CUBP production of carbon tetrachloride and methyl chloroform must submit the following information to EPA within 45 days after the beginning of the control period (except in 1992, when the information should be submitted 45 days after the publication of this notice):

—The name and address of the plant at which the CUBP production takes place, and the name and telephone number of a contact person;
—A description of the process of which the chemical is a by-product;
—The name of the primary chemical produced in the process;
—A description of the destruction technology to be used, including documentation showing that it has a destruction efficiency of at least 99.99 percent;
—An estimate of the annual production and subsequent destruction of the controlled substance;
—Documentation describing the handling of the material and showing that all procedures are consistent with regulations under RCRA or other applicable rules; and
—A statement of whether the process and destruction method was being used in 1989 and whether the amounts manufactured were included as "production" in reports submitted for use in EPA's baseline calculation.

This information is similar to that appearing in the proposed rule, with the addition of that relating to the 99.99 percent requirement, other regulations, and how the process was treated in baseline-year reports. In addition, these companies are required to keep on-site dated records of the quantity of the CUBP carbon tetrachloride and methyl chloroform produced at the facility, as well as dated records of the quantity of the CUBP controlled substance destroyed at the facility or shipped from there to an off-site destruction facility.

This section also specifies the equation that the Agency will use to calculate each company's compliance in the production of carbon tetrachloride for feedstock.

F. Sections 82.5 and 82.6—Apportionment of Baseline Production and Consumption Allowances

In these sections, EPA is promulgating each company's baseline production and consumption allowances for each chemical within the five groups of class I substances. The Agency is reserving the apportionment of allowances for class II substances as proposed.

EPA's method for baseline calculation remains unaltered from the proposal. As noted in the NPRM, to establish baseline allowances for the groups of newly regulated chemicals, EPA obtained information on and documentation of companies' 1989 production, import, and export of these chemicals through a request issued under section 114 of the Act. Because section 601(11) excludes from the definition of production the amount of a chemical used and entirely consumed (except for trace quantities) in the production of another chemical, the Agency also requested companies that had consumed or transformed the regulated chemicals as feedstock in the manufacture of another chemical to supply information documenting the transformation. Based on this information, the Agency calculated companies' baseline production and consumption allowances for the groups of newly regulated chemicals specified by section 602 (i.e., Group III—the newly regulated CFCs; Group IV—carbon tetrachloride; and Group V—methyl chloroform).

Baseline production allowances were calculated by excluding from the amount of the newly regulated chemicals produced in 1989 the amount of those chemicals transformed in the same year. The Agency attempted to trace every discrete amount of a chemical that had been transformed to the producer of that discrete amount of chemical and exclude that amount from the producer's baseline allowances. In some cases, however, EPA was unable to track the chemical transformed to its original producer. To account for these unassignable amounts of transformed chemicals, EPA applied a correction factor to distribute these amounts among producers of the relevant chemicals based on their respective market shares.

The Agency believes that this is a fair way of allocating transformation amounts to the producers of these chemicals, with the larger producers receiving the larger share of the documented, but unassignable, transformation amounts. This approach is also consistent with that taken by the Agency in a previous rulemaking apportioning baseline allowances. In that rulemaking, EPA decided that documented, but unassignable, exports of the regulated CFCs and halons should be allocated to producers based on their relative market share. As a result, larger producers had their consumption allowances decreased more than smaller producers.

EPA determined each company's consumption allowances by performing the consumption equation for each company based on that company's documented production, imports, and exports. For the chemicals for which the Agency is establishing baseline allowances in this rule, EPA was able, in most cases, to track all exports back to

the exported chemicals' producers. However, it was also necessary to allocate unassignable exports to producers in a manner similar to the method used to allocate unassignable transformation amounts to producers. As discussed above, consumption amounts that were negative for two companies were also distributed across companies receiving consumption allowances through use of a correction factor. In addition, since the Protocol as construed by the Parties and EPA's rule do not count imports transformed in the manufacture of other substances against applicable consumption limits, the Agency has not counted baseline-year imports transformed in the manufacture of other substances in calculating baseline consumption allowances. (See 55 FR 24491; June 15, 1990.)

In developing chemical-specific allowances for Groups I and II controlled substances for today's rulemaking, the Agency reviewed the original data submitted in compliance with the section 114 information request promulgated in 1987. In today's rule, producers are receiving chemical-specific production allowances based on what they had reported as production in 1986, excluding any production that was used and consumed as a feedstock for another chemical. Producers and importers of these chemicals are receiving chemical-specific consumption allowances based on their reported production, imports, and exports of these chemicals. The Agency is further adjusting individual consumption allowances within these two groups to take account of the unattributed exports. Chemical-specific, unattributed exports were apportioned to each consumption allowance holder based on the percentage share of the market that producer and/or importer held for that chemical.

Since allowances are no longer allotted on a group basis, they are promulgated here in units of unweighted kilograms, instead of by calculated level, as was used in the past. Although the ODP weights of the controlled substances are still relevant for allowance transfers, actual production and consumption limits now apply separately to each chemical and thus the concept of calculated level is no longer necessary for the purpose of allotting baseline allowances.

Although the baseline calculation method has remained unchanged from that proposed in the September 30, 1991 notice, actual numbers for Groups III, IV and V have changed slightly. These differences are due to the Agency's allowing companies to continue to submit baseline information through the comment period as well as refining the definitions of transformation and destruction. The changes result in baselines that more accurately reflect actual production and consumption in 1989.

G. Section 82.7—Granting and Phased Reduction of Allowances for Class I Controlled Substances

This section allocates percentages of baseline allowances for Group I, Group II, Group III, Group IV, and Group V controlled substances for all control periods until the year 2000 and beyond according to the schedule presented in section 604. Baseline production and consumption allowances are chemical-specific. This section is being promulgated as proposed.

H. Section 82.8—Grant and Phased Reduction of Allowances for Class II Controlled Substances

This section is reserved in this rulemaking.

I. Section 82.9—Availability of Additional Production Allowances

This section provides that persons with baseline production allowances for any controlled substance be granted potential production allowances equal to ten percent of their baseline allowances for that chemical for each year from 1992 through 1999, and 15 percent for each year from 2000 through 2010 (with adjustments for methyl chloroform). Potential production allowances may be converted to production allowances with proof of export to a developing country that is operating under Article 5 of the Protocol, as specified under § 82.11. This paragraph is being adopted unchanged from the proposal.

A company can also increase or decrease its production allowances by trading with another Party to the Protocol under the provisions of section 616. The Agency has adopted proposed regulations under § 82.9(b)(2) as final.

For trades to another Party, the submission must include the identity and address of the person seeking approval of the trade, the identity of the Party, the names and telephone numbers of contact persons for the person and for the Party, and the chemical and level of production being transferred. The trading company's production limit will be reduced according to the formula as proposed, except that if more than one company trades production to a Party in the same control period, the total offset amount will be recalculated and divided between the companies based on the ratio of the amount of their trades. Thus, the first company to trade will see an increase in its balance of allowances if a second company trades within the same control period.

For trades to the United States, similar information is required with the addition that the transferring Party must submit a document from that nation's embassy in the United States stating that it has revised its production limits according to the conditions stated in section 616.

EPA will review trades from and to other Montreal Protocol Parties on a one control period, one time trade basis, as well as permanent trades between Parties for the remaining control periods.

When a Party to the Protocol trades production for the remaining control periods to a company within the United States, the Agency will modify the U.S. company's production allowances to reflect the additional allowances received in trade. For the remaining control periods, the Agency will reduce that companies allowances by the required Clean Air Act schedules, adjusting the traded allowances by a ratio that accounts for the percentage reduction required by that control period relative to the percentage reduction required in the control period in which the trade was received. This is required to ensure that companies reduce their production according to the percentage reductions required under the Clean Air Act, and that total production is phased out by the turn of the century.

In addition, should a U.S. company trade all of its production for the remaining control periods to a Party of the Protocol, that company's zero production for the remaining years will not enter into any calculation of the past three year average if additional trades by other companies occur at a later date. EPA believes that other companies which may eventually trade should not be disadvantaged by the permanent trade of all trades of another company.

However, the Agency will include in the three year average calculation, any production of controlled substances by a company that had traded on a one time basis some production rights during that control period.

Finally, companies may receive additional production allowances for transforming Group I, II, III or V chemicals. To obtain additional production allowances for the transformation of these chemicals, a person must submit a request for production allowances that includes the identity and address of the person; the name and quantity of the controlled substance used and entirely consumed

in the manufacture of another chemical; a copy of the invoice or receipt documenting the sale from the producer of the chemical to the person; and the name, quantity, and verification of the commercial use of the resulting chemical. The Agency uses this information to confirm that the chemical was indeed transformed, and that production allowances were expended in the production of the chemical. If the transformed chemical was imported, the company cannot receive additional production allowances, since only domestic consumption allowances were expended in bringing the chemical into the country.

J. Section 82.10 Availability of Additional Consumption Allowances

Companies can receive additional consumption allowances for exports to Parties. Companies requesting additional consumption allowances must submit the following information: The identities and the addresses of the exporter and the recipient of the export; the Exporter's Identification Number (EIN) listed on the United States Census Export Declaration form; the names and telephone numbers of contact persons for the exporter and the recipient; the quantity and type of controlled substance; the source of the controlled substance and the date purchased; the date on which and the port from which the controlled substance was exported from the United States or its territories; the country to which the controlled substances were exported; the bill of lading and the invoice indicating the net quantity of controlled substance and date shipped and documenting the sale of the controlled substance to the purchaser; and the harmonized tariff number (or "commodity code") of the goods exported.

This information will be used by EPA to verify that the export actually occurred and to prepare end-of-year reports required by the Montreal Protocol. The Agency will review the information expeditiously and issue a notice granting additional consumption allowances to the exporter if all the submitted information indicates that the export actually occurred.

In this rule, the Agency has added a provision for producing companies that do not have baseline consumption allowances for Group IV that wish to produce for export. A limited number of consumption allowances will be granted to the producing company up front, equal to the level of their baseline production allowances for that year. At the end of the control period, the producer must have obtained at least that same quantity of consumption allowances and hold them unexpended in order to be in compliance.

Companies can also receive additional consumption allowances for the transformation of a controlled substance (other than carbon tetrachloride). Any application for additional production allowances for the transformation of a controlled substance will be treated as an application for additional consumption allowances. This section is being adopted as proposed.

K. Section 82.11 Exports to Article 5 Parties

Companies may obtain authorization to convert potential production allowances to production allowances by exporting controlled substances to developing countries that are operating under Article 5 of the Montreal Protocol.

The proof required by EPA in order to grant authorization to convert potential production allowances for exports to Article 5 countries is the same as that required for a request for additional consumption allowances for exports to Parties. However, the exporter must also adequately demonstrate that the export has not been and will not be re-exported in bulk form by submitting a copy of a contract specifying that the material cannot be re-exported and requiring payment of damages if it is re-exported.

This information will be used by EPA to verify that the export did indeed occur and to prepare end-of-year reports required by the Montreal Protocol. The Agency will review the information expeditiously and issue a notice granting authorization to convert potential production allowances to the exporter if all the submitted information indicates that the export did indeed occur and the material will not be re-exported. This section is also being adopted without alteration from the proposal.

L. Section 82.12 Exchanges

Companies must submit requests for inter-pollutant and inter-company allowance trades to EPA that include the identities and addresses of the transferor and the transferee; the names and telephone numbers of contact persons for the transferor and for the transferee; the type and amount of allowances being transferred; the amount of the one-percent offset applied to the unweighted amount traded that will be deducted from the transferor's allowance balance (except for trades of potential production allowances, authorizations to convert, or trades from transformers to producers or importers for the purpose of allowance reimbursement); and the amount of unexpended allowances or authorizations for that chemical that the transferor holds as of the date the claim is submitted to EPA. The Agency uses this information to verify that sufficient allowances exist for the trade. The Agency will issue a "No Objection Notice" within three working days if EPA does not object to the trade. If EPA does deny the trade, the transferee will have ten working days to appeal the decision.

This section has been slightly altered from the proposal. Specifically, language has been added stating that the offset does not apply for trades of production and consumption allowances from transformers to producers for purposes of allowance reimbursement. Trades of potential production allowances and authorizations to convert are also not subject to the offset requirement. In addition, language has been added clarifying that in the case of an inter-pollutant/inter-company trade, the offset only applies once.

M. Section 82.13 Recordkeeping and Reporting

1. Producers

a. *Daily recordkeeping.* Producers are required to maintain dated records of the quantity of the class I controlled substances produced at each facility, including the dated records of the quantity of any carbon tetrachloride produced for feedstock use, the quantity of controlled substances used as feedstocks in the manufacture of controlled substances and in the manufacture of non-controlled substances, and the quantity of any virgin, used or recycled controlled substances introduced into the production process of new controlled substances. They are also required to keep records of the feedstock materials consumed in producing the regulated chemicals at each facility and records documenting the sale of carbon tetrachloride for feedstock use (invoices, bills of lading, etc.). EPA requires records of feedstocks consumed so that the Agency can approximate the quantity of controlled substances produced by monitoring the materials consumed. Records of shipments of controlled substances from each facility must be maintained as well. EPA believes that this requirement will aid the Agency in verifying production. Finally, EPA requires that all spills or releases of 100 pounds or more be recorded, including the date of occurrence and the estimated quantity of the controlled substance released.

These amounts should be included in production totals for reporting purposes.

EPA believes that current methods of recordkeeping will generally be sufficient to satisfy the recordkeeping requirements. EPA is aware that some producers may not make daily production estimates over weekends, and that production may not be measured directly, but may be determined from records of consumption, shipments, and inventories. For the purpose of verifying that these accounting procedures are acceptable, EPA is requiring that producers who have not previously done so submit within 120 days of publication of this final rule a report detailing how production is measured on a regular basis and how its methods are to be used to determine quarterly production figures in kilograms.

b. *Production reports.* EPA also requires that producers report on a quarterly basis, within 45 days after the end of the quarter. The Clean Air Act specifies that controls be on a calendar-year basis and thus EPA cannot allow compliance to be determined based on a company's fiscal period to the extent that it is different from the specified control period. However, if the first and last quarterly reports are adjusted to coincide with the beginning and end of the control period, the interim quarterly reports may be based on a fiscal quarter, provided EPA determines that a company's fiscal quarters follow the calendar quarters closely enough so as not to complicate its review of records.

Since one purpose of these reports is to provide EPA with information to verify production, EPA requires that producers submit the following information: summaries of quarterly production of the controlled substances (for carbon tetrachloride separating out production and manufacture-for-feedstock), specifying the quantity used and consumed as feedstock for controlled and non-controlled substances; summaries of total quarterly and control period to date production levels each class I controlled substance; and the producer's total expended and unexpended consumption allowances, expended and unexpended production allowances, potential production allowances, and authorization to convert potential production allowances to production allowances, as of the end of the quarter. In addition, firms must report the total shipments of each controlled substance from that plant in the quarter. For companies that produce carbon tetrachloride for feedstock use, the proposal has been altered to add a required reporting of amounts sold to each transforming company during the quarter, and the provision of IRS certificates showing that the purchaser intends to transform the material.

2. Importers

a. *Daily recordkeeping.* EPA is requiring the same import records as were contained in its previous regulations (56 FR 9518) and in the proposal, with the addition of requirements for importers of carbon tetrachloride to be used as feedstock. The rule requires that importers maintain daily records of the following: The quantity of virgin, used, and recycled controlled substances brought into the United States; the date and port of entry into the United States or its territories; the country from which the imported controlled substances were exported; and the port of exit. In addition, importers must record the commodity code and the importer number for each shipment and keep the following documentation to verify imports: The bill of lading and the invoice and United States Customs Entry Summary Form. This information will allow EPA to verify shipments against United States Census reports during compliance checks and investigations of potential violations. Retention of the bill of lading and the invoice is necessary to provide EPA with an independent check on quantities imported, separate from Census and Customs data.

Companies importing carbon tetrachloride for feedstock use must keep records documenting the sale of the material to transforming companies.

b. *Import reports.* EPA requires that importers, like producers, file quarterly reports within 45 days of the end of the quarter. Importers may receive shipments at several ports throughout the country and thus may need 45 days to collect and summarize information and report accurate quantities. Also since several importers are also producers, it is helpful for the reporting period for importers to be consistent with the 45-day reporting period for producers. Again, EPA cannot allow compliance to be determined based on a company's fiscal period to the extent that it is different from the specified control period. However, if the first and last quarterly reports are adjusted to coincide with the beginning and end of the control period, the interim quarterly reports may be based on a fiscal quarter, provided EPA determines that a company's fiscal quarters follow the calendar quarters closely enough so as not to complicate record review.

These reports must include the following: The quantity of controlled substances that are imported in that quarter, the level of each controlled substance imported for the quarter and the total for the control period, and the total quantity of expended and unexpended consumption allowances the importer holds at the end of the quarter. The importer must also provide a summary of the import activities that shall include the quantity of each import as recorded on the Entry Summary Form to the United States Customs Service, the date and port of entry into the United States or its territories, the country from which the imported controlled substances were imported, the port of exit, and the name and address from whom additional information can be obtained. In addition, the commodity code and the importer number must be provided to assist with comparison and verification of importer records with United States Census and Customs records. Finally, the Agency requires that importers, when reporting controlled substances contained in mixtures, state what percentage of the mixture consists of controlled substances. These requirements have been adopted as proposed.

The Agency, in implementing the previous rules, determined that exporters must report the residual amounts (heels) of controlled substances that remain in isotanks or canisters or other shipping containers that are returned to the United States as imports. Companies are entitled to receive, and do so when they request them, additional allowances for the full weight of their export. Therefore, as a matter of consistency the Agency must require companies to report the controlled substances that return in the form of heels as imports. These companies must have and expend consumption allowances in the import process. Thus, exporters who intend to return heels must possess allowances before the heels are returned and report heel imports quarterly.

Reporting requirements have been added for companies that import carbon tetrachloride for feedstock use. These companies must report the amount of carbon tetrachloride imported for feedstock use and the amounts sold during that quarter to transforming companies. IRS certificates for those companies must accompany the quarterly report.

3. Exporters

EPA is requiring the same reporting and recordkeeping requirements for exporters as were contained in its previous regulations (56 FR 9518) and

the proposal. Exports for which additional consumption allowances were not requested or for which the request was denied must be reported within 45 days after the end of the year. EPA requires this information to comply with the Montreal Protocol only and, therefore, does not believe that more frequent reporting is necessary. Since consumption allowances are not being granted for these exports, periodic monitoring and independent verification is not needed. Consequently, these exporters need only report at the end of the control period.

For these exports EPA requires that the following be submitted: Name and address of the exporter and recipient of the exports, the exporter's Employer Identification Number (EIN), the type and quantity of controlled substances exported and the percentage that is recycled or used, and the date and port from which the exports were shipped. The commodity code is also required because it allows EPA to verify these shipments. A final reporting requirement includes the date and source from whom the exported controlled substances were purchased.

4. Transformers

Companies that use any of the class I controlled substances in Groups I, II, III or V as feedstock and request additional allowances under §§ 82.9 and 82.10 of EPA's regulations and companies that transform carbon tetrachloride must maintain the following records on site: Dated records of the quantity of controlled substance used and entirely consumed in the manufacture of another chemical; copies of the invoices or receipts documenting the sale from the producer or importer of the controlled substance to the person; dated records of the names, commercial use, and quantities of the resulting chemicals; and dated records of shipments to the purchasers of the resulting chemicals. These requirements are being adopted as proposed.

Recordkeeping requirements have been added for carbon tetrachloride transformers, including dated records of all shipments received and records of amounts of carbon tetrachloride in inventory at the beginning of each quarter.

Companies that transform carbon tetrachloride must report their activities quarterly, within 45 days after the end of the quarter. Such companies must provide the amount of carbon tetrachloride purchased from each producer and transformed during that quarter. The report should include the name and address of the producing and transforming company and the name and telephone number of the contact person at each company. Also provided should be the address of the facility at which the transformation took place, the name of the chemical produced as a result of the transformation, and the verification of its commercial use. This requirement is being altered slightly from the proposal to match the requirements under § 82.9 for requests for additional allowances for the use of controlled substances as feedstock.

5. Class II Controlled Substances

For class II controlled substances, companies who produced, imported, or exported a class II substance must file an annual report within 45 days after the end of the calendar year, stating the amount of each substance that such person produced, imported, and exported during that year. Each such report shall be signed and attested by a responsible officer of the company. This requirement is being adopted as proposed.

VI. Impact of Action

The Agency has prepared a Regulatory Impact Analysis that evaluates the costs and benefits of phasing out class I chemicals.

The costs and benefits of the phaseout were estimated by comparing the percentage of ozone depletion that would occur in the future if the phaseout were implemented to various scenarios, including a projected baseline that would occur in the absence of any regulation, the ozone depletion that would occur with the original 1987 Montreal Protocol limits, and the ozone depletion that would occur under the limits outlined in the London Amendments to the Montreal Protocol and in the amended Clean Air Act.

The RIA used two projections to estimate ozone depletion. The primary method is a parameterization based on a one dimensional model, which has been used in previous EPA analyses of the stratosphere, and is taken from Connell (1986). This model translates emissions of the class I and II chemicals into chlorine loadings, and transforms these loadings into estimates of depletion relative to ozone concentrations in 1970. This first projection does not take into account any depletion that may have occurred prior to 1988.

To account for the observed depletion prior to 1988, the Agency developed a second projection using an adjusted version of the one dimensional parameterized model. In this model, an adjustment factor was applied so that historical emission data, when entered into the model, predicted the observed estimated level of ozone depletion prior to 1988. For this adjustment, the Agency assumed that the average ozone trend over the latitudes 30° N–64° N was representative of the global change in column ozone, and that the trend is due to decreases in stratospheric chlorine. The model was further adjusted to account for the seasonal level of UV–B expected when ozone depletion occurs. The RIA provides results based on both model projections.

The major health benefits of these regulations are attributable to avoided effects of exposure to ultraviolet radiation. The major environmental effects are based on studies that found decreased crop and fish harvests associated with increased ultraviolet radiation. Decreased stratospheric ozone is also expected to lead to increased tropospheric ozone, which can also reduce crop yields, and lead to rapid deterioration of polymers. There are uncertainties related to the links between increased use of the substances and ozone depletion, as well as between decreases in stratospheric ozone and increases in UV–B radiation and their effects on human health and the environment.

A phaseout significantly reduces the rate of depletion of stratospheric ozone. Indeed, the atmospheric models indicate that ozone concentrations will return to historic levels in the middle of the next century under certain scenarios. However, it should be noted that these models have been shown to underpredict the level of ozone depletion in the past, and the two projections do not account for the most recent observation that ozone concentrations have decreased by three to five percent over the last decade in the northern mid-latitudes.

The health effects due to ozone depletion are generated from estimated dose-response relationships. These dose-response relationships have large uncertainties related to the type of population affected, and variability in the studies providing the data. A second human health benefit of ozone depleting compound regulation is reduced incidence of cataracts. The estimated increase in cataracts is roughly 0.5 percent for each percent increase in UV–B.

The quantifiable environmental benefits in the United States due to CFC, halon, methyl chloroform, and carbon tetrachloride regulation, although small when compared to the value of the avoided cancer benefits, are also substantial. Increases in ultra-violet radiation have been shown to affect crop yield and crop quality adversely. Again, the Agency emphasizes that

these benefit estimates are based on limited data containing many assumptions. However, they do provide an order of magnitude estimate of the likely benefits to preserving the ozone layer.

Social costs of reducing CFC, halon, and methyl chloroform use through regulation were estimated by examining the costs of alternative technologies and materials for producing CFC, halon, and methyl chloroform based products. Social costs are the additional amount of resources required to produce an equivalent amount of goods and services for consumers. Regulation also transfers income from consumers of class I based products to other sectors of society. The economic model calculated the costs that society would incur to meet the production targets of the Clean Air Act, based on available or future control technologies. The economic model generally selected those control options that were either already being used by industry, or were the least costly options available, thus minimizing the cost to society. Once selected, the model totalled the social costs and transfer payments needed each year to meet the reduction targets of the Clean Air Act.

The costs of these regulations are expected to depend on the speed at which specific user industries and the economy as a whole adopts techniques to reduce the use of ozone depleting compounds, and on the potential for these technologies to achieve the reductions required. Transfer payments generated by ozone depleting substance regulation are significant, particularly in the initial years of regulation. Cost estimates are also subject to considerable uncertainty because they are sensitive to technical innovation, and future energy and chemical costs.

To estimate costs and benefits distributed over time, the Agency applied several discount rates to various phaseout scenarios. The Agency applied discount rates of two, four, and ten percent to gauge their impact on social costs and benefits. The two and four percent discount rates represent possible estimates of the "consumption rate of interest," where two percent has been used and accepted by the Agency in previous analyses on the impact of regulations restricting the production and consumption of ozone-depleting substances. The ten percent discount rate represents the "real pre-tax rate of return on private investments" and is required by the Office of Management and Budget's 1972 circular A–94. The RIA discusses further the choice of the various discount rates and the circumstances under which each could most appropriately be used. The Agency believes that the two and ten percent discount rates may currently represent the outerbound estimates of the appropriate rate.

The following table summarizes the net incremental benefits in billions of 1985 dollars (between the London Amendments and the Clean Air Act Phaseout Scenarios) of the regulation at the three different discount rates using the two different modelling projections. The London Amendments provide the following net incremental benefits over the 1997 Montreal Protocol: For the unadjusted model—$226 billion to $887.6 billion at a two percent discount rate, $35.8 billion to $145.3 billion at a four percent discount rate, and $–0.6 to $2.2 billion at ten percent; for the adjusted model—$352.7 billion to $1,362 billion at two percent, $57.3 billion to $222.4 billion at four percent, and $0.1 billion to $4.2 billion at ten percent.

Model	Discount rate (%)	Net incremental benefits
Unadjusted	2	1.0–6.5
	4	(0.2)–1.3
	10	(0.3)–(0.2)
Adjusted (assuming a weighted average ozone depletion of approximately one percent).	2	1.6–8.5
	4	0.0–2.1
	10	(0.3)–(0.1)

The Agency is also developing a third projection of ozone depletion that includes the most recent ozone depletion calculations determined by NASA, using an initial depletion amount of 3.38 percent in 1989. The value of benefits to people born before 2075 exceed the control costs through 2075 using discount rates of two, four, and ten percent when the most current ozone depletion measurements are accounted for. Using the two percent discount rate, the net incremental benefits using the re-adjusted model are expected to range between 13.0 and 50.2 billions of 1985 dollars, with the results at the four percent rate ranging between 3.6 and 4.1 billion and the calculation at ten percent showing net incremental benefits from 0.1 to 1.2 billions of 1985 dollars.

VII. Additional Information

A. Executive Order 12291

Executive Order (E.O.) 12291 requires preparation of a Regulatory Impact Analysis for major rules, defined by the order as those likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic industries; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based industry to compete with foreign based enterprises in domestic or export markets.

EPA has determined that these regulations meet the criteria of a major rule. The Agency estimates that annual industry costs will exceed $100 million. A regulatory impact analysis has been prepared to analyze these costs and has been submitted to the Office of Management and Budget for review.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires that federal agencies examine the impacts of regulations on small entities. Under 5 U.S.C. 601(a), whenever an agency is required to publish a general notice of rulemaking, it must prepare and make available a regulatory flexibility analysis (RFA).

The Agency originally published an RFA to accompany the August 12, 1988 final rule (53 FR 30566) that placed the initial limits on the production and consumption of CFCs and halons. The RFA concluded that of the industries affected by regulation of CFCs and halons only some segments of the foam blowing industry were potentially at risk. In contrast to almost all the other users of these chemicals, CFCs are a large percentage of the final costs for the foam industry.

Different sectors of the foam industry are likely to be affected differently. Indeed, the August 12 rule discussed how several foam sectors were already moving away from CFCs. Foam food packagers have shifted out of CFCs to HCFC–22 or other alternatives. Similarly, the industry sector that makes flexible molded foam has moved out of CFCs with minimal disruption, while the extruded polystyrene board-stock industry intends to eliminate the use of CFC–12 in the near future.

In updating this analysis to examine the other foam sectors, as well as those sectors using carbon tetrachloride and methyl chloroform, the Agency did re-examine the effect of increased price on several foam segments—polyurethane-sprayed and molded foam and foam insulation and board-stock. The insulating foam industry is investigating the use of HCFC–141b or a blend of HCFC–141b and HCFC–123. To the extent that these substitutes are determined to be technically and economically viable, the longer term

impact on these firms will be minimized. The industry is actively pursuing these options and is currently waiting for the results of toxicity studies required for its use of these chemicals.

Based on the analysis contained in the RFA, EPA does not believe that any foam industry segment will be substantially harmed over the long term, and that recent development of alternative blowing agents for use in these sectors indicate the competitiveness of this industry. Sectors using carbon tetrachloride and methyl chloroform are unaffected. In the applications where they are most commonly used, the value of the end product is not significantly related to the price of the chemicals, since they are used only in small volumes. Thus the final costs of industry will not be significantly affected by these regulations.

Under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 605, I certify that the regulation promulgated in this document will not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

As required by § 35.04 of the Paperwork Reduction Act, 44 U.D.C. 3501 *et seq.*, EPA submitted an information collection request to the Office of Management and Budget for review. The recordkeeping and reporting requirements contained in this rulemaking were approved by the Office of Management and Budget under control number 2060–0170.

Industry reporting burden for this collection is estimated in the following table. It includes the time needed to comply with EPA's reporting and compliance monitoring requirements as well as that used for the completion of voluntary reports and requests under this rule.

Respondent activities	Respondent burden per occurrence							
	Frequency	Producer hours	Frequency	Importer hours	Frequency	Exporter hours	Frequency	Transformer hours
Conduct transfer transactions	1	8	1	8	4	8	0	0
Obtain additional allowances through exports	0	0	0	0	4	21	0	0
Convert potential allowances through exports	0	0	0	0	1	42	0	0
Convert potential allowances by receiving allowances from Party countries	1	82	0	0	0	0	0	0
Receive additional allowances for transforming	0	0	0	0	0	0	12	42
Comply with reporting and compliance monitoring requirements	4	88	4	60	4	60	4	32

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Chief, Information Policy Branch, PM–223y, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Paperwork Reduction Project, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 40 CFR Part 82

Administrative practice and procedure, Air pollution, Chemicals, Chlorofluorocarbons, Clean Air Act Amendments of 1990, Exports, Imports, Recordkeeping and reporting requirements, Stratospheric ozone layer.

Dated: July 17, 1992.

William K. Reilly,

Administrator.

Title 40, Code of Federal Regulations, part 82, is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

2. Sections 82.14 and 82.20 are removed. Sections 82.1 through 82.13 are designated as subpart A and revised. Appendices A through C and E to part 82 are redesignated as appendices A through C and E to subpart A and revised, and appendix D to part 82 which is currently reserved is redesignated as appendix D to subpart A and reserved. The revised text is set forth below.

Subpart A—Production and Consumption Controls

Sec.

82.1 Purpose and scope.
82.2 Effective date.
82.3 Definitions.
82.4 Prohibitions.
82.5 Apportionment of baseline production allowances.
82.6 Apportionment of baseline consumption allowances.
82.7 Grant and phased reduction of baseline production and consumption allowances for class I controlled substances.
82.8 Grant and freeze of baseline production and consumption allowances for class II controlled substances. [Reserved]
82.9 Availability of production allowances in addition to baseline production allowances.
82.10 Availability of consumption allowances in addition to baseline consumption allowances.
82.11 Exports to Article 5 Parties.
82.12 Transfers.
82.13 Record-keeping and reporting requirements.

Sec.

