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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

Proclamation 6646 of January 14, 1994

Religious Freedom Day, 1994

By the President of the United States of America

A Proclamation

This past year, the Religious Freedom Restoration Act of 1993 was enacted, reaffirming our solemn commitment to protect the first guarantee of our Bill of Rights. In the great tradition of our Nation's founders, this legislation embraces the abiding principle that our laws and institutions must neither impede nor hinder, but rather preserve and promote, religious liberty. As it is inscribed on the Liberty Bell in Philadelphia, the words of Leviticus ring out, "Proclaim liberty throughout the land unto all the inhabitants thereof." Our government did not create this liberty, but it cannot be too vigilant in securing its blessings.

It is no accident of authorship that the right to free exercise of religion is the first freedom granted by our Bill of Rights. The framers of the Constitution well recognized the awesome power of religious liberty, not only to unite the citizenry in common cause, but also to empower us to question age-old beliefs and lift this Nation toward enlightenment. Today, as we face a crisis of conscience in our families and communities, as children murder children in our schools, as neighbor turns away from neighbor on frightening city streets—today, more than ever, we see the fundamental wisdom of our country's forefathers. For at the heart of this most precious right is a challenge to use the spiritual freedom we have been afforded to examine the values, the soul, and the true essence of human nature.

Religious freedom helps to give America's people a character independent of their government, fostering the formation of individual codes of ethics, without which a democracy cannot survive. For more than two centuries, this freedom has enabled us to live together in a peace unprecedented in the history of nations. To be both the world's strongest democracy and its most truly multi-ethnic society is a victory of human spirit we must not take for granted. For as many issues as there are that divide us in this society, there remain values that all of us share. We believe in respecting the bond between parents and children. We believe in honoring the worth of honest labor. We believe in treating each other generously and with kindness. We are striving to accept our differences and to find strength in the dreams we all hold dear.

On this day, let us hear the sound of the Liberty Bell as a clarion call to action. Let us face with renewed determination the problems that beset our communities. Let us replace the instability and intolerance with security and justice. Regardless of our faith, let us be each other's guides along the open path toward peace.

The Congress, by Senate Joint Resolution 154, has designated January 16, 1994, as "Religious Freedom Day" and has requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the day of January 16, 1994, as Religious Freedom Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities, and I urge them to reaffirm their devotion to the principles of religious freedom.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of January, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 94–1480
Filed 1–18–94; 1:58 pm]
Billing code 3195–01–P

Presidential Documents

Proclamation 6647 of January 14, 1994

National Good Teen Day, 1994

By the President of the United States of America

A Proclamation

There are now more than 24 million young people between the ages of 13 and 19 in the United States, each of them unique, each with promise, each struggling with the complicated transition to adulthood. These young people hold the keys to a promising future, and we must help them use every available resource to meet the challenges that lie ahead. Few generations have been confronted with so much responsibility, yet perhaps none has been presented with such exciting opportunities.

In spite of barriers and stumbling blocks, most teens play by the rules as they begin the work of building meaningful lives for themselves and finding their places in the community. Most embrace and promote fairness and compassion, often championing such precepts when others forsake them as unattainable ideals. They work together to diminish prejudice and violence; they find joy in family and friends and satisfaction in triumph and accomplishment.

Many teens are heroes who refuse to give up in adversity, to yield to temptation, or to give in to the negative influences around them. They serve as positive role models to younger children, as leaders to their peers, and as inspiration to older generations. They are our future, our hope, and a very real joy to those of us who know them well.

We are justifiably proud of American teens. They deserve our recognition and appreciation, and it is fitting that we honor them. Our country depends on their energy and dedication. Their knowledge, creativity, and dreams can change America for the better.

The Congress, by House Joint Resolution 75, has designated January 16, 1994, as "National Good Teen Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim January 16, 1994, as National Good Teen Day. I invite the States, communities, and people of the United States to observe this day with appropriate ceremonies and programs in appreciation of our Nation's teenagers.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of January, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc 94–1481
Filed 1–18–94; 1:59 pm]
Billing code 3195–01–P

Presidential Documents

Presidential Determination No. 94–9 of January 5, 1994

Eligibility of the Czech Republic To Be Furnished Defense Articles and Services Under the Foreign Assistance Act and the Arms Export Control Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 503(a) of the Foreign Assistance Act of 1961, as amended, (22 U.S.C. 2311(a)), and section 3(a)(1) of the Arms Export Control Act, as amended (22 U.S.C. 2753(a)(1)), I hereby find that the furnishing of defense articles and services to the Government of the Czech Republic will strengthen the security of the United States and promote world peace.

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

William J. Clinton

THE WHITE HOUSE,
Washington, January 5, 1994.

[FR Doc. 94–1482
Filed 1–18–94; 2:27 pm]
Billing code 4710–10–M

Presidential Documents

Presidential Determination No. 94–10 of January 5, 1994

Eligibility of the Slovak Republic To Be Furnished Defense Articles and Services Under the Foreign Assistance Act and the Arms Export Control Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 503(a) of the Foreign Assistance Act of 1961, as amended, (22 U.S.C. 2311(a)), and section 3(a)(1) of the Arms Export Control Act, as amended (22 U.S.C. 2753(a)(1)), I hereby find that the furnishing of defense articles and services to the Government of the Slovak Republic will strengthen the security of the United States and promote world peace.

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

William J. Clinton

THE WHITE HOUSE,
Washington, January 5, 1994.

[FR Doc. 94–1483
Filed 1–18–94; 2:28 pm]
Billing code 4710–10–M

Presidential Documents

Presidential Determination No. 94–12 of January 16, 1994

Delegation of Authority To Modify, Restrict, or Terminate Title VII Trade Action Taken Against Japan

Memorandum for the United States Trade Representative

By the authority vested in me by the Constitution and laws of the United States, including 3 U.S.C. Section 301, I hereby delegate to the United States Trade Representative the powers granted the President in Section 305(g)(2) and (3) of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2515(g)(2) and (3)) to modify, restrict, or terminate the application of sanctions that were imposed upon Japan as a result of the identification of Japan as a country that discriminates against U.S. products or services in government procurement of construction, architectural, and engineering services; 58 Fed. Reg. 36226 (July 6, 1993).

This delegation of authority is effective until January 28, 1994. This determination shall be published in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, January 16, 1994.

[FR Doc. 94–1490
Filed 1–18–94; 2:29 pm]
Billing code 3190–01–M

Presidential Documents

Executive Order 12891 of January 15, 1994

Advisory Committee on Human Radiation Experiments

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Establishment.* (a) There shall be established an Advisory Committee on Human Radiation Experiments (the "Advisory Committee" or "Committee"). The Advisory Committee shall be composed of not more than 15 members to be appointed or designated by the President. The Advisory Committee shall comply with the Federal Advisory Committee Act, as amended, 5 U.S.C. App. 2.

(b) The President shall designate a Chairperson from among the members of the Advisory Committee.

Sec. 2. *Functions.* (a) There has been established a Human Radiation Interagency Working Group, the members of which include the Secretary of Energy, the Secretary of Defense, the Secretary of Health and Human Services, the Secretary of Veterans Affairs, the Attorney General, the Administrator of the National Aeronautics and Space Administration, the Director of Central Intelligence, and the Director of the Office of Management and Budget. As set forth in paragraph (b) of this section, the Advisory Committee shall provide to the Human Radiation Interagency Working Group advice and recommendations on the ethical and scientific standards applicable to human radiation experiments carried out or sponsored by the United States Government. As used herein, "human radiation experiments" means:

(1) experiments on individuals involving intentional exposure to ionizing radiation. This category does not include common and routine clinical practices, such as established diagnosis and treatment methods, involving incidental exposures to ionizing radiation;

(2) experiments involving intentional environmental releases of radiation that (A) were designed to test human health effects of ionizing radiation; or (B) were designed to test the extent of human exposure to ionizing radiation.

Consistent with the provisions set forth in paragraph (b) of this section, the Advisory Committee shall also provide advice, information, and recommendations on the following experiments:

(1) the experiment into the atmospheric diffusion of radioactive gases and test of detectability, commonly referred to as "the Green Run test," by the former Atomic Energy Commission (AEC) and the Air Force in December 1949 at the Hanford Reservation in Richland, Washington;

(2) two radiation warfare field experiments conducted at the AEC's Oak Ridge office in 1948 involving gamma radiation released from non-bomb point sources at or near ground level;

(3) six tests conducted during 1949–1952 of radiation warfare ballistic dispersal devices containing radioactive agents at the U.S. Army's Dugway, Utah, site;

(4) four atmospheric radiation-tracking tests in 1950 at Los Alamos, New Mexico; and

(5) any other similar experiment that may later be identified by the Human Radiation Interagency Working Group.

The Advisory Committee shall review experiments conducted from 1944 to May 30, 1974. Human radiation experiments undertaken after May 30 1974 the date of issuance of the Department of Health, Education, and Welfare ("DHEW") Regulations for the Protection of Human Subjects (45 C.F.R. 46), may be sampled to determine whether further inquiry into experiments is warranted. Further inquiry into experiments conducted after May 30, 1974, may be pursued if the Advisory Committee determines, with the concurrence of the Human Radiation Interagency Working Group, that such inquiry is warranted.

(b)(1) The Advisory Committee shall determine the ethical and scientific standards and criteria by which it shall evaluate human radiation experiments, as set forth in paragraph (a) of this section. The Advisory Committee shall consider whether (A) there was a clear medical or scientific purpose for the experiments; (B) appropriate medical follow-up was conducted; and (C) the experiments' design and administration adequately met the ethical and scientific standards, including standards of informed consent, that prevailed at the time of the experiments and that exist today.

(2) The Advisory Committee shall evaluate the extent to which human radiation experiments were consistent with applicable ethical and scientific standards as determined by the Committee pursuant to paragraph (b)(1) of this section. If deemed necessary for such an assessment, the Committee may carry out a detailed review of experiments and associated records to the extent permitted by law.

(3) If required to protect the health of individuals who were subjects of a human radiation experiment, or their descendants, the Advisory Committee may recommend to the Human Radiation Interagency Working Group that an agency notify particular subjects of an experiment, or their descendants, of any potential health risk or the need for medical follow-up.

(4) The Advisory Committee may recommend further policies, as needed, to ensure compliance with recommended ethical and scientific standards for human radiation experiments.

(5) The Advisory Committee may carry out such additional functions as the Human Radiation Interagency Working Group may from time to time request.

Sec. 3. *Administration.* (a) The heads of executive departments and agencies shall, to the extent permitted by law, provide the Advisory Committee with such information as it may require for purposes of carrying out its functions.

(b) Members of the Advisory Committee shall be compensated in accordance with Federal law. Committee members may be allowed travel expenses, including per diem in lieu of subsistence, to the extent permitted by law for persons serving intermittently in the government service (5 U.S.C. 5701–5707).

(c) To the extent permitted by law, and subject to the availability of appropriations, the Department of Energy shall provide the Advisory Committee with such funds as may be necessary for the performance of its functions.

Sec. 4. *General Provisions.* (a) Notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act that are applicable to the Advisory Committee, except that of reporting annually to the Congress, shall be performed by the Human Radiation Interagency Working Group, in accordance with the guidelines and procedures established by the Administrator of General Services.

(b) The Advisory Committee shall terminate 30 days after submitting its final report to the Human Radiation Interagency Working Group.

(c) This order is intended only to improve the internal management of the executive branch and it is not intended to create any right, benefit, trust, or responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person.

William J. Clinton

THE WHITE HOUSE,
January 15, 1994.

[FR Doc. 94–1531
Filed 1–18–94; 4:37 pm]
Billing code 3195–01–P

Presidential Documents

Executive Order 12892 of January 17, 1994

Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in accordance with the Fair Housing Act, as amended (42 U.S.C. 3601 *et seq.*) ("Act"), in order to affirmatively further fair housing in all Federal programs and activities relating to housing and urban development throughout the United States, it is hereby ordered as follows:

Section 1. *Administration of Programs and Activities Relating to Housing and Urban Development.*

1–101. Section 808(d) of the Act, as amended, provides that all executive departments and agencies shall administer their programs and activities relating to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions) in a manner affirmatively to further the purposes of the Act and shall cooperate with the Secretary of Housing and Urban Development to further such purposes.

1–102. As used in this order, the phrase "programs and activities" shall include programs and activities operated, administered, or undertaken by the Federal Government; grants; loans; contracts; insurance; guarantees; and Federal supervision or exercise of regulatory responsibility (including regulatory or supervisory authority over financial institutions).

Sec. 2. *Responsibilities of Executive Agencies.*

2–201. The primary authority and responsibility for administering the programs and activities relating to housing and urban development affirmatively to further fair housing is vested in the Secretary of Housing and Urban Development.

2–202. The head of each executive agency is responsible for ensuring that its programs and activities relating to housing and urban development are administered in a manner affirmatively to further the goal of fair housing as required by section 808 of the Act and for cooperating with the Secretary of Housing and Urban Development, who shall be responsible for exercising leadership in furthering the purposes of the Act.

2–203. In carrying out the responsibilities in this order, the head of each executive agency shall take appropriate steps to require that all persons or other entities who are applicants for, or participants in, or who are supervised or regulated under, agency programs and activities relating to housing and urban development shall comply with this order.

2–204. Upon receipt of a complaint alleging facts that may constitute a violation of the Act or upon receipt of information from a consumer compliance examination or other information suggesting a violation of the Act, each executive agency shall forward such facts or information to the Secretary of Housing and Urban Development for processing under the Act. Where such facts or information indicate a possible pattern or practice of discrimination in violation of the Act, they also shall be forwarded to the Attorney General. The authority of the Federal depository institution regulatory agencies to take appropriate action under their statutory authority remains unaffected.

Sec. 3. *President's Fair Housing Council.*

3–301. There is hereby established an advisory council entitled the "President's Fair Housing Council" ("Council"). The Council shall be chaired by the Secretary of Housing and Urban Development and shall consist of the Secretary of Health and Human Services, the Secretary of Transportation, the Secretary of Education, the Secretary of Labor, the Secretary of Defense, the Secretary of Agriculture, the Secretary of Veterans Affairs, the Secretary of the Treasury, the Attorney General, the Secretary of the Interior, the Chair of the Federal Reserve, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Chair of the Federal Deposit Insurance Corporation, and such other officials of executive departments and agencies as the President may, from time to time, designate.

3–302. The President's Fair Housing Council shall review the design and delivery of Federal programs and activities to ensure that they support a coordinated strategy to affirmatively further fair housing. The Council shall propose revisions to existing programs or activities, develop pilot programs and activities, and propose new programs and activities to achieve its goals.

3–303. In support of cooperative efforts among all executive agencies, the Secretary of Housing and Urban Development shall:

(a) cooperate with, and render assistance to, the heads of all executive agencies in the formulation of policies and procedures to implement this order and to provide information and guidance on the affirmative administration of programs and activities relating to housing and urban development and the protection of the rights accorded by the Act; and

(b) develop memoranda of understanding and any necessary implementing procedures among executive agencies designed to provide for consultation and the coordination of Federal efforts to further fair housing through the affirmative administration of programs and activities relating to housing and urban development, including coordination of the investigation of complaints or other information referred to the Secretary as required by section 2–204 of this order that would constitute a violation of the Act or, where relevant, other Federal laws. Existing memoranda of understanding shall remain in effect until superseded.

3–304. In connection with carrying out functions under this order, the Secretary of Housing and Urban Development is authorized to request from any executive agency such information and assistance as the Secretary deems necessary. Each agency shall furnish such information to the extent permitted by law and, to the extent practicable, provide assistance to the Secretary.

Sec. 4. *Specific Responsibilities.*

4–401. In implementing the responsibilities under sections 2–201, 2–202, 2–203, and section 3 of this order, the Secretary of Housing and Urban Development shall, to the extent permitted by law:

(a) promulgate regulations in consultation with the Department of Justice and Federal banking agencies regarding programs and activities of executive agencies related to housing and urban development that shall:

(1) describe the functions, organization, and operations of the President's Fair Housing Council;

(2) describe the types of programs and activities defined in section 1–102 of this order that are subject to the order;

(3) describe the responsibilities and obligations of executive agencies in ensuring that programs and activities are administered and executed in a manner that furthers fair housing;

(4) describe the responsibilities and obligations of applicants, participants, and other persons and entities involved in housing and urban development programs and activities affirmatively to further the goal of fair housing; and

(5) describe a method to identify impediments in programs or activities that restrict fair housing choice and implement incentives that will maximize the achievement of practices that affirmatively further fair housing,

(b) coordinate executive agency implementation of the requirements of this order and issue standards and procedures regarding:

(1) the administration of programs and activities relating to housing and urban development in a manner affirmatively to further fair housing; and

(2) the cooperation of executive agencies in furtherance of the Secretary of Housing and Urban Development's authority and responsibility under the Act.

4–402. Within 180 days of the publication of final regulations by the Secretary of Housing and Urban Development under section 4–401 of this order, the head of each executive agency shall publish proposed regulations providing for the administration of programs and activities relating to housing and urban development in a manner affirmatively to further fair housing, consistent with the Secretary of Housing and Urban Development's regulations, and with the standards and procedures issued pursuant to section 4–401(b) of this order. As soon as practicable thereafter, each executive agency shall issue its final regulations. All executive agencies shall formally submit all such proposed and final regulations, and any related issuances or standards, to the Secretary of Housing and Urban Development at least 30 days prior to public announcement.

4–403. The Secretary of Housing and Urban Development shall review proposed regulations and standards prepared pursuant to section 4–402 of this order to ensure conformity with the purposes of the Act and consistency among the operations of the various executive agencies and shall provide comments to executive agencies with respect thereto on a timely basis.

4–404. In addition to promulgating the regulations described in section 4–401 of this order, the Secretary of Housing and Urban Development shall promulgate regulations describing the nature and scope of coverage and the conduct prohibited, including mortgage lending discrimination and property insurance discrimination.

Sec. 5. *Administrative Enforcement.*

5–501. The head of each executive agency shall be responsible for enforcement of this order and, unless prohibited by law, shall cooperate and provide records, data, and documentation in connection with any other agency's investigation of compliance with provisions of this order.

5–502. If any executive agency concludes that any person or entity (including any State or local public agency) applying for or participating in, or supervised or regulated under, a program or activity relating to housing and urban development has not complied with this order or any applicable rule, regulation, or procedure issued or adopted pursuant to this order, it shall endeavor to end and remedy such violation by informal means, including conference, conciliation, and persuasion. An executive agency need not pursue informal resolution of matters where similar efforts made by another executive agency have been unsuccessful, except where otherwise required by law. In the event of failure of such informal means, the executive agency, in conformity with rules, regulations, procedures, or policies issued or adopted by it pursuant to section 4 of this order hereof, shall impose such sanctions as may be authorized by law. To the extent authorized by law, such sanctions may include:

(a) cancellation or termination of agreements or contracts with such person, entity, or any State or local public agency;

(b) refusal to extend any further aid under any program or activity administered by it and affected by this order until it is satisfied that the affected

person, entity, or State or local public agency will comply with the rules, regulations, and procedures issued or adopted pursuant to this order;

(c) refusal to grant supervisory or regulatory approval to such person, entity, or State or local public agency under any program or activity administered by it that is affected by this order or revoke such approval if previously given; and

(d) any other action as may be appropriate under law.

5–503. Findings of any violation under section 5–502 of this order shall be promptly reported by the head of each executive agency to the Secretary of Housing and Urban Development and the Attorney General. The Secretary of Housing and Urban Development shall forward this information to all other executive agencies.

5–504. Any executive agency shall also consider invoking appropriate sanctions against any person or entity where any other executive department or agency has initiated action against that person or entity pursuant to section 5–502 of this order, where the Secretary of Housing and Urban Development has issued a charge against such person or entity that has not been resolved, or where the Attorney General has filed a civil action in Federal Court against such person or entity.

5–505. Each executive agency shall consult with the Secretary of Housing and Urban Development, and the Attorney General where a civil action in Federal Court has been filed, regarding agency actions to invoke sanctions under the Act. The Department of Housing and Urban Development, the Department of Justice, and Federal banking agencies shall develop and coordinate appropriate policies and procedures for taking action under their respective authorities. Each decision to invoke sanctions and the reasons therefor shall be documented and shall be provided to the Secretary of Housing and Urban Development and, where appropriate, to the Attorney General in a timely manner.

Sec. 6. *General Provisions.*

6–601. Nothing in this order shall limit the authority of the Attorney General to provide for the coordinated enforcement of nondiscrimination requirements in Federal assistance programs under Executive Order No. 12250.

6–602. All provisions of regulations, guidelines, and procedures proposed to be issued by executive agencies pursuant to this order that implement nondiscrimination requirements of laws covered by Executive Order No. 12250 shall be submitted to the Attorney General for review in accordance with that Executive order. In addition, the Secretary shall consult with the Attorney General regarding all regulations and procedures proposed to be issued under sections 4–401 and 4–402 of this order to assure consistency with coordinated Federal efforts to enforce nondiscrimination requirements in programs of Federal financial assistance pursuant to Executive Order No. 12250.

6–603. Nothing in this order shall affect the authority and responsibility of the Attorney General to commence any civil action authorized by the Act.

6–604. (a) Part IV and sections 501 and 503 of Executive Order No. 11063 are revoked. The activities and functions of the President's Committee on Equal Opportunity in Housing described in that Executive order shall be performed by the Secretary of Housing and Urban Development.

(b) Sections 101 and 502(a) of Executive Order No. 11063 are revised to apply to discrimination because of "race, color, religion (creed), sex, disability, familial status or national origin." All executive agencies shall revise regulations, guidelines, and procedures issued pursuant to Part II of Executive Order No. 11063 to reflect this amendment to coverage.

(c) Section 102 of Executive Order No. 11063 is revised by deleting the term "Housing and Home Finance Agency" and inserting in lieu thereof the term "Department of Housing and Urban Development."

6–605. Nothing in this order shall affect any requirement imposed under the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*), the Home Mortgage Disclosure Act (12 U.S.C. 2801 *et seq.*) or the Community Reinvestment Act (12 U.S.C. 2901 *et seq.*).

6–606. Nothing in this order shall limit the authority of the Federal banking agencies to carry out their responsibilities under current law or regulations.

6–607. Executive Order No. 12259 is hereby revoked.

Sec. 7. *Report.*

7–701. The Secretary of Housing and Urban Development shall submit to the President an annual report commenting on the progress that the Department of Housing and Urban Development and other executive agencies have made in carrying out requirements and responsibilities under this Executive order. The annual report may be consolidated with the annual report on the state of fair housing required by section 808(e)(2) of the Act.

William J. Clinton

THE WHITE HOUSE,
January 17, 1994.

[FR Doc. 94–1532
Filed 1–18–94; 4:38 pm]
Billing code 3195–01–P

Editorial note: For the President's remarks on signing this order, see the *Weekly Compilation of Presidential Documents* (vol. 30, no. 3).

Rules and Regulations

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 110

OPM Regulation Posting Notices; Technical Amendment

AGENCY: Office of Personnel Management.

ACTION: Final rule; technical amendment.

SUMMARY: The Office of Personnel Management is amending its regulations on the posting of personnel regulations in agencies to delete references to the Federal Personnel Manual (FPM). With the recent abolishment of the FPM, these references are no longer valid. We will continue to issue posting notices as required by statute; however, the notices will no longer be identified with the Federal Personnel Manual system.

EFFECTIVE DATE: January 20, 1994.

FOR FURTHER INFORMATION CONTACT: JoAnn G. Blackler, (202) 606–1973.

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 553 (b)(3)(B) and (d)(3), good cause exists for publishing this amendment without general notice of proposed rulemaking and a 30-day delay in effectiveness. This amendment is non-substantive in nature and will not affect current compliance.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities as it applies only to operations of the Federal Government and is non-substantive in impact.

List of Subjects in 5 CFR Part 110

Government employees, Reporting and recordkeeping requirements.

Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending part 110 of title 5 of the Code of Federal Regulations as follows:

PART 110—OPM REGULATIONS AND INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 110 continues to read as follows:

Authority: 5. U.S.C. 1103; § 110.201 is also issued under 5 U.S.C. 1104, 5 CFR 5.2 (c) and (d); 44 U.S.C. 3507(f); 5 CFR part 1320.

§ 110.101 [Amended]

2. In § 110.101, the introductory text is amended by removing the words "Federal Personnel Manual (FPM)."

§ 110.102 [Amended]

3. In § 110.102, the last sentence in paragraph (c) is amended by removing the words "Federal Personnel Manual."

[FR Doc. 94–1276 Filed 1–19–94; 8:45 am]
BILLING CODE 6325–01–M

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 935

[No. 93–97]

Advances to Capital Deficient Members, and Other Matters

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its regulations to incorporate requirements governing secured loans (called advances) made by the Federal Home Loan Banks (Banks) to capital deficient members. The final rule prohibits Bank lending to tangibly insolvent members, except at the request of the appropriate federal regulator or insurer, and restricts the Banks from lending to other capital deficient members whose use of Bank advances has been prohibited by the appropriate federal regulator or insurer.

In addition, the final rule provides that a Bank may allow a member to assume advances held by a nonmember, as long as the advances had previously been extended by the Bank to another of its members. The final rule also changes the definition of nursing homes from nonresidential to residential real property, which means that mortgage loans backed by nursing homes are eligible collateral for advances.

EFFECTIVE DATE: February 22, 1994.

FOR FURTHER INFORMATION CONTACT: Christine M. Freidel, Financial Analyst, (202) 408–2976; Thomas D. Sheehan, Assistant Director, (202) 408–2870, District Banks Directorate; James H. Gray Jr., Associate General Counsel, Office of Legal and External Affairs, (202) 408–2552; Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Background

On September 23, 1993, the Finance Board published for 30-day public comment a proposed rule governing advances to capital deficient members and other matters. See 58 FR 49446. The provisions in the proposed rule addressing Bank lending to capital deficient members closely paralleled the Finance Board's current policy on lending to capital deficient members.

The Finance Board received six comment letters on the proposed rule. Comment letters were submitted by three Banks, two trade associations, and a federal savings bank member. In general, the comment letters concurred with the overall intent of the provisions in the proposed rule addressing lending to capital deficient members, although there were conflicting views on the point at which access to advances should be restricted. None of the comment letters addressed the transfer of advances, and one comment letter addressed the treatment of nursing home loans as eligible collateral.

Based on the comment letters received, the Finance Board is publishing the final rule on lending to capital deficient members as proposed, except that the definition of tangible capital has been changed to permit members to include purchased mortgage servicing rights to the extent a member has included such assets in core or Tier 1 capital.

II. Analysis of Final Rule

A. Lending to Capital Deficient Members

1. Background

In April 1992, the Finance Board adopted policy guidelines governing the extension of advances to capital

deficient members. See Finance Board Resolution No. 92–277.1. The policy precludes the Banks from making new advances available to members without positive tangible capital, unless a member's regulator requests that the Bank provide such funding and the Bank determines it can safely make the advance. The Banks may extend new advances to undercapitalized but solvent members without regulatory approval, but must refrain from doing so at the request of the appropriate federal banking agency or insurer. The policy permits the Banks to renew existing advances to tangibly insolvent members for terms of up to 30 days without regulatory approval.

Prior to the adoption of these policy guidelines, there were no Finance Board-mandated restrictions on a Bank's ability to lend to an insolvent member. The Federal Home Loan Bank Act (Bank Act) does not address lending to capital deficient members. Although the secured nature of advances generally protects the Banks from credit risk, the Finance Board was concerned that, by making advances available to certain capital deficient members, a Bank could inadvertently contravene the wishes of a member's federal regulator.

2. New Advances to Members Without Positive Tangible Capital

Section 935.5(b) of the final rule restricts a Bank from making a new advance to a member that does not have positive tangible capital, unless the appropriate federal banking agency or insurer requests in writing that funding be made available to such member. Section 935.5(b) of the final rule also requires each Bank to promptly provide the Finance Board with a copy of any such written request. A Bank shall use the most recently available Report of Condition and Income (Call Report), Thrift Financial Report (TFR), or other regulatory report of financial condition to determine whether a member has positive tangible capital.

The comment letters provided conflicting views on the appropriate point to require regulatory approval for member access to advances. One Bank commenter believes the regulators already have adequate authority and power to limit advance borrowings by capital deficient and insolvent members. The Bank commented that it is not necessary for the Banks to become part of the regulatory process by subjecting themselves to the direction of the shareholders' regulators.

A trade association for community bankers recommended that the final rule preclude the Banks from making advances to critically undercapitalized members (i.e., members with tangible capital equal to two percent or less of assets) without regulatory approval.

A thrift trade association commented that the Banks should be permitted to lend to members without positive tangible capital unless the appropriate federal regulator objects. The comment letter notes that the decision to fund an advance should be an independent credit decision made by a Bank and that the Banks are protected from default by full collateralization. The trade association also recommended that the final rule allow the Banks to lend to tangibly insolvent members with approved capital restoration plans without regulatory approval.

While the Finance Board agrees that the federal banking regulators have considerable authority to supervise member activities, the purpose of this final rule is to ensure that the Banks do not inadvertently contravene the supervisory objectives of a member's primary federal regulator. The provisions in this final rule prohibiting Bank lending to tangibly insolvent members have been in effect since April 1992 as part of the Finance Board's policy on limiting Bank lending to capital deficient members. Since these provisions have been quite effective, the Finance Board does not see any reason to eliminate them.

The final rule uses tangible insolvency, rather than the definition of critically undercapitalized, as the threshold level for requiring regulatory approval of new advances. The Finance Board considers the insolvency criterion to be appropriate because it limits access by insolvent members while providing a measure of flexibility for capital deficient members unless the appropriate federal banking agency or insurer objects. The Finance Board believes it is more appropriate for the federal banking agencies and insurer to determine whether a critically undercapitalized member should have access to Bank advances, than for the Finance Board to take unilateral action and prohibit the Banks from providing advances to such members.

Regarding the comment that the Banks be permitted to lend to a tangibly insolvent member unless the member's appropriate regulator objects, the Finance Board believes that requiring regulatory approval for Bank lending to insolvent members provides greater assurance that the objective of the final rule will be met. Regarding the suggestion that tangibly insolvent members operating under approved capital restoration plans be permitted to borrow new advances without regulatory approval, the Finance Board believes that tangible solvency rather than approval of a capital restoration plan should be the criterion for determining access to advances without regulatory approval. The regulator may request that funding for a tangibly insolvent member be continued.

The federal savings bank member commenter generally agreed with the proposed rule but expressed concern about Bank lending to members without positive tangible capital, even with regulatory approval. The commenter recommended that provisions be included in the final rule to ensure that a Bank's collateral position is secured should a member borrower be placed in receivership. However, this is unnecessary since section 10(a) of the Bank Act (12 U.S.C. 1430(a)) requires that advances be fully secured and that each Bank, at the time an advance is originated or renewed, obtain and maintain a security interest in certain specified types of eligible collateral.

Therefore, § 935.5(b) is being adopted in the final rule as proposed.

3. Renewal of Advances to Members Without Positive Tangible Capital

Section 935.5(c)(1) of the final rule permits a Bank to renew an outstanding advance to a member without positive tangible capital for successive terms of up to 30 days each. This provision is intended to allow a Bank to accommodate a tangibly insolvent member's need to find alternative funding sources, while also limiting the Bank's exposure to a weak institution. This section of the final rule also prohibits a Bank from renewing advances to tangibly insolvent members if the appropriate federal banking agency or insurer objects. Section 935.5(c)(2) of the final rule provides that a Bank may renew an advance to a member without positive tangible capital for a term greater than 30 days at the written request of the appropriate federal banking agency or insurer.

The thrift trade association commenter recommended that the Banks be permitted to renew advances to a tangibly insolvent member for periods of any length, unless the member's regulator requests that the Bank not do so. The Finance Board does not consider this change to be necessary since the final rule provides the Banks with the flexibility to renew an advance for successive 30-day terms. This allows the Bank to reassess the advisability of such renewals at regular intervals. Furthermore, the Finance Board believes that the renewal of outstanding advances to tangibly insolvent members should be a temporary measure until the member finds alternative funding

sources. Therefore, § 935.5(c) is being adopted as proposed.

4. Lending to Capital Deficient But Solvent Members

Section 935.5(d) of the final rule authorizes the Banks to make new advances and renew outstanding advances to capital deficient members (defined as members that fail to meet their minimum capital requirements) that have positive tangible capital. However, the final rule also directs the Banks not to make new advances or renew outstanding advances to such capital deficient members upon receipt of written notification from the appropriate federal regulator that the member's access to advances has been prohibited.

The Finance Board wants to ensure that the Banks do not lend to members whose access to advances has been restricted by the appropriate federal banking agency or insurer. However, the Finance Board also wants to ensure that the federal regulators, and not the Banks, have the responsibility for determining whether a member's access to funding should be restricted and for enforcing any directives that limit the member's access to advances. The Finance Board therefore believes that it is appropriate for a Bank to refrain from lending to a capital deficient but tangibly solvent member after the appropriate federal banking agency or insurer has established restrictions on the member's access to Bank advances.

Accordingly, the final rule directs the Banks to refrain from lending to a capital deficient but solvent member once the Bank receives written notice from the appropriate federal regulator that the member's use of Bank advances has been prohibited. The Bank may resume lending to such a member once it receives a written statement from the appropriate federal banking agency or insurer that re-establishes the member's access to advances.

The community banker trade association recommended that members that have been precluded from borrowing by their regulators be permitted to petition the regulators for the resumption of funding. The commenter believes that the proposed rule is unclear as to when the regulator would be prompted to request the resumption of Bank funding to an undercapitalized member.

The proposed rule provided that a Bank may resume funding to a capital deficient but solvent member if it receives a written statement from the appropriate federal banking agency or insurer which re-establishes the member's ability to use advances. A member is always entitled to petition its federal regulator or insurer. Therefore, adding a provision to allow a member to petition its regulator is unnecessary. In addition, since the Finance Board has no jurisdiction in this area, such a provision would not be enforceable. Accordingly, § 935.5(d) is being adopted in the final rule as proposed.

5. Bank Determination That It Can Safely Make an Advance

Section 935.5(a)(3) reiterates the provision in the Bank Act that all advances, including advances to tangibly insolvent members made at the request of the appropriate federal banking agency or insurer, can only be made if the Bank determines that it can safely make the advance to the member. See 12 U.S.C. 1430(a).

6. Report of Outstanding Bank Advances

Section 935.5(e) of the final rule requires each Bank to provide the Finance Board with a monthly report of outstanding Bank advances and commitments to all members. Section 935.5(e) also directs the Banks, upon written request from a member's appropriate federal banking agency or insurer, to provide to such entity information on advances and commitments outstanding to the member.

7. Capital Deficient Members That Are Not Federally Insured Depositories

Section 935.5(f) of the final rule requires that, in the case of members that are not federally insured depository institutions, the relevant provisions in § 935.5(b), (c), (d) and (e) apply to a member's state regulator acting in a capacity similar to an appropriate federal banking agency or insurer.

8. Advance Commitments

Section 935.5(g) of the final rule provides that the written advances agreement required by § 935.4(b)(2) of the Finance Board's regulations, or the written advances application required by § 935.4(a) of the Finance Board's regulations, stipulate that a Bank shall not fund commitments for advances, including Community Investment Program and Affordable Housing Program advance commitments, previously made to members whose access to advances was subsequently restricted pursuant to § 935.5. Consistent with § 935.8 of the Finance Board's advances regulation, a Bank may charge the member a fee for a commitment cancellation resulting from the restrictions in § 935.5.

Section 935.5(g) of the proposed rule provided that all commitments entered into after August 25, 1993 were subject to the restrictions in § 935.5 to ensure that commitments entered into by the Banks from the time the proposed rule was approved did not result in the Banks inadvertently circumventing the wishes of the federal banking agencies or insurer. The Finance Board reasoned that immediate application of the restrictions on advance commitments was justifiable, given that the Banks and their members have been aware of the Finance Board's views on lending to capital deficient members since the adoption of the Finance Board's capital deficient lending policy on April 22, 1992. The Finance Board specifically requested comment on this issue.

Two comment letters addressed this issue. The community banker trade association expressed support for this provision. The second commenter, a Bank, opposed the provision. The Bank wrote that the final rule should not affect commitments made before the Banks had received notice of the proposed limitation and had an opportunity to assimilate the requirement into their operations and applicable credit documentation.

However, as stated earlier, the Banks have been subject to limitations on lending to capital deficient members since April 1992. The Finance Board believes this is adequate notice. Further, there is good cause to make the limitation on commitments effective August 25, 1993, because using this date allowed the Banks to adjust their lending policies to avoid making commitments to lend that would contravene the requirements of the final rule. Therefore, § 935.5(g) is being adopted in the final rule as proposed.

Another Bank commented more generally on the commitment provisions in § 935.5(g). It opposes the provision precluding a Bank from funding an outstanding commitment to a capital deficient member if the appropriate federal regulator has restricted the member's access to advances. The Bank believes this requirement could result in potential asset/liability management complications and funding costs for the Bank, and could have serious negative implications for the Bank's membership and marketing efforts.

The Finance Board believes it is doubtful that a member would ask a Bank to fund an outstanding commitment once the member has been prohibited by its regulator from access to Bank advances, and does not believe that a Bank should provide a member with funding that has been explicitly prohibited by the member's regulator. A Bank's asset/liability management costs should be minimized since a Bank may

charge a fee if it is required to cancel an outstanding commitment due to regulatory action. Therefore, § 935.5(g) is being adopted in the final rule as proposed.

9. Definition of "Tangible Capital"

The restrictions on access to Bank advances are triggered by a member's level of tangible capital. Section 935.1 of the proposed rule defined "tangible capital" as: (1) Capital, calculated according to Generally Accepted Accounting Principles (GAAP), less "intangible assets" as reported in the member's TFR for members whose primary federal regulator is the Office of Thrift Supervision (OTS), or as reported in the Call Report for members whose primary federal regulator is the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC) or the Board of Governors of the Federal Reserve System (Federal Reserve Board); or (2) capital calculated according to GAAP, less intangible assets, as defined by a Bank for members which are not regulated by the OTS, the FDIC, the OCC, or the Federal Reserve Board.

This definition of tangible capital is consistent with the definition established by the FDIC in its final rulemaking on prompt corrective action. See 57 FR 44886 (Sept. 29, 1992), 12 CFR part 325. The prompt corrective action procedures provide a framework for determining supervisory action for financial institutions. The FDIC has implemented prompt corrective action procedures based on an institution's level of core or Tier 1 capital. GAAP capital less intangible assets results in a definition of tangible capital that is similar to core or Tier 1 capital, as defined by the federal banking agencies. See *e.g.*, 12 CFR part 3, Appendix A, section 2(a) (OCC); 12 CFR part 208, Appendix A, II.A.1 (Federal Reserve Board); 12 CFR 325.2(m) (FDIC); 12 CFR 567.5(a) (OTS).

The comment letter from the thrift trade association recommended that the final rule use the definition of "tangible equity" as adopted by the OTS and the FDIC to determine whether a member is tangibly solvent. The commenter noted that this definition permits banks and savings associations to include qualifying purchased mortgage servicing rights in the calculation of tangible capital and permits savings associations to include qualifying supervisory goodwill.

The community banker trade association requested that the capital definitions in the final rule be the same as those used in the prompt corrective action regulations, and that the definition of tangible capital include certain qualifying intangible assets such as purchased mortgage servicing rights.

The proposed rule sought to incorporate definitions that the Banks could easily verify using currently available regulatory reports. Tangible equity is not reported on the Call Report filed by commercial bank members, and capital measured according to the prompt corrective action definitions is not reported on the Call Report or the TFR. Therefore, if these definitions were used, the Banks or their members would be required to perform a separate calculation to determine a member's capital level. The Finance Board believes that this requirement would place an unnecessary regulatory burden on the Banks and their members.