Appendix A to subpart A—Class I Controlled Substances

Appendix B to subpart A—Class II Controlled Substances

Appendix C to subpart A—Parties to the Montreal Protocol

Appendix D to subpart A—Nations Complying with, but not Party to, the Protocol [Reserved]

Appendix E to subpart A—Article 5 Parties

Subpart A—Production and Consumption Controls

§ 82.1 Purpose and scope.

(a) The purpose of these regulations is to implement the Montreal Protocol on Substances that Deplete the Ozone Layer and sections 603, 604, 605, 607 and 616 of the Clean Air Act as amended by the Clean Air Act Amendments of 1990, Public Law 101–549. The Protocol and section 604 impose limits on the production and consumption (defined as production plus imports minus exports) of certain ozone depleting chemicals, according to specified schedules. The Protocol also requires each nation that becomes a Party to the agreement to impose certain restrictions on trade in ozone depleting substances with non-Parties.

(b) This rule applies to any individual, corporate, or governmental entity that

produces, transforms, imports, or exports controlled substances.

§ 82.2 Effective date.

(a) The regulations under this subpart take effect January 1, 1992.

(b) The regulations under this part that were effective prior to January 1, 1992 are saved for purposes of enforcing the provisions that were applicable prior to January 1, 1992.

§ 82.3 Definitions.

As used in this subpart, the term:

(a) *Administrator* means the Administrator of the Environmental Protection Agency or his authorized representative.

(b) *Baseline consumption allowances* means the consumption allowances apportioned under § 82.6 of this subpart.

(c) *Baseline production allowances* means the production allowances apportioned under § 82.5 of this subpart.

(d) *Calculated level* means the weighted amount of a controlled substance determined by multiplying the amount (in kilograms) of the controlled substance by that substance's ozone depletion weight listed in appendix A or appendix B to this subpart.

(e) *Class I* refers to the controlled substances listed in appendix A to this subpart.

(f) *Class II* refers to the controlled substances listed in appendix B to this subpart.

(g) *Consumption allowances* means the privileges granted by this subpart to produce and import class I controlled substances; however, consumption allowances may be used to produce class I controlled substances only in conjunction with production allowances. A person's consumption allowances are the total of the allowances he obtains under § 82.7 of this subpart (baseline allowances for class I controlled substances) and § 82.10 of this subpart (additional consumption allowances), as may be modified under § 82.12 of this subpart (transfer of allowances).

(h) *Control period* means the period from January 1, 1992 through December 31, 1992, and each twelve-month period from January 1 through December 31, thereafter.

(i) *Controlled substance* means any substance listed in appendix A or appendix B to this subpart, whether existing alone or in a mixture, but excluding any such substance or mixture that is in a manufactured product other than a container used for the transportation or storage of the substance or mixture. Any amount of a listed substance which is not part of a use system containing the substance is a controlled substance. If a listed substance or mixture must first be transferred from a bulk container to another container, vessel, or piece of equipment in order to realize its intended use, the listed substance or mixture is a controlled substance. Controlled substances are divided into two classes, class I and class II. Class I substances are further divided into five groups, Group I, Group II, Group III, Group IV and Group V, as set forth in appendix A to this subpart.

(j) *CUBP* means a coincidental unavoidable byproduct of a manufacturing process that is immediately contained and destroyed by the producer using MACT. A substance is CUBP if—

(1) The quantity of the substance generated by the manufacturing process cannot be varied independently of the intended product, varies proportionately with the production of the intended product, and ceases when the intended product's production is stopped; and

(2) It is not manufactured for commercial purposes, including for sale or use in place of substances that otherwise would be purchased.

(k) *Export* means the transport of virgin, used, or recycled controlled substances from inside the United States or its territories to persons outside the United States or its territories, excluding United States military bases and ships for on-board use.

(l) *Exporter* means the person who contracts to sell controlled substances for export or transfers controlled substances to his affiliate in another country.

(m) *Facility* means any process equipment (e.g., reactor, distillation column) used to convert raw materials or feedstock chemicals into controlled substances or consume controlled substances in the production of other chemicals.

(n) *Import* means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into any place subject to the jurisdiction of the United States whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States, with the following exemptions:

(1) Off-loading used or excess controlled substances from a ship during servicing and

(2) Bringing controlled substances into the U.S. from Mexico where the controlled substance had been admitted into Mexico in bond and was of U.S. origin.

(o) *Importer* means the importer of record listed on U.S. Customs Service forms for imported controlled substances.

(p) *MACT* means, with respect to the destruction of CUBP, maximum available control technology having a destruction efficiency of no less than 99.99%.

(q) *Montreal Protocol* means the Montreal Protocol on Substances that Deplete the Ozone Layer, a protocol to the Vienna Convention for the Protection of the Ozone Layer, including adjustments adopted by the Parties thereto and amendments that have entered into force.

(r) *Nations complying with, but not joining, the Protocol* means any nation listed in appendix D to this subpart.

(s) *Party* means any nation that is a Party to the Montreal Protocol and listed in appendix C to this subpart.

(t) *Person* means any individual or legal entity, including an individual, corporation, partnership, association, State, municipality, political subdivision of a State, Indian tribe; any agency, department, or instrumentality of the United States; and any officer, agent, or employee thereof.

(u) *Plant* means one or more facilities at the same location owned by or under common control of the same person.

(v) *Potential production allowances* means the production allowances obtained under § 82.9(a) of this subpart.

(w) *Production* means the manufacture of a substance from any raw material or feedstock chemical, but does not include:

(1) The manufacture of a substance that is used and entirely consumed (except for trace quantities) in the manufacture of other chemicals or

(2) The reuse or recycling of a substance.

Production includes spilled or vented controlled substances equal to or in excess of one hundred pounds per event.

(x) *Production allowances* means the privileges granted by this subpart to produce controlled substances; however, production allowances may be used to produce controlled substances only in conjunction with consumption allowances. A person's production allowances are the total of the allowances he obtains under § 82.7 of this subpart (baseline allowances for class I controlled substances) and § 82.9(a), (b), and (c) of this subpart (additional production allowances) as may be modified under § 82.12 of this subpart (transfer of allowances).

(y) *Transform* means to use and entirely consume (except for trace quantities) a controlled substance in the manufacture of other chemicals for commercial purposes.

(z) *Unexpended consumption allowances* means consumption allowances that have not been used. At any time in any control period a person's unexpended consumption allowances are the total of the level of consumption allowances he has authorization under this subpart to hold at that time for that control period, minus the level of controlled substances that the person has produced or imported in that control period until that time.

(aa) *Unexpended production allowances* means production allowances that have not been used. At any time in any control period a person's unexpended production allowances are the total of the level of production allowances he has authorization under this subpart to hold at that time for that control period, minus the level of controlled substances that the person has produced in that control period until that time.

§ 82.4 Prohibitions.

(a) No person may produce, at any time in any control period, any class I controlled substance (except for

(1) Group IV controlled substances that are transformed by the end of the first quarter of the following control period, as determined in accordance with paragraph (f) of this section, or

(2) Group IV and V controlled substances for which the person has obtained an exemption in accordance with paragraph (e) of this section) in excess of the amount of unexpended production allowances for that substance held by that person under the authority of this subpart at that time for that control period. In no event may any person produce in the period from July 1, 1991 through December 31, 1992 a total calculated level of Group I controlled substances in excess of 150 percent of that person's baseline production allowances for Group I substances plus any additional production allowances for Group I controlled substances that the person obtained under §§ 82.9 and 82.12 of this subpart during this same period. Every kilogram of excess production constitutes a separate violation of this regulation.

(b) No person may produce or import, at any time in any control period, any class I controlled substance (except for

(1) Group IV controlled substances that are transformed by the end of the first quarter of the following control period as determined in accordance with paragraph (f) of this section, or

(2) Group IV and Group V controlled substances for which the person has obtained an exemption in accordance with paragraph (e) of this section) in excess of the amount of unexpended consumption allowances held by that person under the authority of this subpart at that time for that control period. In no event may any person produce or import in the period from July 1, 1991 through December 31, 1992 a calculated level of Group I controlled substances in excess of 150 percent of that person's baseline consumption allowances plus any consumption allowances for Group I controlled substances that the person obtained under §§ 82.10 and 82.12 of this subpart during this same period. Every kilogram of excess production or importation constitutes a separate violation of this regulation.

(c) A person may not use production allowances to produce a quantity of class I controlled substances (with the exceptions set forth in paragraph (a) of this section) unless he or she holds under the authority of this subpart at the same time consumption allowances sufficient to cover that quantity of class I controlled substances nor may a person use consumption allowances to produce a quantity of class I controlled substances (with the same exceptions noted above) unless the person holds under authority of this subpart at the same time production allowances sufficient to cover that quantity of class I controlled substances. However, only consumption allowances are required to import class I controlled substances (except for Group IV controlled substances that are transformed by the end of the first quarter of the control period following that in which the substance was imported).

(d) No person may import any quantity of Group I or Group II controlled substances from any nation not listed in Appendix C to this subpart (Parties to the Montreal Protocol) unless that nation is listed in appendix D to this subpart (Nations Complying with, But Not Party to, the Protocol). Every kilogram of controlled substances imported in contravention of this regulation constitutes a separate violation of this regulation.

(e) Any person may obtain, in accordance with the provisions of this paragraph, an exemption from the prohibitions set forth in paragraphs (a) and (b) of this section for CUBP Group IV and Group V controlled substances.

(1) A person must submit within 45 days after the beginning of each control period (or by September 14, 1992, for the 1992 control period) during which the person will produce CUBP Group IV and Group V a petition that includes the following:

(i) The identity and address of the person;

(ii) The name and telephone number of a contact person;

(iii) A description of the process of which the class I controlled substance is a by-product and the name of the CUBP produced;

(iv) The name of the primary chemical produced in the process;

(v) A description of the destruction technology to be used, including documentation showing that it has a destruction efficiency of at least 99.99 percent;

(vi) An estimate of the annual amount of production and subsequent destruction of the CUBP controlled substance;

(vii) A description of the handling of the material and a showing that all procedures are consistent with regulations under RCRA or other applicable rules; and

(viii) A statement of whether the process and destruction methods were being used in the baseline year and whether the amounts manufactured were included as "production" in reports submitted for use in the calculation of baseline allowances.

(2) The Administrator will review the information and documentation submitted under paragraph (e)(1) of this section and will issue the person a notice granting the exemption for that amount or portion of Group IV or Group V substance that the Administrator determines is CUBP, provided the request satisfactorily demonstrates that the person's destruction technology is MACT and that the CUBP is handled in a manner consistent with other applicable law and regulations.

(3) If the Administrator determines that the request does not establish that the substances are CUBP or that the destruction technology is MACT and the CUBP is not handled in a manner consistent with other applicable law and regulations, the Administrator will issue a note disallowing the request for the exemption.

(4) The Administrator will adjust the person's baseline allowances if necessary based on the information submitted under paragraph (e)(1) of this section.

(f) Upon receipt of each person's first quarterly report as required under § 82.13 of this subpart, the Administrator will calculate the following quantities for each person that produced Group IV controlled substances for feedstock in the previous control period:

(1) The amount of the person's production transformed in the previous control period;

(2) The amount of the person's production transformed in the first

quarter of the previous control period attributable to the person's production in the control period previous to that;

(3) The amount of the person's production transformed in the first quarter of the current control period; and

(4) The amount that the person produced for transformation in the previous year.

If the Administrator finds that the quantity calculated in paragraph (f)(4) of this section is greater than the sum of the quantities calculated in paragraphs (f)(1) and (f)(3) of this section minus the quantity calculated in paragraph (f)(2) of this section, each kilogram by which the quantity calculated in paragraph (f)(4) of this section is greater, constitutes a separate violation.

§ 82.5 Apportionment of baseline production allowances.

Persons who produced controlled substances in Group I or Group II in 1986 are apportioned baseline production allowances as set forth in paragraphs (a) and (b) of this section. Persons who produced controlled substances in Group III, IV, or V in 1989 are apportioned baseline production allowances as set forth in paragraphs (c), (d), and (e) of this section. Persons who produced class II controlled substances are apportioned baseline production allowances as set forth in paragraph (f) of this section.

(a) For Group I controlled substances:

Controlled substance	Person	Allowances (kg)
CFC–11	Allied-Signal, Inc.	23,082,358
	E.I. DuPont de Nemours & Co.	33,830,000
	Elf Atochem, N.A	21,821,500
	Laroche Chemicals	12,856,364
CFC–12	Allied-Signal, Inc.	35,699,776
	E.I. DuPont de Nemours & Co.	64,849,000
	Elf Atochem, N.A	31,089,807
	Laroche Chemicals	15,330,909
CFC–113	Allied-Signal, Inc.	21,788,896
	E.I. DuPont de Nemours & Co.	58,553,000
CFC–114	Allied-Signal, Inc.	1,488,569
	E.I. DuPont de Nemours & Co.	4,194,000
CFC–115	E.I. Dupont de Nemours & Co.	4,176,000

(b) For Group II controlled substances:

Controlled substance	Person	Allowances (kg)
Halon–1211	Great Lakes Chemical Corp.	826,487
	ICI Americas, Inc.	2,135,484
Halon–1301	E.I. DuPont de Nemours & Co.	3,220,000
	Great Lakes Chemical Corp.	1,766,850
Halon–2402		

(c) For Group III controlled substances:

Controlled substance	Person	Allowances (kg)
CFC–13	Allied-Signal, Inc.	127,125
	E.I. DuPont de Nemours & Co.	187,831
	Elf Atochem, N.A	3,992
	Great Lakes Chemical Corp.	56,381
	Laroche Chemicals	29,025
CFC–111		
CFC–112		
CFC–211	E.I. Dupont de Nemours & Co.	11
CFC–212	E.I. Dupont de Nemours & Co.	11
CFC–213	E.I. Dupont de Nemours & Co.	11
CFC–214	E.I. DuPont de Nemours & Co.	11
CFC–215	E.I. DuPont de Nemours & Co.	511
	Halocarbon Products Corp.	1,270
CFC–216	E.I. DuPont de Nemours & Co.	170,574
CFC–217	E.I. Dupont de Nemours & Co.	511

(d) For Group IV controlled substances:

Controlled substance	Person	Allowances (kg)
CCl_4	Akzo Chemicals, Inc.	7,873,615
	Degussa Corporation	26,546
	Dow Chemical Company, USA.	18,987,747
	E.I. DuPont de Nemours & Co.	9,099
	Hanlin Chemicals-WV, Inc.	219,616
	ICI Americas, Inc.	853,714
	Occidental Chemical Corp.	1,059,358
	Vulcan Chemicals	21,931,987

(e) For Group V controlled substances:

Controlled substance	Person	Allowances (kg)
Methyl Chloroform.	Dow Chemical Company, USA.	168,030,117
	E.I. DuPont de Nemours & Co.	2
	PPG Industries, Inc.	57,450,719
	Vulcan Chemicals	89,689,064

(f) For class II controlled substances: [Reserved]

§ 82.6 Apportionment of baseline consumption allowances.

Persons who produced, imported, or produced and imported controlled substances in Group I or Group II in 1986 are apportioned chemical-specific baseline consumption allowances as set forth in paragraphs (a) and (b) of this section. Persons who produced, imported, or produced and imported controlled substances in Group III, Group IV, or Group V in 1989 are apportioned chemical-specific baseline consumption allowances as set forth in paragraphs (c), (d) and (e) of this section. Persons who produced, imported, or produced and imported class II chemicals are apportioned chemical-specific baseline consumption allowances set forth in paragraph (f) of this section.

(a) For Group I controlled substances:

Controlled substance	Person	Allowances (kg)
CFC-11	Allied-Signal, Inc.	22,683,833
	E.I. DuPont de Nemours & Co.	32,054,283
	Elf Atochem, N.A	21,740,194
	Hoechst Celanese Corporation.	185,396
	ICI Americas, Inc.	1,673,436
	Kali-Chemie Corporation.	82,500
	Laroche Chemicals	12,695,726
	National Refrigerants, Inc.	693,707
	Refricentro, Inc.	160,697
	Sumitomo Corporation of America.	5,800
CFC-12	Allied-Signal, Inc.	35,236,397
	E.I. Dupont de Nemours & Co.	61,098,726
	Elf Atochem, N.A	32,403,869
	Hoechst Celanese Corporation.	138,865
	ICI Americas, Inc.	1,264,980
	Kali-Chemie Corporation.	355,440
	Laroche Chemicals	15,281,553
	National Refrigerants, Inc.	2,375,384
	Refricentro, Inc.	242,526
CFC-1113	Allied-Signal, Inc.	18,241,928
	E.I. Dupont de Nemours & Co.	49,602,858
	Elf Atochem, N.A	244,908
	Holchem	265,199
	ICI Americas, Inc.	2,399,700
	Refricentro, Inc.	37,385
	Sumitomo Corporation of America.	280,163
CFC-114	Allied-Signal, Inc.	1,429,582
	E.I. Dupont de Nemours & Co.	3,686,103
	Elf Atochem, N.A	22,880
	ICI Americas, Inc.	32,930
CFC-115	E.I. DuPont de Nemours & Co.	2,764,109
	Elf Atochem, N.A	633,007
	Hoechst Celanese Corporation.	8,893
	ICI Americas, Inc.	2,366,351
	Laroche Chemicals	135,520
	Refricentro, Inc.	27,337

(b) For Group II controlled substances:

Controlled substance	Person	Allowances (kg)
Halon-1211	Elf Atochem, N.A	411,292
	Great Lakes Chemical Corp.	772,775
	ICI Americas, Inc	2,116,641
	Kali-Chemie Corporation.	330,000
Halon-1301	E.I. DuPont de Nemours & Co.	2,772,917
	Elf Atochem, N.A	89,255
	Great Lakes Chemical Corp..	1,744,132
	Kali-Chemie Corporation.	54,380
Halon-2402	Ausimont	34,400
	Great Lakes Chemical Corp.	15,900

(c) For Group III controlled substances:

Controlled substance	Person	Allowances (kg)
CFC-13	Allied-Signal, Inc	127,124
	E.I. DuPont de Nemours & Co.	158,508
	Elf Atochem, N.A	3,992
	Great Lakes Chemical Corp.	56,239
	ICI Americas, Inc	5,855
	Laroche Chemicals	29,025
	National Refrigerants, Inc.	16,665
CFC-111		
CFC-112	Sumitomo Corporation of America.	5,912
	TG (USA) Corporation.	9,253
CFC-211	E.I. DuPont de Nemours & Co.	11
CFC-212	E.I. DuPont de Nemours & Co.	11
CFC-213	E.I. DuPont de Nemours & Co.	11
CFC-214	E.I. DuPont de Nemours & Co.	11
CFC-215	E.I. DuPont de Nemours & Co.	511
	Halocarbon Products Corp.	1,270
CFC-216	E.I. DuPont de Nemours & Co.	170,574
CFC-217	E.I. Dupont de Nemours & Co.	511

(d) For Group IV controlled substances:

Controlled substance	Person	Allowances (kg)
CCl_4	Crescent Chemical Co.	56
	Degussa Corporation.	12,466
	Dow Chemical Company, USA.	8,170,561
	E.I. DuPont de Nemours & Co.	26,537
	Elf Atochem, N.A	41
	Hanlin Chemicals-WV, Inc.	103,133
	Hoechst Celanese Corporation.	3
	ICC Chemical Corp	1,173,723
	ICI Americas, Inc	855,466
	Occidental Chemical Corp.	497,478
	Sumitomo Corporation of America.	9

(e) For Group V controlled substances:

Controlled substance	Person	Allowances (kg)
Methyl Chloroform.	3V Chemical Corp	3,528
	Actex, Inc	50,171
	Atochem North America.	74,355
	Dow Chemical Company, USA.	125,200,200
	E.I. DuPont de Nemours & Co.	2
	IBM	2,026
	ICI Americas, Inc	14,179,850
	Laidlaw	420,207
	PPG Industries	45,254,115
	Sumitomo	1,954
	TG (USA) Corporation.	7,073
	Unitor Ships Service, Inc.	14,746
	Vulcan Chemicals	70,765,072

(f) For class II controlled substances: (Reserved)

§ 82.7 Grant and phased reduction of baseline production and consumption allowances for class I controlled substances.

For each control period specified in the following table, each person is granted the specified percentage of the baseline production and consumption allowances apportioned to him under §§ 82.5 and 82.6 of this subpart.

Date	Group IV (%)	Group V (%)	Other class I substances %
1992	90	100	80
1993	80	90	75
1994	70	85	65
1995	15	70	50
1996	15	50	40
1997	15	50	15
1998	15	50	15
1999	15	50	15
2000	0	20	0
2001	0	20	0
2002 and each year thereafter	0	0	0

§ 82.8 Grant and freeze of baseline production and consumption allowances for class II controlled substances. [Reserved]

§ 82.9 Availability of production allowances in addition to baseline production allowances.

(a) Every person apportioned baseline production allowances for class I controlled substances under § 82.5(a) of this subpart is also granted potential production allowances equal to:

(1) 10 percent of his apportionment under § 82.5 of this subpart for each control period ending before January 1, 2000; and

(2) 15 percent of his apportionment under § 82.5 of this subpart for each control period beginning after December 31, 1999 and ending before January 1, 2011 (January 1, 2013 in the case of methyl chloroform).

A person may convert potential production allowances, either granted under this paragraph or obtained under § 82.12 (transfer of allowances), to production allowances only to the extent authorized by the Administrator under § 82.11 of this subpart (Exports to Article 5 Parties). A person may obtain authorizations to convert potential production allowances to production allowances by requesting issuance of a notice under § 82.11 of this subpart or by completing a transfer of authorizations under § 82.12 of this subpart.

(b) A company may also increase or decrease its production allowances by trading with another Party to the Protocol. A nation listed in appendix C to this subpart (Parties to the Montreal Protocol) must agree either to transfer to the person some amount of production that the nation is permitted under the Montreal Protocol or to receive from the person some amount of production that the person is permitted under this subpart.

(1) For trades from a Party, the person must obtain from the principal diplomatic representative in that nation's embassy in the United States a signed document stating that the appropriate authority within that nation has established or revised production limits for the nation to equal the lesser of the maximum production that the nation is allowed under the Protocol minus the amount transferred, the maximum production that is allowed under the nation's applicable domestic law minus the amount transferred, or the average of the nation's actual national production level for the three years prior to the transfer minus the production allowances transferred. The person must submit to the Administrator a transfer request that includes a true copy of this document and that sets forth the following:

(i) The identity and address of the person;

(ii) The identity of the Party;

(iii) The names and telephone numbers of contact persons for the person and for the Party;

(iv) The chemical type and level of production being transferred; and

(v) The control period(s) to which the transfer applies.

(2) For trades to a Party, a person must submit a transfer request that sets forth the following:

(i) The identity and address of the person;

(ii) The identity of the Party;

(iii) The names and telephone numbers of contact persons for the person and for the Party;

(iv) The chemical type and level of allowable production to be transferred; and

(v) The control period(s) to which the transfer applies.

(3) After receiving a transfer request that meets the requirements of paragraph (b)(2) of this section, the Administrator may, at his discretion, consider the following factors in deciding whether to approve such a transfer:

(i) Possible creation of economic hardship;

(ii) Possible effects on trade;

(iii) Potential environmental implications; and

(iv) The total amount of unexpended production allowances held by United States entities.

(4) The Administrator will issue the person a notice either granting or deducting production allowances and specifying the control periods to which the transfer applies, provided that the request meets the requirement of paragraph (b)(1) of this section for trades from Parties and paragraphs (b)(2) of this section for trades to Parties, unless the Administrator has decided to disapprove the trade under paragraph (b)(3) of this section for trades to Parties. For a trade from a Party, the Administrator will issue a notice that revises the production allowances held by the person to equal the unexpended production allowances held by the person under this subpart plus the level of allowable production transferred from the Party. For a trade to a Party, the Administrator will issue a notice that revises the production limit for the person to equal the lesser of:

(i) The unexpended production allowances held by the person under this subpart minus the amount transferred; or

(ii) The unexpended production allowances held by the person under this subpart minus the amount by which the United States average annual production of the controlled substance being traded for the three years prior to the transfer is less than the total allowable production allowable for that substance under this subpart minus the amount transferred.

The change in production allowances will be effective on the date that the notice is issued.

(5) If after one person obtains approval for a trade of allowable production of a controlled substance to a Party, one or more other persons obtain approval for trades involving the same controlled substance and the same control period, the Administrator will issue notices revising the production limits for each of the other persons trading that controlled substance in that control period to equal the lesser of:

(i) The unexpended production allowances held by the person under this subpart minus the amount transferred; or

(ii) The unexpended production allowances held by the person under this subpart minus (the amount by which the United States average annual production of the controlled substance being traded for the three years prior to the transfer is less than the total allowable production for that substance under this subpart) multiplied by the amount transferred divided by (the total amount transferred by all the other persons trading the same controlled substance in the same control period) minus the amount transferred by that person.

The Administrator will also issue a notice revising the production limit for each person who previously obtained approval of a trade of that substance in that control period to equal the unexpended production allowances held by the person under this subpart plus the amount by which the United States average annual production of the controlled substance being traded for the three years prior to the transfer is less than the total allowable production under this subpart multiplied by the amount transferred by that person divided by (the amount transferred by all of the persons that have traded that controlled substance in that control period). The change in production allowances will be effective on the date that the notice is issued.

(c) A person who does not produce a controlled substance in Group I, II, III or V may obtain production allowances for that controlled substance equal to the amount of that controlled substance produced in the United States that the person transforms in accordance with the provisions of this paragraph. A request for production allowances under this section will be considered a request for consumption allowances under § 82.10(b) of this subpart.

(1) A person must submit a request for production allowances that includes the following:

(i) The identity and address of the person;

(ii) The name, quantity, and level of class I controlled substance transformed;

(iii) A copy of the invoice or receipt documenting the sale of the class I controlled substance to the person;

(iv) The name of the person from whom the class I controlled substances were purchased; and

(v) The name, quantity, and verification of the commercial use of the resulting chemical.

(2) The Administrator will review the information and documentation submitted under paragraph (c)(1) of this section and will assess the quantity of class I controlled substance that the documentation and information verifies was transformed. The Administrator will issue the person production allowances equivalent to the controlled substances that the Administrator determined were transformed. The grant of allowances will be effective on the date that the notice is issued.

(3) If the Administrator determines that the request for production allowances does not satisfactorily substantiate that the person transformed controlled substances as claimed, the Administrator will issue a notice disallowing the request for additional production allowances. Within ten working days after receipt of notification, the Party may file a notice of appeal, with supporting reasons, with the Administrator. The Administrator may affirm the disallowance or grant an allowance, as he finds appropriate in light of the available evidence.

§ 82.10 Availability of consumption allowances in addition to baseline consumption allowances.

(a) Any person may obtain, in accordance with the provisions of this paragraph, consumption allowances equivalent to the level of class I controlled substances that the person has exported from the United States and its territories to any nation listed in Appendix C to this subpart (Parties to the Montreal Protocol). The consumption allowance granted under this section will be valid only during the control period in which the exports departed the United States or its territories.

(1) The exporter of the class I controlled substances must submit to the Administrator a request for consumption allowances setting forth the following:

(i) The identities and addresses of the exporter and the recipient of the exports;

(ii) The exporter's Employer Identification Number;

(iii) The names and telephone numbers of contact persons for the exporter and the recipient;

(iv) The quantity and type of controlled substances exported, and what percentage, if any, of the controlled substances are recycled or used;

(v) The source of the controlled substance and the date purchased;

(vi) The date on which and the port from which the controlled substances were exported from the United States or its territories;

(vii) The country to which the controlled substances were exported;

(viii) The bill of lading and the invoice indicating the net quantity of controlled substances shipped and documenting the sale of the controlled substances to the purchaser; and

(ix) The commodity code of the controlled substance exported.

(2) The Administrator will review the information and documentation submitted under paragraph (a)(1) of this section, and will assess the quantity of controlled substances that the documentation verifies was exported. The Administrator will issue the exporter consumption allowances equivalent to the level of controlled substances that the Administrator determined was exported. The grant of the consumption allowances will be effective on the date the notice is issued.

(b) A person who does not produce a class I controlled substance in Group I, II, III or V may obtain consumption allowances for that controlled substance equal to the level of a controlled substance either produced in or imported into the United States that the person transformed in accordance with the provisions of this paragraph.

(1) A person must submit a request for consumption allowances that includes the following:

(i) The identity and address of the person;

(ii) The name and quantity of controlled substance used and entirely consumed in the manufacture of another chemical;

(iii) A copy of the invoice or receipt documenting the sale of the controlled substance to the person; and

(iv) The name, quantity, and verification of the commercial use of the resulting chemical.

(2) The Administrator will review the information and documentation submitted under paragraph (b)(l) of this section and will assess the quantity of controlled substance that the documentation and information verifies was transformed. The Administrator will issue to the person consumption allowances equivalent to the level of controlled substances that the Administrator determined was transformed. The grant of allowances will be effective on the date that the notice is issued.

(3) If the Administrator determines that the request for consumption allowances does not satisfactorily substantiate that the person transformed controlled substances as claimed, the Administrator will issue a notice disallowing the request for additional consumption allowances. Within ten working days after receipt of notification, the Party may file a notice of appeal, with supporting reasons, with the Director, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation. The Director may affirm or vacate the disallowance. If no appeal is taken by the tenth day after notification, the disallowance will be final on that day.

(c) On the first day of each control period the Agency will grant consumption allowances to any person that produced and exported a Group IV controlled substance in the baseline year and that was not granted baseline consumption allowances under § 82.5 of this subpart.

(1) The number of consumption allowances any such person will be granted for each control period will be equal to the number of production allowances granted to that person under § 82.7 for that control period.

(2) Any person granted allowances under this paragraph must hold the same number of unexpended consumption allowances for the control period for which the allowances were granted by February 15 of the following control period. Every kilogram by which the person's unexpended consumption allowances fall short of the amount the person was granted under this paragraph constitutes a separate violation.

§ 82.11 Exports to Article 5 Parties.

In accordance with the provisions of this section, any person may obtain authorizations to convert potential production allowances to production allowances by exporting class I controlled substances to nations listed in appendix E to this subpart (Article 5 Parties). Authorizations obtained under this section will be valid only during the control period in which the controlled substance departed the United States or its territories. A request for authorizations under this section will be considered a request for consumption allowances under § 82.10 of this subpart as well.

(a) The exporter must submit to the Administrator a request for authority to convert potential production allowance to production allowances. That request must set forth the following:

(1) The identities and addresses of the exporter and the recipient of the exports;

(2) The exporter's Employee Identification Number;

(3) The names and telephone numbers of contact persons for the exporter and for the recipient;

(4) The quantity and the type of controlled substances exported, its source and date purchased, and what percentage, if any, of the controlled substances are recycled or used;

(5) The date on which and the port from which the controlled substances were exported from the United States or its territories;

(6) The country to which the controlled substances were exported;

(7) A copy of the bill of lading and invoice indicating the net quantity

shipped and documenting the sale of the controlled substances to the recipient;

(8) The commodity code of the controlled substance exported; and

(9) A copy of the contract covering the sale of the controlled substances to the recipient that contains provisions forbidding the reexport of the controlled substance in bulk form and subjecting the recipient or any transferee of the recipient to liquidated damages equal to the resale price of the controlled substances if they are reexported in bulk form.

(b) The Administrator will review the information and documentation submitted under paragraph (a) of this section, and assess the quantity of controlled substances that the documentation verifies were exported to an Article 5 Party. Based on that assessment, the Administrator will issue the exporter a notice authorizing the conversion of a specified quantity of potential production allowances to production allowances in a specified control year, and granting consumption allowances in the same amount for the same control year. The authorizations may be used to convert potential production allowances to production allowances as soon as the date on which the notice is issued.