However, the Finance Board agrees with the commenters that since both commercial bank and thrift members may include a certain amount of purchased mortgage servicing rights (PMSRs) in their calculation of core or Tier 1 capital, it is appropriate that such assets also be included in tangible capital for the purpose of determining access to advances. Since PMSRs are a line item on the Call Report and TFR, this should not place an undue reporting burden on the members. Therefore, the Finance Board has decided to change the definition of tangible capital in § 935.1 of the final rule to include PMSRs, to the extent such assets are included in the member's calculation of core or Tier 1 capital as reported in the member's TFR, Call Report, or other regulatory report of financial condition. At the present time, thrifts and commercial banks may include PMSRs in core or Tier 1 capital in an amount up to 50 percent of core or Tier 1 capital. See *e.g.*, 12 CFR 325.6(e)(3) (1993).

For members that are not federally insured depository institutions, the Bank shall define intangible assets; provided that a Bank shall include a member's PMSRs to the extent such assets are included for the purpose of meeting regulatory capital requirements.

The community banker trade association also recommended that the definition "capital deficient member" in the proposed rule be replaced by the definition of undercapitalized in the banking agencies' prompt corrective action regulations. However, the term "capital deficient member," which is defined as an institution that fails to meet its minimum regulatory capital requirements, has been used since the Finance Board adopted its policy in 1992. Given that the Banks and their membership are familiar with this term, the Finance Board does not see any reason to change it. Therefore, the definition of "capital deficient member" is being adopted as proposed.

B. Transfer of Advances

The final rule amends § 935.17 of the Finance Board's advances regulation, which governs the transfer of advances. Section 935.17 provides that a Bank may allow one of its members to assume advances previously extended by the Bank to another of its members. The final rule amends this section to provide that a Bank may allow a member to assume advances held by a nonmember, provided the advances were originated by the Bank.

The Banks generally may not make advances to nonmembers, except in the limited circumstances provided for in section 10b of the Bank Act, 12 U.S.C. 1430b. However, a nonmember, through acquisition of a member institution, may assume outstanding Bank advances held by the acquired member. Section 935.17, as amended, authorizes a Bank to allow the transfer of advances from a nonmember to a member, provided the advance was originated by the Bank, and provided the assumption complies with the requirements governing the issuance of new advances. A Bank may charge an appropriate fee for processing the transfer. No comments were received on this provision and § 935.17 of the final rule is being adopted as proposed.

C. Treatment of Nursing Homes as Residential Property

In the Finance Board's final advances rule published on May 20, 1993, see 58 FR 29456, nursing homes were treated as nonresidential property, thus making mortgages on nursing homes ineligible as collateral for advances. The Finance Board has subsequently reconsidered this issue and determined that mortgages on nursing homes have a sufficiently residential character to be treated as residential real property, thus making them eligible to be accepted as collateral for advances. One comment letter addressed this provision. The commenter, a Bank, believes this treatment of nursing homes will assist the Banks in fulfilling their housing mission, without exposing them to unnecessary risk. Therefore, as proposed, the final rule deletes nursing homes from the definition of "nonresidential real property" and includes nursing homes in the definition of "multifamily property." Thus, mortgage loans backed by nursing homes are eligible collateral for an advance.

III. Paperwork Reduction Act

Section 935.5(e) of the final rule will require the Banks to report certain information to the Finance Board. However, § 935.5(e) does not involve a "collection of information" for purposes of the Paperwork Reduction Act because § 935.5(e) does not require the Banks to collect any additional information from the public. The Paperwork Reduction Act defines "collection of information" to include the obtaining of facts or opinions from ten or more persons "other than * * * instrumentalities * * * of the United States." 44 U.S.C. 3502(4)(A).

The Banks are considered to be instrumentalities of the United States under statute and case law. See 12 U.S.C. 1431(e)(1); *Fahey* v. *O'Melveny & Myers*, 200 F.2d 420, 446 (9th Cir. 1952) ("a Federal Home Loan Bank is a federal instrumentality organized to carry out public policy * * *" *Id.*); *Association of Data Processing Service Organizations* v. *Fed. Home Loan Bank Board*, 568 F.2d 478 (6th Cir. 1977) (court found Banks to be federal instrumentalities in action preventing a Bank from providing on-line data processing services); *Osei-Bonsu* v. *Fed. Home Loan Bank of New York*, 726 F. Supp. 95, 97–98 (S.D.N.Y. 1989) (Banks held to be federal instrumentalities in an employment context).

Reporting requirements imposed upon the Banks are not "collection[s] of information" unless the collection is for general statistical purposes. See 12 U.S.C. 3502(4)(B). The information that the Banks are required to provide the Finance Board in § 935.5(e) is not for general statistical purposes and, therefore, is not an information collection under the Paperwork Reduction Act. Accordingly, this final rule does not require any reporting under the Paperwork Reduction Act.

IV. Regulatory Flexibility Act

The final rule applies to all Bank members, regardless of their size. The final rule does not contain any requirements that the Finance Board believes will have a disproportionate impact on small entities. Therefore, it is certified, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this final rule, as promulgated, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 935

Advances, Credit, Federal home loan banks.

The Finance Board hereby amends chapter IX, title 12, Code of Federal Regulations, as follows:

PART 935—ADVANCES

1. The authority citation for part 935 is revised to read as follows:

Authority: 12 U.S.C. 1422b(a)(1), 1426, 1429, 1430, 1430b, 1431.

Subpart A—Advances to Members

2. Section 935.1 is amended by revising the definitions of "Insurer," "Multifamily property," and "Nonresidential real property" and by adding the following definitions in appropriate alphabetical order to read as follows:

§ 935.1 Definitions.

* * * * *

Capital deficient member means a member that fails to meet its minimum regulatory capital requirements as defined or otherwise required by the member's appropriate federal banking agency, insurer or, in the case of members that are not federally insured depository institutions, state regulator.

* * * * *

Insurer means the Federal Deposit Insurance Corporation for "insured depository institutions" as defined in 12 U.S.C. 1813(c)(2) and the National Credit Union Administration for federally insured credit unions.

* * * * *

Multifamily property means, for purposes of this part:

(1)(i) Real property that is solely residential and which includes five or more dwelling units; or

(ii) Real property which includes five or more dwelling units with commercial units combined, provided the property is primarily residential.

(2) Multifamily property as defined in this section includes nursing homes, dormitories and homes for the elderly.

* * * * *

Nonresidential real property means, for purposes of this part, real property not used for residential purposes, including business or industrial property, hotels, motels, churches, hospitals, educational and charitable institutions, clubs, lodges, association buildings, golf courses, recreational facilities, farm property not containing a dwelling unit, or similar types of property, except as otherwise determined by the Board in its discretion.

* * * * *

State regulator means a state insurance commissioner or state regulatory entity with primary responsibility for supervising a member borrower that is not a federally insured depository institution.

Tangible capital means:

(1) Capital, calculated according to GAAP, less "intangible assets" except for purchased mortgage servicing rights to the extent such assets are included in a member's core or Tier 1 capital, as reported in the member's Thrift Financial Report for members whose primary federal regulator is the OTS, or as reported in the Report of Condition and Income for members whose primary federal regulator is the FDIC, the OCC, or the Board of Governors of the Federal Reserve System.

(2) Capital calculated according to GAAP, less intangible assets, as defined by a Bank for members which are not regulated by the OTS, the FDIC, the OCC, or the Board of Governors of the Federal Reserve System; provided that a Bank shall include a member's purchased mortgage servicing rights to the extent such assets are included for the purpose of meeting regulatory capital requirements.

3. Section 935.5 is amended by removing the period at the end of paragraph (a)(2) and adding in its place "; and" and adding paragraphs (a)(3) and (b) through (g) to read as follows:

§ 935.5 Limitations on access to advances.

(a) * * *

(3) Make advances and renewals only if the Bank determines that it may safely make such advance or renewal to the member, including advances and renewals made pursuant to this section.

(b) *New advances to members without positive tangible capital.* (1) A Bank shall not make a new advance to a member without positive tangible capital unless the member's appropriate federal banking agency or insurer requests in writing that the Bank make such advance. The Bank shall promptly provide the Finance Board with a copy of any such request.

(2) A Bank shall use the most recently available Thrift Financial Report, Report of Condition, and Income or other regulatory report of financial condition to determine whether a member has positive tangible capital.

(c) *Renewals of advances to members without positive tangible capital.* (1) *Renewal for 30-day terms.* A Bank may renew outstanding advances, for successive terms of up to 30 days each, to a member without positive tangible capital; provided, however, that a Bank shall honor any written request of the appropriate federal banking agency or insurer that the Bank not renew such advances.

(2) *Renewal for longer than 30-day terms.* A Bank may renew outstanding advances to a member without positive tangible capital for a term greater than 30 days at the written request of the appropriate federal banking agency or insurer.

(d) *Advances to capital deficient but solvent members.* (1) Except as provided in paragraph (d)(2)(i) of this section, a Bank may make a new advance or renew an outstanding advance to a capital deficient member that has positive tangible capital.

(2)(i) A Bank shall not lend to a capital deficient member that has positive tangible capital if it receives written notice from the appropriate federal banking agency or insurer that the member's use of Bank advances has been prohibited. The Bank shall promptly provide the Finance Board with a copy of any such notice.

(ii) A Bank may resume lending to such a capital deficient member if the Bank receives a written statement from the appropriate federal banking agency or insurer which re-establishes the member's ability to use advances.

(e) *Reporting.* (1) Each Bank shall provide the Finance Board with a monthly report of the advances and commitments outstanding to each of its members.

(2) Such monthly report shall be in a format or on a form prescribed by the Finance Board.

(3) Each Bank shall, upon written request from a member's appropriate federal banking agency or insurer, provide to such entity information on advances and commitments outstanding to the member.

(f) *Members without federal regulators.* In the case of members that are not federally insured depository institutions, the references in paragraphs (b), (c), (d) and (e) of this section to "appropriate federal banking agency or insurer" shall mean the member's state regulator acting in a capacity similar to an appropriate federal banking agency or insurer.

(g) *Advance commitments.* (1) In the event that a member's access to advances from a Bank is restricted pursuant to this section, the Bank shall not fund outstanding commitments for advances not exercised prior to the imposition of the restriction. This requirement shall apply to all advance commitments made by a Bank after August 25, 1993.

(2) Each Bank shall include the stipulation contained in paragraph (g)(1) of this section as a clause in either:

(i) The written advances agreement required by § 935.4(b)(2) of this part; or

(ii) The written advances application required by § 935.4(a) of this part.

4. Section 935.17 is revised to read as follows:

§ 935.17 Intradistrict transfer of advances.

(a) *Advances held by members.* A Bank may allow one of its members to assume an advance extended by the Bank to another of its members, provided the assumption complies with the requirements of this part governing the issuance of new advances. A Bank may charge an appropriate fee for processing the transfer.

(b) *Advances held by nonmembers.* A Bank may allow one of its members to assume an advance held by a nonmember, provided the advance was originated by the Bank and provided the assumption complies with the requirements of this part governing the issuance of new advances. A Bank may charge an appropriate fee for processing the transfer.

By the Federal Housing Finance Board.

December 15, 1993.

Philip L. Conover,

Managing Director.

[FR Doc. 94–1213 Filed 1–19–94; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–ANE–56; Amendment 39–8798; AD 94–02–01]

Airworthiness Directives; Textron Lycoming Model T5508D Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Textron Lycoming Model T5508D turboshaft engines. This action requires a cyclic life reduction for the T5508D impeller, a more conservative method for determining low cycle fatigue (LCF) damage to the impeller, and a method for prorating past impeller usage, based on the new LCF counting factors. This amendment is prompted by a report of a rotorcraft accident found to have been caused by an uncontained impeller failure. A subsequent field campaign inspection of high-time impellers utilized by heavy lift operators confirmed 12 more impellers with similar distress. The actions specified in this AD are intended to prevent an impeller failure, which can result in an uncontained engine failure, inflight shutdown, or possible rotorcraft damage.

DATES: Effective February 4, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of February 4, 1994.

Comments for inclusion in the Rules Docket must be received on or before March 21, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–56, 12 New England Executive Park, Burlington, MA 01803–5299.

The service information referenced in this AD may be obtained from Textron Lycoming, 550 Main Street, Stratford, CT 06497. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 93–ANE–56, 12 New England Executive Park, Burlington, Massachusetts; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Daniel Kerman, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7130, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) received a report of a rotorcraft accident caused by an uncontained failure of a Textron Lycoming T5508D compressor impeller. The impeller failure was caused by a low cycle fatigue (LCF) crack which initiated and propagated to failure in the impeller aft face cooling air holes. Based on this accident, Textron Lycoming issued a Service Bulletin (SB) requiring all operators to inspect impellers with greater than 5,000 cycles in service (CIS). To date, 12 impellers have been discovered with distress in the impeller aft face cooling air holes similar to the accident aircraft but of lesser magnitude. Subsequent analysis and testing of this current design impeller, as well as service experience, has revealed a lower LCF life than originally calculated. This lower LCF life is based on a new engineering analysis using different, improved component geometry and LCF material properties than were used in the original engineering lifing analysis for the impeller. In addition to arriving at a lower LCF life, the new engineering

analysis also derived the updated impeller cyclic counting factors. Configuration-specific material testing, combined with updated operator mission profiles, revealed a need to update the impeller cyclic counting factors because minor cyclic LCF damage was greater than previously calculated. This condition, if not corrected, can result in impeller failure, which can result in an uncontained engine failure, inflight shutdown, or possible rotorcraft damage.

This amendment requires a cyclic life reduction for the impeller, a more conservative sub-cycle counting factors table, and a method for prorating past impeller usage based on the new cyclic counting factors. For those impellers that exceed the new life limit, a drawdown schedule will be implemented for safe removal of time-expired impellers. This program is substantiated by the demonstrated correlation between spin pit testing of actual cracked parts, engineering analysis, configuration specimen fatigue testing, and field service experience. A safety assessment has also been performed to substantiate the drawdown schedule for time-expired impellers to conservatively manage these impellers beyond the new life limits.

The FAA has reviewed and approved the technical contents of Textron Lycoming SB No. T5508D–0040, dated June 25, 1993, that describes the removal schedule necessary for those impellers that exceed the new life limits, and Textron Lycoming SB No. T5508D–0002, Revision 7, dated June 25, 1993, that reduces the cyclic life limit of the impeller from 16,600 to 8,000 cycles, revises the minor cycle counting factors table used for cyclic computation, and provides a method for prorating past impeller usage based on the new cycle counting factors.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, this AD is being issued to prevent impeller failure, which can result in an uncontained engine failure, inflight shutdown, or possible rotorcraft damage. This AD requires a cyclic life reduction for the impeller, a more conservative sub-cycle counting factors table, and a method for prorating past impeller usage based on the new cycle counting factors. For those impellers that exceed the new life limit, the FAA has established a drawdown schedule for safe removal. These actions are required to be accomplished in accordance with the service bulletins described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–ANE–56." The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

94–02–01 Textron Lycoming: Amendment 39–8798. Docket 93–ANE–56.

Applicability: Textron Lycoming Model T5508D turboshaft engines, installed on but not limited to Bell 214B helicopters.

Compliance: Required as indicated, unless accomplished previously.

To prevent an impeller failure, which can result in an uncontained engine failure, inflight shutdown, or possible rotorcraft damage, accomplish the following:

(a) Within 7 days after the effective date of this AD, conduct a revised impeller operating cycle count (prorate), in accordance with paragraph E of Textron Lycoming Service Bulletin (SB) No. T5508D–0002, Revision 7, dated June 25, 1993.

(b) Following the implementation of the revised cycle count methodology, specified in paragraph (a) of this AD, replace those impellers installed in aircraft that exceed the new life limit, on the effective date of this AD, in accordance with the drawdown requirements defined in Table 1 of Textron Lycoming SB T5508D–0040, dated June 25, 1993.

(c) For those impellers not installed in aircraft on the effective date of this AD, with 8,000 or more cycles in service (CIS), replace with a new or serviceable impeller prior to further flight.

(d) Thereafter, Textron Lycoming Model T5508D impeller, part numbers 2-100-180-13 and 2-100-180-19, are life limited to 8,000 CIS, as defined in Table 1 of Textron Lycoming SB No. T5508D-0002, Revision 7, dated June 25, 1993.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(f) The operational cyclic counting and replacement of impellers shall be done in accordance with the following service bulletins:

Document No.	Pages	Revision	Date
Textron Lycoming, SB No. T5508D-0002. Total pages: 12	1-12	7	June 25, 1993.
Textron Lycoming, SB No. T5508D-0040 Total pages: 2	1-2	Original ...	June 25, 1993.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Textron Lycoming, 550 Main Street, Stratford, CT 06497. Copies may be inspected at the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93-ANE-56, 12 New England Executive Park, Burlington, Massachusetts; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on February 4, 1994.

Issued in Burlington, Massachusetts, on January 10, 1994.

Jay J. Pardee,

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

[FR Doc. 94-1103 Filed 1-19-94; 8:45 am]

BILLING CODE 4910-13-P

14 CFR Part 39

[Docket No. 93-NM-177-AD; Amendment 39-8801; AD 93-21-04]

Airworthiness Directives; Canadair Model CL-600-2B19 "Regional Jet" Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 93-21-04 that was sent previously to all known U.S. owners and operators of Canadair Model CL-600-2B19 "Regional Jet" series airplanes by individual letters. This AD requires repetitive lubrication with grease of the sliding shaft of the input plunger of the brake control valve assembly. This amendment is prompted by reports of temporary loss of braking action upon landing. The actions specified by this AD are intended to prevent temporary loss of braking action due to the freezing of moisture on the input plunger of the brake control valve during steep descent.

DATES: Effective February 4, 1994 to all persons except those persons to whom it was made immediately effective by priority letter AD 93-21-04, issued October 18, 1993, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 4, 1994.

Comments for inclusion in the Rules Docket must be received on or before March 21, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-177-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The applicable service information may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Danko Kramar, Aerospace Engineer, Systems and Equipment Branch, ANE-173, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11582; telephone (516) 791-6427; fax (516) 791-9024.

SUPPLEMENTARY INFORMATION: On October 18, 1993, the FAA issued priority letter AD 93-21-04, applicable to Canadair Model CL-600-2B19 "Regional Jet" series airplanes. That action was prompted by notification from Transport Canada Aviation, which is the airworthiness authority for Canada, indicating that an unsafe condition may exist on certain of these airplanes. There had been two reports of temporary loss of braking action upon landing; in both cases, the braking action returned to normal within a few minutes after touchdown. Investigation revealed that the temporary loss of braking action was due to the freezing of moisture on the input plunger of the brake control valve during steep descent. This condition, if not corrected, could result in temporary loss of all braking action.

Canadair issued Regional Jet Alert Service Bulletin S.B.A601R-32-016, dated October 14, 1993, which describes procedures for lubricating the sliding shaft of the input plunger of the brake control valve assembly. Lubricating the input plunger will ensure that any moisture that has accumulated will not freeze on the plunger before the airplane is landed, thus ensuring that the brakes will function properly. Transport Canada Aviation classified this service bulletin as mandatory and issued Canadian Airworthiness Directive CF-93-26, dated October 15, 1993, in order to assure the continued airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design

registered in the United States, the FAA issued priority letter AD 93–21–04 to prevent temporary loss of all braking action. The AD requires repetitive lubrication with grease of the sliding shaft of the input plunger of the brake control valve assembly. The actions are required to be accomplished in accordance with the service bulletin previously described.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on October 18, 1993, to all known U.S. owners and operators of Canadair Model CL–600–2B19 "Regional Jet" series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective as to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–177–AD." The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

93–21–04 Canadair: Amendment 39–8801. Docket No. 93–NM–177–AD.

Applicability: Model CL–600–2B19 "Regional Jet" series airplanes; serial numbers 7003 and subsequent; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent temporary loss of all braking action, accomplish the following:

(a) Within 3 days after the effective date of this AD, and thereafter at intervals not to exceed 3 days, lubricate with grease the sliding shaft of the input plunger of the brake control valve assembly in accordance with Canadair Regional Jet Alert Service Bulletin S.B.A601R–32–016, dated October 14, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

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

(d) The lubrication procedure shall be done in accordance with Canadair Regional Jet Alert Service Bulletin S.B.A601R–32–016, dated October 14, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on February 4, 1994, to all persons except those persons to whom it was made immediately effective by priority letter AD 93–21–04, issued October 18, 1993, which contained the requirements of this amendment.

Issued in Renton, Washington, on January 12, 1994.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–1227 Filed 1–19–94; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 91–AWA–3]

Alteration of the Denver Class B Airspace Area; CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to a final rule published on September 17, 1993. That final rule alters the Denver, CO, Class B airspace area to coincide with the scheduled opening date of the new Denver International Airport. A new field survey was conducted of the new Denver International Airport and the supporting navigational aid (NAVAID), and the Denver Very High Frequency Omnidirectional Range (VOR) has been upgraded to a Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) facility. This upgrade was not reflected in the final rule action. This action is also necessary to correct an error in the coordinates for the airport reference point and the supporting NAVAID for the new Denver International Airport.

EFFECTIVE DATE: 0701 u.t.c, March 9, 1994.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9230.

SUPPLEMENTARY INFORMATION: On September 17, 1993, the Federal Aviation Administration (FAA) published a final rule that alters the Denver, CO, Class B airspace area to coincide with the scheduled opening date of the new Denver International Airport (58 FR 48722). This action is necessary to correct an error in the coordinates for the airport reference point and the supporting NAVAID for the new Denver International Airport, and to reflect that the Denver VOR has been upgraded to a VOR/DME facility.

Correction of Final Rule

Accordingly, pursuant to the authority delegated to me, the publication on September 17, 1993 (58 FR 48722) and the description in FAA Order 7400.9A, which is incorporated by reference in 14 CFR 71.1, are corrected as follows:

§ 71.1 [Corrected]

On page 48727, in the third column, under the heading "Denver International Airport (Primary Airport)" the coordinates for the airport reference point are corrected by removing "(lat. 39°51'38" N., long. 104°40'24" W.)" and inserting "(lat. 39°51'30" N., long. 104°40'01" W.)." The heading "Denver VOR" should be corrected to read "Denver VOR/DME" and the coordinates are corrected by removing "(lat. 39°48'44" N., long. 104°39'36" W.)" and inserting "(lat. 39°48'45" N., long. 104°39'39" W.)." Also, on page 48727, third column for Area A through Area E and on page 48728, first and second columns for Areas E, F, G, H, J, K, L, M, N, and P, remove the words "Denver VOR" and insert the words "Denver VOR/DME."

Issued in Washington, DC, on January 10, 1994.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94-1349 Filed 1-19-94; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 93-ACE-01]

Establishment of Class E Airspace; Hartington, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending from 700 feet above the surface at Hartington Municipal Airport, Hartington, Nebraska. This action is necessary because a VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) standard instrument approach procedure (SIAP) has been developed for the Hartington Municipal Airport, Hartington, Nebraska, utilizing the Yankton, South Dakota, VOR/DME as a navigational aid. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action is intended to provide Class E airspace for instrument flight rules (IFR) operations at the Hartington, Nebraska, Municipal Airport. The area will be depicted on aeronautical charts to provide a reference for pilots operating in the area.

EFFECTIVE DATE: 0901 u.t.c., April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Kathy J. Randolph, Air Traffic Division, System Management Branch, ACE-530c, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426-3408.

SUPPLEMENTARY INFORMATION:

History

On March 30, 1993, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a transition area at Hartington, Nebraska, was published in the Federal Register (48 FR 29881). A SIAP was developed for the Hartington Municipal Airport, Hartington, Nebraska. The proposal was to add controlled airspace extending from 700 feet AGL to 1200 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transiting between the en route and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Airspace Reclassification, effective September 16, 1993, has discontinued the use of the term "transition area," and airspace extending upward from 700 feet or more above the ground level is now Class E airspace. Other than that change in terminology, this amendment is the same as that proposed in the notice. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations established Class E airspace at Hartington, Nebraska. It provides controlled airspace from 700 to 1200 feet AGL for aircraft executing the VOR/DME SIAP into the Hartington Municipal Airport, Hartington, Nebraska. The intended effect of this action is to provide controlled airspace to contain IFR operations at this location.

The FAA has determined that this regulation only involves an established body of technical regulations that needs frequent and routine amendments to keep them operationally current. It, therefore (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant impact on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ACE NE E5 Hartington, NE [New]

Hartington Municipal Airport, NE

(lat. 42°36′08″ N, Long. 97°15′12″ W)
Yankton, SD VOR/DME (lat. 42°55′06″ N, long. 97°23′06″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Hartington, Nebraska, Municipal Airport and within 2.5 miles each side of the Yankton VOR/DME 162-degree radial, extending from the 6.3-mile radius to 9 miles southeast of the airport.

* * * * *

Issued in Kansas City, Missouri, on January 4, 1994.

Herman J. Lyons,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 94–1354 Filed 1–19–94; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Ch. I

Intent To Request Public Comments on Rules and Guides

AGENCY: Federal Trade Commission.

ACTION: Notice of intent to request public comments.

SUMMARY: Pursuant to its ten-year regulatory review plan adopted on September 1, 1992, the Federal Trade Commission ("Commission") gives notice that it intends to request public comments on the rules and guides listed below during 1994. The Commission will request comments on, among other things, the economic impact of, and the continuing need for, the rules or guides, possible conflict between the rules or guides and state, local or other federal laws, and the effect on the rules or guides of any technological, economic, or other industry changes, as part of its systematic review of all current Commission regulations and guides. No Commission determination on the need for or the substance of a rule, regulation, guide or interpretation or any other procedural option should be inferred from the intent to publish requests for comments. In certain instances, however, the reviews also will address other specific matters or issues, such as reviews mandated by the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and issues concerning disclosure of measurements in metric terms. Omnibus Trade and Competitiveness Act, 15 U.S.C. 205, Executive Order 12770 ("Metric Usage in Federal Government Programs"), 56 FR 35801 (July 25, 1991).

FOR FURTHER INFORMATION CONTACT: Further details may be obtained from the Commission's contact person listed for each particular regulation.

SUPPLEMENTARY INFORMATION: The Commission is publishing a list of rules and guides that it intends to initiate reviews of and solicit public comments for during 1994. The Commission intends to publish notices requesting comments about the following items in 1994:

Agency Contact for the following items: Bret S. Smart, Federal Trade Commission, Los Angeles Regional Office, suite 13209, 11000 Wilshire Blvd., Los Angeles, CA 90024, 310/575–7975.

(1) Guides for the Hosiery Industry (16 CFR part 22).

(2) Guide for Avoiding Deceptive Use of Word "Mill" in the Textile Industry (16 CFR part 236).

(3) Guides for Labeling, Advertising, and Sale of Wigs and Other Hairpieces (16 CFR part 252).

Agency Contacts for the following items: Bret S. Smart (above) or Robert E. Easton, Federal Trade Commission, room S4631, 601 Pennsylvania Avenue, NW., Washington, DC 20580, 202/326–3029.

(4) Rules and Regulations Under the Wool Products Labeling Act of 1939 (16 CFR part 300).

(5) Rules and Regulations Under the Fur Products Labeling Act (16 CFR part 301).

(6) Rules and Regulations Under the Textile Fiber Products Identification Act (16 CFR part 303).

Agency Contact for the following item: Michael J. Bloom, Federal Trade Commission, New York Regional Office, suite 1300, 150 William Street, New York, New York 10038, 212/264–1200.

(7) Guides for the Feather and Down Products Industry (16 CFR part 253).

Agency Contact for the following item: Louise R. Jung, Federal Trade Commission, Division of Enforcement, Bureau of Consumer Protection, room S4631, 601 Pennsylvania Avenue, NW., Washington, DC 20580, 202/326–2989.

(8) Trade Regulation Rule concerning a Cooling-Off Period for Door-to-Door Sales (16 CFR part 429).

Agency Contact for the following item: Constance M. Vecellio, Federal Trade Commission, Division of Enforcement, Bureau of Consumer Protection, room S4631, 601 Pennsylvania Avenue, NW., Washington, DC 20580, 202/326–2966.

(9) Trade Regulation Rule concerning Care Labeling of Textile Wearing Apparel and Certain Piece Goods As Amended (16 CFR part 423).

Agency Contact for the following items: David Medine, Federal Trade Commission, Division of Credit Practices, Bureau of Consumer Protection, room S4429, 601 Pennsylvania Avenue, NW., Washington, DC 20580, 202/326–3224.

(10) Trade Regulation Rule concerning Credit Practices (16 CFR part 444).

Agency Contact for the following items: George B. Mickum, Federal Trade Commission, Division of Enforcement, Bureau of Consumer Protection, room S4631, 601 Pennsylvania Avenue, NW., Washington, DC 20580, 202/326–3132.

(11) Used Motor Vehicle Trade Regulation Rule (16 CFR part 455).

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94–1369 Filed 1–19–94; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8516]

RIN 1545–AS29

Revisions of the Section 338 Consistency Rules With Respect to Target Affiliates That Are Controlled Foreign Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: These amendments to the income regulations revise the consistency rules under section 338 of the Internal Revenue Code of 1986 applicable to certain cases involving controlled foreign corporations. This action is necessary to simplify and update the existing regulations. These regulations are substantially identical to the consistency rules applicable to controlled foreign corporations contained in recent proposed regulations. The regulations would affect taxpayers that own controlled foreign corporations. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: These regulations are effective on January 20, 1994.

For applicability of these regulations, see "Effective Dates" under the **SUPPLEMENTARY INFORMATION** portion of the preamble.

FOR FURTHER INFORMATION CONTACT: Kenneth D. Allison at (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

A notice of proposed rulemaking was published on January 14, 1992, in the **Federal Register** (57 FR 1409) under section 338 of the Internal Revenue Code. See 1992–1 C.B. 1000. The notice provided rules to replace the asset and stock consistency rules of §§ 1.338–4T and 1.338–5T. The notice included consistency rules applicable to certain cases involving controlled foreign corporations (CFCs). Comments on the notice were received and a public hearing was held on March 26, 1992. After considering the comments and statements made at the hearing, those proposed regulations, with the exception of certain consistency rules applicable to controlled foreign corporations, were adopted as revised by Treasury Decision 8515, published elsewhere in this issue of the **Federal Register**, and the corresponding temporary regulations were removed.

Several comments were received concerning the international consistency rules. Some comments questioned the need to apply the carryover basis rules to an asset disposed of by a CFC while also adjusting the basis in the stock of the CFC. Other comments questioned the propriety of imposing consistency requirements on foreign assets held by CFCs, which are frequently sold in the context of an acquisition for foreign tax planning purposes.

No changes were in response to the comments received. Elimination of either the carryover basis rule for assets or the adjustment to CFC stock basis would complicate the regulation by requiring additional anti-avoidance rules to ensure collection of the appropriate amount of tax. In view of the complexity of the issues involved, the Service intends to continue studying the international consistency rules and may make further changes to the rules if warranted. However, in view of the need for immediate guidance, these rules are being issued as temporary regulations.

Need for Temporary Regulations

The provisions contained in this Treasury decision are needed immediately to provide guidance to the public with respect to the international consistency rules under section 338. Therefore, it is found impractical and contrary to public interest to issue this Treasury decision with prior notice under section 553(b) of Title 5 of the United States Code. In addition, the previously published proposed regulations cannot be finalized, as certain issues relating to the operation and scope of these regulations are being studied.

Explanation of Provisions

The temporary and proposed regulations under § 1.338–4T(h) are substantially identical to the previously proposed regulations. The preamble to the previously proposed regulations contains a discussion of the provisions.

References to new section 951(a)(1)(C) of the Internal Revenue Code have been added to paragraph (h)(2) of this section to incorporate the effect of new section 956A (Sec. 13231, Public Law 103–66, 107 Stat. 312, 495) on the consistency rules.

References to section 1291 have been added in various paragraphs of this section to clarify that an amount otherwise treated as a dividend under section 1248 does not lose its character for purposes of these regulations, where section 1248 is overridden by section 1291. The references to section 1291 in this context contemplate the application of the consistency rules to the full amount that is subject to section 1291(g)(2)(C). See also, § 1.1291–5(e) of the proposed regulations. In addition, a provision was added to paragraph (h)(2)(ii) of this section to deny a stock basis increase where there is an indirect disposition by a domestic target or target affiliate of a section 1291 fund that is subject to the consistency rules. See § 1.1291–3(e)(4)(iii) of the proposed regulations.

Effective Dates

These regulations are generally effective for targets with acquisition dates on or after January 20, 1994. Taxpayers may elect to apply these regulations, together with section 338 regulations issued as temporary and final regulations elsewhere in the **Federal Register**, to a target with an acquisition date on or after January 14, 1992, and before January 20, 1994.

Special Analyses

It has been determined that this temporary regulation is not a significant regulatory action as defined in Executive Order 12866. It also has 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 Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Kenneth D. Allison of the Office of Associate Chief Counsel (International), within the Office Chief Counsel, Internal Revenue Service. However, other personnel from the IRS and Treasury Department participated in their development.

List and Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1, is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * * Section 1.338–4T(h) also issued under 26 U.S.C. 338. * * *

Par 2. Section 1.338–4T is revised to read as follows:

§ 1.338–4T Asset and stock consistency (temporary).

(a) through (g) [Reserved]

(h) *Consistency for target affiliates that are controlled foreign corporations*—(1) *In general.* This paragraph (h) applies only if target is a domestic corporation. See § 1.338–4(g) for additional rules that may apply with respect to controlled foreign corporations. The definitions and nomenclature of § 1.338–1 (b) and (c) and § 1.338–4(e), apply for purposes of this section.

(2) *Income or gain resulting from asset dispositions*—(i) *General rule.* Income or gain of a target affiliate that is a controlled foreign corporation from the disposition of an asset is not reflected in the basis of target stock under § 1.338–4(c) unless the income or gain results in an inclusion under section 951(a)(1)(A), 951(a)(1)(C), 1291 or 1293.

(ii) *Basis of controlled foreign corporation stock.* If, by reason of paragraph (h)(2)(i) of this section, the carryover basis rules of § 1.338–4 apply to an asset, no increase in basis in the stock of a controlled foreign corporation under section 961(a) or 1293(d)(1), or under regulations issued pursuant to section 1297(b)(5), is allowed to target or a target affiliate to the extent the increase is attributable to income or gain described in paragraph (h)(2)(i) of this section. A similar rule applies to the basis of any property by reason of which the stock of the controlled foreign corporation is considered owned under section 958(a)(2) or 1297(a).

(iii) *Operating rule.* For purposes of this paragraph (h)(2)—

(A) If there is an income inclusion under section 951(a)(1) (A) or (C), the shareholder's income inclusion is first attributed to the income or gain of the controlled foreign corporation from the disposition of the asset to the extent of the shareholder's pro rata share of such income or gain; and

(B) Any income or gain under section 1293 is first attributed to the income or gain from the disposition of the asset to the extent of the shareholder's pro rata share of the income or gain.

(3) *Stock issued by target affiliate that is a controlled foreign corporation.* The exception to the carryover basis rules of § 1.338–4 provided in § 1.338–4(d)(2)(iii) does not apply to stock issued by a target affiliate that is a controlled foreign corporation. After applying the carryover basis rules of this section to the stock, the basis in the stock is increased by the amount treated as a dividend under section 1248 on the disposition of the stock (or that would have been so treated but for section 1291).

(4) *Certain distributions*—(1) *General rule.* In the case of a target affiliate that is a controlled foreign corporation, § 1.338–4(g) applies with respect to the target affiliate by treating any reference to a dividend to which section 243(a)(3) applies as a reference to any amount taken into account under § 1.1502–32 in determining the basis of target stock that is—

(A) A dividend;

(B) An amount treated as a dividend under section 1248 (or that would have been so treated but for section 1291); or

(C) An amount included in income under section 951(a)(1)(B).

(ii) *Basis of controlled foreign corporation stock.* If the carryover basis rules of this section apply to an asset, the basis in the stock of the controlled foreign corporation (or any property by reason of which the stock is considered owned under section 958(a)(2)) is reduced by the sum of any amounts that are treated, solely by reason of the disposition of the asset, as a dividend, amount treated as a dividend under section 1248 (or that would have been so treated but for section 1291), or amount included in income under section 951(a)(1)(B).

(5) *Examples.* This paragraph (h) may be illustrated by the following examples:

Example 1. Stock of target affiliate that is a CFC. (a) The S group files a consolidated return; however, T2 is a controlled foreign corporation. On December 1 of Year 1, T1 sells the T2 stock to P and recognizes gain. On January 2 of Year 2, P makes a qualified stock purchase of T from S. No section 338 election is made for T.

(b) Under § 1.338–4(b)(1), § 1.338–4(d) applies to the T2 stock. Under paragraph (h)(3) of this section, § 1.338–4(d)(2)(iii) does not apply to the T2 stock. Consequently, § 1.338–4(d)(1) applies to the T2 stock. However, after applying § 1.338–4(d)(1), P's basis in the T2 stock is increased by the amount of T1's gain on the sale of the T2 stock that is treated as a dividend under section 1248. Because P has a carryover basis in the T2 stock, the T2 stock is not considered purchased within the meaning of section 338(h)(3) and no section 338 election may be made for T2.

Example 2. Stock of target affiliate CFC; inclusion under subpart F. (a) The S group files a consolidated return; however, T2 is a controlled foreign corporation. On December 1 of Year 1, T2 sells an asset to P and recognizes subpart F income that results in an inclusion in T1's gross income under section 951(a)(1)(A). On January 2 of Year 2, P makes a qualified stock purchase of T from S. No section 338 election is made for T.

(b) Because gain from the disposition of the asset results in an inclusion under section 951(a)(1)(A), the gain is reflected in the basis of the T stock as of T's acquisition date. See paragraph (h)(2)(i) of this section. Consequently, under § 1.338–4(b)(1), § 1.338–4(d)(1) applies to the asset. In addition, under paragraph (h)(2)(ii) of this section, T1's basis in the T2 stock is not increased under section 961(a) by the amount of the inclusion that is attributable to the sale of the asset.

(c) If, in addition to making a qualified stock purchase of T, P acquires the T2 stock from T1 on January 1 of Year 2, the results are the same for the asset sold by T2. In addition, under paragraph (h)(2)(ii) of this section, T1's basis in the T2 stock is not increased by the amount of the inclusion that is attributable to the gain on the sale of the asset. Further, under paragraph (h)(3) of this section, § 1.338–4(d)(1) applies to the T2 stock. However, after applying § 1.338–4(d)(1), P's basis in the T2 stock is increased by the amount of T1's gain on the sale of the T2 stock that is treated as a dividend under section 1248. Finally, because P has a carryover basis in the T2 stock, the T2 stock is not considered purchased within the meaning of section 338(h)(3) and no section 338 election may be made for T2.

(d) If P makes a qualified stock purchase of T2 from T1, rather than of T from S, and T1's gain on the sale of T2 is treated as a dividend under section 1248, under paragraph (h)(1) of this section, paragraphs (h)(2) and (3) of this section do not apply because there is no target that is a domestic corporation. Consequently, the carryover basis rules of § 1.338–4 do not apply to the asset sold by T2 or the T2 stock.

Example 3. Gain reflected by reason of section 1248 dividend; gain from non-subpart F asset. (a) The S group files a consolidated return, however, T2 is a controlled foreign corporation. In Years 1 through 4, T2 does not pay any dividends to T1 and no amount is included in T1's income under section 951(a)(1)(B). On December 1 of Year 4, T2 sells an asset with a basis of $400,000 to P for $900,000. T2's gain of $500,000 is not subpart F income. On December 15 of Year 4, T1 sells T2, in which it has a basis of $600,000, to P for $1,600,000. Under section 1248, $800,000 of T1's gain of $1,000,000 is treated as a dividend. However, in the absence of the sale of the asset by T2 to P, only $300,000 would have been treated as a dividend under section 1248. On December 30 of Year 4, P makes a qualified stock purchase of T1 from T. No section 338 election is made for T1.