§ 82.12 Transfers.

(a) *Inter-company transfers.* Any person ("transferor") may transfer to any other person ("transferee") any amount of the transferor's consumption allowances, production allowances, potential production allowances, or authorizations to convert potential production allowances to production allowances, as follows:

(1) The transferor must submit to the Administrator a transfer claim setting forth the following:

(i) The identities and addresses of the transferor and the transferee;

(ii) The name and telephone numbers of contact persons for the transferor and the transferee;

(iii) The type of allowances or authorizations being transferred, including the names of the controlled substances for which allowances are to be transferred;

(iv) The group of controlled substances to which the allowances or authorizations being transferred pertains;

(v) The amount of allowances or authorizations being transferred;

(vi) The control period(s) for which the allowances or authorizations are being transferred;

(vii) The amount of unexpended allowances or authorizations of the type and for the control period being transferred that the transferor holds under authority of this subpart as of the date the claim is submitted to EPA; and

(viii) A statement of whether the trade is for the purpose of reimbursing a producer or importer for allowances expended in the production or import of transformed controlled substances; and

(ix) The amount of the one-percent offset applied to the unweighted amount traded that will be deducted from the transferor's allowance balance (except for trades of potential production allowances, authorizations to convert, or trades from transformers to producers or importers for the purpose of allowance reimbursement).

(2) The Administrator will determine whether the records maintained by EPA, taking into account any previous transfers and any production, imports or exports of controlled substances reported by the transferor, indicate that the transferor possesses, as of the date the transfer claim is processed, unexpended allowances or authorizations sufficient to cover the transfer claim (i.e., the amount to be transferred plus, in the case of transferors of production or consumption allowances), one percent of that amount). Within three working days of receiving a complete transfer claim, the Administrator will take action to notify the transferor and transferee as follows:

(i) If EPA's records show that the transferor has sufficient unexpended allowances or authorizations to cover the transfer claim or if review of available information is insufficient to make a determination, the Administrator will issue a notice indicating that EPA does not object to the transfer and will reduce the transferor's balance of unexpended allowances or authorizations by the amount to be transferred plus, in the case of transfers of production or consumption allowances, one percent of that amount. When EPA issues a no objection notice, the transferor and the transferee may proceed with the transfer. However, if EPA ultimately finds that the transferor did not have sufficient unexpended allowances or authorizations to cover the claim, the transferor and transferee will be held liable for any violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper transfer.

(ii) If EPA's records show that the transferor has insufficient unexpended allowances or authorizations to cover the transfer claim, or that the transferor has failed to respond to one or more Agency requests to supply information needed to make a determination, the Administrator will issue a notice disallowing the transfer. Within 10 working days after receipt of notification, either party may file a notice of appeal, with supporting reasons, with the Administrator. The Administrator may affirm or vacate the disallowance. If no appeal is taken by the tenth working day after notification, the disallowance shall be final on that day.

(3) In the event that the Administrator does not respond to a transfer claim within the three working days specified in paragraph (b)(2) of this section, the transferor and transferee may proceed with the transfer. EPA will reduce the transferor's balance of unexpended allowances or authorizations by the amount to be transferred plus, in the case of transfers of production or consumption allowances, one percent of that amount. However, if EPA ultimately finds that the transferor did not have sufficient unexpended allowances or authorizations to cover the claim, the transferor and transferee will be held liable for any violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper transfer.

(b) *Inter-pollutant conversions.* Any person ("convertor") may convert consumption allowances, production allowances, potential production allowances, or authorizations to convert potential production allowances to production allowances for one class I controlled substance to the same type of allowance for another class I controlled substance within the group of controlled substances as the first as follows:

(1) The convertor must submit to the Administrator a conversion claim setting forth the following:

(i) The identity and address of the convertor;

(ii) The name and telephone number of a contact person for the convertor;

(iii) The type of allowances or authorizations being converted, including the names of the controlled substances for which allowances are to be converted;

(iv) The group of controlled substances to which the allowances or authorizations being converted pertains;

(v) The amount and type of allowances to be converted;

(vi) The amount of allowances to be subtracted from the convertor's unexpended allowances for the first controlled substance, to be equal to 101 percent of the amount of allowances converted (except for conversions of authorizations to convert potential production allowances and conversions of potential production allowances);

(vii) The amount of allowances or authorizations to be added to the convertor's unexpended allowances or authorizations for the second controlled substance, to be equal to the amount of allowances for the first controlled substance being converted multiplied by the quotient of the ozone depletion factor of the first controlled substance divided by the ozone depletion factor of the second controlled substance, as listed in appendix A to this subpart.

(viii) The control period(s) for which the allowances or authorizations are being converted; and

(ix) The amount of unexpended allowances or authorizations of the type and for the control period being converted that the convertor holds under authority of this subpart as of the date the claim is submitted to EPA.

(2) The Administrator will determine whether the records maintained by EPA, taking into account any previous conversions, any transfers, and any production, imports, or exports of controlled substances reported by the convertor, indicate that the convertor possesses, as of the date the conversion claim is processed, unexpended allowances or authorizations sufficient to cover the conversion claim (i.e., the amount to be converted plus, in the case of conversions of production or consumption allowances, one percent of that amount). Within three working days of receiving a complete conversion claim, the Administrator will take action to notify the convertor as follows:

(i) If EPA's records show that the convertor has sufficient unexpended allowances or authorizations to cover the conversion claim or if review of available information is insufficient to make a determination, the Administrator will issue a notice indicating that EPA does not object to the conversion and will reduce the convertor's balance of unexpended allowances or authorizations by the amount to be converted plus, in the case of conversions of production or consumption allowances, one percent of that amount. When EPA issues a no objection notice, the convertor may proceed with the conversion. However, if EPA ultimately finds that the convertor did not have sufficient unexpended allowances or authorizations to cover the claim, the convertor will be held liable for any violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper conversion.

(ii) If EPA's records show that the convertor has insufficient unexpended allowances or authorizations to cover the conversion claim, or that the convertor has failed to respond to one or more Agency requests to supply information needed to make a determination, the Administrator will issue a notice disallowing the conversion. Within 10 working days after receipt of notification, the convertor may file a notice of appeal, with supporting reasons, with the Administrator. The Administrator may affirm or vacate the disallowance. If no appeal is taken by the tenth working day after notification, the disallowance shall be final on that day.

(3) In the event that the Administrator does not respond to a conversion claim within the three working days specified in paragraph (b)(2) of this section, the convertor may proceed with the conversion. EPA will reduce the convertor's balance of unexpended allowances by the amount to be converted plus, in the case of conversions of production or consumption allowances, one percent of that amount. However, if EPA ultimately finds that the convertor did not have sufficient unexpended allowances or authorizations to cover the claims, the convertor will be held liable for any violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper conversion.

(c) *Inter-company transfers and Inter-pollutant conversions.* If a person requests an inter-company transfer and an inter-pollutant conversion simultaneously, the amount subtracted from the convertor-transferor's unexpended allowances for the first controlled substance will be equal to 101 percent of the amount of allowances converted and transferred in the case of transfer-conversions of production or consumption allowances.

§ 82.13 Record-keeping and reporting requirements.

(a) Unless otherwise specified, the record-keeping and reporting requirements set forth in this section take effect on January 1, 1992.

(b) Reports and records required by this section may be used for purposes of compliance determinations. These requirements are not intended as a limitation on the use of other evidence admissible under the Federal Rules of Evidence.

(c) Unless otherwise specified, reports required by this section must be mailed to the Administrator within 45 days of the end of the applicable reporting period.

(d) Records and copies of reports required by this section must be retained for three years.

(e) In reports required by this section, quantities of controlled substances must be stated in terms of kilograms.

(f) Every person ("producer") who will produce class I controlled substances during a control period must comply with the following record-keeping and reporting requirements:

(1) Within 120 days of July 30, 1992, or within 120 days of the date the producer first produces a class I controlled substance, whichever is later, every producer that has not already done so must submit to the Administrator a report describing:

(i) The method by which the producer in practice measures daily quantities of class I controlled substances produced;

(ii) Conversion factors by which the daily records as currently maintained can be converted into kilograms of controlled substances produced, including any constants or assumptions used in making those calculations (e.g., tank specifications, ambient temperature or pressure, density of the controlled substance);

(iii) Internal accounting procedures for determining plant-wide production;

(iv) The quantity of any fugitive losses accounted for in the production figures; and

(v) The estimated percent efficiency of the production process for the controlled substance.

Within 60 days of any change in the measurement procedures or the information specified in the above report, the producer must submit a report specifying the revised data or procedures to the Administrator.

(2) Every person that produced class I controlled substances as by-products and did not destroy them with MACT in 1989 but did not report this production in response to previous information request must supply EPA with the information previously requested on or before September 14, 1992.

(3) Every producer must maintain the following:

(i) Dated records of the quantity of each of the class I controlled substances produced at each facility;

(ii) Dated records of the quantity of Group IV class I controlled substances produced for feedstock use at each facility;

(iii) Dated records of the quantity of class I controlled substances used as feedstocks in the manufacture of controlled substances and in the manufacture of non-controlled substances and any class I controlled substance introduced into the production process of the same controlled substance at each facility;

(iv) Dated records identifying the quantity of each chemical not a controlled substance produced within each facility also producing one or more class I controlled substances;

(v) Dated records of the quantity of raw materials and feedstock chemicals used at each facility for the production of controlled substances;

(vi) Dated records of the shipments of class I controlled substances produced at each plant;

(vii) The quantity of class I controlled substances, the date received, and names and addresses of the source of recyclable or recoverable materials containing class I controlled substances which are recovered at each plant;

(viii) Records of the date, the class I controlled substance, and the estimated quantity of any spill or release of a class I controlled substance that equals or exceeds 100 pounds; and

(ix) Dated records documenting the sale of Group IV controlled substances for feedstock.

(4) For each quarter, each producer must provide the Administrator with a report containing the following information:

(i) The production by plant in that quarter of each class I controlled substance, specifying the quantity of any class I controlled substance used for feedstock purposes for controlled and noncontrolled substances for each plant and totaled by class I controlled substance for all plants owned by the producer;

(ii) The amount of production for feedstock of Group IV controlled substances, by plant;

(iii) The levels of production (expended allowances) for all class I controlled substances for each plant and totaled for all plants for that quarter and totaled for the control period to date;

(iv) From each plant, the total shipments of each class I controlled substance produced at that plant in the quarter;

(v) The producer's total of expended and unexpended consumption allowances, potential production allowances, production allowances, and authorizations to convert potential production allowances to production allowances, as of the end of that quarter;

(vi) The quantity, the date received, and names and addresses of the source of recyclable or recoverable materials containing the class I controlled substance which are recovered at each plant;

(vii) The amount of Group IV controlled substances sold to each person for feedstock during the quarter; and

(viii) Internal Revenue Service Certificates showing that the purchaser of Group IV controlled substances for feedstock use intends to transform the Group IV controlled substances.

(5) For any person who fails to maintain the records required by this paragraph, or to submit the report required by this paragraph, the Administrator may assume that the person has produced at full capacity during the period for which records were not kept, for purposes of determining whether the person has violated the prohibitions at § 82.4 of this subpart.

(g) Importers of class I controlled substances during a control period must comply with the following record-keeping and reporting requirements:

(1) Any importer must maintain the following records:

(i) The quantity of each class I controlled substance imported, either alone or in mixtures, including the percentage of the mixture which consists of class I controlled substances;

(ii) The date on which the controlled substances were imported;

(iii) The port of entry through which the controlled substances passed;

(iv) The country from which the imported controlled substances were imported;

(v) The port of exit;

(vi) The commodity code for the controlled substances shipped;

(vii) The importer number for the shipment;

(viii) A copy of the bill of lading for the import;

(ix) The invoice for the import;

(x) The U.S. Customs Entry Summary Form; and

(xi) Dated records documenting the sale of Group IV controlled substances for feedstock.

(2) For each quarter, every importer must submit to the Administrator a report containing the following information:

(i) Summaries of the records required in paragraphs (g)(1) (i) through (vii) of this section for the previous quarter;

(ii) The total quantity imported in kilograms of each class I controlled substance for that quarter;

(iii) The levels of import (expended consumption allowances) of class I controlled substances for that quarter and totaled by chemical for the control-period-to-date; and

(iv) The importer's total sum of expended and unexpended consumption allowances by chemical as of the end of that quarter;

(v) The amount of Group IV controlled substances imported for feedstock during the quarter;

(vi) The amount of Group IV controlled substances sold to each person for feedstock during the quarter; and

(vii) Internal Revenue Service Certificates showing that the purchaser of Group IV controlled substances for feedstock use intends to transform the Group IV controlled substances.

(h) For any exports of class I controlled substances not reported under § 82.10 of this subpart (additional consumption allowances) or § 82.11 of this subpart (Exports to Parties), the exporter who exported the class I controlled substances must submit to the Administrator the following information within 45 days after the end of the control period in which the unreported exports left the United States:

(1) The names and addresses of the exporter and the recipient of the exports;

(2) The exporter's Employee Identification Number;

(3) The type and quantity of class I controlled substances exported and what percentage, if any, of the controlled substances are recycled or used;

(4) The date on which and the port from which the controlled substances were exported from the United States or its territories;

(5) The country to which the controlled substances were exported; and

(6) The commodity code of the controlled substance shipped.

(i) Every person who has requested additional production allowances under § 82.9(c) of this subpart or consumption allowances under § 82.10(c) of this subpart or who transforms Group IV controlled substances not produced by him or her must maintain the following:

(1) Dated records of the quantity and level of controlled substance used and entirely consumed in the manufacture of another chemical;

(2) Copies of the invoices or receipts documenting the sale of the controlled substance to the person;

(3) Dated records of the names, commercial use, and quantities of the resulting chemical(s);

(4) Dated records of shipments to purchasers of the resulting chemical(s);

(5) For transformers of Group IV controlled substances, dated records of all shipments of Group IV controlled substances received and the identity of the producer or importer of the Group IV controlled substances; and

(6) For transformers of Group IV controlled substances, dated records inventories of Group IV controlled

substances at each plant on the first day of each quarter.

(j) For every quarter, within 45 days after the end of the quarter, every person who transforms Group IV chemicals not produced by him or her must report the following:

(1) The name and address of the person and the name and telephone number of a contact person;

(2) The names and addresses of the persons that produced or imported the Group IV controlled substances that he or she has purchased and transformed and the name and telephone number of a contact person;

(3) The address of the facility at which the transformation took place;

(4) The name of the chemical produced as a result of the transformation and the verification of its commercial use; and

(5) By source in paragraph (j)(2) of this section, the amounts of Group IV controlled substances transformed by the person.

(k) For every control period, every person receiving an exemption for CUBP controlled substances in Groups IV and V must maintain the following information on site:

(1) Dated records of the quantity of the CUBP carbon tetrachloride and methyl chloroform produced at the facility; and

(2) Dated records of the quantity of the CUBP controlled substance destroyed at the facility or shipped from there to an off-site destruction facility.

(l) Every person who produces, imports, or exports class II chemicals must report its annual level of production, imports, and exports of these chemicals within 45 days of the end of each control period.

Appendix A to Subpart A—Class I Controlled Substances

Controlled substance	Ozone depletion weight
A. Group I	
$CFCl_3$—Trichlorofluoromethane (CFC-11)	1.0
CCl_2F_2—Dichlorodifluoromethane (CFC-12)	1.0
CCl_2F-$CClF_2$—Trichlorotrifluoroethane (CFC-113)	0.8
CF_2Cl-$CClf_2$—Dichlorotetrafluoroethane (CFC-114)	1.0
$CClF_2$-CF_3—(Mono) chloropentafluoroethane (CFC-115)	0.6
All isomers of the above chemicals	
B. Group II	
CF_2BrCl—Bromochlorodifluoromethane (halon 1211)	3.0
CF_3Br—Bromotrifluoromethane (halon 1301)	10.0
$C_2F_4Br_2$—Dibromotetrafluoroethane (halon 2402)	6.0
All isomers of the above chemicals	
C. Group III	
CF_3Cl—Chlorotrifluoromethane (CFC-13)	1.0
C_2FCl_5 (CFC-111)	1.0
$C_2F_2Cl_4$—(CFC-112)	1.0
C_3FCl_7—(CFC-211)	1.0
$C_3F_2Cl_6$—(CFC-212)	1.0
$C_3F_3Cl_5$—(CFC-213)	1.0
$C_3F_4Cl_4$—(CFC-214)	1.0
$C_3F_5Cl_3$—(CFC-215)	1.0
$C_3F_6Cl_2$—(CFC-216)	1.0
C_3F_7Cl—(CFC-217)	1.0
All isomers of the above chemicals	
D. Group IV	
CCl_4—Carbon Tetrachloride	1.1
E. Group V	
$C_2H_3Cl_3$—1,1,1-Trichloroethane (Methyl chloroform)	.1
All isomers of the above chemical, except for 1,1,2-trichloroethane.	

Appendix B to Subpart A—Class II Controlled Substances

$CHFCl_2$-Dichlorofluoromethane (HCFC-21)	(1)
CHF_2Cl-Chlorodifluoromethane (HCFC-22)	0.05
CH_2FCl-Chlorofluoromethane (HCFC-31)	(1)
C_2HFCl_4-(HCFC-121)	(1)
$C_2HF_2Cl_3$ (HCFC-122)	(1)
$C_2HF_3Cl_2$-(HCFC-123)	0.02
C_2HF_4Cl-(HCFC-124)	0.02
$C_2H_2FCl_3$-(HCFC-131)	(1)
$C_2H_2F_2Cl_2$-(HCFC-132b)	(1)
$C_2H_2F_3Cl$-(HCFC-133a)	(1)
$C_2H_3FCl_2$-(HCFC-141b)	0.12
$C_2H_3F_2Cl$-(HCFC-142b)	0.06
C_3HFCl_6-(HCFC-221)	(1)
$C_3HF_2Cl_5$-(HCFC-222)	(1)
$C_3HF_3Cl_4$-(HCFC-223)	(1)
$C_3HF_4Cl_3$-(HCFC-224)	(1)
$C_3HF_5Cl_2$-(HCFC-225ca)	(1)
(HCFC-225cb)	(1)
C_3HF_6Cl-(HCFC-226)	(1)
$C_3H_2FCl_5$-(HCFC-231)	(1)
$C_3H_2F_2Cl_4$-(HCFC-232)	(1)
$C_3H_2F_3Cl_3$-(HCFC-233)	(1)
$C_3H_2F_4Cl_2$-(HCFC-234)	(1)
$C_3H_2F_5Cl$-(HCFC-235)	(1)
$C_3H_3FCl_4$-(HCFC-241)	(1)
$C_3H_3F_2Cl_3$-(HCFC-242)	(1)
$C_3H_3F_3Cl_2$-(HCFC-243)	(1)
$C_3H_3F_4Cl$-(HCFC-244)	(1)
$C_3H_4FCl_3$-(HCFC-251)	(1)
$C_3H_4F_2Cl_2$-(HCFC-252)	(1)
$C_3H_4F_3Cl$-(HCFC-253)	(1)
$C_3H_5FCl_2$-(HCFC-261)	(1)
$C_3H_5F_2Cl$-(HCFC-262)	(1)
C_3H_6FCl-(HCFC-271)	(1)
All isomers of the above chemicals	(1)

[1] Reserved.

Appendix C to Subpart A—Parties to the Montreal Protocol

Parties to the Montreal Protocol: Argentina, Australia, Austria, Bahrain, Bangladesh, Belgium, Botswana (3/3/92), Brazil, Bulgaria, Burkina Faso, Byelorussian Soviet Socialist Republic, Cameroon, Canada, Chile, China, Costa Rica, Cyprus (8/26/92), Czechoslovakia, Denmark, Ecuador, Egypt, European Economic Community, Fiji, Finland, France, Gambia, Germany, Ghana, Greece, Guatemala, Guinea (9/23/92), Hungary, Iceland, India (9/17/92), Indonesia (9/24/92), Iran, Ireland, Israel (9/28/92), Italy, Japan, Jordan, Kenya, Libyan Arab Jamahiriya, Liechtenstein, Luxembourg, Malawi, Malaysia, Maldives, Malta, Mexico, Netherlands, New Zealand, Nigeria, Norway, Panama, Philippines, Poland, Portugal, Republic of Korea (5/27/92), Russian Federation, Singapore, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Syrian Arab Republic, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukrainian Soviet Socialist Republic, United Arab Emirates, United Kingdom, United States of America, Uruguay, Venezuela, Yugoslavia, Zambia.

Appendix D to Subpart A—Nations Complying With, But Not Parties to, the Protocol [reserved]

Appendix E to Subpart A—Article 5 Parties

Argentina, Bangladesh, Botswana (3/3/92), Brazil, Burkina Faso, Cameroon, Chile, China, Costa Rica, Cyprus (8/26/92), Ecuador, Egypt, Fiji, Gambia, Ghana, Guatemala, Guinea (9/23/92), India (9/23/92), Indonesia (9/24/92), Iran, Jordan, Kenya, Libyan Arab Jamahiriya, Malawi, Malaysia, Maldives, Mexico, Nigeria, Panama, Philippines, Republic of Korea (5/27/92), Sri Lanka, Syrian Arab Republic, Thailand, Togo, Trinidad and Tobago,

Tunisia, Turkey, Uganda, Uruguay, Venezuela, Yugoslavia, Zambia.

[FR Doc. 92–17661 Filed 7–29–92; 8:45 am]

BILLING CODE 6560–50–M

federal register

Thursday
July 30, 1992

Part III

Department of Health and Human Services

Administration for Children and Families

Request for Applications Under the Office of Community Services' FY 1992 Homeless Families Support Services Demonstration Program; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. OCS-92-8]

Request for Applications Under the Office of Community Services' FY 1992 Homeless Families Support Services Demonstration Program

AGENCY: Office of Community Services, Administration for Children and Families (ACF), HHS.

ACTION: Announcement of availability of funds and request for applications under the Office of Community Service's Homeless Families Support Services Demonstration Program (HFSSDP).

SUMMARY: The Office of Community Services (OCS) announces that competing applications will be accepted for demonstration projects authorized by the Departments of Labor, Health and Human Services, Education and Related Agencies Appropriations Act, 1992 (Pub. L. 102–170). The House Appropriations Committee Report and Senate Appropriations Committee Report indicated that Section 1110 (Social Services Research) of the Social Security Act was the mechanism for implementing this prospective demonstration program. See H.R. Rep. No. 121, 102d Cong., 1st Sess. 141(1991); S. Rep. No. 104, 102d Cong., 1st Sess. 194(1991). Both committee reports directed that such demonstration programs be modeled after the family support centers described in title VII of the Stewart B. McKinney Homeless Assistance Act (the McKinney Act). See 42 U.S.C. 11481–11489.

OSC will implement this demonstration program as a component of the Department's strategy for addressing family homelessness in a manner consistent with the delivery system concepts envisioned in the McKinney Act Family Support Center Program. The Department's overall strategy is to support activities to stabilize both homeless families in temporary or transitional shelters and those families who are at imminent risk of becoming homeless and to provide comprehensive support services integrated with housing assistance to maximize the ability of those families to live self-sufficiently in permanent housing. The Homeless Families Support Services Demonstration program will establish a coordinating mechanism for case-managed support services essential to these families' efforts to achieve the highest level of self sufficiency possible. The primary purpose of this demonstration program is to provide the "glue" between neighborhood/community efforts to help homeless families and a system of private and public entities that need to be more responsive to homeless families and those who are at imminent risk of becoming homeless. The support systems developed, however, would be available for all every low-income families and we would encourage such comprehensive systems. The project will arrange for and organize the provision of services by State agencies, relevant public agencies, non-profit service agencies and private industry and voluntary sector organizations. Where necessary, a limited portion of the grants funds (not to exceed 25%) may be used to provide direct services. Eligible entities will be non-profit public or private organizations, or units of State and local government, which act as the lead community entity to coordinate and consolidate services to the homeless and at risk target populations specified in this announcement.

It is probable that applicants applying for Homeless Family Support Services program funds will also apply for housing assistance funds. Since the Homeless Families Support Services Demonstration program also targets assistance to those homeless families who are ready to move to permanent housing, the program may also qualify for SAFAH funds. With or without a SAFAH program, Homeless Families Support Services Demonstration program applicants must demonstrate that a system is in place which provides comprehensive services to homeless families and those at imminent risk of becoming homeless.

This program is intended to encourage new or expanded integration initiatives that generate State and local public and private partnerships. Applicants should demonstrate a commitment to pooling resources, providing a set of core outreach, intake, and stabilization services for homeless and at risk families with children, and establishing arrangements for longer-term support services essential to low-income family efforts to achieve self-sufficiency.

For demonstration sites, HHS will train project case workers in eligibility requirements and program access for Supplemental Security Income (SSI) and provide information and technical support concerning the use of Medicaid and federal discretionary resources.

The Department expects applications will include a similar commitment by the applicants' States to provide technical assistance and optional services, such as all Medicaid services for children, and improve access to AFDC (Aid to Families with Dependent Children), Medicaid, Food Stamps, and SSI. The program will demonstrate the efficacy of community oriented collaborative service arrangements, or other approaches providing case-managed, comprehensive, housing and supportive services to homeless and at risk families. Review criteria will favor applications proposing innovative, cost-effective programs that leverage public and private funds for more accessible services to homeless and at risk families. The Homeless Families Support Services Demonstration program is soliciting applications for project periods up to three years. Awards, on a

INTRODUCTION: This announcement is one of two planned 1992 notices of Federal fund availability for assistance to test integrated approaches to reducing homelessness among families with children. The Department of Health and Human Services (DHHS) seeks to coordinate grant made under this announcement with grants to be made later under the Department of Housing and Urban Development's (HUD) upcoming program of Supplemental Assistance for Facilities to Assist the Homeless. (SAFAH)

The SAFAH program provides grants to States, in collaboration with local government units and private nonprofit organizations, to assist families with children who are ready to leave transitional, or other homeless family shelters with support services, to locate, secure, and move to permanent housing through such activities as case management, housing search and housing counseling, first and last month's rent, and moving expenses.

The intent of the Homeless Families Support Services Demonstration Program is to support projects that develop and implement comprehensive and integrated systems of support services to prevent homelessness among a high risk targeted population through the provision of intensive and comprehensive supportive services. The program aims to enhance systems for addressing comprehensively the physical, social and educational development of low-income families who are homeless, were previously homeless and currently residing in governmentally subsidized housing, or families who are at imminent risk of becoming homeless. (Families at "imminent risk" of homelessness include those living in precarious housing situations, e.g., doubled up with another family; in unstable or inadequate housing; or those facing eviction or loss of housing.

competitive basis, will be for one-year budget period, although project periods may be for three years. Applications for continuation grants funded under these awards beyond the one-year budget but within the three-year project period will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and determination that this would be in the best interest of the government. The first 60 days of the grant period may be used to complete planning necessary to finalize collaborative arrangements and activities among constituent agencies and providers.

Approximately $5,500,000 is available to support first year grant awards under this program announcement. An estimated 25 to 30 grants will be awarded at a maximum of $250,000 per grant.

CLOSING DATE: The closing date for receipt of applications is August 31, 1992.

ADDRESSES: Address applications to: U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 6th Floor OFM/DDG, 370 L'Enfant Promenade SW., Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Joseph R. Carroll or Sheldon Shalit, Office of Community Services, Homeless Grant Programs, (202) 401–9354 or (202) 401–4807.

SUPPLEMENTARY INFORMATION:

Part I: General Information

A. Program Purpose

The Homeless Families Support Services Demonstration Program is an integral part of an HHS/HUD initiative to encourage and test integrated approaches to reducing homelessness among families with children. The purpose of this demonstration is to support projects that develop and implement comprehensive and integrated systems of support services for homeless and at risk families. The Homeless Families Support Services Demonstration Program encourages and subsidizes the design and establishment of community-based organizational entities that will develop and build support services linkages. These projects are directed at temporarily housed homeless families and those at imminent risk of homelessness to provide them with more accessible, integrated mainstream income and support services.

For the community, the program should tie together support service providers; organize a means to reduce duplication of these efforts; create a centralized locus for client access to various mainstream service providers; and, reduce the administrative and programmatic burden eventually placed upon the client.

For the client population, the program will seek to prevent further homelessness; enhance the living conditions in low income housing; improve the physical, social and educational development of low income at risk families and children; increase the potential for independence and self-sufficiency; increase literacy levels and basic employment skills.

Projects may fund case management activities and, to a limited extent (up to 25 percent), fill services gaps where it is demonstrated that such services are not available to these target populations.

B. Background

Population Characteristics

Studies suggest that at least 25 percent of all homeless, or about 150,000 people, on any given night, are members of homeless families. The number of homeless families with children has grown due to spillover of precariously housed low-income families, and a combination of a lack of affordable housing in some areas with low-paying jobs or low entitlement benefits.

Most often, homeless families are very low-income, multi-problem families in crisis, and consist of mother with 2–3 young children, most of whom are of preschool age. Also, half are victims of domestic violence, and almost 90 percent are single parent, urban families, disproportionally minority. Families often have short but multiple shelter stays, show increased rates of substance abuse and have a high incidence of health problems. Parents often leave children with relatives or foster parents before entering shelters.

The most in-depth look at homeless and at risk family programs around the country found that even city programs that best serve this population are characterized by weak linkages between service and housing agencies, a lack of follow-up with families relocated into permanent housing and failure to provide preventive services. Recent studies of family homelessness in the Bay Area of California and New York City indicate that, respectively, 44 and 50 percent of homeless families had been homeless before. These findings clearly point to the need for follow-up and service linkage as a critical prevention measure to eliminate recurring shelter stays.

Departmental Activities

In January of 1990, the Secretaries of the Departments of Health and Human Services and Housing and Urban Development signed a Memorandum of Understanding (MOU) committing the Departments to develop and implement cooperative efforts to help low-income families and individuals move towards economic independence and self-reliance. One of the initiatives resulting from this MOU was the creation of an interagency working group on homeless families with children to design strategies that encourage the development of accessible support service and housing assistance systems to prevent homeless families with children from becoming homeless.

The Homeless Families with Children Workgroup initially took steps to improve its understanding of the needs of homeless families and to learn how to best provide services to meet identified needs. In 1991, HHS funded a study of five cities making a concerted effort to meet the needs of homeless families with children. The study, Homeless Families With Children: Programmatic Responses of Five Communities by Macro Systems, Inc., found that while the shelter system for homeless families has improved considerably in recent years, there is insufficient coordination among the different service programs, especially those administered by public agencies, needed by this population and there is little follow-up with families moving into permanent housing to ensure sustained links to mainstream support services. The report points out the need for communities to develop "innovative housing/support services collaborations" and concludes that "improvements to the mainstream service system will do more to alleviate homelessness than targeting additional funds at the homeless service system."

A second study, Families on the Move: Breaking the Cycle of Homelessness by The Edna McConnell Clark Foundation, revealed similar findings. This study recommends short-term, intensive case management in conjunction with the reform of service systems that affect the lives of homeless families and enhanced local-level planning and coordination. The report highlights "the importance of identifying and revising intra-and interagency policies that hamper service delivery or inadvertently undermine the resettlement process."

As a result of these, and other assessments, the Homeless Families with Children Work Group was expanded, on Secretary Sullivan's

recommendation, to include other members of the Interagency Council on the Homeless. It was also charged with identifying specific actions and recommendations to address homelessness among families with children. Early in 1992, the Homeless Families with Children Work Group recommended six major focus areas to the Council as follows:

- Enhance support service integration through activities to expand and strengthen ongoing efforts to integrate services in local communities.
- Improve access to support services in child development, child welfare, child health, substance abuse treatment, and other family support services.
- Improve access to entitlement and related mainstream programs such as AFDC, SSI, Medicaid, and Food Stamps.
- Increase available housing from existing housing stock, improve access to public and assisted housing, and link housing and support services.
- Increase awareness of problems of homeless families including practices that work to reduce family homelessness and keep families together.
- Improve help for low-income families at risk of homelessness to achieve and maintain self-sufficient living.

This announcement, issued in consultation with HUD, is intended to respond to the Homeless Families with Children Work Group's recommendation to support coordinated efforts to integrate services and housing in order to reduce initial homelessness and subsequent episodes of homelessness.

C. Program Services

The expected size of the awards necessarily places considerable constraints on the ability of projects to pay for or actually provide services. The Department has determined that the most prudent use of project grant funds would be to support or supplement ongoing efforts to design, develop and implement projects that demonstrate how to leverage an array of supportive services that address the complex needs of homeless families as well as those at imminent risk of homelessness.

The project awards will primarily allow for the design, development and establishment of an organizational infrastructure that can provide an array of comprehensive and intensive case-managed social services to homeless families and those at imminent risk of homelessness. Approaches are sought that emphasize a coordinated effort by a range of community-oriented entities that consolidate resources to a targeted population in need.

Projects may fund case management activities and, to a limited extent (up to 25 percent), fill service gaps where it is demonstrated that such services are not available to these target populations.

Applicants must provide assurances that minimal core services (such as outreach; intake screening and assessment; family case management; emergency health care; family crisis and domestic violence counseling; child protective services; and assistance in obtaining permanent housing) will be made available to the target population.

In order to carry out the assurances noted above, it will be necessary for projects to establish working arrangements with housing, human service and education agencies accessing local, State and federal programs. These include safe temporary shelter; child care; health care, including mental health and substance abuse treatment; employment assistance; job training; early childhood development and parenting programs; education and training and other programs necessary to achieve stability and self-sufficiency.

Projects may be a homeless family component of an existing family oriented program for low income, at risk families or within a community-wide system targeted at serving the homeless and/or at risk families.

D. Program Beneficiaries

Projects proposed for funding under this announcement must directly benefit homeless families and low-income families at imminent risk of becoming homeless whose incomes are up to 125% of the DHHS poverty income guidelines as defined in the most recent Annual Revision of Poverty Income Guidelines published by DHHS.

Attachment A to this announcement is an excerpt from the guidelines currently in effect. Annual revisions of these guidelines are normally published in February or early March of each year. These revised guidelines may be obtained at public libraries, Congressional offices, or by writing the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

No other government agency or privately defined poverty guidelines are applicable for the determination of low-income eligibility for this OCS program.

E. Eligible Applicants

Eligible entities must be non-profit public or private organizations or units of State and local government which act as the lead community entity to coordinate and consolidate services to the homeless target populations specified in this announcement.

The following are types of entities eligible to apply for grants under this announcement:

—Public or private nonprofit organizations specializing in provision of social services
—Any community-based organization of demonstrated effectiveness as a Community Action Agency under section 210 of the Economic Opportunity Act of 1984 (42 U.S.C. 2790)
—A Community development corporation
—Public housing agencies as defined in section 3(b)(6) of the United States Housing Act of 1937 (42 U.S.C. 1437a(6))
—State Housing Finance Agencies
—Head Start agencies
—Local education agencies
—An institution of higher education
—A public hospital
—A private industry council as defined under section 102(a) of the Job Training Partnership Act (JPTA) (29 U.S.C. 1512)
—A community health center
—State and local agencies

More than one eligible entity in a State may apply, but separate applications must be submitted.

The eligible entity will have or be prepared to establish agreements with community services providers that respond to the assessed needs of the client populations. The program seeks to support eligible entities with written agreements either in place at the time of application or able to be in place within 60 days of grant award. While it is preferable that the eligible entity be physically located on or near the place(s) where its target population lives, it is conceivable that its administration and services may be off-site.

The grantee must arrange for and organize the provision of services by other entities such as State agencies, relevant public agencies, non-profit service agencies and private industry and voluntary sector organizations.

Applications for this announcement must indicate substantive State involvement in the form of commitments to provide staff and other resources and to explore ways to streamline State administrative procedures for services in project sites. Specifically, States would be expected to provide staff to provide technical assistance, mandatory and optional services (such as all allowable Medicaid services for children), and improve access to the AFDC, Medicaid, Food Stamp, and SSI programs.

Eligible applicants already engaged in demonstrating consolidation and coordination of services, e.g., SAFAH grantees, Robert Wood Johnson Homeless Family Projects, Healthy Start sites, Health Care for the Homeless Projects etc. may be community lead entities and will receive special attention since these sites are expected to have ongoing cooperative agreements in place and should be advanced in their activities to serve the homeless. Applicants applying for combined projects should be prepared to integrate its current activities within the scope of the application and the appropriate role of the lead agency designated in the application.

F. Project Period

This announcement is soliciting applications for project periods up to three years. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under these awards beyond the one-year budget period but within the three year project period will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and determination that this would be in the best interest of the government.

Part II: Description of the Homeless Families Support Services Demonstration Program

A. Grantee Responsibilities

The Homeless Families Support Services Demonstration Program is intended to prevent the occurrence of homelessness by: 1) creating a centralized point for access to various service providers and the provision of intensive and comprehensive supportive services; 2) joining the case management functions offered by each of the service providers to provide for coordinated family case management; 3) tying together service providers and organizing a means to reduce duplication of effort in response to their potentially or previously homeless clientele; and, 4) reducing the administrative and programmatic burden eventually placed upon the client population.

To accomplish these goals, grantees are expected to have the capacity to coordinate, link and otherwise organize a cadre of existing providers. A Homeless Families Support Services Demonstration program should concentrate on coordination with existing Federally sponsored social services and housing programs such as the Community Services Block Grant (CSBG), AFDC/JOBS program and the SAFAH program.

The objectives of the grantees are expected to be: The prevention of homelessness among target group participants; the enhancement of the living conditions in low income housing; the improvement of the physical, social and educational development of low income children and families; the achievement of progress towards increased potential for independence and self-sufficiency among families served; an increase in literacy levels and basic employment skills of individuals served; and, the development of a clearly defined coordinating body that can arrange for the delivery of appropriate integrated services to the target population.

Each Homeless Families Support Services Demonstration project must include a comprehensive program to serve a targeted low-income population; coordinate and integrate activities with appropriate service providing agencies; expand, coordinate or contract for resources and mechanisms to provide services; provide overall case management services which coordinate all respective case management activities through a team approach; and, participate in an ongoing evaluation mechanism to address process and outcome issues as they relate to the efficacy and efficiency of the demonstration program. Additionally, each grantee's program must establish and provide necessary staff support for an advisory body representing the community, providers and target population including, to the extent possible, a member of a homeless or previously homeless family.

A program's intensive and comprehensive services may include any/all of the following: health and mental health screening; nutritional services; family crisis and domestic violence counseling; drug and alcohol counseling; child development programs; child care; job training and education; parenting classes; programs for young adults and teens; other programs necessary to achieve stability and self-sufficiency in preventing homelessness.

This announcement prescribes no single model for program organization, staffing or service delivery. Instead, it invites applicants to propose structures and mechanisms for delivering services that are unique to the community or neighborhood that it serves.

The operating and organizational structure of the program should include a range of agreements with community services providers that responds to the assessed needs of the client populations. These agreements are most essential to the success of the project. The program seeks to attract prospective grantees with written agreements either in place at the time of application or able to be in place within 60 days of the grant award. This is to assure an accelerated provision of services to the clients. In those cases where additional services are to be added to existing service patterns, the grantee will provide timetables for the inclusion of these added services. Prospective grantees will have a combination of existing and potential agreements and affiliations for services. It is recommended that the program include affiliations with entities that support and enlarge its service providing role. This may include affiliations with the academic community, such as schools of social work, that may provide a source of staff resources, student/intern placements and a site for scholastic investigation and research.

Most importantly, applicants must be closely identified with and located within circumscribed geographical boundaries that coincide with the location and residences of the target population. This catchment areas concept should be reflected in the physical location of the project which should be readily accessible to the target population. This in no way limits the possible configurations for project locus. Instead, it permits a range of possibilities that is consistent with the residential pattern of the target population. While the project is most likely to be physically located in or near the place(s) where its target population lives, it is conceivable that its administrative functions may be off-site or co-located with parent agencies.

Grantees are expected to cooperate with Federal evaluation contractor(s) that will be funded by the Department. Evaluation contractors will conduct assessments of program and service delivery models. Such cooperation will involve periodically furnishing needed process and outcome oriented data as required by the contractors and allowing them access to information that has not otherwise been provided by the grantee.

A percentage of non-Federal share, either in cash and/or in-kind contributions, secured from non-Federal sources is not required. The lack of a requirement is not intended in any way to discourage the use of applicant or third party financial and resource support. As indicated in the review criteria, applicants with written, agreed-upon commitments will score higher than those with proposed or envisioned

commitments, or no non-Federal participation. Further, it should be noted that as the project matures over the project life, there is an implicit encouragement of the assumption of costs of the project by the applicant and the constituent community participants.

The activities funded under this program announcement must be in addition to, and not in substitution for, activities previously carried on without Federal assistance. Also, funds or other resources currently devoted to activities designed to meet the needs of the poor within a community, area, or State must not be reduced.

B. Grant Proposals

To ensure that applicants with the most potential for demonstrating innovative ways to accomplish the goals of the program and establishing new, or expanding existing mechanisms for providing services to the target populations, applicants for grants shall develop their proposals in accordance with the factors described below:

Understanding

1. Identify the population and geographic location to be served by the project and how homeless and at risk families will be chosen for enrollment. Provide assurances in the form of demographic data that there are sufficient numbers of eligible families residing in the designated area to be served and that a sufficient number of these families will be enrolled in the program.

2. Provide assurances and describe how core and other services to be provided are closely related to the assessed needs of the target populations and that the needs to be addressed are important for successful prevention of homelessness and consistent with the objectives of this program.

Comprehensiveness

3. Identify and describe where and how the project will provide directly or arrange for intensive and comprehensive services. Furnish information on which services are to be provided on site and those of which are to be provided in off site locations. Applicant should clearly differentiate between those services which will be provided through the use of grant funds and those services which are committed to the project without use of grant funds.

4. Identify referral providers, agencies and organizations with which the applicant agency will coordinate in order to carry out the objectives of the grant. This necessarily includes those services which are committed to the project without cost to the grant.

5. Furnish relevant agreements and letters of commitment indicating which services and the level of effort (cost) that will be provided to project participants by those providers agencies and/or organizations. Applicants should describe current or previous relationships with these agencies and/or organizations.

Leveraging

6. Describe the extent to which the applicant, through its project, will coordinate and create linkages to existing service providers or new mechanisms for maintaining these organizational and service ties. This refers to the amounts of funds and activities including direct client services which are generated through the grant mechanism, but not necessarily paid for by grant funds.

Cost Effectiveness

7. Identify how the project will be administered and managed. Submit a first year timetable for implementing activities and enrolling families as well as a more general timetable for years 2 and 3. Provide a description of the applicant's previous program, administrative and fiscal experience in accomplishing goals and objectives similar to those outlined in this program. Provide information on experience in coordinating activities with State and local public or non-profit agencies and organizations. Provide resumes detailing the relevant education, training and experience of the key project staff, their responsibilities in connection with and the time they will be committing to this project. Applicants should furnish any information which illustrates their skills and capacity to accomplish the project goals and objectives in a timely manner. Every effort should be made to include on staff persons who are homeless or previously homeless.

8. Identify and describe in detail the proposed first year budget for the project and the next two-year projections and assure that the proposed costs are reasonable in view of the activities to be pursued. The first 60 days of the grant period may be used to complete planning necessary to finalizing collaborative arrangements and activities among participating agencies.

Expected Results

9. Identify, in measurable terms, expected outcomes for participating families and for systems change.

Part III: Criteria for Review and Evaluation of Applications

Applications will be reviewed and evaluated to assess the applicant's ability to carry out the project described under part II of this announcement, against the following criteria:

1. Understanding of Objectives and Need for Demonstrations (10 points)

The extent to which the application reflects a good understanding of the purpose of the program, the need for experimentation in this area, the problems, barriers and impediments that prevent the efficient and effective delivery of an array of intensive and comprehensive services to stabilize homeless and at risk families and prevent them experiencing initial or recurring episodes of homelessness.

Information provided in response to part II, section B, Numbers 1 and 2 of this announcement, will be used to review and evaluate applicants on the above criterion.

2. Approach (5 points)

The soundness and feasibility of the content, methods and organization of the project to specified goals and objectives—The extent to which the application outlines a sound and workable plan of action and details how the proposed work will be accomplished; gives acceptable reasons for taking this approach as opposed to others; provides for a range of intensive and comprehensive supportive services and gives projections of the accomplishments to be achieved. Application describes the relationship between this project and other work planned, anticipated or underway with Federal assistance. Application lists the activities to be carried out in chronological order and shows a reasonable schedule of accomplishments and target dates in detail for the first year and more generally for the remaining two years.

Information provided in response to part II, section B, Numbers 2, 3, 4, 5, and 6 of this announcement, will be used to review and evaluate applicants on the above criterion.

3. Innovation (15 points)

The application identifies creative ways to identify and remove access barriers, and make use of entitlement and related mainstream programs such as AFDC, Medicaid, Supplemental Food Programs for Women, Infants and Children and SSI to stabilize homeless and at risk families, and to state General Assistance to foster family reunification and link them to longer-term support

services, education, and employment training opportunities. The application identifies innovative targeting to homeless families of block grant and other sources of funding including SSBG, CDBG, CSBG, ADMS (Alcohol, Drug Abuse and Mental Health Services) and JTPA (Job Training Partnership Act). Also, application describes any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements.

4. Comprehensiveness (25 points)

Application demonstrates breadth and depth in the strength of the consortia involved in the project. Application describes project coordination and linkages with organizations, agencies, and key groups as well as the activities and nature of their effort or contribution. Application includes the current or anticipated commitments stating kinds of service and level of effort from service providing organizations or agencies. Linkages established with other local systems-oriented or integration initiatives should include, where applicable, HHS-funded programs such as Family Service Centers and Child Support Centers; HUD-funded programs such as Family Self-Sufficiency and the joint HUD-Robert Wood Johnson Foundation Homeless Families programs. Expected State commitments include efforts to expedite AFDC, Medicaid, WIC and Food Stamp eligibility, and to improve access to these programs; and to target other State funded services to these sites served by the proposed program. Finally, partnerships established with various private (e.g. foundations, volunteer efforts) and key public programs are included.

Note: Applicants with written, agreed upon commitments will score higher than those with proposed or envisioned commitments.

Information provided in response to part II, section A and section B, numbers 2, 3, 4, 5, 6 and 7 of this announcement, will be used to review and evaluate applicants on the above criterion.

5. Staff Background and Experience (10 points)

The extent to which the resumes of the program director and key project staff (including names, addresses, training, background and other qualifying experience) demonstrate the ability to effectively and efficiently administer a project of this size, complexity and scope. Staff background and experience should also reflect the ability to use and coordinate activities with other agencies for the delivery of intensive and comprehensive support services.

Information provided in response to part II, section B, number 7 of this announcement, will be used to review and evaluate applicants on the above criterion.

6. Leveraging and Cost Effectiveness (20 points)

The extent to which the applicant is able to pool or consolidate funds from other programs into this effort. The extent to which the project's costs are reasonable in view of the activities to be carried out and the anticipated outcomes. Applicants are encouraged, in the later phases of this project to seek committed funds to support this program beyond the term of this grant.

Note: Applications with committed funds and services and jointly operated programs will be awarded higher scores on this element.

Information provided in response to part II, section B, numbers 4, 7 and 8 of this announcement, will be used to review and evaluate applicants on the above criterion.

7. Expected Results (15 points)

The extent to which measurable expected results for participating families are identified.

Part IV: The Application Process

A. Availability of Forms

This announcement with attachments contains standard forms necessary to apply for awards under this program. These forms may be photocopied for the application.

Copies of the **Federal Register** containing this announcement are available at most local libraries and Congressional District Offices for reproduction. If copies are not available at these sources, they may be obtained by writing or telephoning the office listed under the section entitled "**FOR FURTHER INFORMATION**" at the beginning of the announcement.

Agencies and organizations interested in applying for demonstration grant funds should submit an application on the Standard Form 424 included in this announcement.

Each application must be executed by an individual authorized to act on behalf of the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award. Applications must be prepared in accordance with the guidance in this announcement and the instructions in the attached applications package.

B. Application Submission

Applications must be submitted by the closing date. Refer to "**CLOSING DATE**" at the beginning of this document for the specific date.

1. *Deadlines*

Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date at the ACF Office of Financial Management, Division of Discretionary Grants, 6th Floor OFM/DDG, 370 L'Enfant Promenade, SW., Washington, DC 20447, or

b. Sent on or before the deadline date and received by the granting agency in time for them to be considered during the competitive review and evaluation process under Chapter 1–62 of the Health and Human Services Grants Administration Manual. (Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks are not acceptable as proof as timely mailing.)

2. Applications Submitted by Other Means

Applications which are not submitted in accordance with the above criteria shall be considered as meeting the deadline only if they are physically received before the close of business on or before the deadline date. Hand delivered applications will be accepted at the ACF Office of Financial Management, Division of Discretionary Grants, 6th Floor OFM/DDG, 901 D Street, SW., Washington, DC during the normal working hours of 8:30 a.m. to 5:00 p.m., Monday through Friday.

3. Late Applications

Applications which do not meet one of these criteria are considered late applications. The ACF Division of Discretionary Grants will notify each late applicant that its application will not be considered in this competition.

4. Extension of Deadline

The ACF Office of Community Services may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc. or when there is a disruption of the mails. However, if the Office of Community Services does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

Applications once submitted are considered final and no additional materials will be accepted.

One signed original application and two copies should be submitted.

C. Application Consideration

All applications that meet the published deadline for submission will be screened to determine completeness and conformity to the requirements of this announcement. Only those applications meeting the following requirements will be reviewed and evaluated competitively. Applications meeting the screening requirements will be reviewed competitively and scored against the criteria outlined in Part III of this announcement. The review will be conducted in Washington, DC. Such applications will be referred to Federal and non-Federal reviewers knowledgeable about programs dealing with housing, community action and supportive services. Reviewers will provide a numerical score and explanatory comments based solely on responsiveness to program requirements and evaluation criteria published in this announcement. Reviewers' scores weigh heavily in funding decisions but may not be the only factor considered. Applications generally will be considered in order of the average scores assigned by reviewers. Highly ranked applications are not guaranteed funding as other factors are considered, including: comments of reviewers and government officials; staff evaluation and input; geographic distribution; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowances on previous OCS or other Federal agency grants.

OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to ascertain the applicant's performance record.

The results of the competitive review will be taken into consideration by the Director of the Office of Community Services, who will recommend projects to be funded to the Assistant Secretary for Children and Families. The Assistant Secretary for Children and Families will make the final selections. Consideration will be given to ensuring that a variety of geographic areas are served, that projects with different auspices are selected and that various project designs and models are represented.

Successful applicants will be notified through a Notice of Grant Award. The award will state the amount of Federal funds awarded, the terms and conditions of the grant award, the effective date of the grant, the total project period and the budget period.

D. Intergovernmental Review

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alaska, Idaho, Kansas, Louisiana, Minnesota, Nebraska, Pennsylvania, Oregon, Virginia, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these eleven jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants must submit any required material to the SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions, so that the ACF can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline date to comment on proposed new or competing continuation awards. However, because applications are due 30 days from the date of this announcement and the grants are to be awarded in September, there is no sufficient time to allow for a complete SPOC comment period. Therefore, we have reduced the comment period to 30 days.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule under 45 CFR 100.10.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 6th Floor, 370 L'Enfant Promenade SW., Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included as Attachment G of this announcement.

Part V: Instructions for Completing Applications

(Approved by the Office of Management and Budget under Control Number 0970–0062.)

The standard forms attached to this announcement shall be used when submitting applications for all funds under this announcement. It is suggested that you reproduce single-sided copies of the SF–424, SF–424A, and SF–424B, and type your application on the copies. If an item on the SF–424 does not appear to be related or relevant to the assistance requested, write "NA" for "Not Applicable". If your submission on an item needs further explanation or is not directly responsive to the item requested, please explain or provide commentary in Item Number 23. This item may be extended by use of an additional sheet of paper, appropriately identified.

Prepare your application in accordance with instructions provided on the forms as well as with the OCS specific instructions set forth below:

A. SF–424—"Application for Federal Assistance"

Item 1

For the purposes of this announcement, all projects are considered "Applications"; there are no "Pre-Applications" and no Construction projects. Accordingly, check the "Non-Construction" box.

Item 2

"Date Submitted" and "Applicant Identifier"—Date application is submitted to ACF and applicant's own internal control number, if applicable.

Item 3

"Date received by State"—N/A.

Item 4

"Date received by Federal Agency"—Leave blank.

Item 5 and 6

The legal name of the applicant must match that listed as corresponding to the Employer Identification Number. Where the applicant is a previous Department of Health and Human Services grantee, enter the Central Registry System Employee Identification Number (CRS/EIN) and the Payment Identifying Number, if one has been assigned, in the block entitled "Federal Identifier" located at the top right hand corner of the form.

Item 7

Mark the appropriate box. If the applicant is a non-profit corporation, enter "N" in the box and specify "non-profit corporation" in the space marked "other". Proof of non-profit status, such as IRS determination, Articles of Incorporation, or By-Laws, must be included as an appendix to the project narrative.

Item 8

"Type of Application"—Please indicate the type of application.

Item 9

Enter "Office of Community Services, Administration for Children and families, DHHS"

Item 10

The Catalog of Federal Domestic Assistance Number for OCS programs covered under this announcement is 93.040. The title is "Homeless Families Support Services Demonstration Program"

Item 11

"Descriptive Title of Applicant's Project"—Enter the project title (a brief descriptive title) and the following letter designation must be used: "XY".

Item 12

"Areas Affected by Project"—List only the largest unit or units affected, such as State, county or city.

Item 13

"Proposed Project"—Enter the desirable starting date for the project and the proposed completion date. Projects may not exceed the maximum duration specified.

Item 14

"Congressional District of Applicant/Project"—Enter the number of the Congressional District where the applicant's principal office is located and the number(s) of the Congressional district(s) where the project will be located.

B. SF–424A—"Budget Information-Non-Construction Programs"

See Instructions accompanying this form as well as the instructions set forth below:

Sections A, B, C, and D should reflect budget estimates for the first year of the project. Section E should present the estimates for Federal assistance for the second and third year of the project. The notice of grant award will reflect the amounts estimated for the second and third years of the project, subject to the availability of funds. Grant awardees will be required to submit a "continuation application" for each of the second and third years of the project.

In completing these sections, the "Federal Funds" budget entries should separately identify all Federal funds involved in the project, "Non-Federal" will include mobilized funds from all other sources—applicant, State, and other.

Section A—Budget Summary

Line 1: Column (a): Enter "OCS Homeless Families Support Services Demonstration Program";

Column (b): Enter 93.040.

Columns (c) and (d): Not Applicable for new applications.

Columns (e), (f) and (g): enter the appropriate amounts needed to support the project for the first budget period (Maximum $250,000).

Lines 2–4: Enter same information as above for any other Federal funds proposed to be used in the project. (Please explain status of funds; e.g., approved or requested, etc.)

Section B—Budget Categories

Allocability of costs are governed by applicable cost principles set forth in 45 CFR parts 74 (non-governmental) and 92 (governmental). A detailed itemized budget with a separate budget justification for each major item should be included, as indicated below.

Object Class Categories—Line 6: Enter the total amount of Federal funds required by the Object Class Categories of this section. Justifications and explanations should be presented within the application.

Personnel—Line 6a. Enter the estimated total costs of salaries and wages.

Justification: Identify the principal investigator or project director, if known. Specify by title or name the percentage of time allocated the project, the individual annual salaries, and the cost to the project of the organization's staff who will be working on the project.

Fringe Benefits—Line 6b: Enter the estimated total costs of fringe benefits unless treated as part of an approved indirect cost rate which is entered on line 6j.

Justification: Provide a breakdown of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, taxes, etc.

Travel—Line 6c: Enter total costs of all travel by employees of the project. Do not enter costs for consultant's travel.

Justification: Include the total number of traveler(s), total number of trips, destinations, number of days, transportation costs and subsistence allowances. Travel costs to attend one national workshop in Washington, DC by the project director should be included.

Equipment—Line 6d: Enter the estimated total costs of all non-expendable personal property to be acquired by the project. "Non-expendable personal property" means tangible personal property having a useful life of more than two years and acquisition cost per unit of $500 for non-profit organizations and a useful life of one year and an acquisition cost per unit of $5,000 or more for public organizations.

Justification: Only equipment required to conduct the project may be purchased with Federal funds. The applicant organization or its subgrantees must not have such equipment, or a reasonable facsimile, available for use in the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

Supplies—Line 6e: Enter the estimated total costs of all tangible personal property (surplus) other than that included on line 6d.

Justification: Specify general categories of supplies and their costs.

Contractual—Line 6f: Enter the total costs of all contracts: (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and (2) contracts with secondary recipient organizations including delegate agencies and specific project(s) or business to be financed by the applicant.

Justification: Attach a list of contractors, indicating the names of the organizations, the purposes of the contracts, the estimated dollar amounts, and selection process of the awards as part of the budget justification. Also provide back-up documentation identifying the name of contractor, purpose of contract, and major cost elements.

Note: Subgrants and Pass-through Activity: Whenever the applicant/grantee intends to delegate part of the program to another agency, thus entering into an interagency agreement, the applicant/grantee must submit Sections A and B of this Form SF–424A, completed for each delegate agency by agency title, along with the required supporting information referenced in the applicable instructions. The total costs of all such agencies will be part of the amount shown on Line 6f. Provide draft Request for Proposal in accordance with 45 CFR part 74, appendix H.

Applicants who anticipate procurements that will exceed $5,000

(non-governmental entities) or $25,000 (governmental entities) and are requesting an award without competition should include a sole source justification in the proposal which at a minimum should include the basis for contractor's selection, justification for lack of competition when competitive bids or offers are not obtained and basis for award cost or price.

For successful applicants, the Notice of Grant Award may cite under Remarks, item 18, approval of this action. Also include any contracts with organizations for the provision of technical assistance.

Construction—Line 6g: New construction costs are not permitted under this program. This line may be used for renovation costs.

Other—Line 6h: Enter the estimated total of all other costs. Such costs, where applicable, may include, but are not limited to, insurance, food, medical and dental costs (noncontractual), space and equipment rentals, printing and publication, computer use, training costs including tuition, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Indirect Charges—Line 6j: Enter the total amount of indirect costs. This line generally should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services or other Federal agency. With the exception of local governments, applicants should enclose a copy of the current rate agreement if it was negotiated with a Federal agency other than the Department of Health and Human Services. If the applicant organization is renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the pertinent DHHS Guide for Establishing Indirect Cost Rates, and submit it to the appropriate DHHS Regional Office.

It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not be also charged as direct costs to the grant.

Total—Line 6k: Enter total amounts of lines 6i and 6j.

Program Income—Line 7: Enter the estimated amount of income, if any, expected to be generated from this project. Separately show expected program income generated from OCS support and income generated from other mobilized funds. Do not add or subtract this amount from the budget total. Show the nature and source of income in the program narrative statement.

Justification: Describe the nature, source and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources

This section is to record the amounts of "non-Federal" resources that will be used to support the project. Provide a brief explanation, on a separate sheet, showing the type of contribution, broken out by Object Class Category, and whether it is cash or third-party in-kind. The firm commitment of these funds should be documented and submitted with the application in order to be given full credit in the review criteria.

Justification: Describe all non-Federal resources including third-party, cash and/or in-kind contributions. Except in unusual situations, this documentation should be in the form of letters of commitment from the organization(s)/individuals from which funds will be received.

Grant Program—Line 8: Grant Program: Column (a): Enter the project title.

Column (b): Enter the amount of cash or donations to be made by the applicant.

Column (c): Enter the other contribution.

Column (d): Enter the amount of cash and third-party, in-kind contributions to be made from all other sources.

Column (e): Enter the total of columns (b), (c), and (d).

Grant Program—Lines 9, 10, and 11 should be left blank.

Grant Program—Line 12: Carry the total of each column of Line 8, (b) through (e). The amount in Column (e) should be equal to the amount on Section A, Line 5, column (f).

Section D—Forecasted Cash Needs

Federal—Line 13: Enter the amount of Federal (OCS) cash needed for this grant, by quarter, during the first 12-month budget period.

Non-Federal—Line 14: Enter the amount of cash from all other sources needed by quarter during the first year.

Total—Line 15: Enter the total of Lines 13 and 14.

Section E—Budget Estimates of Federal Funds Needed for Balance of Project

Applicants for three year projects will complete line 16, (a), (b) and (c).

Columns (a) and (b) refer respectively to the second and third years of the project.

Section F—Other Budget Information

Direct Charges—Line 21. Use this space and continuation sheets as necessary to fully explain and justify the major items included in the budget categories shown in Section B. Include sufficient detail to facilitate determination of allowability, relevance to the project, and cost benefits. Particular attention must be given to the explanation of any requested direct cost budget item which requires explicit approval by the Federal agency. Budget items which require identification and justification shall include, but not be limited to, the following:

A. Salary amounts and percentage of time worked for those key individuals who are identified in the project narrative;

B. Any foreign travel;

C. A list of all equipment and estimated cost of each item to be purchased wholly or in part with grant funds which meet the definition of nonexpendable personal property provided on Line 6d, Section B. Need for equipment must be supported in program narrative;

D. Contractual: major items or groups of smaller items; and

E. Other: group into major categories all costs for consultants, local transportation, space, rental, training allowances, staff training, computer equipment, etc. Provide a complete breakdown of all costs that make up this category.

Indirect Charges—Line 22. Enter the type of HHS or other Federal agency approved indirect cost rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied and the total indirect expense. Also, enter the date the rate was approved and attach a copy of the rate agreement.

Remarks—Line 23. Provide any other explanations and continuation sheets required or deemed necessary to justify or explain the budget information.

C. SF–424B—"Assurances-Non-Construction"

All applicants must fill out, sign, date and return the "Assurances" (see Attachment D) with the application.

PART VI: CONTENTS OF APPLICATION AND RECEIPT PROCESS

A. Contents of Application

Each application submission should include a signed original and two additional copies of the application.

Each application should include the following in the order presented:

1. Table of Contents;

2. Completed Standard Form 424 which has been signed by an Official of the organization applying for the grant who has authority to obligate the organization legally.

Note: The original SF–424 must bear the original signature of the authorizing representative of the applicant organization.

3. "Budget Information-Non-Construction Programs" (SF–424A);

4. A narrative budget justification for each object class category required under section B, SF–424A;

5. Filled out signed, and dated "Assurances-Non-Construction Programs" (SF–424B);

6. The applicant should sign attachment E. In so doing, the applicant is certifying that it will comply with the Federal requirements concerning the drug-free workplace and debarment regulations set forth in Attachments E. Additionally, by signing and submitting this application, the applicant is certifying that it will comply with the Federal requirements concerning debarment regulations set forth in attachment F;

7. Restrictions on Lobbying, Certification for Contracts, Grants, Loans, and Cooperative Agreements: fill out, sign and date form found at Attachment H.

8. Disclosure of Lobbying Activities, SF–LLL: Fill out, sign, and date form found at Attachment H, if appropriate.

9. An Executive Summary—not to exceed 300 words;

10. Appendices, including (where applicable) proof of non-profit status; proof that the organization is a community development corporation, commitments from service providing organizations, where applicable; Single Point of Contact comments, if applicable; Maintenance of Effort Certification and résumés.