(b) Under paragraph (h)(4) of this section, § 1.338–4(g)(2) applies by reference to the amount treated as a dividend under section 1248 on the disposition of the T2 stock. Because the amount treated as a dividend is taken into account in determining T's basis in the T1 stock under § 1.1502–32, the sale of the T2 stock and the deemed dividend have the effect of a transaction described in

§ 1.338–4(g)(1). Consequently, § 1.338–4(d)(1) applies to the asset sold by T2 to P and P's basis in the asset is $400,000 as of December 1 of Year 4.

(c) Under paragraph (h)(3) of this section, § 1.338–4(d)(1) applies to the T2 stock and P's basis in the T2 stock is $600,000 as of December 15 of Year 4. Under paragraphs (h)(3) and (4)(ii) of this section, however, P's basis in the T2 stock is increased by $300,000 (the amount of T1's gain treated as a dividend under section 1248 ($800,000), other than the amount treated as a dividend solely as a result of the sale of the asset by T2 to P ($500,000) to $900,000.

(i) and (j) [Reserved]

(k) *Effective dates.* Except as provided in § 1.338(i)–1(b) (allowing elective retroactive application of this section in limited cases), this section is effective for targets with acquisition dates on or after January 20, 1994. As provided in § 1.338(i)–1(b), this section may be applied electively to a target with an acquisition date on or after January 14, 1992, and before January 20, 1994.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: December 22, 1993.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 94–666 Filed 1–12–94; 2:54 pm]

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26 CFR Parts 1 and 602

[TD 8515]

RIN 1545–AQ05

Revision of Section 338 Consistency Rules

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations that replace the stock and asset consistency rules of the temporary Income Tax Regulations. The final regulations substantially revise and simplify the stock and asset consistency rules. The final regulations also restate, simplify, and substantially shorten most of the other regulations under section 338.

DATES: These regulations are effective on January 20, 1994.

For applicability of these regulations, see "Effective Dates" under the "SUPPLEMENTARY INFORMATION" portion of the preamble.

FOR FURTHER INFORMATION CONTACT: Don Leatherman at telephone (202) 622–7520 (not a toll-free number) for domestic issues and Kenneth D. Allison at telephone (202) 622–3860 (not a toll-free number) for international issues.

SUPPLEMENTARY INFORMATION:

A. Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545–1295. The estimated annual burden per respondent varies from .2 hours to 1 hour, depending on individual circumstances, with an estimated average of .56 hours.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents or recordkeepers may require more or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

B. Background.

On January 14, 1992, a notice of proposed rulemaking (CO–111–90) under section 338 of the Internal Revenue Code was published in the **Federal Register** (57 FR 1409). See 1992–1 C.B. 1000. The notice proposed to restate most of the existing temporary regulations by (1) replacing the asset and stock consistency rules of §§ 1.338–4T and 1.338–5T of the temporary regulations, (2) revising the temporary regulations regarding the international aspects of section 338, and (3) generally restating the remainder of the temporary regulations under section 338. Comments on the notice were received and a public hearing was held on March 26, 1992. After considering the comments and statements made at the hearing, the proposed regulations are adopted as revised by this Treasury decision, and the corresponding temporary regulations are removed.

C. The Consistency Rules

The final regulations adopt the consistency rules of the proposed regulations with several minor modifications.

1. Carryover Basis Rule

Several commentors argued that the carryover basis rule should be modified if the gain of a target (T) on the sale of an asset does not result in an equivalent reduction in the gain of the selling group (S or the S group) from the sale of the T stock. For example, they argued that the carryover basis rule should be modified if S recognized a loss on the sale of T stock that was disallowed under § 1.1502–20, if T sold gain and loss assets to the purchasing corporation (P), or if T had separate return limitation year losses. Similarly, they suggested that the rule be modified if the gain on the asset sale is not fully reflected in the basis of T's stock because, for example, the asset is sold by a subsidiary or conduit that is not wholly owned by T.

For purposes of simplification and administrative convenience, the consistency rules in the final regulations apply in a more limited set of circumstances than in the temporary regulations. Adopting the suggested modifications, however, would substantially complicate the regulations. In addition, the carryover basis rule generally will apply only when the stock sale is contemplated at the time of the asset sale. For these reasons, the suggestions have not been adopted.

2. Affiliated Groups

The final regulations apply the consistency rules in certain cases where dividends qualifying for a 100 percent dividends received deduction may be used in conjunction with asset dispositions to achieve a result similar to that available under the consolidated return investment adjustment rules. This provision applies only to amounts treated as dividends under general tax principles. The substance-over-form, step-transaction, and similar principles continue to apply to treat certain amounts that are dividends in form as payments by P for the T stock. See, e.g., *Commissioner* v. *Waterman Steamship Corp.*, 430 F.2d 1185 (5th Cir. 1970), *cert. denied*, 401 U.S. 939 (1971).

As discussed in more detail below, these regulations also permit section 338(h)(10) elections to be made for certain targets that are members of affiliated, non-consolidated groups.

3. Controlled Foreign Corporations

Consistency rules for controlled foreign corporations generally are not included in the final regulations. Instead, rules for controlled foreign corporations are contained in temporary regulations that may be found elsewhere in this issue of the **Federal Register**.

4. Anti-Abuse Rules

Some commentors requested that the anti-abuse rules of § 1.338–4(j) be narrowed and that these rules and the indirect acquisition rule of § 1.338–4(f) be stated as general principles. The Treasury Department and the Service believe that the anti-abuse and indirect acquisition rules are necessary to protect the final consistency rules. Further, no statement of general principle has been identified that provides adequate guidance to distinguish the cases described in the proposed regulations from those not described. Accordingly, these rules have been retained with minor modifications.

D. International Aspects

The final regulations under §§ 1.338–1(g), 1.338–3(c)(3) through (6) and (8), and 1.338–5 are substantially as proposed. The preamble to the proposed regulations contains a discussion of the provisions. The differences from the proposed regulations are noted below.

1. Section 338(h)(16)

In the notice of proposed rulemaking, the Service sought comments on the proper application of section 338(h)(16), including its application where the deemed sale of assets results in subpart F income under section 952. The comments received will be considered in separate proposed regulations.

2. Good Faith Effort To Notify

A commentor suggested that the Service provide examples of a good faith effort, under § 1.338–1(g)(4)(v) of the proposed regulations, to notify affected U.S. shareholders of targets that are controlled foreign corporations, passive foreign investment companies or foreign personal holding companies. The regulations require that the Commissioner determine, under all the facts and circumstances, whether the taxpayer has vigorously attempted the notification. The suggestion has not been adopted because the determination depends on the facts and circumstances in each case.

3. Allocation of Foreign Income Taxes

One commentor pointed out that the allocation of foreign income taxes between the pre- and post-acquisition U.S. taxable years of a target in § 1.338–5(d) of the proposed regulations is to be made under the principles of § 1.1502–76(b)(4) of the consolidated return regulations. That provision has been interpreted to require taxes to be allocated in proportion to U.S. taxable income. Because foreign income taxes are paid with respect to foreign taxable income, an allocation with respect to U.S. taxable income may incorrectly allocate the foreign income taxes between taxable years. The final regulations require foreign income taxes to be allocated in proportion to foreign taxable income.

E. Other Changes to the Regulations

Several commentors argued that, if a section 338(h)(10) election is made for T, new T should not be severally liable under § 1.1502–6 for federal income tax liability of the S group, as provided in the proposed and the existing temporary regulations. They reasoned that a section 338(h)(10) election is intended to be equivalent to an asset sale and that this liability does not continue in an asset sale. However, one other commentor noted that, although the transaction is treated as an asset sale for purposes of income recognition, it continues to be treated as a stock sale for purposes of determining the rights of T's creditors. The final regulations provide that new T remains liable for the tax liabilities of old T (including tax liabilities resulting from the deemed sale of assets and any liability of old T under § 1.1502–6).

Commentors requested that the formula price at which T is deemed to sell its assets be modified to reflect buying and selling costs, as appropriate. These suggestions have been adopted in the final regulations.

Commentors asked that the availability of section 338(h)(10) treatment be extended to situations in which T is not a member of a consolidated group. The final regulations provide that a section 338(h)(10) election may be made for a non-consolidated T if a corporation (the selling affiliate) sells an amount of T stock to P on the acquisition date that satisfies the requirements of section 1504(a)(2). The election must be made jointly by P and the selling affiliate. The instructions to the revised Form 8023 will provide more guidance on making the election.

The final regulations also provide that a section 338(h)(10) election may be made if T is an S corporation immediately before the acquisition date. The deemed sale gain is reported on T's final S corporation return and therefore is taken into account under section 1366 and 1367 in determining a T shareholder's basis in the T stock and resulting gain or loss on the deemed liquidation of T. The section 338(h)(10) election must be made jointly by P and the T shareholders. The instructions to the revised Form 8023 will provide more guidance on making the election.

If a section 338(h)(10) election is made for T, for purposes of subtitle A of the Internal Revenue Code, T is treated as selling all of its assets and liquidating. Thus, as appropriate, the old T shareholders recognize income, gain, or loss under sections 331 and 332.

Several other modifications to the proposed regulations have been included in the final regulations. Minor editorial changes and clarifications have been made. For example, the final regulations clarify the amount of liabilities to be taken into account in calculating deemed sale gain or loss and basis following a section 338 election. Further, the final regulations provide that the adjusted deemed sale price (ADSP) must be calculated under a formula method. (The temporary and proposed regulations referred to the formula method as the elective ADSP formula.) Under the temporary regulations, the ADSP could be calculated using the formula method or by separately valuing each asset. Mandating the formula method is consistent with the treatment under section 338(h)(10) and makes the regulations simpler and easier to apply. The final regulations also simplify the ADSP examples.

In addition, the final regulations contain a provision clarifying that a target S corporation for which a section 338 election (other than a section 338(h)(10) election) is made must file a deemed sale return reporting the deemed asset sale as a C corporation. See H.R. Rep. No. 432, Part 2, 98th Cong., 2d Sess., 1642 (March 5, 1984). No implication is intended by that provision as to the status of an acquired S corporation in the absence of a section 338 election.

F. Effective Dates

Commentors suggested that the final regulations be effective either as of January 14, 1992 (the date the proposed regulations were filed) or earlier (including as early as the effective date of the repeal of the General Utilities doctrine by the Tax Reform Act of 1986).

The final regulations are generally effective for targets with acquisition dates on or after January 20, 1994. The final regulations also apply on an elective basis to targets with acquisition dates on or after January 14, 1992 and before January 20, 1994. If an election is made to apply the final regulations to targets with acquisition dates on or after January 14, 1992 and before January 20, 1994, the provisions for controlled foreign corporations that are issued as temporary regulations elsewhere in the Federal Register will also apply to such targets. Further, if that election is made, a protective carryover basis election or

offset prohibition election made under the temporary regulations will have no effect.

Section 1.338(h)(10)–1(f) (relating to mandatory use of the MADSP formula) is generally effective for targets with acquisition dates on or after November 10, 1986.

Section 1.304–5 is effective on January 20, 1994.

Finally, the District Director's discretion to impose a section 338 election (other than with the taxpayer's consent) under section 338(e) and § 1.338–4T(f)(6)(i) is revoked for all open years.

Although comments were requested regarding transition issues raised by the proposed effective date, no comments were received. Consequently, no special rules relating to transition issues have been provided.

G. Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. It also has 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 Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of the rules on small business.

H. Drafting Information

The principal author of the international aspects of these regulations is Kenneth D. Allison of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recording requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for "Section 1.338–6T" and adding entries in numerical order to read as follows:

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

Section 1.304–5 also issued under 26 U.S.C. 304. * * *

Section 1.338–1 also issued under 26 U.S.C. 337(d), 338, and 1502.

Section 1.338–2 also issued under 26 U.S.C. 337(d), 338, and 1502.

Section 1.338–3 also issued under 26 U.S.C. 337(d), 338, and 1502.

Section 1.338–4 also issued under 26 U.S.C. 337(d), 338, and 1502.

Section 1.338–5 also issued under 26 U.S.C. 337(d), 338, and 1502.

Section 1.338(b)–1 also issued under 26 U.S.C. 337(d), 338, and 1502. * * *

Section 1.338(h)(10)–1 also issued under 26 U.S.C. 337(d), 338, and 1502.

Section 1.338(i)–1 also issued under 26 U.S.C. 337(d), 338, and 1502. * * *

Section 1.1502–75 also issued under 26 U.S.C. 1502. * * *

Par. 2. Section 1.304–5 is added to read as follows:

§ 1.304–5 Control.

(a) *Control requirement in general.* Section 304(c)(1) provides that, for purposes of section 304, control means the ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of shares of all classes of stock. Section 304(c)(3) makes section 318(a) (relating to constructive ownership of stock), as modified by section 304(c)(3)(B), applicable to section 304 for purposes of determining control under section 304(c)(1).

(b) *Effect of section 304(c)(2)(B)*—(1) In general. In determining whether the control test with respect to both the issuing and acquiring corporations is satisfied, section 304(a)(1) considers only the person or persons that—

(i) Control the issuing corporation before the transaction;

(ii) Transfer issuing corporation stock to the acquiring corporation for property; and

(iii) Control the acquiring corporation thereafter.

(2) *Application.* Section 317 defines property to include money, securities, and any other property except stock (or stock rights) in the distributing corporation. However, section 304(c)(2)(B) provides a special rule to extend the relevant group of persons to be tested for control of both the issuing and acquiring corporations to include the person or persons that do not acquire property, but rather solely stock from the acquiring corporation in the transaction. Section 304(c)(2)(B) provides that if two or more persons in control of the issuing corporation transfer stock of such corporation to the acquiring corporation, and if the transferors are in control of the acquiring corporation after the transfer, the person or persons in control of each corporation include each of those transferors. Because the purpose of section 304(c)(2)(B) is to include in the relevant control group the person or persons that retain or acquire acquiring corporation stock in the transaction, only the person or persons transferring stock of the issuing corporation that retain or acquire any proprietary interest in the acquiring corporation are taken into account for purposes of applying section 304(c)(2)(B).

(3) *Example.* This section may be illustrated by the following example.

Example. (a) A, the owner of 20% of T's only class of stock, transfers that stock to P solely in exchange for all of the P stock. Pursuant to the same transaction, P, solely in exchange for cash, acquires the remaining 80% of the T stock from T's other shareholder, B, who is unrelated to A and P.

(b) Although A and B together were in control of T (the issuing corporation) before the transaction and A and B each transferred T stock to P (the acquiring corporation), sections 304(a)(1) and (c)(2)(B) do not apply to B because B did not retain or acquire any proprietary interest in P in the transaction. Section 304(a)(1) also does not apply to A because A (or any control group of which A was a member) did not control T before the transaction and P after the transaction.

(c) *Effective date.* This section is effective on January 20, 1994.

Par. 3. The following sections or paragraphs are amended as follows:

(a) Sections 1.338–1T through 1.338–3T are removed.

(b) Sections 1.338–5T and 1.338–6T are removed.

(c) Section 1.338(b)–1T is removed.

(d) Section 1.338(b)–2T(a)(3) is removed.

(e) Section 1.338(b)–4T is removed.

(f) Section 1.338(h)(10)–1T is removed.

(g) Section 1.367(a)–4T(b)(4) is removed and reserved.

Par. 4. Sections 1.338–0 through 1.338–5 and § 1.338(b)–1 are added to read as follows:

§ 1.338–0 Outline of topics.

This section lists the captions contained in the regulations under section 338.

§ 1.338–1 Elections under section 338.

(a) Scope.

(b) Nomenclature.

(c) Definitions.

(1) Acquisition date.
(2) Affiliated group.
(3) Common parent.
(4) Consistency period.
(5) Domestic corporation.
(6) Old target's final return.
(7) Purchasing corporation.
(8) Qualified stock purchase.
(9) Related persons.
(10) Section 338 election.
(11) Section 338(h)(10) election.
(12) Selling group.
(13) Target; old target; new target.
(14) Target affiliate.
(15) 12-month acquisition period.
(d) Time and manner of making election.
(e) Returns including tax liability from deemed sale.
(1) In general.
(2) Old target's final taxable year otherwise included in consolidated return of selling group.
(i) General rule.
(ii) Separate taxable year.
(iii) Carryover and carryback of tax attributes.
(iv) Old target is a component member of purchasing corporation's controlled group.
(3) Old target an S corporation.
(4) Combined deemed sale return.
(i) General rule.
(ii) Gain and loss offsets.
(iii) Procedure for filing a combined return.
(iv) Consequences of filing a combined return.
(5) Deemed sale excluded from purchasing corporation's consolidated return.
(6) Due date for old target's final return.
(i) General rule.
(ii) Application of § 1.1502–76(c).
(A) In general.
(B) Deemed extension.
(C) Erroneous filing of deemed sale return.
(D) Erroneous filing of return for regular tax year.
(E) Last date for payment of tax.
(7) Examples.
(f) Waiver.
(1) Certain additions to tax.
(2) Notification.
(3) Elections or other actions required to be specified on a timely filed return.
(i) In general.
(ii) New target in purchasing corporation's consolidated return.
(4) Examples.
(g) Special rules for foreign corporations or DISCs.
(1) Elections by certain foreign purchasing corporations.
(i) General rule.
(ii) Qualifying foreign purchasing corporation.
(iii) Qualifying foreign target.
(iv) Triggering event.
(v) Subject to United States tax.
(2) Acquisition period.
(3) Statement of section 338 election may be filed by United States shareholders in certain cases.
(4) Notice requirement for U.S. persons holding stock in foreign target.
(i) General rule.
(ii) Limitation.
(iii) Form of notice.
(iv) Timing of notice.
(v) Consequence of failure to comply.
(vi) Good faith effort to comply.

§ 1.338–2 Miscellaneous issues under section 338.

(a) Scope.
(b) Rules relating to qualified stock purchases.
(1) Purchasing corporation requirement.
(2) Purchase.
(i) Definition.
(ii) Examples.
(3) Date of purchase from related corporations.
(i) In general.
(ii) Examples.
(4) Acquisition date for tiered targets.
(i) Stock sold in deemed asset sale.
(ii) Examples.
(5) Effect of redemptions.
(i) General rule.
(ii) Redemptions from persons unrelated to the purchasing corporation.
(iii) Redemptions from the purchasing corporation or related persons during 12-month acquisition period.
(A) General rule.
(B) Exception for certain redemptions from related corporations.
(iv) Examples.
(c) Effect of post-acquisition events on eligibility for section 338 election.
(1) Post-acquisition elimination of target.
(2) Post-acquisition elimination of the purchasing corporation.
(d) Miscellaneous matters affecting new target.
(1) General rule for subtitle A.
(2) Exceptions for subtitle A.
(3) Taxable year of new target.
(4) General rule for other provisions of the Internal Revenue Code.

§ 1.338–3 Deemed sale and aggregate deemed sale price.

(a) Scope.
(b) Definitions.
(1) ADSP.
(2) Allocable ADSP amount.
(3) Deemed sale gain.
(4) Classes of assets.
(c) Deemed sale of target affiliate stock.
(1) In general.
(2) General rule.
(3) Deemed sale of foreign target affiliate by a domestic target.
(4) Deemed sale producing effectively connected income.
(5) Deemed sale of insurance company target affiliate electing under section 953(d).
(6) Deemed sale of DISC target affiliate.
(7) Anti-stuffing rule.
(8) Examples.
(d) Determination of ADSP.
(1) General rule.
(2) Grossed-up basis of the purchasing corporation's recently purchased target stock.
(3) Liabilities.
(4) Other relevant items.
(5) Calculation of deemed sale gain and loss.
(6) Other rules apply in determining ADSP.
(7) Cross reference.
(8) Examples.