The total number of pages for the entire application package, excluding Appendices, should not exceed 50 pages. Pages should be numbered sequentially throughout, excluding Appendices, beginning with the SF 424 as Page #1.

Applications must be uniform in composition since OCS may find it necessary to duplicate them for review purposes. Therefore, applications must be submitted on white 8½ X 11 inch paper only. They must not include colored, oversized or folded materials. Do not include organizational brochures or other promotional materials, slides, films, clips, etc. in the proposal. They will be discarded if included. The applications should be two-holed punched at the top center and fastened separately with a compressor slide paper fastener, such as an ACCO clip, or a binder clip. The submission of bound applications, or applications enclosed in binders, is specifically discouraged.

B. Acknowledgement of Receipt

All applicants will receive an acknowledgement postcard with an assigned identification number. Applicants are requested to supply a self-addressed mailing label with their application which can be attached to this acknowledgement postcard. This number and the program priority area letter code must be referred to in all subsequent communications with OCS concerning the application. If an acknowledgement is not received within three weeks after the deadline date, please notify ACF by telephone (202) 401–9230.

Part VII: Post-Award Information and Reporting Requirements

Following approval of the applications selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Notice of Grant Award which provides the amount of Federal funds approved for use in the project, the project and budget periods for which support is provided, the terms and conditions of the award, the total project period for which support is contemplated.

In addition to the General Conditions and Special Conditions (where the latter are warranted) which will be applicable to grants, grantees will be subject to the provisions of 45 CFR parts 74 (non-governmental) and 92 (governmental).

Grantees will be required to submit quarterly progress and financial reports (SF 269) throughout the project period, as well as a final progress and financial report within 90 days of the termination of the project. These reports will be submitted in accordance with instructions to be provided by OCS, and will be the basis for any dissemination effort conducted by the Office of Community Services.

Grantees are subject to the audit requirements in 45 CFR parts 74 and 92 and OMB Circular A–133.

Section 1352 of Public Law 101–121, signed into law on October 23, 1989, imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients on Federal contracts, grants, cooperative agreements, and loans. It provides exemptions for Indian tribes and tribal organizations. Current and prospective recipients (and their subtier contractors and/or grantees) are prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement or loan. In addition, for each award action in excess of $100,000 the law requires recipients and their subtier contractors and/or subgrantees (1) to certify that they have neither used nor will use any appropriated funds for payment to lobbyists; (2) to disclose the name, address, payment details, and purpose of any agreements with lobbyists whom recipients or their subtier contractors or subgrantees will pay with profits or nonappropriated funds on or after December 22, 1989 and (3) to file quarterly up-dates about the use of lobbyists if material changes occur in their use. The law establishes civil penalties for noncompliance. See Attachment H for certification and disclosure forms to be submitted with the applications for this program.

Attachment I indicates the regulations which apply to all applicants/grantees under the Homeless Families Support Services Demonstration Program.

Dated: July 22, 1992.

Eunice S. Thomas,

Director, Office of Community Services.

ATTACHMENT A—1992 POVERTY INCOME GUIDELINES FOR ALL STATES (EXCEPT ALASKA AND HAWAII) AND THE DISTRICT OF COLUMBIA

Size of family unit	Poverty guideline
1	$6,810
2	9,190
3	11,570
4	13,950
5	16,330
6	18,710
7	21,090
8	23,470

For family units with more than 8 members, add $2,380 for each additional member.

POVERTY INCOME GUIDELINES FOR ALASKA

Size of family unit	Poverty guideline
1	$8,500
2	11,480
3	14,460
4	17,440
5	20,420
6	23,400
7	26,380
8	29,360

For family units with more than 8 members, add $2,980 for each additional member.

POVERTY INCOME GUIDELINES FOR HAWAII

Size of family unit	Poverty guideline
1	$7,830
2	10,570
3	13,310
4	16,050
5	18,790
6	21,530
7	24,270
8	27,010

For family units with more than 8 members, add $2,740 for each additional member.

BILLING CODE 4130-01-M

Attachment B

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ ▪ ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE_____

b NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4130-01-C

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry:

1. Self-explanatory.

2. Date application submitted to Federal agencies (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—"New" means a new assistance award.

—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4130-01-M

Attachment C

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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Instructions for the SF–424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in Columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5

Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i

Show the totals of Lines 6a to 6h in each column.

Line 6j

Show the amount of indirect cost.

Line 6k

Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in Column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7

Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8–11

Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a). Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12

Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13

Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14

Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15

Enter the totals of amounts of Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19

Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20

Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21

Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22

Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23

Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

OMB Approval No. 0348–0040

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (43 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include, but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) Institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official —
Title ———————
Applicant Organization ———————
Date Submitted ———————

BILLING CODE 4130–01–M

Attachment E

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"**Controlled substance**" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"**Conviction**" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"**Criminal drug statute**" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"**Employee**" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

BILLING CODE 4130-01-C

Attachment F

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction." provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Attachment G—State Single Points of Contact

Alabama

Mrs. Moncell Thornell, State Single Point of Contact, Alabama Department of Economic & Community Affairs, 3465 Norman Bridge Road, Post Office Box 250347, Montgomery, Alabama 36125–0347, Telephone (205) 284–8905

Arizona

Ms. Janice Dunn, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone: (602) 280–1315

Arkansas

Mr. Joseph Gillespie, Manager, State Clearinghouse, Office of Intergovernmental Service, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 371–1074

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California, 95814, Telephone (916) 323–7480

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, room 520, Denver Colorado 80203, Telephone (303) 866–2156

Connecticut

Under Secretary, Attn: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459, Telephone (202) 566–3410

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326

District of Columbia

Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, Room 416, District Building, 1350 Pennsylvania Avenue, N.W., Washington, DC 20004, Telephone (202) 727–9111

Florida

Karen McFarland, Director, Florida State Clearinghouse, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone (904) 488–8114

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, S.W., Atlanta, Georgia 30334, Telephone (404) 656–3855

Hawaii

Mr. Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development, Office of the Governor, State Capitol—Room 406, Honolulu, Hawaii 96813, Telephone (808) 548–5893, FAX (808) 548–8172

Illinois

Tom Berkshire, State Single Point of Contact, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Telephone (217) 782–8639

Indiana

Frank Sullivan, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610

Iowa

Steven R. McCann, Division for Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725

Kentucky

Debbie Anglin, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor Capital Plaza Tower, Frankfort, Kentucky 40601, Telephone (502) 564–2382

Maine

State Single Point of Contact, Attn: Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261

Maryland

Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490

Massachusetts

State Single Point of Contact, Attn: Beverly Boyle, Executive Office of Communities & Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001

Michigan

Milton O. Waters, Director of Operations, Michigan Neighborhood Builders Alliance, Michigan Department of Commerce, Telephone (517) 373–7111

Please direct correspondence to: Manager, Federal Project Review, Michigan Department of Commerce, Michigan Neighborhood Builders Alliance, P.O. Box 30242, Lansing, Michigan 48909, Telephone (517) 373–6223.

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, Office of Policy Development, 421 West Pascagoula Street, Jackson, Mississippi 39203, Telephone (601) 960–4280

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834

Montana

Deborah Stanton, State Single Point of Contact, Intergovernmental Review Clearinghouse, c/o Office of Budget and Program Planning, Capitol Station, Room 202—State Capitol, Helena, Montana 59620, Telephone (406) 444–5522

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, ATTN: John B. Walker, Clearinghouse Coordinator

New Hampshire

Jeffery H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/James E. Bieber, 2 1/2 Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155

New Jersey

Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613

Please direct correspondence and questions to: Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625–0803, Telephone (609) 292–9025.

New Mexico

Aurelia M. Sandoval, State Budget Division, DFA, Room 190, Bataan Memorial Building, Santa Fe, New Mexico, 87503, Telephone (505) 827–3640, FAX (505) 827–3006

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605

North Carolina

Mrs. Chrys Baggett, Director, Intergovernmental Relations, N.C. Department of Administration, 116 W. Jones Street, Raleigh, North Carolina 27611 Telephone (919) 733–0499

North Dakota

William Robinson, State Single Point of Contact, Office of Intergovernmental Affairs, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Telephone (701) 224–2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Telephone (614) 466–0698

Oklahoma

Don Strain, State Single Point of Contact, Oklahoma Department of Commerce Office of Federal Assistance Management, 6601 Broadway Extension, Oklahoma City, Oklahoma 73116, Telephone (405) 843–9770

Rhode Island

Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277–2656

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning.

South Carolina

Danny L. Cromer, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734–0493

South Dakota

Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Telephone (605) 773–3212

Tennessee

Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741–1676

Texas

Tom Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463–1778

Utah

Utah State Clearinghouse, Office of Planning and Budget, ATTN: Carolyn Wright, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538–1535

Vermont

Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828–3326

Washington

Marilyn Dawson, Washington Intergovernmental Review Process, Department of Community Development, 9th and Columbia Building, Mail Stop GH–51, Olympia, Washington, 98504–4151, Telephone (206) 753–4978

West Virginia

Fred Cutlip, Director, Community Development Division, Governor's Office of Community and Industrial Development, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348–4010

Wisconsin

William C. Carey, Federal/State Relations, IGA Relations, 101 South Webster Street, P.O. Box 7864, Milwaukee, Wisconsin 53707, Telephone (608) 266–1741

Please direct correspondence and questions to: William C. Carey, Section Chief, Federal/State Relations Office, Wisconsin Department of Administration, (608) 266–0267.

Wyoming

Ann Redman, State Single Point of Contact, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Telephone (307) 777–7574

Territories

Guam

Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472–2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Patria Custodio/Israel Soto Marrero, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Telephone (809) 727–4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, No. 32 & 33 Kongens Gade, Charlotte Amalie, V.I. 00802, Telephone (809) 774–0750

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by

section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more that $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Date

BILLING CODE 4130-01-M

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change
For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known*:

Congressional District, *if known*:

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

Congressional District, *if known*:

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, *if applicable*: _____

8. Federal Action Number, *if known*:

9. Award Amount, *if known*:
$

10. a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

b. Individuals Performing Services *(including address if different from No. 10a)*
(last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply)*:
$ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply)*:
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment *(check all that apply)*:
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ Date: _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

BILLING CODE 4130-01-C

Attachment I—DHHS Regulations Applying to All Applications/Grantees Under the Homeless Families Support Services Demonstration Program

Title 45 of the *Code of Federal Regulations:*

Part 16—Department of Grant Appeals Process

Part 74—Administration of Grants (non-governmental)

Part 74—Administration of Grants (State and local governments and Indian Tribal affiliates):

Sections 74.62(a) Non-Federal Audits
74.173 Hospitals
74.174(b) Other Non-profit Organizations
74.304 Final Decisions in Disputes
74.710 Real Property, Equipment and Supplies
74.715 General Program Income

Part 75—Informal Grant Appeal Procedures

Part 76—Debarment and Suspension From Eligibility for Financial Assistance

Subpart F—Drug-Free Workplace Requirements

Part 80—Non-Discrimination Under Programs Receiving Federal Assistance Through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964

Part 81—Practice and Procedures for Hearings Under Part 80 of this Title

Part 83—Non-Discrimination on the Basis of Sex in the Admission of Individuals to Training Programs

Part 84—Non-Discrimination on the Basis of Handicap in Programs

Part 91—Non-Discrimination on the Basis of Age in Health and Human Services Programs or Activities Receiving Federal Financial Assistance

Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (**Federal Register**, March 11, 1988)

Part 93—New Restrictions on Lobbying

Part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities

[FR Doc. 92-17810 Filed 7-29-92; 8:45 am]

BILLING CODE 4130-01-M

federal register

Thursday
July 30, 1992

Part IV

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Missing Children's Assistance Act: Fiscal Year 1992 Competitive Discretionary Grant Programs Announcement and Notice of Availability of Application Kit

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Missing Children's Assistance Act: Fiscal Year 1992 Competitive Discretionary Grant Programs Announcement and Notice of the Availability of Application Kit

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Justice.

ACTION: Notice of issuance of solicitations for discretionary grant programs under the Missing Children's Assistance Act and availability of the application kit.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is publishing this Notice of Competitive Discretionary Grant Programs to be funded under section 405 of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5775 (Title IV of this Act is referred to as the Missing Children's Assistance Act). The total amount of funding available is $3,285,000. Each program announcement that follows contains specific instructions on competitive program requirements, including eligibility requirements and selection criteria for each competitive program. Following the program announcements is a section that summarizes general application and administrative requirements applicable to all announced programs. The Missing Children's Program Application Kit contains the discretionary program announcements, general application and administrative requirements, an application form (Standard Form 424), the OJJDP Peer Review Guideline, OJJDP Competition and Peer Review Procedure, and other supplemental information relevant to the application process.

DATES: Each program announcement specifies a due date for the receipt of applications. Applications received after the due dates will not be considered.

ADDRESSES: Applications must be received by mail or hand delivered by 5 p.m., on the due date at the Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Program inquiries are to be addressed to the attention of the OJJDP staff contact person identified in each specific program announcement. For general information, contact Marilyn Silver, Information Dissemination Unit, (202) 307–0751. (This is not a toll-free number.) To order a Missing Children's Program Application Kit, or draft copies of OJJDP sponsored studies referred to in the solicitations, please call the Juvenile Justice Clearinghouse, toll-free, 24 hours a day, at 1–800–638–8736.

SUPPLEMENTARY INFORMATION: Responsibility for establishing annual research, demonstration, and service program priorities and criteria for making grants and contracts pursuant to section 405 of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, (the Act), 42 U.S.C. 5775, rests with the Administrator of the Office of Juvenile Justice and Delinquency Prevention. For FY 1992, 11 new programs, new awards for two continuing programs, and a program jointly funded by OJJDP and the National Institute of Justice (NIJ), to be awarded and administered by NIJ, constitute all section 405 programs. The Administrator issued Final Program Priorities, describing the funding activities under section 405 of the Act which OJJDP intends to carry out during Fiscal Year 1992, by publication in the **Federal Register** on June 24, 1992. Other new programs may also be funded under section 404 of the Missing Children's Assistance Act, 42 U.S.C. 5773.

The OJJDP program planning process for Fiscal Year 1992 is closely coordinated with the Assistant Attorney General and the Bureau components of the Office of Justice Programs (OJP). The Missing Children's Program discretionary programs that follow in this announcement are listed below in accordance with overall OJP program priorities, where applicable.

CONTINUING PROGRAMS WITH NEW AWARDS

Missing and Exploited Children Comprehensive Action Program (M/CAP)

Purpose

The purpose of this solicitation is to aid local communities in preventing abduction and exploitation of children, to provide information to assist in locating and recovering missing children, and to minimize the negative effects and consequences of abduction, serious runaway episodes, and exploitation on children and families through enabling individual communities to develop and maintain a multi-disciplinary, coordinated approach to these children and their families. This award will continue the national development, maintenance, and management of existing M/CAP program services.

Background

In recent years, the public has demanded that greater priority be given to crimes against children. M/CAP was designed to provide for a comprehensive community response to those missing children who run away or are abducted by non-family or family members and who are, as a consequence, in danger of exploitation, abuse, injury, and death. The M/CAP program is also designed to enable communities to improve education and prevention services with regard to missing and exploited children.

OJJDP considers the M/CAP program approach to the problem outlined in this solicitation to be an effective and cost-efficient way to provide a comprehensive approach to State and local agencies that will enable them to respond effectively to the problems and needs of missing children and their families. This is done through a process which facilitates the development of multi-agency teams and protocols and provides ongoing training and technical assistance support to these community-based teams. Each participating community develops its team and implementation plan according to the specific needs, resources and priorities of the community. M/CAP focuses on improving the knowledge and skill levels of the agencies involved and on improving the way existing agencies interact and coordinate information and services. M/CAP is designed so that staff time is the only cost to the participating agencies. What is required of the participating communities is commitment from agency heads and a community assessment process to determine service requirements and existing municipal agency capabilities. The information gathered from the assessment process is utilized to develop site-specific training curricula for an intensive 5 day multi-agency program development and implementation workshop, including training manuals for instructors and participants in the 5-day training program. The M/CAP program provides follow-up technical assistance and specialized training activities for each program site.

Sections 404 and 405 of the Act and the 1987 Report of the Attorney General's Advisory Board on Missing and Exploited Children identify a number of recommendations designed to improve the response to missing children and the abuse or sexual exploitation which may be a result. These recommendations constitute the principal elements of the M/CAP plan of

community action. These recommendations include:

- Multi-agency guidelines for reporting and investigating missing and exploited children cases;
- Training for juvenile services and law enforcement agencies in awareness and investigation of child abductions, runaway children and the abuse and exploitation that may result;
- Policies and procedures for juvenile services agencies to ensure that thorough background checks and investigations are conducted on persons working with children;
- Family and Juvenile Court policies to promote the exchange of case-appropriate information between agencies dealing with missing and exploited children;
- Programs to alleviate the trauma and intimidation that many missing children experience in court proceedings;
- Case management practices in cases involving abusers, abductors, and exploiters of missing children which produce more informed case disposition decisions by the court;
- School policies and procedures for flagging, recording, reporting, and documenting school transfer records in order to prevent the concealment of abducted children; and
- Public awareness and prevention programs for the community on missing children, child abuse, child exploitation, and child abduction.

Previous program activity has focused on several components: (1) The assessment of effective approaches to multi-agency team building, existing literature, and training materials; (2) the development of required procedures, assessment tools, and program and training materials; and (3) the development of four test sites. The four sites include Decatur, Illinois; Hillsborough County, Florida; Richland County, South Carolina; and Reno, Nevada. These sites were among those that requested to participate in M/CAP, successfully completed the community assessment process, and represent an array of populations and characteristics.

M/CAP is currently operating under a cooperative agreement (#88–MC–CX–K001) with Public Administration Service (PAS) in McLean, Virginia. Program information and materials are available upon request from the OJJDP staff person listed as the program contact at the end of this solicitation.

Goal

The primary goal of M/CAP is to provide expert specialized training and technical assistance for improved agency information sharing and enhanced management of resources and services in cases of missing and exploited children.

Objectives

The objectives of the M/CAP Program are:

(1) To identify and assess promising and effective community organization planning strategies and procedures for responding to the needs of missing and exploited children;

(2) To help municipal agencies implement programs which respond to the needs of missing and exploited children; and

(3) To disseminate promising and effective program development and implementation techniques for localities to respond to the needs of missing and exploited children.

Program Strategy

By the end of the three year project period, M/CAP will have developed 10 host sites, twenty satellite sites, and 60 affiliate sites. The first tier of 10 host sites will consist of sites that have the capability to be program training and technical assistance platforms and model sites for the M/CAP program process. The 20 satellite sites, which represent the second tier, will be selected from those sites which have successfully completed the community assessment process and demonstrated promising program implementation potential. These satellite sites will share in selected host site training and M/CAP implementation assistance delivered by OJJDP. It is anticipated that there will be at least one state-wide program based on this model. The third tier of up to 60 affiliate sites are jurisdictions which have requested information on the M/CAP program process and wish to be involved in a more unstructured, self-help M/CAP program development. This last tier may consist of small communities which would like the benefit of information and training, but do not need an active and on-going M/CAP team in their community.

The applicant will conduct training based on previously developed programs, with priority training provided to host and satellite sites. It will hold collective training workshops for affiliate sites when feasible. Program implementation assistance will require the utilization of existing training capabilities (facilities, talent and equipment) and the development of additional topic-specific curricula, training materials, and trainers which may be required for the expanded program. Technical assistance through information dissemination will require the continued development, production, and distribution of a variety of written guides and materials.

The applicant will develop and provide to the M/CAP site teams specialized training programs related to issues of missing and exploited children. The applicant will work with host sites to develop up to eight specialized training and technical assistance components for national M/CAP program replication workshops. The applicant will also train practitioners in host sites to act as mentors in satellite and affiliate sites. The specialized training projects will be developed according to the training needs identified by the community agencies participating in M/CAP, such as training for mental health professionals in providing reunification services for missing children and their families. Most training will be cross-disciplinary in nature, but some components will be tailored for individual professions.

The successful applicant will assist M/CAP sites in developing data collection and applied research on missing and exploited children in their communities. As other OJJDP-sponsored research on missing and exploited children is made available, the grantee will be expected to incorporate appropriate and relevant information and findings into M/CAP training and technical assistance components.

Eligibility Requirements

Applications are invited from public agencies or private nonprofit organizations. Applicant organizations may choose to submit joint proposals with other eligible organizations, as long as one organization is designated as the applicant, and co-applicants are designated as such. The applicant and any co-applicant(s) must demonstrate, in addition to program knowledge and support experience, programmatic and fiscal management capabilities to implement a project of this size and scope effectively. Applicants who fail to demonstrate that they have the experience and capability to manage a program of this size and complexity will be ineligible for funding consideration.

Specific Eligibility Requirements

(1) The applicant must demonstrate the requisite knowledge of and experience with missing and exploited children issues necessary to provide capable, responsible management of a national demonstration program.

(2) The applicant must demonstrate the experience and capability to provide timely, relevant professional services in order to assure successful program continuity.

(3) The applicant must demonstrate the ability to develop and provide training related to missing and exploited children issues as well as service-oriented training materials to the recipient jurisdictional, professional, citizen, and community needs as they have been described in this solicitation.

(4) The successful applicant must demonstrate the technical and management capability that will be required to provide an M/CAP service delivery program to incorporate as many as 90 jurisdictions into a three tiered M/CAP program development effort.

(5) The applicant must demonstrate experience and expertise in providing technical assistance to a diverse audience requiring such services with regard to the missing and exploited children issues described in this solicitation. The applicant must demonstrate the capability to provide the required information technology and consultant expertise in order to produce a varied array of relevant training and program implementation guides and trainers for appropriate national program audience needs.

Selection Criteria

In general, all applications will be reviewed in terms of their demonstrated past, present, and potential ability to provide the requisite services and products as they are described in this solicitation.

The applicant will be evaluated and rated based on the extent to which they meet the following criteria:

(1) Conceptualization of the Problem. (10 points)

The applicant must demonstrate a clear understanding of, and competence to deal with issues relating to missing and exploited children and the needs of the agencies who serve them.

(2) Statement of Goals and Objectives. (15 points)

The goals and objectives to be achieved by the project must be clearly defined, and expressed in operational terms consistent with the issues and performance requirements set forth in the problem statement(s).

(3) Project Design. (20 points)

The applicant must propose a project design, including a work plan, specific procedures to be carried out, performance schedules, expected accomplishments and products. The design must be consistent with the project's goals and objectives, and with the conceptualization of the problem statement.

(4) Project Management. (20 points)

The project's management structure and staffing must be appropriate for the successful implementation of the project. Key staff members should have significant experience in program management and in subject area(s) related to those addressed in this announcement.

(5) Organizational Capability. (25 points)

The applicant's ability to conduct the project successfully must be clearly documented in the proposal. The documentation should include organizational experience in conducting projects of the scope and complexity reflected in this program announcement. The applicant should demonstrate program management and information technology capabilities sufficient to perform the tasks described and defined in this solicitation.

(6) Budget. (10 points)

The proposed budget must be reasonable, allowable, and cost effective vis-a-vis the activities to be performed.

Award Period

The award will be for a project period of three years. One cooperative agreement will be awarded with an initial budget period of 12 months.

Award Amount

Up to $1,100,000 has been allocated for the initial 12 month budget period. Applicants should include an estimated budget for the second and third 12 month budget periods.

Due Date

Applications must be received by mail or delivered to OJJDP by September 28, 1992.

Contact

For further information contact Robert O. Heck, Special Emphasis Division, at (202) 307–5914.

Investigation and Prosecution of Parental Abduction Cases

Purpose

The purpose of this project is to improve the response of the justice system to parentally abducted children and to reduce the incidence of abductions of children by family members by providing training and technical assistance to prosecutors and investigators.

Background

This is a continuing program which requires a new award. Conducted by the National Center for the Prosecution of Child Abuse, one of the research arms of the National District Attorney's Association (NDAA), the first stages of this project successfully produced legal research, including (1) a review of relevant case law and statutes, (2) the collection and review of existing information on prosecutorial, handling of family abductions and related issues, and (3) a survey of prosecutors to identify effective approaches to addressing issues in the area, a trial manual, and a training curriculum for prosecutors responsible for handling family abduction cases. The project is currently providing training and technical assistance to prosecutors as well as multi-disciplinary teams and developing and disseminating materials to facilitate replication of effective approaches to investigating and prosecuting parental abduction cases.

The criminal justice system is increasingly recognizing the prevalence and seriousness of parental abductions and placing greater emphasis on investigative and prosecutorial responses. Many states have raised parental abduction to a felony offense, punishable by imprisonment and large fines. In some states restitution is available for expenses incurred in recovering the child. With the view of parental abduction as simply a "family matter" changing in the eyes of both the public and the judiciary, the criminal justice system is increasingly under pressure to respond effectively to these cases. In many communities it falls to the prosecutor to mobilize the system's response in order to guarantee thorough investigation and prosecution. Abductions of children by parents involve complex investigative and legal issues. They present unique challenges to prosecutors and law enforcement agencies and require different handling from other criminal cases. However, most prosecutors receive little or no training or outside help with parental abduction cases. The lack of experience on the part of most prosecutors is hampered by rapid turnover of personnel, the relative unpopularity of handling parental abduction cases compared with other types of felony prosecutions, the common policy of rotating assistant prosecutors from one position to another, and the practice of assigning lower priority to these cases. For these reasons, there is an ongoing need for regular, high quality and cost-effective training in handling parental abductions.

The findings of recent studies appear to indicate that if parental abduction cases are more vigorously prosecuted, the incidence goes down. Without prosecutorial support, law enforcement involvement in parental abduction cases is infrequent and inconsistent, despite the existence of criminal statutes proscribing such conduct.

Parents who have financial resources may be able to turn to attorneys and private investigators for help; parents who cannot afford private assistance are left without a means to locate and recover their children. Recent studies indicate that a majority of left-behind parents fall into the latter category.

Program information and materials are available upon request from the OJJDP staff contact listed at the end of this solicitation.

Goal

The goal of this program is to increase awareness and knowledge on the part of prosecutors and other professionals about the serious and complex nature of parental abduction cases and to assist local prosecutors in improving the quality of investigation and prosecution of parental abductions.

Objectives

The objectives of this program are:

- To disseminate information to prosecutors on the local level through providing technical assistance as requested, guidance regarding effective strategies, and the development of articles, packets, and educational presentations;
- To provide training for prosecutors through national conferences on investigation and prosecution of parental abduction cases and to provide instructors for State, local, and national training programs and conferences;
- To produce, update, and distribute publications and other written materials, including distribution of the "Investigation and Prosecution of Parental Abduction" manual, contribution of articles for publication in professional journals, and development of new publications on "cutting edge" issues related to the handling of parental abduction cases; and
- To monitor, draft and evaluate federal and state legislation from the perspective and experience of prosecutors.

Program Strategy

The design of this program builds upon the original program by the American Prosecutors Research Institute on the Investigation and Prosecution of Parental Abduction Cases. The award recipient will implement three primary program strategies: technical assistance, training, and publications. These three strategies will be implemented on the local or individual, State or regional, and national levels.

The grantee will develop and implement training for prosecutors and investigators through providing instructors for local, State and regional conferences and through holding annual national conferences. Technical assistance will be made available to individual prosecutors for development of case strategy and for information on specialized topics such as the "underground railroad", cases involving allegations of domestic violence or child abuse, and model voir dire. The project strategy also calls for the development of collected resources and clearinghouse functions, and for the development of additional educational and informational materials which can be disseminated to the field. The grantee is also expected to identify and participate in ongoing exchanges of information with other key organizations and experts in the field, including other OJJDP grantees focusing on missing and exploited children. As new reports and findings on parental abduction issues become available, the grantee should update and incorporate the new information in training curriculum and resource materials. The project also calls for a project advisory board made up of experts in the field of parental abductions and approved by OJJDP.

Eligibility Requirements

Applications are invited from public agencies or private nonprofit organizations which can demonstrate knowledge of the civil and criminal justice issues relating to the investigation and prosecution of parental abduction cases, as well as experience and capability in curricula, technical assistance, and conference development.

Selection Criteria

Applications will be rated on the extent to which they meet the following criteria:

(1) Conceptualization of the Problem. (15 points)

The applicant must demonstrate a clear understanding of, and competence to deal with, civil and criminal justice issues relating to the investigation and prosecution of parental abduction cases.

(2) Statement of Objectives. (15 points)

The objectives to be achieved by the project must be clearly defined and consistent with the issues and requirements set forth in the conceptualization of the problem.

(3) Project Design. (30 points)

The procedures, workplan and proposed products of the project must be directly linked with the stated objectives and with the problem addressed by this announcement.

(4) Project Management. (15 points)

The project's management structure and staffing must be adequate for the successful implementation and completion of the project. The management plan describes a system whereby logistical activities are handled in the most efficient and economical way.

(5) Organizational Capability. (15 points)

The applicant organization's ability to conduct the project successfully must be documented in the application. Organizational experience is required in criminal justice issues relating to the investigation and prosecution of parental abduction. Also organizational experience is required in the development and implementation of training curricula, publications, technical assistance, and conference planning. Key project staff should have significant experience in the subject area addressed in this announcement.

(6) Budget. (10 points)

The proposed budget must be reasonable, allowable and cost-effective vis-a-vis the activities to be undertaken.

Award Period

The project period for the grant is 36 months. One grant will be awarded with an initial 18 month budget period.

Award Amount

Up to $250,000 has been allocated for the initial 18 month budget period. Applicants shall include an estimated budget for the second 18 month budget period.

Due Date

Applications must be received by mail or delivered to OJJDP by September 28, 1992.

Contact

For further information contact Peter Freivalds, Training and Technical Assistance Division, OJJDP, at (202) 307–0598.

New Programs

The following solicitations refer specifically to three recently completed studies sponsored by OJJDP available from the Juvenile Justice Clearinghouse. The studies are:

"Families of Missing Children: Psychological Consequences and Promising Interventions," Center for the Study of Trauma, University of California at San Francisco. (Draft final report, 665 pages).

"Obstacles to the Recovery and Return of Parentally Abducted Children," Center on Children and the Law, American Bar Association. (Draft final report, approximately 257 pages.)

"The Reunification of Missing Children Project," Center for the Study of Trauma, University of California at San Francisco. (Draft final report, 145 pages.)

Legal Issues and Barriers To Using School, Public Service Agency, and Hospital Records and Information in Locating Missing Children

Purpose

This project will identify barriers to using school, hospital, and other public and private service agency records and information to assist in locating missing children.

Background

Law enforcement officers at times must use stealth to locate missing children. In some cases, particularly family abductions, the child can be located through the use of official records such as social service records or school transcripts. However, confidentiality laws, agency policies, and professional ethics often prevent the disclosure and dissemination of this information to parties beyond its immediate use. Law enforcement officers may not be able to access it. Indeed, there may be instances in which the veil of confidentiality should not be pierced in efforts to locate the missing child. Law enforcement personnel will benefit from a study designed to obtain information to identify the nature and extent of these barriers and the mechanisms by which various States, agencies and professionals are impacted by operation of these statutes, policies, and ethical codes in providing information to law enforcement agencies who are investigating a missing child case.

Goal

The goal of this program is to assess the barriers to law enforcement's ability to obtain and use school records, public service agency information, hospital records, and the information resources of other public and private agencies in locating missing children.

Objectives.

The objectives of this project are to:

- Identify public and private agencies and personnel that may have information potentially useful in locating a missing child;
- Examine confidentiality statutes at the Federal, State and local level that prevent or restrict access to this information;
- Identify other statutes, case law, or agency policies which prevent or restrict the use of these information resources;
- Examine other barriers, such as codes of professional ethics, which impact the ability of law enforcement to access relevant information; and
- Suggest mechanisms through which these statutes, policies, or professional codes may be modified to provide access to information that would be valuable in locating the abductor and the child(ren).