§ 1.338–4 Asset and stock consistency.

(a) Introduction.
(1) Overview.
(2) General application.
(3) Extensions of the general rules.
(4) Application where certain dividends are paid.
(5) Application to foreign target affiliates.
(6) Stock consistency.
(b) Consistency for direct acquisitions.
(1) General rule.
(2) Section 338(h)(10) elections.
(c) Gain from disposition reflected in basis of target stock.
(1) General rule.
(2) Gain not reflected if section 338 election made for target.
(3) Gain reflected by reason of distributions.
(4) Controlled foreign corporations.
(5) Gain recognized outside the consolidated group.
(d) Basis of acquired assets.
(1) Carryover basis rule.
(2) Exceptions to carryover basis rule for certain assets.
(3) Exception to carryover basis rule for de minimis assets.
(4) Mitigation rule.
(i) General rule.
(ii) Time for transfer.
(e) Examples.
(1) In general.
(2) Direct acquisitions.
(f) Extension of consistency to indirect acquisitions.
(1) Introduction.
(2) General rule.
(3) Basis of acquired assets.
(4) Examples.
(g) Extension of consistency if dividends qualifying for 100 percent dividends received deduction are paid.
(1) General rule for direct acquisitions from target.
(2) Other direct acquisitions having same effect.
(3) Indirect acquisitions.
(4) Examples.
(h) Special rules for controlled foreign corporations. [Reserved]
(i) [Reserved]
(j) Anti-avoidance rules.
(1) Extension of consistency period.
(2) Qualified stock purchase and 12-month acquisition period.
(3) Acquisitions by conduits.
(i) Asset ownership.
(A) General rule.
(B) Application of carryover basis rule.
(ii) Stock acquisitions.
(A) Purchase by conduit.
(B) Purchase of conduit by corporation.
(C) Purchase of conduit by conduit.
(4) Conduit.
(5) Existence of arrangement.
(6) Predecessor and successor.
(i) Persons.
(ii) Assets.
(7) Examples.

§ 1.338–4T Asset and stock consistency (temporary).

(a) through (g) [Reserved]
(h) Consistency for target affiliates that are controlled foreign corporations.
(1) In general.
(2) Income or gain resulting from asset dispositions.

§ 1.338–1 Elections under section 338.

(a) *Scope.* This section prescribes rules relating to elections under section 338. Paragraphs (c)(6), (e), and (g) of this section do not apply to a target for which a section 338(h)(10) election is made.

(b) *Nomenclature.* For purposes of the regulations under section 338 (except as otherwise provided):

(1) T is a domestic corporation that has only one class of stock outstanding.

(2) P is a domestic corporation that purchases stock of T in a qualified stock purchase.

(3) The P group is an affiliated group of which P is a member.

(4) P1, P2, etc., are domestic corporations that are members of the P group.

(5) T1, T2, etc., are domestic corporations that are target affiliates of T. These corporations (T1, T2, etc.) have only one class of stock outstanding and may also be targets.

(6) S is a domestic corporation (unrelated to P and B) that owns T prior to the purchase of T by P. (S is referred to in cases in which it is appropriate to consider the effects of having all of the outstanding stock of T owned by a domestic corporation.)

(7) A, a U.S. resident or citizen, is an individual (unrelated to P and B) who owns T prior to the purchase of T by P. (A is referred to in cases in which it is appropriate to consider the effects of having all of the outstanding stock of T owned by an individual who is a U.S. resident or citizen. Ownership of T by A and ownership of T by S are mutually exclusive circumstances.)

(8) B, a U.S. resident or citizen, is an individual (unrelated to T, S, and A) who owns the stock of P.

(9) F, used as a prefix with the other terms in this paragraph (b), connotes foreign, rather than domestic, status. For example, FT is a foreign corporation (as defined in section 7701(a)(5)) and FA is an individual other than a U.S. citizen or resident.

(10) CFC, used as a prefix with the other terms in this paragraph (b) referring to a corporation, connotes a controlled foreign corporation (as defined in section 957, taking into account section 953(c)). A corporation identified with the prefix F may be a controlled foreign corporation. The prefix CFC is used when the corporation's status as a controlled foreign corporation is significant.

(c) *Definitions.* For purposes of the regulations under section 338 (except as otherwise provided):

(1) *Acquisition date.* The term *acquisition date* has the same meaning as in section 338(h)(2).

(2) *Affiliated group.* The term *affiliated group* has the same meaning as in section 338(h)(5). Corporations are affiliated on any day they are members of the same affiliated group with each other.

(3) *Common parent.* The term *common parent* has the same meaning as in section 1504.

(4) *Consistency period.* The *consistency period* is the period described in section 338(h)(4)(A) unless extended pursuant to § 1.338–4(j)(1).

(5) *Domestic corporation.* A *domestic* corporation is a corporation—

(i) That is domestic within the meaning of section 7701(a)(4) or that is treated as domestic for purposes of subtitle A of the Internal Revenue Code (e.g., to which an election under section 953(d) or 1504(d) applies); and

(ii) That is not a DISC, a corporation described in section 1248(e), or a corporation to which an election under section 936 applies.

(6) *Old target's final return. Old target's final return* is the income tax return of old target for the taxable year ending at the close of the acquisition date that includes the deemed sale of assets under section 338. If the disaffiliation rule of paragraph (e)(2)(i) of this section applies, target's *deemed sale return* is considered old target's final return.

(7) *Purchasing corporation.* The term *purchasing corporation* has the same meaning as in section 338(d)(1). Unless otherwise provided, any reference to the purchasing corporation is a reference to all members of the affiliated group of which the purchasing corporation is a member. See sections 338(h) (5) and (8).

(8) *Qualified stock purchase.* The term *qualified stock purchase* has the same meaning as in section 338(d)(3).

(9) *Related persons.* Two persons are related if stock in a corporation owned by one of the persons would be attributed under section 318(a) (other than section 318(a)(4)) to the other.

(10) *Section 338 election.* A *section 338 election* is an election to apply section 338(a) to target. A section 338 election may be made by filing a statement of section 338 election pursuant to § 1.338–1(d). The form on which this statement is filed is referred to in the regulations under section 338 as the *Form 8023.*

(11) *Section 338(h)(10) election.* A *section 338(h)(10) election* is an election to apply section 338(h)(10) to target. A section 338(h)(10) election may be made by making a joint election for target under § 1.338(h)(10)–1.

(12) *Selling group.* The *selling group* is the affiliated group (as defined in section 1504) that is eligible to file a consolidated return that includes target for the target's taxable period that includes the acquisition date and that does not have a target as common parent for the taxable year including the acquisition date.

(13) *Target; old target; new target. Target* is the target corporation as defined in section 338(d)(2). *Old target* refers to target for periods ending as of the close of the date of target's deemed sale of assets. *New target* refers to target for subsequent periods.

(14) *Target affiliate.* The term *target affiliate* has the same meaning as in section 338(h)(6) (applied without section 338(h)(6)(B)(i)). Thus, a corporation described in section 338(h)(6)(B)(i) is considered a target affiliate for all purposes of section 338. If a target affiliate is acquired in a qualified stock purchase, it is also a target.

(15) *12-month acquisition period.* The *12-month acquisition period* is the period described in section 338(h)(1), unless extended pursuant to § 1.338–4(j)(2).

(d) *Time and manner of making election.* The purchasing corporation makes a section 338 election for target by filing a statement of section 338 election on Form 8023 in accordance with the instructions to the form. The section 338 election must be made not later than the 15th day of the 9th month beginning after the month in which the acquisition date occurs. A section 338 election is irrevocable.

(e) *Returns including tax liability from deemed sale*—(1) *In general.* Except as provided in paragraphs (e)(2) and (3) of this section, any tax liability resulting from the deemed sale of assets under section 338 is included in the final return of old target filed for old target's taxable year that ends at the close of the acquisition date. If old target is the common parent of an affiliated group, the final return may be a consolidated return (any such consolidated return must also include any tax liability from any deemed sales under section 338 by subsidiaries in the consolidated group that have the same acquisition date as old target and that are acquired by the purchasing corporation).

(2) *Old target's final taxable year otherwise included in consolidated return of selling group*—(i) *General rule.* If the selling group files a consolidated return for the period that includes the acquisition date, old target is disaffiliated from that group immediately before its deemed sale of assets under section 338 and must file a separate final return that includes only the items resulting from the deemed sale and the carryover items specified in

paragraph (e)(2)(iii) of this section (deemed sale return). The deemed sale occurs at the close of the acquisition date and is the last transaction of old target. Any transactions of old target occurring on the acquisition date other than the deemed sale are included in the selling group's consolidated return. A deemed sale return includes a *combined return* as defined in paragraph (e)(4) of this section.

(ii) *Separate taxable year.* The deemed sale included in the deemed sale return under this paragraph (e)(2) occurs in a separate taxable year, except that old target's taxable year of the sale and the consolidated year of the selling group that includes the acquisition date are treated as the same year for purposes of determining the number of years in a carryover or carryback period.

(iii) *Carryover and carryback of tax attributes.* Target's attributes may be carried over to, and carried back from, the deemed sale return under the rules applicable to a corporation that ceases to be a member of a consolidated group.

(iv) *Old target is a component member of purchasing corporation's controlled group.* For purposes of its deemed sale return, target is a component member of the controlled group of corporations including the purchasing corporation unless target is treated as an excluded member under section 1563(b)(2).

(3) *Old target an S corporation.* If target is an S corporation for the period that ends on the day before the acquisition date, old target must file a deemed sale return as a C corporation. For this purpose, the principles of paragraph (e)(2) of this section apply.

(4) *Combined deemed sale return*—(i) *General rule.* Under section 338(h)(15), a combined deemed sale return (combined return) may be filed for all targets from a single selling consolidated group (as defined in § 1.338(h)(10)–1(c)(3)) that are acquired by the purchasing corporation on the same acquisition date and that otherwise would be required to file separate deemed sale returns. The combined return must include all such targets. For example, T and T1 may be included in a combined return if—

(A) T and T1 are directly owned subsidiaries of S;

(B) S is the common parent of a consolidated group; and

(C) P makes qualified stock purchases of T and T1 on the same acquisition date.

(ii) *Gain and loss offsets.* Gains and losses recognized on the deemed sale of assets by targets included in a combined return are treated as the gains and losses of a single target. In addition, loss carryovers of a target that were not subject to the separate return limitation year restrictions (SRLY restrictions) of the consolidated return regulations while that target was a member of the selling consolidated group may be applied without limitation to the gains of other targets included in the combined return. If, however, a target has loss carryovers that were subject to the SRLY restrictions while that target was a member of the selling consolidated group, the use of those losses in the combined return continues to be subject to those restrictions, applied in the same manner as if the combined return were a consolidated return. A similar rule applies, when appropriate, to other tax attributes.

(iii) *Procedure for filing a combined return.* A combined return is made by filing a single corporation income tax return in lieu of separate deemed sale returns for all targets required to be included in the combined return. The combined return reflects the deemed sales of all targets required to be included in the combined return. If the targets included in the combined return constitute a single affiliated group within the meaning of section 1504(a), the income tax return is signed by an officer of the common parent of that group. Otherwise, the return must be signed by an officer of each target included in the combined return. Rules similar to the rules in § 1.1502–75(j) apply for purposes of preparing the combined return. The combined return must include an attachment prominently identified as an "ELECTION TO FILE A COMBINED RETURN UNDER SECTION 338(h)(15)." The attachment must—

(A) Contain the name, address, and employer identification number of each target required to be included in the combined return;

(B) Contain the following declaration (or a substantially similar declaration): "EACH TARGET IDENTIFIED IN THIS ELECTION TO FILE A COMBINED RETURN CONSENTS TO THE FILING OF A COMBINED RETURN"; and

(C) For each target, be signed by a person who states under penalties of perjury that he or she is authorized to act on behalf of such target.

(iv) *Consequences of filing a combined return.* Each target included in a combined return is severally liable for any tax associated with the combined return. See § 1.338–2(d)(1).

(5) *Deemed sale excluded from purchasing corporation's consolidated return.* Old target may not be considered a member of any affiliated group that includes the purchasing corporation with respect to the deemed sale of target assets under section 338.

(6) *Due date for old target's final return*—(i) *General rule.* Old target's final return is generally due on the 15th day of the third calendar month following the month in which the acquisition date occurs. See section 6072 (time for filing income tax returns).

(ii) *Application of § 1.1502–76(c)*—(A) *In general.* Section 1.1502–76(c) applies to old target's final return if old target was a member of a selling group that did not file consolidated returns for the taxable year of the common parent that precedes the year that includes old target's acquisition date. If the selling group has not filed a consolidated return that includes old target's taxable period that ends on the acquisition date, target may, on or before the final return due date (including extensions), either—

(*1*) File a deemed sale return on the assumption that the selling group will file the consolidated return; or

(*2*) File a return for so much of old target's taxable period as ends at the close of the acquisition date on the assumption that the consolidated return will not be filed.

(B) *Deemed extension.* For purposes of applying § 1.1502–76(c)(2), an extension of time to file old target's final return is considered to be in effect until the last date for making the election under section 338.

(C) *Erroneous filing of deemed sale return.* If, pursuant to this paragraph (e)(6)(ii), target files a deemed sale return but the selling group does not file a consolidated return, target must file a substituted return for old target not later than the due date (including extensions) for the return of the common parent with which old target would have been included in the consolidated return. The substituted return is for so much of old target's taxable year as ends at the close of the acquisition date. Under § 1.1502–76(c)(2), the deemed sale return is not considered a return for purposes of section 6011 (relating to the general requirement of filing a return) if a substituted return must be filed.

(D) *Erroneous filing of return for regular tax year* If, pursuant to this paragraph (e)(6)(ii), target files a return for so much of old target's regular taxable year as ends at the close of the acquisition date but the selling group files a consolidated return, target must file an amended return for old target not later than the due date (including extensions) for the selling group's consolidated return. (The amended return is a deemed sale return.)

(E) *Last date for payment of tax.* If either a substituted or amended final

return of old target is filed pursuant to this paragraph (e)(6)(ii), the last date prescribed for payment of tax is the final return due date (as defined in paragraph (e)(6)(i) of this section).

(7) *Examples.* This paragraph (e) may be illustrated by the following examples:

Example 1. (a) S is the common parent of a consolidated group that includes T. The S group files calendar year consolidated returns. At the close of June 30 of Year 1, P makes a qualified stock purchase of T from S. P makes a section 338 election for T, and the deemed sale of T's assets occurs as of the close of T's acquisition date (June 30).

(b) T is considered disaffiliated for purposes of reporting the deemed sale. Accordingly, T is included in the S group's consolidated return through T's acquisition date except that the tax liability resulting from the deemed sale of assets is reported in a separate deemed sale return of T. Provided that T is not treated as an excluded member under section 1563(b)(2), T is a component member of P's controlled group for the taxable year represented by the deemed sale, and the taxable income bracket amounts available in calculating tax on the deemed sale return must be limited accordingly.

(c) If P purchased the stock of T at 10 a.m. on June 30 of Year 1, the results would be the same. See paragraph (e)(2)(i) of this section.

Example 2. The facts are the same as in *Example 1*, except that the S group does not file consolidated returns. T must file a separate return for its taxable year ending on June 30 of Year 1, which includes the deemed sale.

(f) *Waiver*—(1) *Certain additions to tax.* An addition to tax or additional amount (addition) under subchapter A of chapter 68 of the Internal Revenue Code arising on or before the last day for making the election under section 338, by reason of circumstances that would not exist but for an election under section 338, is waived if—

(i) Under the particular statute the addition is excusable upon a showing of reasonable cause; and

(ii) Corrective action is taken on or before the last day.

(2) *Notification.* The Service should be notified at the time of correction (e.g., by attaching a statement to a return that constitutes corrective action) that the waiver rule of this paragraph (f) is being asserted.

(3) *Elections or other actions required to be specified on a timely filed return*—(i) *In general.* If paragraph (f)(1) of this section applies or would apply if there was an underpayment, any election or other action that must be specified on a timely filed return for the taxable period covered by the late filed return described in paragraph (f)(1) of this section is considered timely if specified on a late-filed return filed on or before the last day for making the election under section 338.

(ii) *New target in purchasing corporation's consolidated return.* If new target is includible for its first taxable year in a consolidated return filed by the affiliated group of which the purchasing corporation is a member on or before the last day for making the election under section 338, any election or other action that must be specified in a timely filed return for new target's first taxable year (but which is not specified in the consolidated return) is considered timely if specified in an amended return filed on or before such last day, at the place where the consolidated return was filed.

(4) *Examples.* This paragraph (f) may be illustrated by the following examples:

Example 1. T is an unaffiliated corporation with a tax year ending March 31. At the close of September 20 of Year 1, P makes a qualified stock purchase of T. P does not join in filing a consolidated return. P makes a section 338 election for T on or before June 15 of Year 2, which causes T's taxable year to end as of the close of September 20 of Year 1. An income tax return for T's taxable period ending on September 20 of Year 1 was due on December 15 of Year 1. Additions to tax for failure to file a return and to pay tax shown on a return will not be imposed if T's return is filed and the tax paid on or before June 15 of Year 2. (This waiver applies even if the acquisition date coincides with the last day of T's former taxable year, i.e., March 31 of Year 2.) Interest on any underpayment of tax for old T's short taxable year ending September 20 of Year 1 runs from December 15 of Year 1. A statement indicating that the waiver rule of § 1.338–1(f) is being asserted should be attached to T's return.

Example 2. Assume the same facts as in *Example 1*. Assume further that new T adopts the calendar year by filing, on or before June 15 of Year 2, its first return (for the period beginning on September 21 of Year 1 and ending on December 31 of Year 1) indicating that a calendar year is chosen. See § 1.338–2(d)(8). Any additions to tax or amounts described in this paragraph (f) which arise by reason of the late filing of a return for the period ending on December 31 of Year 1 are waived, because they are based on circumstances that would not exist but for the section 338 election. Notwithstanding this waiver, however, the return is still considered due March 15 of Year 2, and interest on any underpayment runs from that date.

Example 3. Assume the same facts as in *Example 2*, except that T's former taxable year ends on October 31. Although prior to the election old T had a return due on January 15 of Year 2 for its year ending October 31 of Year 1, that return need not be filed because a timely election under section 338 was made. Instead, old T must file a final return for the period ending on September 20 of Year 1, which is due on December 15 of Year 1.

(g) *Special rules for foreign corporations or DISCs—(1) Elections by certain foreign purchasing corporations*—(i) *General rule.* A qualifying foreign purchasing corporation is not required to file a statement of section 338 election for a qualifying foreign target before the earlier of 3 years after the acquisition date and the 180th day after the close of the purchasing corporation's taxable year within which a triggering event occurs.

(ii) *Qualifying foreign purchasing corporation.* A purchasing corporation is a *qualifying foreign purchasing corporation* only if, during the acquisition period of a qualifying foreign target, all the corporations in the purchasing corporation's affiliated group are foreign corporations that are not subject to United States tax.

(iii) *Qualifying foreign target.* A target is a *qualifying foreign target* only if target and its target affiliates are foreign corporations that, during target's acquisition period, are not subject to United States tax (and will not become subject to United States tax during such period by reason of a section 338 election). A target affiliate is taken into account for purposes of the preceding sentence only if, during target's 12-month acquisition period, it is or becomes a member of the affiliated group that includes the purchasing corporation.

(iv) *Triggering event.* A triggering event occurs in the taxable year of the qualifying foreign purchasing corporation in which either that corporation or any corporation in its affiliated group becomes subject to United States tax.

(v) *Subject to United States tax.* For purposes of this paragraph (g)(1), a foreign corporation is considered *subject to United States tax*—

(A) For the taxable year for which that corporation is required under § 1.6012–2(g) (other than § 1.6012–2(g)(2)(i)(*b*)(2)) to file a United States income tax return; or

(B) For the period during which that corporation is a controlled foreign corporation, a passive foreign investment company for which an election under section 1295 is in effect, a foreign investment company, or a foreign corporation the stock ownership of which is described in section 552(a)(2).