Program Strategy

The grantee will first identify non-law enforcement agencies and personnel which may have information that could aid in locating missing children. The survey should include battered women's shelters, the Internal Revenue Service, the branches of the military, public assistance agencies, adoption agencies, foster care agencies, schools, and other private and public child-service agencies. The grantee should identify a full range of relevant agencies for potential inclusion.

Second, the grantee will examine Federal and State statutes, case law, codes of professional ethics and conduct, and agency policies which impact access to the information contained in records of these agencies that would assist law enforcement in locating missing children.

Third, using the information gathered, the grantee will produce a guide to accessing and using such information. This guide shall indicate the flexibility provided by the various statutes, policies, and codes of conduct, the potential barriers they establish, and whether and under what circumstances identified barriers can be overcome to make needed information available to law enforcement agencies in missing child cases while, at the same time, protecting the legitimate confidentiality rights of individuals.

Finally, to disseminate this information and provide a wide review of the findings, the grantee will organize a symposium of professionals to discuss and critique the final draft of the guide. The grantee, in consultation with OJJDP, will invite to the symposium as groups of professionals representative of the agencies examined, such as school officials, social service professionals, community mental health workers, law enforcement personnel, judges (or appropriate judicial personnel), and others. The symposium will assist the grantee to refine the findings of the assessment and to indicate future policy directions.

Products

At each stage of the project, the grantee will submit a report to OJJDP that will demonstrate that these objectives have been met:

(1) A listing of agencies that potentially have information on missing children;

(2) An assessment protocol to determine the type of information available;

(3) A publishable guide to using the particular agencies for locating missing children; and

(4) Proceedings from the symposium.

Eligibility Requirements

Applications are invited from public and private non-profit agencies, organizations, educational institutions, or combinations thereof. Applicants must demonstrate that they have the necessary legal background and knowledge to examine the relevant statutes, case law, and professional codes or standards of conduct. Also, applicants must indicate they have the neccessary research background to produce a credible information guide.

Selection Criteria

Applications will be rated on the extent to which they meet the following selection criteria:

(1) Conceptualization of the Problem. (15 points)

The applicant should expand on the problem with a narrative that indicates a full understanding of the difficulties involved in locating missing children. The applicant should indicate particular circumstances in which such information would be useful to law enforcement personnel and parents. The applicant should also show initiative in efforts to grasp the full extent of the stated problem and indicate how their proposal will address this problem.

(2) Statement of Goals and Objectives. (20 points)

The applicant must link the problem statement directly with concrete, measurable tasks or objectives. These tasks should show exactly what should be done to address the goals of the project as indicated in the problem statement.

(3) Project Design. (25 points)

The application will be evaluated on the soundness of the project design. Applicants should map out how the project tasks will be completed and how they directly apply to the stated goal of the project. The design should be consistent with generally accepted principles of research and investigation. OJJDP will require the four following tasks to be completed:

- A listing of the agencies (public and private) which may have useful

information for locating missing children;

• The drafting of an assessment protocol to examine the opportunities and barriers to using this information;

• The actual assessment of the accessibility of the information; and

• A symposium of professionals to discuss the findings of this grant. While the successful applicant will be encouraged to present creative solutions to the problem, the above four tasks link directly to the products OIJDP deems necessary for the successful completion of the project, and must be built into the project design.

(4) Project Management. (15 points)

The applicant must demonstrate that their organization has the managerial and organizational capability to undertake a project of this type. Applicants should indicate specific personnel who will accomplish the tasks. If specific personnel are not yet named, the applicant must include position descriptions along with minimum qualifications necessary of any individuals that will fill those positions. The applicant must indicate how their particular management structure will contribute to the successful completion of the project.

(5) Organizational Capability. (15 points)

The applicant must demonstrate that the organization has the capacity and the experience to undertake and complete a project of this nature and scope.

(6) Budget. (10 points)

Applications will be reviewed to assure that all costs will cover the expenses of the proposed project. Similarly, the budget will be reviewed to assure that all costs are reasonable for the type of project and activities required to carry out this project. All costs indicated must be allowable under OJP Financial Guidelines and Federal Policy.

Award Period

The project period for this program will be 12 months.

Award Amount

Up to $125,000 has been allocated for this project.

Due Date

Applications must be received by mail or delivered to OJJDP by September 14, 1992.

Contact

For further information contact Joe Moone, Research and Program Development Division, at (202) 307–5929.

Cases of Legal Definition Abduction, Child Molestation and Exploitation by Nonfamily Members

Purpose

The purpose of this project is to provide information about cases of nonfamily legal definition child abduction, molestation and exploitation cases and the manner in which these cases are defined and treated by the community through the media and within the criminal justice system.

Background

Much of the controversy in the last decade about nonfamily child abduction has been about definitions, not numbers. Definitions in social science research differ from legal definitions, and legal definitions may vary substantially from one jurisdiction to the next. The "National Incidence Studies of Missing, Abducted, Runaway, and Thrownaway Children in America" (NISMART), released by the Office of Juvenile Justice and Delinquency Prevention in 1990, addressed this problem by using a two-level definition. Within the category of nonfamily abduction, NISMART used a "legal definition" of abduction (or the crime of abduction as defined by state laws) and stereotypical kidnappings. Stereotypical kidnappings referred to the more common conception of stranger abductions involving long-term, long-distance, or fatal episodes while the legal definition included short-term abduction, and the coerced, unauthorized movement or detention of the child as a part of some rapes and assaults by nonfamily members. Using the legal definition, many violent crimes, including child sexual assault, can involve abduction as an element. NISMART estimated that there were between 3,200 and 4,600 legal definition abductions of children in 1988. At least two thirds of these cases involved sexual assault.

The estimates for legal definition abductions are the most difficult to validate against any other source, since many of these abductions are not thought of as abductions, even by law enforcement personnel, and they are not necessarily reported as such in the media. The sexual assault aspects of child molestation generally overshadow the aspect of a legal definition abduction. Police reporting methods, particularly regarding sexual assault crimes and abductions, are problematic and inconsistent. The NISMART researchers pointed out that the biggest potential unknown for estimates of legal definition abductions concerns crimes not reported to police and abductions not known to caretakers. The FBI estimates that only between 1% and 10% of these cases are ever reported to law enforcement. Currently there is no national data collection focused on children who are sexually abused or assaulted by nonfamily members each year. Also, national figures on homicide are not kept in a form that makes it possible to determine whether an abduction occurred together with the murder. The lack of uniformity and definition of charges contributes to the difficulty in understanding the scope and nature of not only legal definition abductions but also of the children who are sexually assaulted by nonfamily members.

Goals

The goals of this program are:

(1) To understand how the media portrays nonfamily abductions of children and how this portrayal may impact on the outcome of the criminal justice process and community perceptions of the problem.

(2) To identify prominent characteristics of nonfamily child abductions, as well as molestation and sexual exploitation in the context of legal definition abductions through media sources, police records and court data within selected sites.

(3) To analyze and compare definitions and handling of legal definition abductions and molestations by the media, law enforcement, and the courts within selected sites.

Objectives

The objectives of the program are to:

• Construct a representative sample of newspaper reports of incidents such as sexual assault, molestation, kidnapping, homicides, and other related victimization of children that may include nonfamily abductions.

• Compare the information found in newspapers, police reports, and court information (bargained pleas, verdicts, dispositions etc.) to determine "accuracy" in newspaper reports, and consistency between sources of reporting. The grantee may also examine police records for cases which were charged but not reported in the media.

• Using the information gathered from media, police, and court records, analyze and compare the ways in which cases of legal definition abduction and molestation are defined and handled.

• Explore media reporting of the community response to a range of incidents and their perceptions about the problem of child abduction and sexual molestation and exploitation and its impact on their community.

Program Strategy

Within the limits of resources available, select several jurisdictions to study. The grantee will examine all media reports available on nonfamily kidnappings, molestations, and exploitation of children to search for legal definition abductions. The grantee will gather from these reports basic information about the case.

From the total sample of cases, the grantee will select sites within the jurisdictions from which to draw a subsample of cases for further investigation. This investigation will include examination of police and court records as well as further tracking through the media. Police records may be examined for information on cases which were charged but not reported in the media. Besides information on the charges filed and case outcome, the information collected from these sources will be examined for ages of offenders and victims, offender occupation, a victim-offender relationship, number of victims, previous arrest history, involvement of child pornography or prostitution, and the criminal justice system status of the offender (on bail, probation, or parole).

The analysis will include an examination of the types of newspapers that report such crimes (such as urban or rural, West, South, or North, population size, etc.) and how the crimes are reported (such as seriousness, judgmental language, column inches, number of articles). Within the subsample of cases, the grantee will note consistencies and inconsistencies between the newspaper reports and the police records of the case. When tracking the cases further through the court system, the grantee will note inconsistencies between all three sources of information.

Following this examination, the grantee will look at the particular independent variables collected (such as arrest charge, demographics of offenders and victims, characteristics of the charge, bargained pleas, verdicts, dispositions). This examination will indicate the level of knowledge available to the public from the newspaper accounts.

Products

(1) A final report summarizing the findings. This report should include the following: (1) The findings about characteristics of nonfamily legal definition abduction and molestation and sexual exploitation cases, (2) consistencies and inconsistencies found between the three data sources, (3) information on how legal definition abductions and molestations of children are perceived by the community at large through media representation, and (4) how these cases are defined (i.e. differences in legal definition abduction in the selected sites) and handled by the criminal justice system.

(2) A public use data base. This data base should include all information collected. All individual identifying variables must be removed.

Eligibility Requirements

Applications are invited from public and private nonprofit agencies, organizations, educational institutions, or combinations thereof. Applicants must demonstrate that they have knowledge of child victims of sexual molestation, exploitation and abduction and provide evidence of their management and financial capability to implement effectively a project of this size and scope.

Selection Criteria

Applications will be rated on the extent to which they meet the following selection criteria.

(1) Conceptualization of the Problem. (20 points)

The applicant should expand on their understanding of data sources, data analysis, etc., with regard to this particular problem.

(2) Statement of Goals and Objectives. (20 points)

The applicant should expand on the above listed objectives providing clear definitions based upon the applicant's understanding of the problem, objectives, and available resources. Finally, the applicant should organize these objectives in such a way as to be consistent with the research design.

(3) Project Design. (25 points)

The applicant will be evaluated on the soundness of the project design. The solicitation does not dictate a specific direction for this project. OJJDP will be looking for inventive and creative methods to examine this problem. However, the proposed methodology must be fully explained. It must also be closely related to the goals of the project. The applicant must indicate how the proposed methodology will fulfill the project goals.

(4) Project management. (15 points)

The applicant must demonstrate that their organizations have the managerial and organizational capability to undertake a project of this type. The applicant must provide a list of all personnel to be involved in this project and specify which tasks will be performed by whom and under what timelines. The applicant must include résumés of all primary research personnel and indicate how their management structures will allow for the successful completion of the project.

(5) Organizational Capability. (10 points)

The applicant should indicate how its organization will direct the necessary resources, facilities, etc., to accomplish this project. In particular the applicant should provide evidence of past projects which indicate the ability to complete this project.

(6) Budget. (10 points)

The application will be reviewed to assure that all costs will completely cover the expenses of the proposed project. Similarly, the budget will be reviewed to assure that all costs are reasonable for the type of project. All costs indicated must be allowable under OJP Financial Guidelines and Federal Policy.

Award Period

The project period for this project will be 18 months.

Award Amount

Up to $200,000 has been allocated for this project.

Due Date

Applications must be received by mail or delivered to OJJDP by August 28, 1992.

Contact

For further information contact Jeff Slowikowski, Research and Program Development Division, at (202)307–5929.

"Families of Missing Children: Psychological Consequences and Promising Interventions": A Study to Resurvey the Respondents in the Original Study

Purpose

The purpose of this resurvey is to provide an improved knowledge base for future development of programs to ameliorate the psychological effects on victims and families of family and non-family abductions and serious runaway episodes. It builds on the earlier project, "Families of Missing Children: Psychological Consequences," by resurveying the families who participated in that survey and again measuring levels of psychological distress in order to gather data in which the missing child has been recovered since the last survey and to identify more clearly the missing child situations in which the psychological effects dissipate after two years and those in which they do not.

Background

The results of the initial "Psychological Consequences" project indicated that it is appropriate to identify two traumas rather than just the one associated with each missing child incident. The initial trauma arises when the child is taken, but there is a second trauma at the time of resolution, the return of the child or the discovery that the child has been killed. At the conclusion of the initial study 50 missing children from the 279 cases had not been recovered. It is important to get data from any of these 50 cases in which there has been a recovery since the conclusion of the initial project because it is expected that these will be more serious cases due to the length of time the children would have been missing.

In the initial "Psychological Consequences" project, data was collected and analyzed using the double ABCX Model of Family Adaptation to Crisis developed by Hamilton McCubbin of the University of Wisconsin. A sample of 279 families were followed prospectively with in-home interviews in a time series measurement design from approximately one month post-disappearance to eight months post-disappearance. Changes in the levels of distress for each type of disappearance were measured in the initial project over a period not exceeding eight months, with the time after recovery often being much shorter. Whether or not a significant drop in psychological distress levels can now be measured two years after disappearance is important to the development of programs to help families cope with this distress.

Goal

The goal of this project is to assess the changes in the post-trauma responses of the 279 families composing the original sample, now that approximately two years have passed after the original data collection, in order to validate the conclusions reached in the original study over a longer period of time, particularly with regard to the trauma associated with the recovery of a body or a child.

Objectives

The objectives of the project are:

(1) To obtain responses to the original data collection instruments from as high a percentage of the 279 sample families as possible.

(2) To collect the data using methods equivalent to those employed originally, including in-home interviews, in order to isolate the variation in responses as due only to the passage of time.

(3) To analyze data using the double ABCX Model of Family Adaptation to Crisis and present the results showing changes from the results of the initial project and drawing conclusions from these results.

Program Strategy

(1) Applicants will be expected to present a plan for obtaining the highest possible rate of response. This plan will include working in cooperation with the original researcher, the University of California, San Francisco, to reestablish contact with the original victim families in order to assure the continuity of contact.

(2) Data collection instruments will be the same as used in the initial data collection including the following instruments: Symptom Check List—90, Achenback Child Behavior Check List, Family Inventory of Life Events, F–COPES, Frederick Trauma Reaction Index—Adult, Frederick Trauma Reaction Index—Child, and the Locke-Wallace Marital Satisfaction Scale.

(3) Data will be collected in the same manner used by the initial researcher, in the families' homes.

(4) Data will be analyzed using the double ABCX Model of Family Adaptation to Crisis and results will be presented showing changes from the results of the initial project and drawing conclusions from these results.

Products

A final report will be presented 90 days after the close of the grant period showing changes from the results of the initial project and drawing conclusions from these results.

Eligibility Requirements

Applications are invited from public and private nonprofit agencies, organizations, educational institutions, or combinations thereof. The applicant must demonstrate that they have knowledge and experience in the design and implementation of research projects of this size and complexity. They must demonstrate the ability to collect and analyze data using the double ABCX Model of Family Adaptation to Crisis employed in the initial project.

The applicant must provide further evidence of their management and financial capability to implement effectively a project of this size and scope. Those who fail to do so will be ineligible for funding consideration.

Selection Criteria

Applications will be rated on the extent to which they meet the following criteria:

(1) Conceptualization of the Problem. (15 points)

The problem to be addressed by the project should be clearly stated. The applicant should address the problems of achieving the maximum level of response on this resurvey, assuring the comparability of the data developed in this resurvey with that developed in the original survey, and analyzing the results to gain the most insight possible from the new information.

(2) Statement of Objectives. (20 points)

The objectives to be achieved by the project must be clearly defined. The applicant must link the problem statement directly with concrete, measurable tasks to achieve the program objectives. These tasks should show exactly what will be done to address the program objectives.

(3) Project Design. (20 points)

The application will be evaluated on the soundness of the project design. The applicant should provide a schedule for the implementation and completion of these tasks and demonstrate that they will achieve the objectives of the project. The design should comply with generally accepted principles of research and investigation.

(4) Project Management. (20 points)

The applicant must demonstrate that it has the managerial and organizational capability to undertake a project of this type, indicating specific personnel who will accomplish the tasks. If specific personnel are not yet named, the applicant must include position descriptions along with the qualifications necessary of any individuals who will fill those positions. The applicant must indicate how this particular structure will allow for the successful completion of the project.

(5) Organizational Capability. (15 points)

The applicant must have the capability to complete the tasks indicated in the application. In particular, the applicant must demonstrate experience in collecting, analyzing, and presenting data as required to complete this project.

(6) Budget. (10 points)

The proposed budget must be reasonable, allowable and cost-effective vis-a-vis the activities to be undertaken. The application will be reviewed to assure that all costs will completely cover the expenses of the proposed project. Similarly, the budget will be reviewed to assure that all costs are reasonable for the type of project envisioned in this solicitation. All costs indicated must be allowable under OJJDP grant regulations. The applicant

should show that all proposed costs will be used in the most effective manner possible to complete the project goals.

Award Period

The project and award period for this project is 12 months.

Award Amount

Up to $150,000 has been allocated for this project.

Due Date

Applications must be received by mail or delivered to OJJDP by September 28, 1992.

Contact

For further information contact Eric Peterson, Social Science Specialist, Research and Program Development Division, at (202)616–3644.

Model Sentencing and Custody Guidelines in Parental Abduction Cases

Purpose

The purpose of this project is improve the justice system response to parentally abducted children and deter abductions through the development of guidelines for prosecutors and judges on the effective handling of parental abduction cases and to minimize the negative effects on children by enabling judges to make more informed decisions regarding post-abduction custody.

Background

Recent OJJDP-sponsored studies on the obtacles to the recovery of parentally abducted children and on the psychological impact of abduction on children and families show that child victims of family abductions experience more trauma and long-term disturbances than is commonly believed. These, and other studies, indicate that primary motivations of family abductors in the majority of cases were anger and revenge against the other parent and that the abductors attempted to use their children to control and attack the opposing parent. Some parents were fleeing abuse directed at themselves, their child, or both, and needed protection. While studies indicate that up to 33% of parental abduction cases involve allegations of child abuse, a higher percentage reportedly involve a violent relationship between the parents. A recent study found that more than one-half of left-behind parents reported previous abuse by their partners, with three-quarters of abducting fathers having a history of violent behavior compared with one-quarter of abducting mothers. Fifteen percent of the abductions in the same sample involved the use of force. One study of missing children found that parentally abducted children were missing longer (an average of 499 days) than stranger abducted children (an average of 122.3 days), or runaway children (an average of 27.7 days).

Family abduction cases represent a wide variety of situations with regard to motivation, effects on the child, and outcomes. Regardless of whether an abduction is prompted by frustration with unsatisfactory custody or visitation arrangements or by a desire to punish or control the other parent, many abducting parents intentionally or unintentionally inflict serious emotional or physical harm upon their children. Legal outcomes differ greatly from state to state. OJJDP-sponsored studies indicate that few abductors are being prosecuted or are receiving sentences of any consequence, and custody is being awarded to the abductor in some cases. Consequently, in many jurisdictions, law enforcement involvement in these cases is infrequent and inconsistent.

Goal

The goal of the project is to develop guidelines that inform prosecutors and judges of the effects of parental abductions on children and families which will enable the criminal justice system to develop more accurate and effective responses to family abduction cases.

Objectives

The objectives of this program are to:

- Develop guidelines for prosecutors who must make decisions on charging in parental abduction cases.
- Develop guidelines for judges on sentencing and post-abduction and post-recovery custody determinations.
- From these judicial guidelines, develop a bench book for judges.

Program Strategy

The grantee will be responsible for reviewing current studies about the abduction of children and the consequences of this action on children and their families, as well as conducting surveys, if necessary, to determine judicial and prosecutorial needs in this area. In addition, reports and information on Federal and State statutes should be examined and analyzed. This information will be utilized to develop guidelines for prosecutors and judges to enable them to identify and address a wide range of cases with varying motivations and consequences to the abducted child. Examples of the factors to be considered include child concealment behaviors, use of force or violence at the time of the abduction, transporting a child out of state, changing a child's name, depriving the child of stable schooling, physical or sexual abuse, emotional and physical (including medical) neglect, and lying to the child by telling it that the other parent does not want it or is dead. The guidelines should be specifically directed to the complex concerns facing judges and court personnel and prosecutors, such as the types of situations in which abduction is likely to reoccur, a history of domestic violence which would affect the other parent and/or the child, the circumstances in which child custody might be granted to the abducting parent, and what visitation options and circumstances guiding them will be permitted after the recovery of the child.

The applicant will develop the judicial guidelines into a bench book as well as a series of articles that can be widely distributed to criminal and family court judges. The grantee will also develop a plan for dissemination to professionals through judicial, prosecutorial, and child welfare organizations.

To support this work the applicant will establish an advisory committee of judges, prosecutors and other practitioners and researchers. This advisory committee will advise the grantee on all aspects of the project and review and comment on all of the products.

The successful applicant will work with the grantee in the followup project to "Obstacles to the Recovery and Return of Parentally Abducted Children" to develop a training curriculum that can be incorporated into existing national, State and local judicial, prosecutorial and child welfare training.

Products

OJJDP expects the following products under this grant:

- Guidelines for prosecutors with regard to the handling of parental abduction cases.
- Guidelines for judges on the handling of parental abduction cases and the related custody issues.
- A judicial bench book which incorporates the guidelines and guidance for sentencing of parental abductors and guidance with regard to custody determinations in child abduction cases.

Eligibility Requirements

Applications are invited from public agencies and private organizations which can demonstrate knowledge of issues relating to missing and abducted children, experience with surveys,

development of guidelines, and capability in civil and criminal justice issues and training development. Joint proposals by more than one applicant are welcome, as long as one organization is designated as the applicant with fiscal responsibility for the grant and the other as the co-applicant.

Selection Criteria

Applications will be rated on the extent to which they meet the following criteria:

(1) Conceptualization of the Problem. (15 points)

The applicant must demonstrate a clear understanding of the problem and a competence to deal with issues relating to missing, abducted, and exploited children, including civil and criminal justice handling of parental abduction cases.

(2) Statement of the Goal and Objectives. (20 points)

The applicant must demonstrate a clear understanding of the goal and objectives to be achieved by this project and this understanding must be consistent with the requirements set forth in the conceptualization of the problem.

(3) Project Design. (25 points)

The program strategy, procedures, workplan or milestone chart, and proposed products of this project must be directly linked with the stated objectives, and with the problem addressed by this announcement. The applicant must provide a clear discussion of how it will accomplish the various tasks and responsibilities under this project.

(4) Project Management. (15 points)

The project's management structure and staffing must be adequate for the successful implementation and completion of the project. The management plan describes a system whereby logistical activities are handled in the most efficient and economical way.

(5) Organizational Capability. (15 points)

The applicant's ability to conduct the project successfully must be documented in the application. Organizational experience is also required in issues relating to missing and exploited children, including civil and criminal justice system handling of parental abduction cases, and development of publications and training curricula. Key project personnel should have significant experience in the subject area addressed in this announcement.

(6) Budget. (10 points)

The proposed budget must be reasonable, allowable, and cost-effective vis-a-vis the activities to be undertaken.

Award Period

The project period is 18 months.

Award Amount

Up to $125,000 has been allocated for this project.

Due Date

Applications must be received by mail or delivered to OJJDP by September 14, 1992.

Contact

For further information contact Len Johnson, Special Emphasis Division, at (202) 616–3657.

Model Treatment and Services Approaches for Mental Health Professionals Working With Families of Missing Children

Purpose

The purpose of this project is to increase knowledge of and develop effective treatment and services approaches for mental health professionals working with families of missing children in order to minimize the psychological consequences experienced by these victims and their families.

Background

"The Families of Missing Children: The Psychological Consequences and Promising Interventions" (Center for the Study of Trauma at University of California at San Francisco) study found that the vast majority of families of missing and recovered children do not receive any mental health services even though the experience of having a child abducted inflicts significant trauma upon the victim and the family members left behind. Only a limited number of criminological or psychological studies have specifically addressed missing children and their families. Previous studies have generally reported that there are profound negative psychological effects that result from the missing experience. The adverse psychological effects of the abduction response are peculiar to children and can be observed in their immediate responses as well as up to 4–5 years post-trauma. However, long-term traumatic effects may not be observed by parents for 6 months to 1 year post-trauma. Symptoms range in frequency and severity. The more severely disturbed children often may have pre-existing psychological problems. They may also come from families with pre-existing physical or emotional disturbances, and may have fewer extended family members in the community. Significant trauma symptoms have been reported in recovered children in parental abduction cases, including disordered sleep, violent behavior, uncontrolled crying, fearfulness, and separation difficulties. Children may also perceive the left-behind parent as having failed to protect' them and may react with anger and rejection. One study noted that the degree of trauma to children was affected by five factors: (1) Their age at the time of abduction, (2) how they were treated by the abductor, (3) the length of time gone, (4) the events and lifestyle experienced during the abduction, and (5) the type of support received upon recovery.

Other families experience post traumatic stress symptoms similar to those of the child victim, although often of lesser intensity. The "Families of Missing Children: Psychological Consequences and Promising Interventions" study also indicated that the majority of families of missing children experience clinically significant levels of distress. While the severity of trauma suffered by victims and families of non-family abduction is more commonly recognized, children and left-behind parents involved in parental abductions also suffer high levels of trauma and long-term distress. Children are usually abducted by a parent during or after the breakup of a marriage or relationship. As a consequence, in addition to the trauma ensuing from the loss of the child, the parent must also deal with other stressful factors stemming from the marital or relationship break-up. The literature review conducted in conjunction with this study found that there is a dearth of experience and knowledge and almost no research on abduction trauma and reactions of families to having a child abducted. Thus, parents who do seek mental health assistance are not likely to find a therapist with experience in either non-family or family abduction trauma.

Goal

Given the void in experience, information, and research on the psychological trauma associated with child abduction, the goal of this program is to develop, test, and refine model treatment and services approaches and training materials for use by mental health professionals in stabilizing family units upon recovery of missing children, and supporting the members of these family units and the returned child to

recover effectively from the associated emotional trauma.

Objectives

The objectives of the project are:

- Through existing research and interviews with victims and their families and therapists, to assess the experiences and effects of abductions (both family and nonfamily).
- To assess other treatment approaches which have been determined to be effective with child victims and their families.
- To develop and test program and family services approaches designed specifically for missing children and their families.
- To develop materials for training curricula and replication manuals.

Program Strategy

While the desirability of developing research-based treatment models is irrefutable, given the immediate need for professionally structured treatment and services approaches, the strategy anticipated for development of these programs anticipates an eclectic approach. The grantee may want to interview families and victims about their experiences and the effects, as well as therapists who have worked with victims and families. Program approaches should be developed which are based upon a combination of treatment approaches determined to be effective in cases involving child protection, family violence, gross family dysfunctioning, court ordered placement of children, familial incest, and marital conflict accompanied by serious violence, and post-traumatic stress disorder in children and adults. Treatment with families of soldiers missing in action should also be explored to determine if effective approaches were developed. The project may also include the development of a nationwide referral system.

Products

The end product should be two to three treatment and services approaches which can be tested in the second and third years of a three year project period, along with replication manuals, training curricula, and a complete literature review.

Eligibility Requirements

Applications are invited from public agencies and private nonprofit organizations that can demonstrate knowledge of issues relating to missing and exploited children and experience and capability in development of mental health treatment and services for victims. Joint proposals by more than one applicant are welcome, as long as one organization is designated as the applicant and the other as co-applicant.

Selection Criteria

Applications will be rated on the extent to which they meet the following criteria:

(1) Conceptualization of the Problem. (15 points)

The applicant must demonstrate a clear understanding of, and competence to deal with, issues relating to missing and exploited children and the development of mental health treatment and services for victims of crime.

(2) Statement of Objectives. (15 points)

The objectives to be achieved by the project must be clearly defined and consistent with the issues and requirements set forth in the conceptualization of the problem.

(3) Project Design. (30 points)

The procedures, workplan and proposed products of the project must be directly linked with the stated objectives, and with the problem addressed by this announcement.

(4) Project Management. (15 points)

The project's management structure and staffing must be adequate for the successful implementation and completion of the project. The management plan describes a system whereby logistical activities are handled in the most efficient and economical way.

(5) Organizational Capability. (15 points)

The applicant organization's ability to conduct the project successfully must be documented in the application. Organizational experience in issues relating to missing and exploited children and development of mental health services and treatment is required. Key project personnel should have significant experience in the subject area addressed in this announcement.

(6) Budget. (10 points)

The proposed budget must be reasonable, allowable, and cost-effective vis-a-vis the activities to be undertaken.

Award Period

The project period is 36 months.

Award Amount

The allocation of funds for the initial 18 month budget period is up to $200,000. The applicant must include an estimated budget for a second 18 month budget period.

Due Date

Applications must be received by mail or delivered to OJJDP by September 28, 1992.

Contact

For further information contact Kathryn Turman, Missing & Exploited Children Program at (202) 616–3631.

Interviewing Adolescent Victims of Sexual Exploitation and Sexual Abuse

Purpose

The purpose of this program is to improve the response of the criminal and civil justice systems to missing children and exploited children by improving interviewing techniques for law enforcement, judicial and other professionals who deal with sexually abused or exploited adolescents.

Background

Interviewing adolescent victims of sexual abuse and exploitation requires particular skills and techniques. Due to their age and the nature of their exploitation, these victims are often extremely reluctant or unable to disclose or discuss their abuse or exploitation. There is little literature or training available in the field to instruct law enforcement personnel and medical and direct service providers on how to conduct interviews with the adolescent victim. However, individual practitioners in various police, prosecutorial, health, or related agencies have developed considerable proficiency in dealing with adolescent victims. Their expertise could be harnessed to train others.

Goal

The goal of this project is to develop information and techniques for interviewing adolescent victims of sexual abuse and exploitation for use by criminal justice personnel and other professionals.

Objectives

The objectives of this project are:

- To assess and inventory training needs in the subject area.
- To develop the necessary training curricula and related informational materials for professionals who conduct interviews with adolescent victims.

Program Strategy

In order to expand the availability of information and training in this area, OJJDP will sponsor an inventory and assessment of existing informational and training resources pertaining to this topic. Overall, the project will review

the protocols for conducting victim interviews and the distinctions between the first responder interview, the investigative interview, and the therapeutic interview. Joint investigative interviewing by law enforcement personnel and child protective services should also be addressed. Project documents are expected to cover: (1) Interviewing techniques, including types and purposes; (2) essential elements of sexual exploitation and abuse investigations; and (3) essential elements of adolescent psychology and behavior. The grantee is expected to draw on the expertise of experienced law enforcement investigators and others who have developed special skills in interviewing adolescent victims. A literature review should be included. The training should be tested in several sites.

Products

Final products expected by OJJDP include a literature review, a suggested training curriculum and a summary state-of-the-art monograph, as well as a listing of resources and practitioners with particular expertise in this area.

Eligibility Requirements

Applications are invited from public agencies and private organizations that can demonstrate the knowledge of issues relating to missing and exploited children, and the experience and capability in developing curricula and publications for law enforcement and social services and mental health personnel.

Selection Criteria

Applications will be rated on the extent to which they meet the following criteria:

(1) Conceptualization of the Problem. (15 points)

The applicant must demonstrate a clear understanding of, and competence to deal with, issues relating to missing and exploited children, investigation of crimes against children, and curricula and publications development.

(2) Statement of Objectives. (15 points)

The objectives to be achieved by the project must be clearly defined and consistent with the issues and requirements set forth in the conceptualization of the problem.