(2) *Acquisition period.* For purposes of this paragraph (g), the term *acquisition period* means the period beginning on the first day of the 12-month acquisition period and ending on the acquisition date.

(3) *Statement of section 338 election may be filed by United States shareholders in certain cases.* The United States shareholders (as defined in section 951(b)) of a foreign purchasing corporation that is a controlled foreign corporation (as defined in section 957 (taking into account section 953(c))) may file a statement of section 338 election on behalf of the purchasing corporation if the purchasing corporation is not required under § 1.6012–2(g) (other than § 1.6012–2(g)(2)(i)(*b*)(*2*)) to file a United States income tax return for its taxable year that includes the acquisition date. Form 8023 must be filed as described in the form and its instructions and also must be attached to the Form 5471 (information return with respect to a foreign corporation) filed with respect to the purchasing corporation by each United States shareholder for the purchasing corporation's taxable year that includes the acquisition date (or, if paragraph (g)(1)(i) of this section applies to the election, for the purchasing corporation's taxable year within which it becomes a controlled foreign corporation). The provisions of § 1.964–1(c) (including § 1.964–1(c)(7)) do not apply to an election made by the United States shareholders.

(4) *Notice requirement for U.S. persons holding stock in foreign target*—(i) *General rule.* If a target subject to a section 338 election was a controlled foreign corporation, a passive foreign investment company, or a foreign personal holding company at any time during the portion of its taxable year that ends on its acquisition date, the purchasing corporation must deliver written notice of the election (and a copy of Form 8023, its attachments and instructions) to—

(A) Each U.S. person (other than a member of the affiliated group of which the purchasing corporation is a member (the purchasing group member)) that, on the acquisition date of the foreign target, holds stock in the foreign target; and

(B) Each U.S. person (other than a purchasing group member) that sells stock in the foreign target to a purchasing group member during the foreign target's 12-month acquisition period.

(ii) *Limitation.* The notice requirement of this paragraph (g)(4) applies only where the section 338 election for the foreign target affects income, gain, loss, deduction, or credit of the U.S. person described in paragraph (g)(4)(i) of this section under section 551, 951, 1248, or 1293.

(iii) *Form of notice.* The notice to U.S. persons must be identified prominently as a notice of section 338 election and must—

(A) Contain the name, address, and employer identification number (if any) of, and the country (and, if relevant, the lesser political subdivision) under the laws of which is organized, the purchasing corporation and the relevant target (i.e., target the stock of which the particular U.S. person held or sold under the circumstances described in paragraph (g)(4)(i) of this section);

(B) Identify those corporations as the purchasing corporation and the foreign target, respectively; and

(C) Contain the following declaration (or a substantially similar declaration): "THIS DOCUMENT SERVES AS NOTICE OF AN ELECTION UNDER SECTION 338 FOR THE ABOVE CITED FOREIGN TARGET THE STOCK OF WHICH YOU EITHER HELD OR SOLD UNDER THE CIRCUMSTANCES DESCRIBED IN TREASURY REGULATIONS § 1.338–1(g)(4). FOR POSSIBLE UNITED STATES FEDERAL INCOME TAX CONSEQUENCES UNDER SECTION 551, 951, 1248, OR 1293 OF THE INTERNAL REVENUE CODE OF 1986 THAT MAY APPLY TO YOU, SEE TREASURY REGULATIONS § 1.338–5(b). YOU MAY BE REQUIRED TO ATTACH THE INFORMATION ATTACHED TO THIS NOTICE TO CERTAIN RETURNS".

(iv) *Timing of notice.* The notice required by this paragraph (g)(4) must be delivered to the U.S. person on or before the later of the 120th day after the acquisition date of the particular target or the day on which Form 8023 is filed. If notice is delivered by United States mail, the date of the United States postmark is deemed to be the date of delivery.

(v) *Consequence of failure to comply.* A statement of section 338 election is not valid if timely notice is not given to one or more U.S. persons described in this paragraph (g)(4). If the form of notice fails to comply with all requirements of this paragraph (g)(4), the section 338 election is valid, but the waiver rule of paragraph (f)(1) of this section does not apply.

(vi) *Good faith effort to comply.* The purchasing corporation will be considered to have complied with this paragraph (g)(4), even though it failed to provide notice or provide timely notice to each person described in this paragraph (g)(4), if the Commissioner determines that the purchasing corporation made a good faith effort to identify and provide timely notice to those U.S. persons.

§ 1.338–2 Miscellaneous issues under section 338.

(a) *Scope.* This section provides guidance on miscellaneous issues under section 338.

(b) *Rules relating to qualified stock purchases*—(1) *Purchasing corporation requirement.* An individual cannot make a qualified stock purchase of target. Section 338(d)(3) requires, as a condition of a qualified stock purchase, that a corporation purchase the stock of target. If an individual forms a corporation (new P) to acquire target stock, new P can make a qualified stock purchase of target if new P is considered for tax purposes to purchase the target stock. Facts that may indicate that new P does not purchase the target stock include that new P merges downstream into target, liquidates, or otherwise disposes of the target stock following the purported qualified stock purchase.

(2) *Purchase*—(i) *Definition.* The term *purchase* has the same meaning as in section 338(h)(3).

(ii) *Examples.* This paragraph (b)(2) may be illustrated by the following examples:

Example 1. A, who owns all of the stock of P and T, sells the T stock to P for cash. A is treated under section 304(a)(1) as receiving a distribution in redemption of the P stock to which section 301 applies. P is treated as receiving the T stock as a contribution to its capital. Under section 362(a) and § 1.304–2(a), P's basis in the T stock is determined by reference to A's adjusted basis in the stock. Further, stock owned by A would be attributed to P under section 318(a)(3)(C). Thus, P is not considered to have acquired the T stock by purchase. See sections 338(h)(3)(A)(i) and (iii).

Example 2. P exchanges cash for all of the stock of N, a newly formed corporation. N was formed for the sole purpose of acquiring all of the T stock by means of a reverse subsidiary cash merger. Prior to the merger, N conducted no activities other than those required for the merger. Pursuant to the plan, N merges into T, and the T shareholders receive cash for their T stock. No T shareholder is related to P, and no group of T shareholders controls P within the meaning of section 304(c). The existence of N is disregarded, and P is considered to acquire the T stock directly from the T shareholders for cash. Thus, P is considered to have acquired the T stock by purchase.

(3) *Date of purchase from related corporations*—(i) *In general.* Stock acquired by a purchasing corporation from a related corporation (R) is generally not considered acquired by purchase. See section 338(h)(3)(A)(iii). However, if section 338(h)(3)(C) applies and the purchasing corporation is treated as acquiring stock by purchase from R, solely for purposes of

determining when the stock is considered acquired—

(A) Target stock acquired from R is considered to have been acquired by the purchasing corporation on the day on which the purchasing corporation is first considered to own that stock under section 318(a) (other than section 318(a)(4)); and

(B) If such stock first may be considered owned by the purchasing corporation on more than one date, such stock is deemed acquired on the earliest date first to the extent thereof, then on the next earliest date, and so on.

(ii) *Examples.* This paragraph (b)(3) may be illustrated by the following examples:

Example 1. (a) On January 1 of Year 1, P purchases 75% in value of the R stock. On that date, R owns 4 of the 100 shares of T stock. On June 1 of Year 1, R acquires an additional 16 shares of T stock. On December 1 of Year 1, P purchases 70 shares of T stock from an unrelated person and 12 of the 20 shares of T stock held by R.

(b) Of the 12 shares of T stock purchased by P from R on December 1 of Year 1, 3 of those shares are deemed to have been acquired by P on January 1 of Year 1, the date on which 3 of the 4 shares of T stock held by R on that date were first considered owned by P under section 318(a)(2)(C) (i.e., 4×.75). The remaining 9 shares of T stock purchased by P from R on December 1 of Year 1, are deemed to have been acquired by P on June 1 of Year 1, the date on which an additional 12 of the 20 shares of T stock owned by R on that date were first considered owned by P under section 318(a)(2)(C) (i.e., (20×.75) −3). Because stock acquisitions by P sufficient for a qualified stock purchase of T occur within a 12-month period (i.e., 3 shares constructively on January 1 of Year 1, 9 shares constructively on June 1 of Year 1, and 70 shares actually on December 1 of Year 1), a qualified stock purchase is made on December 1 of Year 1.

Example 2. (a) On February 1 of Year 1, P acquires 25% in value of the R stock from B (the sole shareholder of P). That R stock is not acquired by purchase. See section 338(h)(3)(A)(iii). On that date, R owns 4 of the 100 shares of T stock. On June 1 of Year 1, P purchases an additional 25% in value of the R stock, and on January 1 of Year 2, P purchases another 25% in value of the R stock. On June 1 of Year 2, R acquires an additional 16 shares of the T stock. On December 1 of Year 2, P purchases 68 shares of the T stock from an unrelated person and 12 of the 20 shares of the T stock held by R.

(b) Of the 12 shares of the T stock purchased by P from R on December 1 of Year 2, 2 of those shares are deemed to have been acquired by P on June 1 of Year 1, the date on which 2 of the 4 shares of the T stock held by R on that date were first considered owned by P under section 318(a)(2)(C) (i.e., 4×.5). For purposes of this attribution, the R stock need not be acquired by P by purchase. See section 338(h)(1). (By contrast, the acquisition of the T stock by P from R does not qualify as a purchase unless P has acquired at least 50% in value of the R stock by purchase. Section 338(h)(3)(C)(i).) Of the remaining 10 shares of the T stock purchased by P from R on December 1 of Year 2, 1 of those shares is deemed to have been acquired by P on January 1 of Year 2, the date on which an additional 1 share of the 4 shares of the T stock held by R on that date was first considered owned by P under section 318(a)(2)(C) (i.e., (4×.75) −2). The remaining 9 shares of the T stock purchased by P from R on December 1 of Year 2, are deemed to have been acquired by P on June 1 of Year 2, the date on which an additional 12 shares of the T stock held by R on that date were first considered owned by P under section 318(a)(2)(C) (i.e., (20×.75) −3). Because a qualified stock purchase of T by P is made on December 1 of Year 2, only if all 12 shares of the T stock purchased by P from R on that date are considered acquired during a 12-month period ending on that date (so that, in conjunction with the 68 shares of the T stock P purchased on that date from the unrelated person, 80 of T's 100 shares are acquired by P during a 12-month period) and because 2 of those 12 shares are considered to have been acquired by P more than 12 months before December 1 of Year 2 (i.e., on June 1 of Year 1), a qualified stock purchase is not made. (Under § 1.338–4(j)(2), for purposes of applying the consistency rules, P is treated as making a qualified stock purchase of T if, pursuant to an arrangement, P purchases T stock satisfying the requirements of section 1504(a)(2) over a period of more than 12 months.)

Example 3. Assume the same facts as in *Example 2*, except that on February 1 of Year 1, P acquires 25% in value of the R stock by purchase. The result is the same as in Example 2.

(4) *Acquisition date for tiered targets*—(i) *Stock sold in deemed asset sale.* If an election under section 338 is made for target, old target is deemed to sell target's assets and new target is deemed to acquire those assets. Under section 338(h)(3)(B), new target's deemed purchase of stock of another corporation is a purchase for purposes of section 388(d)(3) on the acquisition date of target. If new target's deemed purchase causes a qualified stock purchase of the other corporation and if a section 338 election is made for the other corporation, the acquisition date for the other corporation is the same as the acquisition date of target. However, the deemed sale and purchase of the other corporation's assets is considered to take place after the deemed sale and purchase of target's assets.

(ii) *Examples.* This paragraph (b)(4) may be illustrated by the following examples:

Example 1. A owns all of the T stock. T owns 50 of the 100 shares of X stock. The other 50 shares of X stock are owned by corporation Y, which is unrelated to A, T, or P. On January 1 of Year 1, P makes a qualified stock purchase of T from A and makes a section 338 election for T. On December 1 of Year 1, P purchases the 50 shares of X stock held by Y. A qualified stock purchase of X is made on December 1 of Year 1, because the deemed purchase of 50 shares of X stock by new T by reason of the section 338 election for T and the actual purchase of 50 shares of X stock by P are treated as purchases made by one corporation. Section 338(h)(8). For purposes of determining whether those purchases occur within a 12-month acquisition period as required by section 338(d)(3), T is deemed to purchase its X stock on T's acquisition date, i.e., January 1 of Year 1.

Example 2. On January 1 of Year 1, P makes a qualified stock purchase of T and makes a section 338 election for T. On that day, T sells all of the stock of T1 to A. Although T held all of the T1 stock on T's acquisition date, T is not considered to have purchased the T1 stock by reason of the section 338 election for T. In order for T to be treated as purchasing the T1 stock, T must hold the T1 stock when T's deemed sale of assets occurs pursuant to section 338(a). The deemed sale of assets is considered the last transaction of old T at the close of T's acquisition date. Accordingly, the T1 stock actually disposed of by T on the acquisition date is not included in the deemed sale of assets. Thus, T does not make a qualified stock purchase of T1.

(5) *Effect of redemptions*—(i) *General rule.* Except as provided in this paragraph (b)(5), a qualified stock purchase is made on the first day on which the percentage ownership requirements of section 338(d)(3) are satisfied by reference to target stock that is both—

(A) Held on that day by the purchasing corporation; and

(B) Purchased by the purchasing corporation during the 12-month period ending on that day.

(ii) *Redemptions from persons unrelated to the purchasing corporation.* Target stock redemptions from persons unrelated to the purchasing corporation that occur during the 12-month acquisition period are taken into account as reductions in target's outstanding stock for purposes of determining whether target stock purchased by the purchasing corporation in the 12-month acquisition period satisfies the percentage ownership requirements of section 338(d)(3).

(iii) *Redemptions from the purchasing corporation or related persons during 12-month acquisition period—(A) General rule.* For purposes of the percentage ownership requirements of section 338(d)(3), a redemption of target stock during the 12-month acquisition period from the purchasing corporation or from any person related to the purchasing corporation is not taken into account as a reduction in target's outstanding stock.

(B) *Exception for certain redemptions from related corporations.* A redemption of target stock during the 12-month acquisition period from a corporation related to the purchasing corporation is taken into account as a reduction in target's outstanding stock to the extent that the redeemed stock would have been considered purchased by the purchasing corporation (by reason of section 338(h)(3)(C)) during the 12-month acquisition period if the redeemed stock had been acquired by the purchasing corporation from the related corporation on the day of the redemption. See paragraph (b)(3) of this section.

(iv) *Examples.* This paragraph (b)(5) may be illustrated by the following examples:

Example 1. QSP on stock purchase date; redemption from unrelated person during 12-month period. A owns all 100 shares of T stock. On January 1 of Year 1, P purchases 40 shares of the T stock from A. On July 1 of Year 1, T redeems 25 shares from A. On December 1 of Year 1, P purchases 20 shares of the T stock from A. P makes a qualified stock purchase of T on December 1 of Year 1, because the 60 shares of T stock purchased by P within the 12-month period ending on that date satisfy the 80-percent ownership requirements of section 338(d)(3) (i.e., 60/75 shares), determined by taking into account the redemption of 25 shares.

Example 2. QSP on stock redemption date; redemption from unrelated person during 12-month period The facts are the same as in *Example 1*, except that P purchases 60 shares of T stock on January 1 of Year 1 and none on December 1 of Year 1. P makes a qualified stock purchase of T on July 1 of Year 1, because that is the first day on which the T stock purchased by P within the preceding 12-month period satisfies the 80-percent ownership requirements of section 338(d)(3) (i.e., 60/75 shares), determined by taking into account the redemption of 25 shares.

Example 3 Redemption from unrelated person more than 12 months before stock purchase. A owns all 100 shares of T stock. On January 1 of Year 1, T redeems 25 of its shares. On January 15 of Year 2, P purchases 60 shares of T stock from A. P makes a qualified stock purchase of T on January 15 of Year 2. The 60 shares of T stock purchased by P within the 12-month period ending on that date satisfy the 80-percent ownership requirements of section 338(d)(3) (i.e., 60/75 shares), determined by taking into account the redemption of 25 shares. It is irrelevant that the redemption occurred before the 12-month acquisition period.

Example 4. Redemption from unrelated person more than 12 months after stock purchase. The facts are the same as in *Example 3*, except that the redemption occurs on April 1 of Year 3. P does not make a qualified stock purchase of T on April 1 of Year 3, because 80% of the T stock, as of April 1 of Year 3 had not been purchased in the preceding 12 months. (Under § 1.338–4(j)(2), for purposes of applying the consistency rules, P is treated as making a qualified stock purchase of T if, pursuant to an arrangement, P purchases T stock satisfying the requirements of section 1504(a)(2) over a period of more than 12 months.)

Example 5. Redemption from purchasing corporation not taken into account. On December 15 of Year 1, T redeems 30% of its stock from P. The redeemed stock was held by P for several years and constituted P's total interest in T. On December 1 of Year 2, P purchases the remaining T stock from A. P does not make a qualified stock purchase of T on December 1 of Year 2. For purposes of the 80-percent ownership requirements of section 338(d)(3), the redemption of P's T stock on December 15 of Year 1 is not taken into account as a reduction in T's outstanding stock.

Example 6. Redemption from related person taken into account. On January 1 of Year 1, P purchases 60 of the 100 shares of X stock. On that date, X owns 40 of the 100 shares of T stock. On April 1 of Year 1, T redeems X's T stock and P purchases the remaining 60 shares of T stock from an unrelated person. For purposes of the 80-percent ownership requirements of section 338(d)(3), the redemption of the T stock from X (a person related to P) is taken into account as a reduction in T's outstanding stock. If P had purchased the 40 redeemed shares from X on April 1 of Year 1, all 40 of the shares would have been considered purchased (by reason of section 338(h)(3)(C)(i)) during the 12-month period ending on April of Year 1 (24 of the 40 shares would have been considered purchased by P on January 1 of Year 1 and the remaining 16 shares would have been considered purchased by P on April 1 of Year 1). See paragraph (b)(3) of this section. Accordingly, P makes a qualified stock purchase of T on April 1 of Year 1, because the 60 shares of T stock purchased by P on that date satisfy the 80-percent ownership requirements of section 338(d)(3) (i.e., 60/60 shares), determined by taking into account the redemption of 40 shares.

(c) *Effect of post-acquisition events on eligibility for section 338 election*—(1) *Post-acquisition elimination of target.* (i) The purchasing corporation may make an election under section 338 for target even though target is liquidated on or after the acquisition date. If target liquidates on the acquisition date, the liquidation is considered to occur on the following day and immediately after new target's deemed purchase of assets. The purchasing corporation may also make an election under section 338 for target even though target is merged into another corporation, or otherwise disposed of by the purchasing corporation provided that, under the facts and circumstances, the purchasing corporation is considered for tax purposes as the purchaser of the target stock.

(ii) This paragraph (c)(1) may be illustrated by the following examples:

Example 1. On January 1 of Year 1, P makes a qualified stock purchase of T. On June 1 of Year 1, P sells the T stock to an unrelated person. Assuming that P is considered for tax purposes as the purchaser of the T stock, P remains eligible, after June 1 of Year 1, to make a section 338 election for T that results in a deemed sale of T's assets on January 1 of Year 1.

Example 2. On January 1 of Year 1, P makes a qualified stock purchase of T. On that date, T owns the stock of T1. On March 1 of Year 1, T sells the T1 stock to an unrelated person. On April 1 of Year 1, P makes a section 338 election for T. Notwithstanding that the T1 stock was sold on March 1 of Year 1, the section 338 election for T on April 1 of Year 1, results in a qualified stock purchase by T of T1 on January 1 of Year 1. See paragraph (b)(4)(i) of this section.

(2) *Post-acquisition elimination of the purchasing corporation.* An election under section 338 may be made for target after the acquisition of assets of the purchasing corporation by another corporation in a transaction described in section 381(a), provided that the purchasing corporation is considered for tax purposes as the purchaser of the target stock. The acquiring corporation in the section 381(a) transaction may make an election under section 338 for target.