(3) Project Design. (30 points)

The procedures, workplan and proposed products of the project must be directly linked with the stated objectives, and with the problem addressed by this announcement.

(4) Project Management. (15 points)

The project's management structure and staffing must be adequate for the successful implementation and completion of the project. The management plan must describe a system whereby logistical activities are handled in the most efficient and economical way.

(5) Organizational Capability. (15 points)

The applicant organization's ability to conduct the project successfully must be documented in the application. Organizational experience in issues relating to missing and exploited children, training curricula for investigators, and publications development is required. Key project personnel should have significant experience in the subject area addressed in this announcement.

(6) Budget. (10 points)

The proposed budget must be reasonable, allowable and cost-effective vis-a-vis the activities to be undertaken.

Award Period

The project period is 24 months.

Award Amount

Up to $125,000 has been allocated for the first 12 month budget period. The applicant must include an estimated budget for a second 12 month budget period.

Due Date

Applications must be received by mail or delivered to OJJDP by September 28, 1992.

Contact

For further information contact Kathryn Turman, Missing and Exploited Children Program, at (202) 616–3631.

Resource Handbook of Victim Services and Assistance for Missing and Exploited Children and Their Families

Purpose

The purpose of this project is to enable families of missing children to minimize the negative psychological effects of the abduction or missing experience through the development of a resource handbook to be used by families and friends of missing children to help them recognize the emotional and physical needs of family members and to identify and access available services designed to assist them in coping with the loss, loss and recovery, or death of their child.

Background

The "Families of Missing Children: The Psychological Consequences and Promising Interventions" study found that the vast majority of families of missing and recovered children do not receive mental health services, guidance in coping with the return of a child, or other victims services and resources even though the experience of having a child abducted inflicts significant trauma upon both the victims and the family members left behind.

Families of missing and recovered children can (1) enhance their personal, marital, and family stability during this crisis when they know what constitutes expected or normative reactions of child loss; (2) improve the parent-child relationship when they know the child's experience during the event and after recovery; and (3) insure their understanding of ongoing needs of the non-missing children in the family when they know sibling reaction to child loss.

Goal

The goal of this project is to develop and publish a resource handbook for families and friends of missing children that will help them (1) understand the emotional and physical needs of family members and (2) identify and access available services designed to assist them in coping with the disappearance and recovery or death of their child.

Objectives

The objectives of this project are to:

- Assess the needs of families of missing children.
- Produce a resource handbook for families and friends of missing children that will help them (1) identify the emotional and physical needs of family members and (2) identify and access the types of available services designed to assist them in coping with the loss and recovery or death of their child.
- Develop a plan whereby the publication can be efficiently and economically updated from time to time to ensure that the information—especially available services and financial assistance—remains as current as possible.
- Develop and implement a plan for an initial distribution of the final product.

Program Strategy

This project requires the development of a specialized handbook designed to enable families to recognize their personal needs and the needs of their family and to identify and access services available on a local, State, and national basis. This publication will include information on the types of available victim compensation and assistance, e.g., local, State and Federal funds, a listing of national support organizations for families and victims,

as well as information on selecting a therapist. For situations involving a crime, the handbook will also address investigative, legal and court issues. The handbook will provide information for friends and extended family members on providing support and assistance to the family of a missing child. The handbook is not intended to be a comprehensive directory of local services nationwide but should instead focus on the broader types of assistance available and provide general information about accessing it.

Due to the multi-faceted nature of this publication, it is important that an Advisory Group be established to assist in determining the most important information to be included in the document. The applicant should give careful consideration as to who should be represented in the Advisory Group. It is recommended that the Group include such advisors as family members who have survived the loss and recovery or death of a child; therapists; medical doctors; family counselors; and representatives of social services, law enforcement, and the legal and court systems. The purpose of the Advisory Group is to assist in providing information for the resource handbook and reviewing and commenting on the final publication.

Production of the resource handbook should include a needs assessment of what victimized family members needed during and following their crisis. The assessment should cover what services were most helpful to the victims and their families and what "services" were either missing or harmful. The applicant should also conduct a literature review that includes, but is not limited to, physical and psychological advice to family members and friends of a missing child and available services designed to assist them in coping with the loss and recovery or death of their child. The applicant should submit a handbook organizational plan and outline and a final draft of the handbook to the Advisory Group for review and comment.

The multi-faceted nature of the publication requires that a data base be established and maintained to provide the most current data on available services, including financial assistance. The National Center for Missing and Exploited Children (NCMEC) presently maintains resource lists of State missing children clearinghouses, private nonprofit organizations focusing on missing children, and some national support groups. The applicant is expected to work with NCMEC in compiling the data on available sources. The applicant will develop an efficient, cost-effective plan whereby the resource handbook can be updated from time to time to ensure that the information remains as current as possible.

Publication of this handbook will be facilitated through NCMEC and dissemination will be primarily through NCMEC, missing children State clearinghouses, and other public and private organizations to the families of missing children they serve through an initial distribution effort and an ongoing basis as new cases arise. The applicant should develop a detailed marketing and dissemination plan to ensure that the product will reach the intended audience effectively.

Eligibility Requirements

Applications are invited from public agencies and private nonprofit organizations that can demonstrate the knowledge of issues relating to missing and exploited children and victims services, as well as experience and capability in producing publications.

Selection Criteria

Applications will be rated on the extent to which they meet the following criteria:

(1) Conceptualization of the Problem. (15 points)

The applicant must demonstrate a clear understanding of, and competence to deal with, issues relating to missing and exploited children, services and assistance to victims of crime, and publications development.

(2) Statement of Objectives. (15 points)

The objectives to be achieved by the project must be clearly defined and consistent with the issues and requirements set forth in the conceptualization of the problem.

(3) Project Design. (30 points)

The procedures, workplan, and proposed products of the project must be directly linked with the stated objectives, and with the problem addressed by this announcement.

(4) Project Management. (15 points)

The project's management structure and staffing must be adequate for the successful implementation and completion of the project. The management plan must describe a system whereby logistical activities are handled in the most efficient and economical way.

(5) Organizational Capability. (15 points)

The applicant organization's ability to conduct the project successfully must be documented in the application. Organizational experience in issues relating to missing and exploited children, resources and assistance for victims, and publications development is required. Key project personnel should have significant experience in the subject area addressed in this announcement.

(6) Budget. (10 points)

The proposed budget must be reasonable, allowable and cost-effective vis-a-vis the activities to be undertaken.

Award Period

The project period is 12 months.

Award Amount

Up to $60,000 has been allocated for this project.

Due Date

Applications must be received by mail or delivered to OJJDP by September 14, 1992.

Contact

For further information contact Cora Roy, Special Emphasis Division, at (202) 616–3659.

Symposium on International Child Abductions

Purpose

The purpose of this project is to provide information to assist in the location and return of internationally abducted children through holding a symposium for practioners in North America on critical issues regarding international child abductions.

Background

Parental child abductions are tragic and often difficult cases to resolve. When a child is abducted or moved across international borders the difficulties are compounded. The left-behind parent faces not only the pain of the loss of their child but intensified frustration and helplessness because their child is beyond the jurisdiction of U.S. laws and custody orders.

The increase in international marriages since World War II has resulted in increased international child abductions. Over the past 13 years the Department of State has been contacted on the cases of approximately 2800 children who have been abducted from the United States or kept from returning to the United States by one of their parents. In 1980, the Hague Convention on the Civil Aspects of International Child Abduction was initiated. As of this date, the Hague Convention has been ratified by 23 countries, including the United States in 1988. The Hague Convention sets international policy condemning parental abduction and seeks promptly to restore children to

their pre-abduction circumstances, thus limiting the harm they suffer as a result of the abduction. It also provides international laws and procedures for the resolution of these difficult disputes.

Despite the adoption of the Hague Convention by many countries and the success in recovering children under the Convention, international child abduction still poses complicated problems for parents, governments and other agencies involved in the location and recovery of these children. There is a lack of knowledge and information about recovering children under the Hague and other resources available to assist in international child abduction cases. The Convention will govern the return of the child only if both countries have ratified the Convention and only in cases occurring after ratification. Where the Hague Convention does not govern, there are a whole set of additional issues that must also be addressed. Information on the appropriate civil and criminal remedies and the interaction between them is available and should be presented during the forum.

Educating professionals from around the country and North America, who can in turn educate parents and the public about precautionary measures and the dangers and consequences of international abduction, may help prevent abductions or repeat abductions.

Goal

The goal of this project is to educate practitioners on the issues related to international child abductions.

Objectives

The objectives of this project are:

(1) To plan a conference on international child abductions;

(2) To develop individual workshops or roundtables regarding prevention of international child abductions, overcoming obstacles to locating and recovering abducted children in the world-wide arena, on the progress in implementation of the Hague Convention, the interaction of civil and criminal remedies and international trafficking in children;

(3) To hold the conference by mid-1993 in an accessible site;

(4) To develop the proceedings of the conference into a monograph for distribution; and

(5) To develop a dissemination plan to distribute the monograph and any related materials to the broadest possible audience of interested practitioners.

Program Strategy

The grantee would work cooperatively with the U.S. Department of State's Office of Citizens Consular Services (CCS), Interpol, the Office of International Affairs in the Criminal Division at the Department of Justice, the National Center for Missing and Exploited Children, and appropriate others to convene a forum of practitioners to examine current issues regarding international abductions, including prevention, overcoming obstacles for locating and recovering abducted children in a world-wide arena, and progress in the adoption and implementation of the Hague Convention. The symposium should be planned for mid-1993 to follow an international meeting of representatives of Hague Convention Central Authorities scheduled for January of 1993.

Besides providing a forum for reports and updates from the Hague Convention meeting, specific issues to be addressed should include court costs and legal fees, handling cases in non-Hague Convention countries, interaction between civil and criminal processes, techniques and assistance in locating abducted children abroad, needed policy improvements, training needs, public education as a deterrant, and trafficking in children.

Speakers and presenters would be drawn from the agencies mentioned above and others with expertise in handling international child abductions. Groups to be targeted for participation and attendance would include State Attorneys General, U.S. Attorneys, State prosecuting attorneys, judges, private attorneys, State missing children clearinghouse personnel, legislators, law enforcement officers, and media personnel. Invitations to participate in the symposium should also be extended to central authorities in Canada and Mexico.

An expected outcome of this forum would be the publication of a series of reports indicating directions for future study, training and information dissemination.

Eligibility Requirements

Applications are invited from public agencies and private nonprofit organizations that demonstrate the experience and capability in dealing with legal issues relating to international child abductions, conference and curricula development, and publications development.

Selection Criteria

Applications will be rated on the extent to which they meet the following criteria:

(1) Conceptualization of the Problem. (15 points)

The applicant must demonstrate a clear understanding of, and competence to deal with, issues regarding legal obstacles to and remedies for resolving international abduction cases, symposium development, and the providing of information and training to the target population.

(2) Statement of Objectives. (15 points)

The objectives to be achieved by the project must be clearly defined and consistent with the issues and requirements set forth in the conceptualization of the problem.

(3) Project Design. (30 points)

The procedures, workplan, and proposed products of the project must be directly linked with the stated objectives, and with the problem addressed by this announcement.

(4) Project Management. (15 points)

The project's management structure and staffing must be adequate for the successful implementation and completion of the project. The management plan must describe a system whereby logistical activities are handled in the most efficient and economical way.

(5) Organizational Capability. (15 points)

The applicant organization's ability to conduct the project successfully must be documented in the application. Organizational experience in legal issues, resource and conference development, and training is required. Key project staff should have significant experience in the subject area addressed in this announcement.

(6) Budget. (10 points)

The proposed budget must be reasonable, allowable, and cost-effective vis-a-vis the activities to be undertaken.

Award Period

The project period for this program is 12 months.

Award Amount

Up to $200,000 has been allocated for this project.

Due Date

Applications must be received by mail or delivered to OJJDP by September 28, 1992.

Contact

For further information contact Douglas Dodge, Special Emphasis Division, (202) 616–3652.

Obstacles to the Recovery and Return of Parentally Abducted Children: Training, Technical Assistance and Product Resources

Purpose

The purpose of this project is to improve the justice system response to children who are abducted by family members through the dissemination to judges, prosecutors, law enforcement personnel, private attorneys, and policy makers information on the legal obstacles faced by parents and investigators in recovering parentally abducted children.

Background

Section 408 of the Act, 42 U.S.C. 5778, directed OJJDP to fund a study on the obstacles that prevent or impede the recovery and return of parentally abducted children. The study, "Obstacles to the Recovery and Return of Parentally Abducted Children" was conducted for OJJDP by the Center on Children and the Law at the American Bar Association. The interim report presented to Congress in November, 1991, identified and focused on three key legal obstacles. These obstacles were: (1) lack of knowledge of applicable law on the part of judges and attorneys; (2) lack of compliance by judges and attorneys, even when knowledgeable; and (3) lack of uniformity and specificity in State laws. In addition, left-behind parents often were unable to afford legal assistance or to find attorneys who would adequately and knowledgeably represent them. The final report, which was received by OJJDP on July 1, 1992, details other issues of a non-legal nature and will include specific recommendations for removing legal obstacles and improving interstate and interjurisdictional cooperation in parental abduction cases.

Goals

The goals of this project are:

(1) To increase the knowledge of judges, prosecutors, and policy makers as to the legal obstacles to recovering parentally abducted children and to existing civil remedies; and

(2) To identify and assess potential remedies for practical obstacles relating to accessibility of custody records and lack of available and affordable legal assistance for left-behind parents.

Objectives

The objectives of this project are to:

- Develop specialized publications and resources;
- Develop training curriculum for judges and dissemination through existing organizations which provide training for the judiciary; and
- Implement regional policy conferences on parental abductions and the implementation of the Uniform Child Custody Jurisdiction Act and the Parental Kidnapping Prevention Act.
- Assess the feasibility of remedies such as development of a child custody registry, development of a nationwide referral network of attorneys who handle family abduction cases, and problems of affordability of legal services for left-behind parents.

Program Strategy

OJJDP expects this project to develop materials and training for different audiences and create cooperative arrangements with existing organizations to disseminate these materials. Target audiences include lawyers, judges, law enforcement personnel, prosecutors, policy makers and public and private missing children's organizations.The successful applicant is expected to develop and disseminate model State statutes and to possibly hold a conference for State legislators and their staffs. In addition, procedures for establishing a national child custody registry and possible resources to assist left-behind parents in accessing knowledgeable legal representation are to be examined.

Products

Specific products will include:

(1) A written bench book for judges on the Uniform Child Custody Jurisdiction Act (UCCJA), the Parental Kidnapping Prevention Act (PKPA);

(2) A booklet of practice tips for attorneys in family law on handling family abduction cases;

(3) Information for left-behind parents on how best to work with the system to accomplish the recovery of an abducted child;

(4) Development of a written protocol for law enforcement for both civil and criminal cases;

(5) A fifty State, D.C., and territorial directory of relevant statutes and case law (on disk) related to family abductions; and

(6) A directory of legal resources and information for use in parental abduction cases and enforcement of child custody orders.

Eligibility Requirements

Applications are invited from public agencies and private organizations that can demonstrate the experience and capability to produce legal analysis, publications and training curricula for justice system personnel.

Selection Criteria

Applications will be rated on the extent to which they meet the following criteria:

(1) Conceptualization of the Problem. (15 points)

The applicant must demonstrate a clear understanding of, and competence to deal with, issues regarding legal obstacles and remedies to parental abduction cases, curricula development, and the providing of information and training to the target population.

(2) Statement of Objectives. (15 points)

The objectives to be achieved by the project must be clearly defined and consistent with the issues and requirements set forth in the conceptualization of the problem.

(3) Project Design. (30 points)

The procedures, workplan, and proposed products of the project must be directly linked with the stated objectives, and with the problem addressed by this announcement.

(4) Project Management. (15 points)

The project's management structure and staffing must be adequate for the successful implementation and completion of the project. The management plan must describe a system whereby logistical activities are handled in the most efficient and economical way.

(5) Organizational Capability. (15 points)

The applicant organization's ability to conduct the project successfully must be documented in the application. Organizational experience in legal issues, resource and curricula development, and training is required. Key project staff should have significant experience in the subject area addressed in this announcement.

(6) Budget. (10 points)

The proposed budget must be reasonable, allowable, and cost-effective vis-a-vis the activities to be undertaken.

Award Period

The project period is 36 months.

Award Amount

Up to $250,000 has been allocated for this project for the first 18 month budget period. Applicants must include an estimated budget for a second 18 month budget period.

Due Date

Applications must be received by mail or delivered to OJJDP by September 28, 1992.

Contact

For further information contact Kathryn Turman, Missing and Exploited Children Program, at (202) 616–3631.

Telecommunications Training for Law Enforcement Personnel on Techniques for Investigating Missing and Exploited Child Cases

Purpose

The purpose of this project is to address the particular needs of missing children by minimizing the negative impact of law enforcement procedures on children who are victims of abuse or sexual exploitation through the development and dissemination to law enforcement personnel of a comprehensive video training curriculum designed to improve investigative response.

Background

The past decade has seen a substantial increase in the number of cases involving missing and sexually abused and exploited children. The majority of cases of children abducted by non-family members involve sexual assault. Runaway children are frequently at serious risk of sexual assault and exploitation. Recent surveys of prosecutors and law enforcement reflect the growing burden these cases place on the criminal and civil justice system. The investigation and handling of missing and sexually exploited children present difficult challenges for the law enforcement officer and require special skills and knowledge. Most law enforcement agencies employ less than ten officers. Even the smallest agencies will encounter these cases, yet these law enforcement officers have few opportunities or resources to receive specialized and intensive training in the investigation of crimes against children.

Rapidly developing telecommunications technologies are becoming more accessible and economical in use. According to proponents of this type of technology, these methods can provide many advantages over more traditional training and information dissemination, including cost savings in travel and time, more timely transfer of information, and greater access to larger numbers of students or interested parties.

The distribution of video training programs supported by satellite or other technology to closed user group audiences may overcome many of the barriers to receiving specialized training faced by many law enforcement agencies. Training could occur through the existing law enforcement telecommunications systems or through structured teleconferencing.

Goal

The goal of this project is to provide state-of-the-art information on the investigation of missing and sexually abused and exploited children cases to a wide audience of small to mid-size police departments.

Objectives

The objectives of the project are:

- To support development of an integrated training course package to be used in model training approaches; and
- To develop and test dissemination strategies emphasizing utilization of cable and teleconferencing networks.

Program Strategy

OJJDP will select an organization to develop and produce a video training course about the investigation of missing and exploited children cases. This series of videotape presentations will focus on the investigation of missing children (including both family and non-family abductions), sexual abuse and exploitation of children, including related crimes committed against children who are missing or who may have been abducted, such as investigation of physical abuse injuries and homicides.

Related topics to be addressed in training videotapes include case management, developing offender profiles, techniques for interviewing child victims and suspects, and interacting with social service, medical, and mental health professionals. The curriculum should focus on basic, but state-of-the-art information and techniques, and should be consistent with other OJJDP-sponsored training programs for law enforcement. The curriculum should primarily represent situations and resources available to small and mid-size law enforcement agencies.

This project requires the selection of a project advisory committee approved by OJJDP consisting of experts and practitioners from law enforcement, child protective services, the medical field, mental health services, and prosecutors. This advisory committee will assist in the development of the curriculum. The grantee should consult with law enforcement officers currently serving as faculty for OJJDP's child abuse and exploitation training program as well as the training staff from the National Center for Missing and Exploited Children.

In addition to the series of training videotapes, the successful applicant will produce a small publication or pocket card for law enforcement agencies listing national and regional resources which provide training, information, and technical assistance in cases of missing and exploited children.

The successful grantee will also design and test a plan for regional and national dissemination utilizing cable and teleconferencing networks, law enforcement training academies, and professional organizations.

Specific products to be completed during this project are:

- A series of training videos;
- A small pamphlet or pocket card for law enforcement listing resources for training, information, and technical assistance;
- A pilot demonstration effort using telecommunications technology, and
- A summary report detailing opportunities for future dissemination.

Eligibility Requirements

Applications are invited from public agencies and private organizations which can demonstrate the capability to develop and produce a high quality series of training videos on the investigation of child maltreatment cases for law enforcement as well as the demonstrated capability for utilizing telecommunications technology for dissemination of training materials.

Selection Criteria

Applications will be rated on the extent to which they meet the following criteria:

(1) Conceptualization of the Problem. (15 points)

The applicant must demonstrate a clear understanding of, and competence to deal with, investigative issues regarding child maltreatment cases, law enforcement training, and telecommunications technology.

(2) Statement of Objectives. (15 points)

The objectives to be achieved by the project must be clearly defined and consistent with the issues and requirements set forth in the conceptualization of the problem.

(3) Project Design. (30 points)

The procedures, workplan, and proposed products of the project must be directly linked with the stated objectives, and with the problem addressed by this announcement.

(4) Project Management (15 points)

The project's management structure and staffing must be adequate for the

successful implementation and completion of the project. The management plan must describe a system whereby logistical activities are handled in the most efficient and economical way.

(5) Organizational Capability (15 points)

The applicant organization's ability to conduct the project successfully must be documented in the proposal. Organizational experience with law enforcement training and utilization of telecommunications is crucial. Key project staff should have significant experience in the subject area addressed in this announcement.

(6) Budget. (10 points)

The proposed budget must be reasonable, allowable, and cost-effective vis-a-vis the activities to be undertaken.

Award Period

The project will be funded for 24 months.

Award Amount

Up to $200,000 has been allocated for the first 12 month budget period. Applicants must include an estimated budget for a second 12 month budget period.

Due Date

Applications must be received by mail or delivered to OJJDP by September 28, 1992.

Contact

For further information contact Kathryn Turman, Missing and Exploited Children Program, at (202) 616–3631.

Funding Support for Specific Program Development for State Clearinghouses for Missing Children

Purpose

The purpose of this project is to strengthen the capabilities of State missing children clearinghouses and to improve coordination and cooperation among the systems serving missing children at the Federal, State, and local levels.

Background

There are currently 44 State missing children clearinghouses around the country. They differ widely as to statutory authority, mission, staff size, functions, and budget. While most State clearinghouses are part of a state law enforcement agency, some are housed in a State Department of Education or in the Attorney General's office. The State clearinghouses are a critical link in the national network of agencies and organizations involved in missing and exploited children cases. Through the National Center for Missing and Exploited Children (NCMEC) and other OJJDP grantees, training and technical assistance is provided for State clearinghouse personnel. OJJDP has provided funding for new computer systems for the State clearinghouses and has also provided a bulletin board technology link with other State clearinghouses and NCMEC. Through NCMEC, OJJDP also plans to establish computer age-progression labs in four State clearinghouses. The project presented in this solicitation will provide direct funding assistance to six to eight State clearinghouses for the development of special projects and functions.

Goal

The goal of this project is to assist State missing children clearinghouses to strengthen their role within their State through the development of specific projects and functions relating to missing and exploited children.

Objectives

The objectives of this project are:

- To generate new and innovative ways to serve the families of missing children and assist local law enforcement in the investigation of missing child cases;
- To facilitate the development of projects within State clearinghouses which would raise the visibility and viability of those clearinghouses;
- To develop models and processes for new programs and State clearinghouse functions for replication in other State clearinghouses.
- To develop programs which would expand the national networking capabilities among the State missing children clearinghouses and law enforcement agencies.

Program Strategy

Proposals are being solicited from designated State clearinghouses on missing and exploited children for cooperative agreements with OJJDP to develop and implement special programs and products designed to assist and improve the quality of services offered missing and exploited children by law enforcement and youth serving agencies.

OJJDP anticipates providing up to six grants (up to $50,000) to individual clearing- houses to develop special projects and products. OJJDP encourages the applicants to develop their programs in formats to serve as models for other State clearinghouses around the country to improve their service capabilities. These projects could include programs such as the development of a State-wide listing of investigators specializing in missing and/or exploited child cases; development and implementation of improved case management systems; the development of training and information dissemination programs designed for law enforcement personnel on investigating missing child cases and how to utilize and interface with their State clearinghouse; making their services known to law enforcement, lawyers, judges, attorneys, and parents; community education and prevention programs; and the development of a network of volunteers within the State who have experience and background in providing services for the parents of missing or exploited children. OJJDP will also consider submissions of original program ideas designed to improve the service capabilities of the State clearinghouse.

The successful applicant must be creative and innovative in its approach and strategy in designing and implementing this program. Applicants must be cost effective, develop their own strategy and budget for achieving the objectives and tasks of this initiative. The successful grantees must provide OJJDP with a report detailing the development of their programs and how they might be replicated for dissemination to other State clearinghouses.

Through a competitive peer review process, up to six applicants will be funded.

Eligibility Requirements

Applications are invited from eligible designated State missing children clearinghouses.

Selection Criteria

Applicants will be rated on the extent to which they meet the following criteria:

(1) Conceptualization of the Problem. (15 Points)

Applicants identify the nature and scope of the missing and exploited children problem to be addressed.

(2) Statement of Objectives. (10 Points)

Applicants provide a succinct statement demonstrating an understanding of the goals, objectives, and tasks associated with the program.

(3) Project Design. (20 Points)

Applicants clearly demonstrate an understanding of the nature of the program area and the soundness of the approach to implementing the needs to be addressed by the project. The

applicant must provide an innovative, yet replicable approach.

(4) Implementation Plan. (25 Points)

Project activities and management structures are adequate and appropriate. The feasibility and clarity of the time task plan is apparent as it addresses what, when, who, and where project activities will be performed and products developed.

(5) Organizational Capability. (20 Points)

Project management structure is adequate to conduct the project successfully. The applicants demonstrate adequate program management and experience in coordinating the type of task to be performed.

(6) Budget. (10 Points)

Proposed costs are complete, reasonable, and cost effective in relationship to the proposed strategy and task to be accomplished.

Award Period

The project period for these cooperative agreements will be 18 months.

Award Amount

Up to six applicants will be awarded up to $50,000 each. Future funding will be based upon performance and availability of funds.

Due Date

Applications must be received by mail or delivered to OJJDP by September 28, 1992.

Contact

For further information contact Frank Smith, Special Emphasis Division, at (202) 616–3656.

General Application and Administrative Requirements

General application and administrative requirements and conditions, including various certifications, are implicit in this announcement. These requirements and conditions are set forth in the Missing Children's Program Application Kit. The reader should consult with the Kit for details.

Gerald (Jerry) P. Regier,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 92–17851 Filed 7–29–92; 8:45 am]

BILLING CODE 4410–18–M

federal register

Thursday
July 30, 1992

Part V

Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 207 et al.

Smoke Detectors for HUD-Assisted or Insured Rental Housing and Public and Indian Housing; Final rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 207, 213, 215, 220, 221, 231, 232, 234, 236, 242, 880, 881, 882, 883, 884, 885, 886, 887, 889, 890, 905, and 965

[Docket No. R-92-1567; FR-3081-F-02]

RIN 2501-AB39

Smoke Detectors for HUD-Assisted or Insured Rental Housing and Public and Indian Housing

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This rule makes final a rule proposed on November 22, 1991 (56 FR 59150) amending HUD regulations to require, at a minimum, one smoke detector on each level of a rental dwelling unit, assisted or insured by HUD, and in public and Indian housing dwelling units. The purpose of the rule is to assure that fire safety equipment is included and maintained in HUD-associated rental units, and to further the National Housing Goal of a decent home and a suitable living environment for every American family.

EFFECTIVE DATE: August 31, 1992.

FOR FURTHER INFORMATION CONTACT: For Section 8 rental certificate, rental voucher, and moderate rehabilitation programs, contact Gerald Benoit, Room 6122, telephone (202) 708-1800; (TDD (202) 708-4594); for Section 202 Elderly and Handicapped Housing, contact Robert Wilden, room 6116, telephone (202) 708-2730; (TDD (202) 708-4594); for Public and Indian Housing, contact Janice Rattley, room 4136, telephone (202) 708-1800; (TDD (202) 708-0850); for HUD-insured and other programs, contact James Tahash, room 6182, telephone (202) 708-3944; (TDD (202) 708-4594); 451 Seventh Street SW., Washington, DC 20410. (Telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Background

The primary objective of HUD housing programs is to advance the long-established national commitment to decent, safe, and sanitary housing for every American. This standard is required under Annual Contributions contracts with public housing agencies (PHAs) and Indian Housing Authorities (IHAs), as well as the Housing Assistance Payments contracts with owners of housing assisted under section 8 of the U.S. Housing Act of 1937. The standard is also the underlying purpose of HUD's Minimum Property Standards (MPS) and housing quality standards (HQS).

Fire safety in all HUD-associated rental units is critical to achieving the goal of a safe environment for all families residing in those units. The early detection of fires through smoke alarms can be a primary factor in saving lives and preventing injury. On November 22, 1991 (56 FR 59150), the Department invited public comment to a proposed rule amending its regulations to require that each affected unit contain, at a minimum, one working smoke detector to provide a measure of safety from fires to residents of those units.

Under the MPS contained in subpart S of 24 CFR part 200, all units developed or substantially rehabilitated with HUD assistance, including insured financing, since 1978 are required to be equipped with smoke detectors. In addition, public and Indian housing units that have received assistance for modernization under the Comprehensive Improvement Assistance Program (CIAP) since 1985 are required to have smoke detectors. Public and Indian housing units that receive modernization assistance under the new Comprehensive Grant Program (CGP), for PHAs and IHAs that own or operate 500 or more public or Indian housing units (250 or more units in fiscal year 1993), are required by the modernization standards in 24 CFR 968.115 and 905.603 to have smoke detectors. The Department also requires smoke detectors in all units owned by HUD or for which HUD is the mortgagee-in-possession.

With respect to all other units not covered by the requirements of the MPS, CIAP, or CGP, or units which HUD does not own or is not the mortgagee-in-possession, HUD believes that most of those units may already be equipped with smoke detectors under requirements imposed by State and local codes or by fire or liability insurance carriers. This rule is not intended to preempt those requirements, but to require that, in order to meet the HQS or regulatory requirements for the applicable programs, each assisted unit must contain at least one working smoke detector on each level of the unit.

The rule will amend the HQS in 24 CFR parts 882, 886, and 887, which describe the minimum requirements for units in the Section 8 Rental Certificate and Rental Voucher programs, the Moderate Rehabilitation programs, Project-Based Certificate Assistance, Loan Management Set-Aside and Property Disposition programs, as well as any other units required to meet the HQS described in those regulations. The rule also will amend subparts B and C of part 885, which govern Section 202 elderly and handicapped housing, as well as parts 880 (New Construction), 881 (Substantial Rehabilitation), 883 (State Housing Agencies), 884 (Section 515 Rural Rental Housing), and 215 (Rent Supplement). This final rule adds two programs inadvertently omitted from the proposed rule, by amending parts 889 (Supportive Housing for the Elderly) and 890 (Supportive Housing for Persons with Disabilities), which govern the new Section 202 and Section 811 programs.

The rule will also amend regulations governing HUD-insured multifamily rental projects and care-type properties (parts 207, 213, 215, 220, 221, 231, 232, 234, 236, and 242). Units in insured projects constructed or substantially rehabilitated after 1978 are required to contain smoke detectors under the MPS, as discussed above. The intent of the amendments is to ensure that pre-1978 insured projects are subject to the requirement as well.

With respect to public and Indian housing dwelling units, the rule amends 24 CFR parts 905 (Indian housing) and 965 (public housing). (On June 24, 1992 (57 FR 28240), HUD published a final rule consolidating into part 905 all regulations pertaining to Indian housing programs.)

The final rule requires that each unit be equipped with at least one battery-operated or hard-wired smoke detector, in proper working condition, located in a hallway adjacent to the bedroom or bedrooms, and one additional smoke detector on each level of a multilevel unit. The rule also requires that units occupied by hearing-impaired persons be equipped with alarm systems designed for the hearing-impaired and located in the bedrooms occupied by those persons.

II. Public Comments

During the comment period, which ended January 21, 1992, HUD received 24 public comments. Generally, the majority of the commenters favored the rule, but several requested clarification or some changes to the requirements. One commenter questioned the Department's legal authority to extend what amounts to minimum property standards on a retroactive basis to multifamily dwelling units. Section 2 of the National Housing Act of 1949 sets forth the goal of providing a decent home and suitable living environment for every American family. This goal has been reaffirmed again and again in subsequent housing legislation. The Department firmly believes that the provision of smoke detectors in

multifamily housing advances this goal. HUD regulations at 24 CFR 207.249 grant authority to the Secretary to amend the regulations pertaining to contract rights and obligations so long as the amendment does not "adversely affect the interest of a mortgagee or lender." The requirement that the mortgagor install smoke detectors in the insured project does not adversely impact the mortgagee. Indeed, it enhances the mortgagee's security by providing for an additional fire safety device in the building.

In the Regulatory Agreement (HUD-Form 92466) executed between HUD and the mortgagors for projects insured under sections 207, 220, 221(d)(4), 231, and 232 of the National Housing Act, the mortgagor contractually obligates itself to comply with certain HUD requirements. Specifically, paragraph 7 of the Agreement provides that "[o]wners shall maintain the mortgaged premises, accommodations and the grounds and equipment appurtenant thereto, in good repair and condition." The Department believes that this provision can be interpreted to encompass the additional requirement that mortgagors install smoke detectors in insured projects, in compliance with their contractual agreement to maintain the premises in good repair and condition, since there is an increased risk of smoke and fire damage to the property where there is no early warning system.

In addition, it is the opinion of the Department that *Thorpe* v. *Housing Authority of the City of Durham*, 393 U.S. 268 (1969), stands for the principle that HUD can impose an additional obligation on the parties to a housing contract provided that it does not amount to a substantial modification of the contract. The Regulatory Agreement does not preclude HUD from requiring the installation of safety devices, such as smoke detectors, by the mortgagor, when the technology is later developed and becomes available subsequent to the execution of the contract between HUD and the mortgagor. The Department believes that the smoke detector requirement does not amount to a substantial modification of the Agreement.

The remainder of the comments focused on the following areas:

Location of Smoke Detectors

One commenter stated that a local code to which it is subject requires that smoke detectors be located in each bedroom of a unit, and expressed concern that by following the local standard it would violate HUD's rule. Another commenter stated that the rule should allow for flexibility in the location of smoke detectors where the design of a unit makes another location more feasible. Several commenters recommended that the rule require more than one smoke detector per unit, and suggested they be located outside each separate sleeping area and on each additional level of a unit. A commenter also suggested that units should be equipped with residential sprinkler systems and range hoods with fusable link triggered automatic extinguishers. The commenter was especially concerned about housing located in rural areas served by undertrained volunteer firefighters with inadequate and outdated equipment, and stated that any extra measures for early warning of fires in these areas would reduce the risk of personal injury and property damage.

The Department has stated that the rule is not intended to preempt local or State fire safety codes. The purpose of the rule is to set out a minimum standard for HUD-associated housing. To the extent that a local code has a stricter standard or requires a different type of smoke detector (*e.g.*, hard-wired rather than battery-operated) or different location for the detector (*e.g.*, in each bedroom rather than adjacent to bedrooms), the local code should be followed, as long as HUD's minimum standard that each unit contain a smoke detector is met. Since the rule explicitly states that the required location of the detector is to be followed "to the extent practicable," inspectors of HUD-associated housing will be instructed to allow a degree of latitude on this issue. Under this standard, PHAs and owners have the discretion to install detectors in an alternate location if warranted by the design of the unit.

The costs involved in retrofitting units with sprinker systems would be prohibitive for some PHAs and owners, and such a requirement could conceivably result in some owners withdrawing from the programs. Again, the rule sets out minimum standards. PHAs or owners located in rural areas where firefighting protection may be limited or inadequate have the discretion to install a greater measure of protection on a voluntary basis.

The Department agrees with the comments that the rule should require that each level of a multilevel unit should be equipped with at least one smoke detector, and the final rule has been changed to include this requirement. The final rule for public and Indian housing units has also been changed at 24 CFR 965.805(a) and 905.346(b) to provide that public areas, such as community rooms, laundry rooms, and hallways and stairwells, must also be equipped with smoke detectors.

Battery-Operated vs. Hard-Wired Smoke Detectors

Several commenters argued that the rule should require hard-wired detectors, rather than battery-operated, since batteries wear out or are removed by residents. Others requested clarification concerning who is responsible for replacing batteries in battery-operated detectors, with two commenters suggesting that PHAs and owners should be responsible only for installation or provision, and that residents should be responsible for continued operation (*e.g.* changing batteries).

The Department is attempting to balance the need to protect residents from fire and the desire to keep owners' costs at a reasonable level. For that reason, the rule allowed owners the discretion to install either battery-operated or hard-wired smoke detectors, with a minimum of one detector per unit. The final rule has not been changed with regard to allowing the smoke detectors to be either battery-operated or hard-wired smoke detectors. Owners may make their own decisions regarding the type of detector to use. (The rule for public and Indian housing units allows battery-operated detectors on a temporary basis only for projects where modernization has not been completed. Under the CIAP program, hard-wired detectors are required and have already been installed by PHAs that have completed modernization.)

Owners (PHAs in the case of PHA-owned or -leased projects) and PHAs are responsible for installing, inspecting, and replacing batteries, as necessary, in the smoke detectors. A resident's responsibility under the lease to maintain and care for the unit extends to not tampering with smoke detectors and ensuring that batteries are kept in place. Residents also should be responsible for informing the owner or PHA of any problems with the smoke detectors, including the failure of the batteries, in the same manner that they are responsible for informing the owner or PHA of any other malfunction or maintenance need in their units.

Smoke Detectors for the Hearing-Impaired

Several comments dealt with the requirements for smoke detectors equipped with visual alarm systems for the hearing-impaired. They included recommendations with respect to technical specifications for visual

alarms and suggested these be included in the rule; a request for a definition of "hearing-impaired"; and instructions on what documentation will be necessary to determine whether a resident is hearing-impaired or which bedroom the person would occupy. Another commenter argued that the requirement for smoke detectors specifically designed for the hearing-impaired should be deleted, since it would necessitate inquiring about the nature of a handicap, which is prohibited.

The Department declines to give detailed technical specifications regarding smoke detectors for the hearing-impaired, and leaves this to the judgment of PHAs and owners. They may wish to consult organizations familiar with equipment for hearing-impaired persons for advice on this issue. The Department also declines to define hearing-impaired in the rule. HUD's position is that residents requiring visual alarms because of a hearing impairment should advise owners and PHAs of this need. If eligibility for housing or a preference depends on the resident being handicapped, PHAs and owners may, of course, make the appropriate inquiries. Otherwise, it is up to residents to request any special equipment, since they are often the best judge of their individual needs.

A number of the comments on this subject were concerned about the cost of providing special detectors for hearing-impaired persons and whether the owner or resident would pay for these special detectors, since Fair Housing regulations provide that disabled persons may install special equipment in any unit at their own expense. A few commenters were especially concerned about the cost of these smoke detectors since they must be hard-wired, and one suggested that portable visual/audio alarms would be much less of a cost burden for owners. A portable detector, which the commenter argued costs less than a permanently installed detector, has the advantage of eliminating the need to retrofit units over time due to resident turnover, and is returned when the resident moves.

It is the responsibility of owners and PHAs to provide the smoke detectors, which includes the cost of the equipment. The Department recognizes that permanently installed smoke detectors for the hearing-impaired may be costly. However, it is not willing to consider the use of portable equipment in fulfilling the minimum standard required under the rule. The possibilities of loss or improper use make portable detectors less reliable, especially when used as the sole warning system. The final rule has not been changed.

Finally, the Department received a comment on the requirements for smoke detectors for the hearing-impaired with respect to nursing homes. The commenter stated that most persons occupying rooms in nursing homes have some degree of impairment to their hearing, and therefore visual alarm detectors would have to be installed in all rooms. The commenter asserted that nursing homes and other care-type housing have smoke detector systems that are connected to a central alarm system, as well as to an alarm monitored on a 24-hour basis by professional staff. Visual alarms in each room in nursing homes and hospitals can be disturbing to the occupants and lead to panic and perhaps injury if an occupant attempts to leave the room unassisted by the professional staff. The Department agrees that the requirement for a visual alarm in each occupied room in nursing homes and hospitals is unnecessary if the smoke detector in the room is connected to a central alarm system and staff-monitored system. Parts 232 and 242 have been changed in the final rule to relax the requirement for smoke detectors designed for hearing-impaired persons if the room's smoke detector is connected to a central alarm system and monitored on a 24-hour basis, or otherwise has a system meeting industry standards.

Miscellaneous

A commenter asked how the Department intends to fund the purchase and installation of smoke detectors. As stated in the responses to comments related to detectors for the hearing-impaired, it is the responsibility of individual owners and PHAs to fund the purchase and installation of smoke detectors. For public and Indian housing units, PHAs may use operating funds or reserves to provide battery-operated detectors where hard-wired detectors are not already in place, or may apply for emergency CIAP or CGP funding if operating funds or reserves are insufficient. CIAP or CGP funds may be used to replace the battery-operated with hard-wired detectors in the normal course of a CIAP or CGP program. The final rule has been changed at 24 CFR 905.346(b) and 965.805(c) with respect to this issue.

One commenter recommended that the rule allow 90 to 120 days for installation, arguing that 60 days is insufficient time, and another commenter requested that the rule allow local HUD offices to grant extensions of time to PHAs with more than 500 units to install hard-wired smoke detectors, considering local conditions and circumstances. The Department has determined that the 60 days from the effective date of the final rule is sufficient time, since this is, in effect, 90 days from publication of the rule. The rule does not require the installation of hard-wired detectors, and large PHAs desiring to do so have the option of installing battery-operated detectors on a temporary basis. The final rule has not been changed.

Finally, one commenter stated that some smoke detectors on the market now contain a radioactive element in the sensor. While the risk from the radioactivity is minimum, the commenter believes the rule should prohibit their use. As stated earlier, the Department declines to provide technical specifications for the smoke detectors. However, owners and PHAs should inspect detectors before installation by owners and PHAs for any hazard that may be detrimental to the assisted families.

Other Matters

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

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

The General Counsel, as the designated official under Executive Order 12606, The Family, has determined that this rule does not have a potential significant impact on the formation, maintenance, and general

well-being of the family and, thus, is not subject to review under that Order. The rule amends the property standards under which HUD-insured, Section 8-assisted, and public and Indian housing units are operated.

The General Counsel has also determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that the policies contained in this rule do not have federalism implications and, thus, are not subject to review under that Order. The requirements of the rule do not replace or affect any requirements that may already be imposed by States and local governments with respect to the use of smoke detectors in rental housing.

The Secretary, in accordance with the Regulatory Flexibility Act, (5 U.S.C. 605(b)], has reviewed this rule before publication and by approving it certifies that the rule does not have a significant economic impact on a substantial number of small entities. The rule applies equally to all owners of HUD-insured and Section 8-assisted housing, as well as PHAs and Indian Housing Authorities.

This rule was listed as item number 1130 in the Department's Semiannual Agenda of Regulations published at 57 FR 16820 on April 27, 1992 under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 207

Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 213

Cooperatives, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 215

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 220

Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Urban renewal.

24 CFR Part 221

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 231

Aged, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 232

Fire prevention, Health facilities, Loan programs—health, Loan programs—housing and community development, Mortgage insurance, Nursing homes, Reporting and recordkeeping requirements.

24 CFR Part 234

Condominiums, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 236

Grant programs—housing and community development, Low and moderate income housing, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 242

Hospitals, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 880

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 881

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 882

Grant programs—housing and community development, Lead poisoning, Manufactured homes, Homeless, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 883

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 884

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

24 CFR Part 885

Aged, Handicapped, Loan programs—housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 886

Grant programs—housing and community development, Lead poisoning, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 887

Grant programs—housing and community development, Rent subsidies; Reporting and recordkeeping requirements.

24 CFR Part 889

Aged, Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 890

Civil rights, Grant programs—housing and community development, Handicapped, Loan programs—housing and community development, Low and moderate income housing, Mental health programs, Reporting and recordkeeping requirements.

24 CFR Part 905

Grant programs—Indians, Low and moderate income housing, Homeownership, Public housing.

24 CFR Part 965

Energy conservation, Government procurement, Grant programs—housing and community development, Lead poisoning, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements, Utilities.

Accordingly, for the reasons set forth in the preamble, 24 CFR parts 207, 213, 215, 220, 221, 231, 232, 234, 236, 242, 880, 881, 882, 883, 884, 885, 886, 887, 889, 890, 905, and 965 are amended to read as follows:

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

1. The authority citation for 24 CFR part 207 is revised to read as follows:

Authority: 12 U.S.C. 1701z–11(e), 1713, and 1715b; 42 U.S.C. 3535(d).

2. Part 207 is amended by adding § 207.24a under the undesignated center heading *Property Requirements*, to read as follows:

§ 207.24a Smoke detectors.

(a) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(b) *Acceptability criteria.* The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

3. The authority citation for part 213 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715e; 42 U.S.C. 3535(d).

4. Part 213 is amended by adding §213.41, to read as follows:

§ 213.41 Smoke detectors.

(a) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(b) *Acceptability criteria.* The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

PART 215—RENT SUPPLEMENT PAYMENTS

5. The authority citation for part 215 is revised to read as follows:

Authority: 12 U.S.C. 1701s; 42 U.S.C. 3535(d).

6. Part 215 is amended by adding § 215.16, to read as follows:

§ 215.16 Smoke detectors.

(a) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(b) *Acceptability criteria.* The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

PART 220—MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS FOR URBAN RENEWAL AND CONCENTRATED DEVELOPMENT AREAS

7. The authority citation for part 220 is revised to read as follows:

Authority. 12 U.S.C. 1713, 1715b, 1715k; 42 U.S.C. 3535(d).

8. Subpart C of part 220 is amended by adding § 220.506a, to read as follows:

§ 220.506a Smoke detectors.

(a) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(b) *Acceptability criteria.* The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

9. The authority citation for part 221 is revised to read as follows:

Authority: 12 U.S.C. 1707(a), 1715b, and 1715l; 42 U.S.C. 3535(d).

10. Subpart C or part 221 is amended by adding § 221.545a, to read as follows:

§ 221.545a Smoke detectors.

(a) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(b) *Acceptability criteria.* The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

PART 231—HOUSING MORTGAGE INSURANCE FOR THE ELDERLY

11. The authority citation for part 231 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715v; 42 U.S.C. 3535(d).

12. Part 231 is amended by adding § 231.15 to Subpart a to read as follows:

§ 231.15 Smoke detectors.

(a) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(b) *Acceptability criteria.* The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

PART 232—MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES

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

Authority: 12 U.S.C. 1715b, 1715w, and 17152 (9); 42 U.S.C. 3535(d).

14. Part 232 is amended by adding § 232.591, to read as follows:

§ 232.591 Smoke detectors.

After October 30, 1992, each occupied room must include at least one battery-operated or hard-wired smoke detector in proper working condition. If the room is occupied by hearing-impaired persons, the smoke detector must have an alarm system designed for hearing-impaired persons, unless the smoke alarm is connected to a central alarm system that is monitored on a 24-hour basis, or otherwise meets industry standards.

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

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

Authority: 12 U.S.C. 1707(a), 1715b, and 1715y; 42 U.S.C. 3535(d).

16. Part 234 is amended by adding § 234.521, to read as follows:

§ 234.521 Smoke detectors.

(a) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(b) *Acceptability criteria.* The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENT FOR RENTAL PROJECTS

17. The authority citation for part 236 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715z; 42 U.S.C. 3535(d).

18. Part 236 is amended by adding § 236.85, to read as follows:

§ 236.85 Smoke detectors.

(a) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(b) *Acceptability criteria.* The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

PART 242—MORTGAGE INSURANCE FOR HOSPITALS

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

Authority: 12 U.S.C. 1715b, 1715n(f), 1715z-7; 42 U.S.C. 3535(d).

20. Part 242 is amended by adding § 242.87a, to read as follows:

§ 242.87a Smoke detectors.

After October 30, 1992, each occupied room must include at least one battery-operated or hard-wired smoke detector in proper working condition. If the room is occupied by hearing-impaired persons, the smoke detector must have an alarm system designed for hearing-impaired persons, unless the smoke alarm is connected to a central alarm system that is monitored on a 24-hour basis, or otherwise meets industry standards.

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

21. The authority citation for part 880 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

22. Section 880.207 is amended by adding paragraph (g), to read as follows:

§ 880.207 Property standards.

* * * * *

(g) *Smoke detectors.* (1) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(2) *Acceptability criteria.* The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

23. The authority citation for part 881 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

24. Section 881.207 is amended by adding paragraph (g), to read as follows:

§ 881.207 Property standards.

* * * * *

(g) *Smoke detectors.* (1) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(2) *Acceptability criteria.* The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

25. The authority citation for part 882 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 11361, and 11401.

26. Section 882.109 is amended by adding paragraph (r), to read as follows:

§ 882.109 Housing quality standards.

* * * * *

(r) *Smoke detectors.* (1) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(2) *Acceptability criteria.* The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

27. The authority citation for part 883 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

28. Section 883.310 is amended by adding paragraph (c), to read as follows:

§ 883.310 Property standards.

* * * * *

(c) *Smoke detectors.* (1) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an

alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(2) *Acceptability criteria.* The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

29. The authority citation for part 884 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

30. Section 884.110 is amended by adding paragraph (d), to read as follows:

§ 884.110 Types of housing and property standards.

* * * * *

(d) *Smoke detectors.* (1) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(2) *Acceptability criteria.* The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

PART 885—LOANS FOR HOUSING FOR THE ELDERLY OR HANDICAPPED

31. The authority citation for part 885 is revised to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437f and 3535(d).

32. Subpart B of part 885 is amended by adding § 885.429, to read as follows:

§ 885.429 Smoke detectors.

(a) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(b) *Acceptability criteria.* The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

33. Section 885.717 of subpart C, part 885, is amended by adding paragraph (d), to read as follows:

§ 885.717 Project standards.

* * * * *

(d) *Smoke detectors.* (1) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(2) *Acceptability criteria.* The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS—SPECIAL ALLOCATIONS

34. The authority citation for part 886 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

35. Section 886.113 is amended by redesignating paragraph (m) as paragraph (n), and by adding a new paragraph (m), to read as follows:

§ 886.113 Housing quality standards.

* * * * *

(m) *Smoke detectors.* (1) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(2) *Acceptability criteria.* The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

* * * * *

36. Section 886.307 is amended by adding paragraph (p) to read as follows:

§ 886.307 Housing quality standards.

* * * * *

(p) *Smoke detectors.* (1) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(2) *Acceptability criteria.* The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

PART 887—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—HOUSING VOUCHERS

37. The authority citation for part 887 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

38. Section 887.251 is amended by adding paragraph (m), to read as follows:

§ 887.251 Housing quality standards.

* * * * *

(m) *Smoke detectors.* (1) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(2) *Acceptability criteria.* The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

PART 889—SUPPORTIVE HOUSING FOR THE ELDERLY

39. The authority citation for part 889 is revised to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 3535(d).

40. Section 889.265 is amended by adding paragraph (g), to read as follows:

§ 889.265 Other Federal requirements.

* * * * *

(g) *Smoke detectors.* (1) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(2) *Acceptability criteria.* The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

PART 890—SUPPORTIVE HOUSING FOR PERSONS WITH DISABILITIES

41. The authority citation for part 890 is revised to read as follows:

Authority: 42 U.S.C. 8013; 42 U.S.C. 3535(d).

42. Section 890.260 is amended by adding paragraph (h), to read as follows:

§ 890.260 Other Federal requirements.

* * * * *

(h) *Smoke detectors.* (1) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(2) *Acceptability criteria.* The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

PART 905—INDIAN HOUSING PROGRAMS

43. The authority citation for part 905 is revised to read as follows:

Authority: 25 U.S.C. 405e(b); 42 U.S.C. 1437aa, 1437bb, 1437c, 1437cc, 1437d(c)(4)(D), 1437ee, and 3535(d).

44. Part 905 is amended by adding a new § 905.346, to read as follows:

§ 905.346. Fire safety.

(a) *Applicability.* This section applies to all IHA-owned or -leased housing, including Mutual Help and Turnkey III.

(b) *Smoke detectors.* (1) After October 30, 1992, each unit must be equipped with at least one battery-operated or hard-wired smoke detector, or such greater number as may be required by applicable state, local, or tribal codes, in working condition, on each level of the unit. In units occupied by hearing-impaired residents, smoke detectors must be hard-wired.

(2) After October 30, 1992, the public areas of all housing covered by this section must be equipped with a sufficient number, but not less than one for each area, or battery-operated or hard-wired smoke detectors to serve as adequate warning of fire. Public areas include, but are not limited to, laundry rooms, community rooms, day care centers, hallways, stairwells, and other common areas.

(3) The smoke detector for each individual unit must be located, to the extent practicable, in a hallway adjacent to the bedroom or bedrooms. In units occupied by hearing-impaired residents, hard-wired smoke detectors must be connected to an alarm system designed for hearing-impaired persons and installed in the bedroom or bedrooms occupied by the hearing-impaired residents. Individual units that are jointly occupied by both hearing and hearing-impaired residents must be equipped with both audible and visual types of alarm devices.

(4) If needed, battery-operated smoke detectors, except in units occupied by hearing-impaired residents, may be installed as a temporary measure where no detectors are present in a unit. Temporary battery-operated smoke detectors must be replaced with hard-wired electric smoke detectors in the normal course of a IHA's planned CIAP or CGP program to meet the HUD Modernization Standards or applicable state, local, or tribal codes, whichever standard is stricter. Smoke detectors for units occupied by hearing-impaired residents must be installed in accordance with the acceptability criteria in paragraph (b)(3) of this section.

(5) IHAs shall use operating funds to provide battery-operated smoke detectors in units that do not have any smoke detector in place. If operating funds or reserves are insufficient to accomplish this, IHAs may apply for emergency CIAP funding. IHAs may apply for CIAP or CGP funds to replace battery-operated smoke detectors with hard-wired smoke detectors in the normal course of a planned modernization program.

PART 965—PHA-OWNED OR LEASED PROJECTS—MAINTENANCE AND OPERATIONS

45. The authority citation for part 965 is revised to read as follows:

Authority: 42 U.S.C. 1437, 1437a, 1437d, 1437g, 3535(d); and 4821-4846.

46. Part 965 is amended by adding subpart I, to read as follows:

Subpart I—Fire Safety

Sec.
965.800 Applicability.
965.805 Smoke detectors.

§ 965.800 Applicability.

This subpart applies to all PHA-owned or -leased housing housing, including Mutual Help and Turnkey III.

965.805 Smoke detectors.

(a) *Performance requirement.* (1) After October 30, 1992, each unit covered by this subpart must be equipped with at least one battery-operated or hard-wired smoke detector, or such greater number as may be required by state or local codes, in working condition, on each level of the unit. In units occupied by hearing-impaired residents, smoke detectors must be hard-wired.

(2) After October 30, 1992, the public areas of all housing covered by this subpart must be equipped with a sufficient number, but not less than one for each area, of battery-operated or hard-wired smoke detectors to serve as adequate warning of fire. Public areas include, but are not limited to, laundry rooms, community rooms, day care centers, hallways, stairwells, and other common areas.

(b) *Acceptability criteria.* (1) The smoke detector for each individual unit must be located, to the extent practicable, in a hallway adjacent to the bedroom or bedrooms. In units occupied by hearing-impaired residents, hard-wired smoke detectors must be connected to an alarm system designed for hearing-impaired persons and installed in the bedroom or bedrooms occupied by the hearing-impaired residents. Individual units that are

jointly occupied by both hearing and hearing-impaired residents must be equipped with both audible and visual types of alarm devices.

(2) If needed, battery-operated smoke detectors, except in units occupied by hearing-impaired residents, may be installed as a temporary measure where no detectors are present in a unit. Temporary battery-operated smoke detectors must be replaced with hard-wired electric smoke detectors in the normal course of a PHA's planned CIAP or CGP program to meet the required HUD Modernization Standards or state or local codes, whichever standard is stricter. Smoke detectors for units occupied by hearing-impaired residents must be installed in accordance with the acceptability criteria in paragraph (b)(1) of this section.

(c) *Funding.* PHAs shall use operating funds to provide battery-operated smoke detectors in units that do not have any smoke detector in place. If operating funds or reserves are insufficient to accomplish this, PHAs may apply for emergency CIAP funding. The PHAs may apply for CIAP or CGP funds to replace battery-operated smoke detectors with hard-wired smoke detectors in the normal course of a planned modernization program.

Dated: July 24, 1992.

Jack Kemp,

Secretary.

[FR Doc. 92–17922 Filed 7–24–92; 8:45 am]

BILLING CODE 4210–32–M

federal register

Thursday
July 30, 1992

Part VI

Department of the Interior

Bureau of Indian Affairs

Notice of Revision of FI&R and O&M Facilities Category and Rank Codes; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Automated FACCOM System FI&R and Operations and Maintenance (O&M) Facilities Category and Rank Codes

July 15, 1992.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of revision of FI&R and O&M facilities category and rank codes.

SUMMARY: Notice is hereby given that the Bureau of Indian Affairs (BIA) through the Facilities Management and Construction Center and the Division of Safety Management have updated the backlog categories and ranking classification in the Automated Facilities Construction, Operation and Maintenance System (FACCOM) Facilities Category and Rank Codes for Facilities Improvement and Repair (FI&R) and Operation and Maintenance (O&M). The update will incorporate descriptions of deficiencies utilizing Occupational Safety and Health (OSHA) terminology. OSHA type violations are not sufficiently expressed in the current FACCOM system. This change coordinates the interpretive elements, inherent in data acquisition, via court tested standards. These revisions will promote standardization in the way findings are reported and, thereby, enable a more accurate prioritizing process for funding necessary corrections. All backlog items in the FACCOM system shall be categorized and ranked using the following:

General Category Classification

U=Emergency
S=Deficiencies affecting safety and health, including violations of Occupational Safety, Health (OSHA) Standards, Life Safety Code, Uniform Building Code, among other codes and laws, as applicable.
X=Violations of Environmental Protection Agency (EPA), Indian Health Service (IHS), Health Codes and Standards.
H=Violations related to Federal Accessibility and use standards by the handicapped.
M=Physical plant deficiencies—includes such items as structural, mechanical, electrical, roofs, walls, floors, foundations, utilities and paving, etc. Does not include finishes or programmatic needs.
E=Energy related items—includes such items as insulation, multi-glazed windows, heat recovery systems, etc.
P=Improvements related to space function and program needs in existing facilities.
C=Construction (New, Replacement, Additions).

Priority Ranking Classification

1=Serious safety deficiency.
2=Non-serious code and law violations.
3=Functional deficiency.

Specific Category & Rank Definitions

U–1=Emergency, must be abated immediately.
S–1=Serious deficiency which requires interim correction to be permanently corrected, as soon as possible.
S–2=Non-serious violations; including violations of institutional guidelines.
M–2=Physical plant (non-programmatic) deficiencies in violation of code.
M–3=Physical plant (non-programmatic) deficiency.
X–2=EPA or IHS code or other environmental deficiency.
H–2=Violation of Federal Accessibility and use codes and standards where handicapped persons are currently served.
E–2=Violation of Federal energy codes and standards.
E–3=Deficiencies which, when corrected, will reduce energy consumption.
P–3=Improvements related to program needs, includes the remodeling of existing spaces for functional or programmatic changes.
C–2=Construction (new, replacement or addition) to correct code and/or standards violations (subject to feasibility study verification).
C–3=Construction (new, replacement or addition) to accommodate functional or programmatic changes.

FOR FURTHER INFORMATION CONTACT: Chester D. Mills, Department of the Interior, Office of Construction Management, 1849 C Street NW., Mail Stop 2415, Washington, DC 20240, (202)208–3405.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 92–18012 Filed 7–29–92; 8:45 am]

BILLING CODE 4310–02–M

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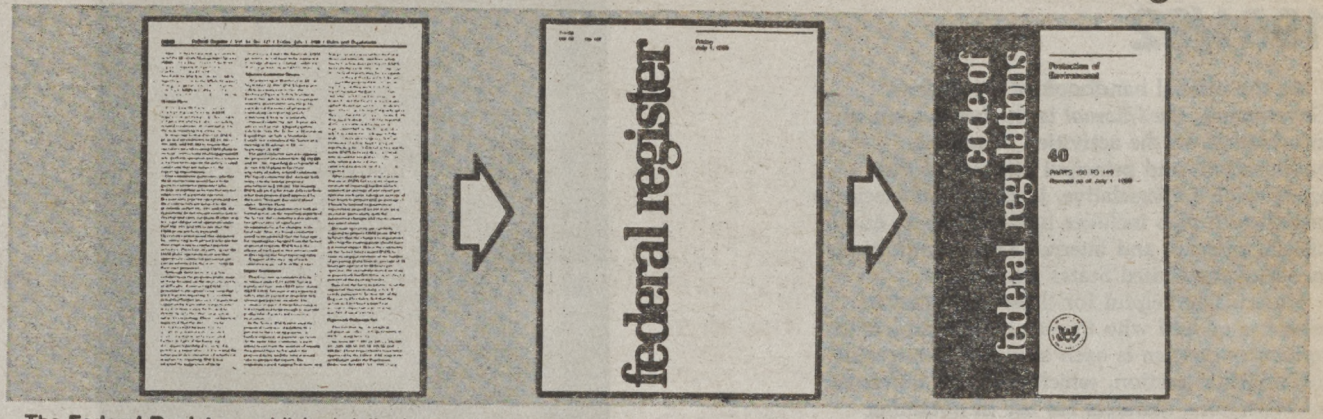
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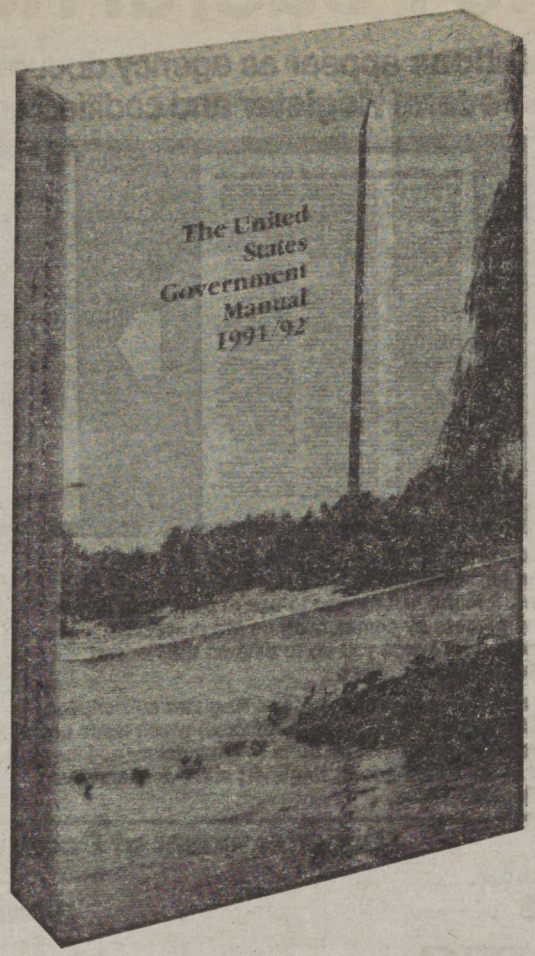
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