(d) *Miscellaneous matters affecting new target*—(1) *General rule for subtitle A.* Except as provided in this paragraph (d), new target is treated as a new corporation that is unrelated to old target for purposes of subtitle A of the Internal Revenue Code. Thus, in the section 338(a)(1) deemed sale, new target is treated as purchasing assets from an unrelated person, and—

(i) New target is not considered related to old target for purposes of section 168 and may make new elections under section 168 without taking into account the elections made by old target; and—

(ii) New target may adopt, without obtaining prior approval from the Commissioner, any taxable year that meets the requirements of section 441 and any method of accounting that meets the requirements of section 446.

(2) *Exceptions for subtitle A.* New target and old target are treated as the same corporation for purposes of—

(i) The rules applicable to employee benefit plans (including those plans described in sections 79, 104, 105, 120, 125, 127, and 129), qualified pension, profit-sharing, stock bonus and annuity plans (sections 401(a) and 403(a)), simplified employee pensions (section 408(k)), and tax qualified stock option plans (sections 422 and 423);

(ii) Sections 1311–1314 (relating to the mitigation of the effect of limitations) if a section 338(h)(10) election is not made for target; and

(iii) Any other provision identified by the Commissioner.

(3) *Taxable year of new target.* Notwithstanding § 1.441–1T(b)(2), a new target may adopt a taxable year on or before the last day for making the election under section 338 by filing its first return for the desired taxable year on or before that date.

(4) *General rule for other provisions of the Internal Revenue Code.* Except as provided in the regulations under section 338 or by the Commissioner, new target is treated as a continuation of old target for purposes other than subtitle A. For example—

(i) New target is liable for old target's federal income tax liabilities, including tax liabilities resulting from the deemed asset sale and those tax liabilities of the other members of any consolidated group that included old target that are attributable to taxable years in which those corporations and old target joined in the same consolidated return (see § 1.1502–6(a));

(ii) Wages earned by the employees of old target are considered wages earned by such employees from new target for purposes of sections 3101 and 3111 (Federal Insurance Contributions Act) and section 3301 (Federal Unemployment Tax Act); and

(iii) Old target and new target must use the same employer identification number.

§ 1.338–3 Deemed sale and aggregate deemed sale price.

(a) *Scope.* This section provides guidance regarding the recognition of gain or loss on the deemed sale of target affiliate stock. This section also provides guidance regarding the determination of the price (the aggregate deemed sale price) at which old target is treated as selling its assets in the section 338(a)(1) deemed sale for purposes of determining the gain or loss recognized by target in the deemed sale. Notwithstanding section 338(h)(6)(B)(ii), stock held by a target affiliate in a foreign corporation or in a corporation that is a DISC or that is described in section 1248(e) is not excluded from the operation of section 338.

(b) *Definitions.* For purposes of the regulations under section 338:

(1) *ADSP.* The *ADSP* is the aggregate deemed sale price, i.e., the price at which target is deemed to have sold all of its assets in the deemed sale under section 338(a)(1). See paragraph (d) of this section for the determination of the ADSP.

(2) *Allocable ADSP amount.* The *allocable ADSP amount* is the portion of the ADSP that is allocable to a particular target asset. Deemed sale gain on a target asset is computed by reference to the allocable ADSP amount for that asset. Except as provided in section 7701(g) (relating to fair market value in the case of nonrecourse indebtedness), the ADSP is allocated among target assets for this purpose under the principles of § 1.338(b)–2T (without taking into account § 1.338(b)–2T(c)(2)). Appropriate adjustments to reflect accurately the fair market value of assets must be made if stock of a target affiliate is purchased in the section 338(a)(1) deemed sale, a section 338 election is made for the target affiliate, and target recognizes no gain or loss on the deemed sale of the target affiliate stock under paragraph (c) of this section. See *Example 4* of paragraph (d)(8) of this section.

(3) *Deemed sale gain. Deemed sale gain* is gain (or loss) that is recognized in the section 338(a)(1) deemed sale. For purposes of subtitle A of the Internal Revenue Code, deemed sale gain is taken into account by treating the old target as if, on the acquisition date, it sold all of its assets to an unrelated person in the deemed sale. See § 1.338–2(d)(1). For example, section 267 does not apply to loss recognized on the deemed sale.

(4) *Classes of assets.* The four classes of assets are defined in § 1.338(b)–2T(b).

(c) *Deemed sale of target affiliate stock*—(1) *In general.* This paragraph (c) prescribes rules relating to the treatment of gain or loss realized on the deemed sale of stock of a target affiliate where a section 338 election (but not a section 338(h)(10) election) is made for the target affiliate. For purposes of this paragraph (c), the definition of domestic corporation in § 1.338–1(c)(5) is applied without the exclusion therein for DISCs, corporations described in section 1248(e), and corporations to which an election under section 936 applies.

(2) *General rule.* Except as otherwise provided in this paragraph (c), if a section 338 election is made for target, no gain or loss is recognized by target on the deemed sale of stock of a target affiliate having the same acquisition date and for which a section 338 election is made if—

(i) Target directly owns stock in the target affiliate satisfying the requirements of section 1504(a)(2);

(ii) Target and the target affiliate are members of a consolidated group filing a final consolidated return described in § 1.338–1(e)(1); or

(iii) Target and the target affiliate file a combined return under § 1.338–1(e)(4).

(3) *Deemed sale of foreign target affiliate by a domestic target.* Gain or loss is recognized by a domestic target on the deemed sale of stock of a foreign target affiliate. For the proper treatment of such gain or loss, see, e.g., sections 1246, 1248, 1291 *et seq.*, and 338(h)(16) and § 1.338–5.

(4) *Deemed sale producing effectively connected income.* Gain or loss is recognized by a foreign target on the deemed sale of stock of a foreign target affiliate to the extent that such gain or loss is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States.

(5) *Deemed sale of insurance company target affiliate electing under section 953(d).* Gain (but not loss) is recognized by a domestic target on the deemed sale of stock of a target affiliate that has in effect an election under section 953(d) in an amount equal to the lesser of the gain realized or the earnings and profits described in section 953(d)(4)(B).

(6) *Deemed sale of DISC target affiliate.* Gain (but not loss) is recognized by a foreign or domestic target on the deemed sale of stock of a target affiliate that is a DISC or a former DISC (as defined in section 992(a)) in an amount equal to the lesser of the gain realized or the amount of accumulated DISC income determined with respect to such stock under section 995(c). Such gain is included in gross income as a dividend as provided in sections 995(c)(2) and 996(g).

(7) *Anti-stuffing rule.* If an asset the adjusted basis of which exceeds its fair market value is contributed or transferred to a target affiliate as transferred basis property (within the meaning of section 7701(a)(43)) and a purpose of such transaction is to reduce the gain (or increase the loss) recognized on the deemed sale of such target affiliate's stock, the gain or loss recognized by target on the deemed sale of stock of the target affiliate is determined as if such asset had not been contributed or transferred.

(8) *Examples.* This paragraph (c) may be illustrated by the following examples:

Example 1. (a) P makes a qualified stock purchase of T and makes a section 338 election for T. T's sole asset, all of the T1 stock, has a basis of $50 and a fair market value of $150. T's deemed purchase of the T1 stock results in a qualified stock purchase of T1 and a section 338 election is made for T1. T1's assets have a basis of $50 and a fair market value of $150.

(b) T realizes $100 of gain on the deemed sale of the T1 stock, but the gain is not recognized because T directly owns stock in T1 satisfying the requirements of section 1504(a)(2) and a section 338 election is made for T1.

(c) T1 recognizes gain of $100 on the deemed sale of its assets.

Example 2. The facts are the same as in *Example 1*, except that P does not make a section 338 election for T1. Because a section 338 election is not made for T1, the $100 gain realized by T on the deemed sale of the T1 stock is recognized.

Example 3. (a) P makes a qualified stock purchase of T and makes a section 338 election for T. T owns all of the stock of T1 and T2. T's deemed purchase of the T1 and T2 stock results in a qualified stock purchase of T1 and T2 and a section 338 election is made for T1 and T2. T1 and T2 each own 50% of the vote and value of T3 stock. The deemed purchases by T1 and T2 of the T3 stock result in a qualified stock purchase of T3 and a section 338 election is made for T3. T is the common parent of a consolidated group and all of the deemed sales are reported on the T group's final consolidated return. See § 1.338–1(e)(1).

(b) Because T, T1, T2 and T3 are members of a consolidated group filing a final consolidated return, no gain or loss is recognized by T, T1 or T2 on their respective deemed sales of target affiliate stock.

Example 4. (a) T's sole asset, all of the FT1 stock, has a basis of $25 and a fair market value of $150. FT1's sole asset, all of the FT2 stock, has a basis of $75 and a fair market value of $150. FT1 and FT2 each have $50 of accumulated earnings and profits for purposes of section 1248(c) and (d). FT2's assets have a basis of $125 and a fair market value of $150, and their sale would not generate subpart F income under section 951. The sale of the FT2 stock or assets would not generate income effectively connected with the conduct of a trade or business within the United States. FT1 does not have an election in effect under section 953(d) and neither FT1 nor FT2 is a passive foreign investment company.

(b) P makes a qualified stock purchase of T and makes a section 338 election for T. T's deemed purchase of the FT1 stock results in a qualified stock purchase of FT1 and a section 338 election is made for FT1. Similarly, FT1's deemed purchase of the FT2 stock results in a qualified stock purchase of FT2 and a section 338 election is made for FT2.

(c) T recognizes $125 of gain on the deemed sale of the FT1 stock under paragraph (c)(3) of this section. FT1's $75 of gain on the deemed sale of the FT2 stock is not recognized under paragraph (c)(2) of this section. FT2 recognizes $25 of gain on the deemed sale of its assets. The $125 gain T recognizes on the deemed sale of the FT1 stock is included in T's income as a dividend under section 1248, because FT1 and FT2 have sufficient earnings and profits for full recharacterization ($50 of accumulated earnings and profits in FT1, $50 of accumulated earnings and profits in FT2, and $25 of deemed sale earnings and profits in FT2). § 1.338–5(b). For purposes of sections 901 through 908, the source and foreign tax credit limitation basket of $25 of the recharacterized gain on the deemed sale of the FT1 stock is determined under section 338(h)(16).

(d) *Determination of ADSP*—(1) *General rule.* The ADSP is the sum of—

(i) The grossed-up basis of the purchasing corporation's recently purchased target stock (as defined in section 338(b)(6)(A));

(ii) The liabilities of new target (including any tax liabilities resulting from the deemed sale); and

(iii) Other relevant items.

(2) *Grossed-up basis of the purchasing corporation's recently purchased target stock.* The grossed-up basis of the purchasing corporation's recently purchased target stock is an amount equal to the purchasing corporation's basis in recently purchased target stock, divided by the percentage of target stock (by value) attributable to that recently purchased target stock. If target has a single class of outstanding stock, the grossed-up basis of the purchasing corporation's recently purchased target stock reflects the total price the purchasing corporation would have paid for all outstanding target stock had it purchased all such stock for a price per share equal to the average price per share that it paid for the recently purchased target stock.

(3) *Liabilities.* Liabilities taken into account are the liabilities of new target described in § 1.338(b)–1(f). The amount of the liabilities of new target taken into account to calculate ADSP is determined as if old target had sold its assets to an unrelated person for consideration that included the liabilities. Thus, the ADSP takes into account both tax credit recapture liability arising by reason of the deemed sale and the tax liability on deemed sale gain. The ADSP reflects the fact that deemed sale gain (loss) both increases (decreases) the ADSP by creating (reducing) a tax liability and is computed by reference to the ADSP.

(4) *Other relevant items.* Other relevant items include reductions for acquisition costs of the purchasing corporation incurred in connection with the qualified stock purchase that are capitalized in the basis of recently purchased target stock (e.g., brokerage commissions and any similar costs paid by the purchasing corporation to acquire target stock).

(5) *Calculation of deemed sale gain and loss.* Deemed sale gain on each asset is computed by reference to the ADSP. In certain cases, the determination of the tax liability resulting from the deemed sale and therefore the determination of the ADSP may require trial and error computations.

(6) *Other rules apply in determining ADSP.* The ADSP may not be applied in such a way as to contravene other applicable rules. For example, a capital loss cannot be applied to reduce ordinary income in calculating the tax liability on the deemed sale for purposes of determining the ADSP.

(7) *Cross-reference.* See § 1.338(b)–3T(h) for adjustments to ADSP because of events occurring after the acquisition date and § 1.338(h)(10)–1(f) for the determination of modified ADSP.

(8) *Examples.* (i) For purposes of the examples in this paragraph (d)(8), unless otherwise stated, T is a calendar year taxpayer that files separate returns and that has no loss, tax credit, or other carryovers to Year 1. Depreciation for Year 1 is not taken into account. T has no liabilities other than a federal income tax liability resulting from the deemed sale of assets, and T has no other relevant items. Assume that T's tax rate for any ordinary income or net capital gain resulting from the deemed sale of assets is 34 percent and that any capital loss is offset by capital gain. On July 1 of Year 1, P purchases all of the stock of T and makes a section 338 election for T.

(ii) This paragraph (d) may be illustrated by the following examples:

Example 1 One class. (a) On July 1 of Year 1, T's only asset is an item of section 1245 property with an adjusted basis to T of $50,400, a recomputed basis of $80,000, and a fair market value of $100,000. P purchases all of the T stock for $75,000.

(b) The ADSP may be determined as follows. (In the formula below, G is the grossed-up basis in P's recently purchased T stock, L is T's liabilities other than T's tax liabilities for deemed sale gain determined by reference to the ADSP, T_R is the applicable tax rate, and B is the adjusted basis of the asset deemed sold.)

$ADSP=G+L+T_R\times(ADSP-B)$

$ADSP=(\$75,000/1)+\$0+.34\times(ADSP-\$50,400)$

$ADSP=\$75,000+.34ADSP-\$17,136$

$.66ADSP=\$57,864$

$ADSP=\$87,672.72$

(c) Because the ADSP for T ($87,672.72) does not exceed the fair market value of T's asset ($100,000), a Class III asset, T's entire ADSP is allocated to that asset. Thus, T has deemed sale gain of $37,272.72 (consisting of $29,600 of ordinary income and $7,672.72 of capital gain).

(d) The facts are the same as in paragraph (a) of this *Example 1*, except that on July 1 of Year 1, P purchases only 80 of the 100 shares of T stock for $60,000. The grossed-up basis in P's recently purchased T stock (G) is $75,000 ($60,000/.8). Consequently, the ADSP and deemed sale gain are the same as in paragraphs (b) and (c) of this *Example 1*.

(e) The facts are the same as in paragraph (a) of this *Example 1*, except that T also has goodwill (a Class IV asset) with an appraised value of $10,000. The results are the same as in paragraphs (b) and (c) of this *Example 1*. Because the ADSP does not exceed the fair market value of the Class III asset, no amount is allocated to goodwill.

Example 2. More than one class. (a) P purchases all of the T stock for $140,000. On July 1 of Year 1, T has liabilities (not including the tax liability for deemed sale gain on its assets) of $50,000, cash (a Class I asset) of $10,000, readily marketable securities (a Class II asset) with a basis of $4,000 and fair market value of $10,000, goodwill (a Class IV asset) with a basis of $3,000, and the following Class III assets:

Asset	Basis	FMV	Ratio
1. Land	$5,000	$35,000	.14
2. Inventory	10,000	50,000	.20
3. Equipment A (recomputed basis $80,000)	5,000	90,000	.36
4. Equipment B (recomputed basis $20,000)	10,000	75,000	.30
Totals	$30,000	250,000	1.00

(b) The ADSP exceeds $20,000. Thus, $10,000 of the ADSP is allocated to the cash and $10,000 to the marketable securities. Except as provided in section 7701(g), the amount allocated to an asset (other than a Class IV asset) cannot exceed its fair market value. See § 1.338(b)–2T(c)(1) (relating to fair market value limitation).

(c) The portion of the ADSP allocable to the Class III assets is preliminarily determined as follows. (In the formula, the amount allocated to the Class I assets is referred to as *I* and the amount allocated to the Class II assets as *II*.)

$ADSP_{III} = (G-(I+II))+L+T_R \times [(II-B_{II}) + (ADSP_{III}-B_{III})]$

$ADSP_{III} = (\$140,000 - (\$10,000+\$10,000)) + \$50,000 + .34 \times [(\$10,000-\$4,000) + (ADSP_{III} - (\$5,000+\$10,000+\$5,000+\$10,000))]$

$ADSP_{III}=\$161,840+.34ADSP_{III}$

$.66ADSP_{III}=\$161,840$

$ADSP_{III}=\$245,212.12$

(d) Because, under the preliminary calculation of the ADSP, the amount to be allocated to Class I, II, and III assets does not exceed their aggregate fair market value, no ADSP amount is allocated to the goodwill. Accordingly, the deemed sale of the goodwill results in a capital loss of $3,000. The portion of the ADSP allocable to the Class III assets is finally determined by taking into account this loss as follows:

$ADSP_{III} = (G - (I+II))+L+T_R \times [(II-B_{II}) + (ADSP_{III} - B_{III}) + (ADSP_{IV} - B_{IV})]$

$ADSP_{III} = (\$140,000 - (\$10,000+\$10,000))+\$50,000+.34 \times [(\$10,000-\$4,000) + (ADSP_{III} - \$30,000)+(0-\$3,000)]$

$ADSP_{III}=\$160,820+.34ADSP_{III}$

$.66ADSP_{III}=\$160,820$

$ADSP_{III}=\$243,666.67$

(e) The allocation of $ADSP_{III}$ among the Class III assets is in proportion to their fair market values, as follows:

Asset	ADSP	Gain
1. Land	$34,113.33	$29,113.33 (capital gain)
2. Inventory	48,733.34	38,733.34 (ordinary income)
3. Equipment A	87,720.00	82,720.00 (75,000 ordinary income 7,720 capital gain)
4. Equipment B	73,100.00	63,100.00 (10,000 ordinary income 53,100 capital gain)
Totals	243,666.67	213,666.67

Example 3. More than one class. (a) The facts are the same as in *Example 2*, except that P purchases the T stock for $150,000, rather than $140,000.

(b) As in *Example 2*, the ADSP exceeds $20,000. Thus, $10,000 of the ADSP is allocated to the cash and $10,000 to the marketable securities.

(c) The portion of the ADSP allocable to the Class III assets as preliminarily determined under the formula set forth in paragraph (c) of *Example 2* is $260,363.64. The amount allocated to the Class III assets cannot exceed their aggregate fair market value ($250,000). Thus, preliminarily, the ADSP amount allocated to Class III assets is $250,000.

(d)(1) Based on this preliminary allocation, the ADSP is determined as follows. (In the formula, the amount allocated to the Class I assets is referred to as *I*, the amount allocated to the Class II assets as *II*, and the amount allocated to the Class III assets as *III*.)

$ADSP = G+L+T_R \times [(II-B_{II}) + (III-B_{III}) + (ADSP - (I+II+III+B_{IV}))]$

$ADSP = \$150,000+\$50,000+.34 \times [(\$10,000-\$4,000) + (\$250,000-\$30,000) + (ADSP - (\$10,000+\$10,000+\$250,000+\$3,000))]$

$ADSP=\$200,000+.34ADSP-\$15,980$

$.66ADSP=\$184,020$

$ADSP=\$278,818.18$

(2) Because the ADSP as determined exceeds the aggregate fair market value of the Class I, II, and III assets, the $250,000 amount preliminarily allocated to Class III assets is appropriate. Thus, the amount of the ADSP allocated to Class III assets equals their aggregate fair market value ($250,000), and the allocated ADSP amount for each Class III asset is its fair market value. Further, the allocable ADSP amount for the Class IV asset (goodwill) is $8,818.18 (the excess of the ADSP over the aggregate allocable ADSP amounts for the Class I, II, and III assets).

Example 4. Amount allocated to T1 stock. (a) The facts are the same as in *Example 2*, except that T owns all of the T1 stock (instead of the inventory), and T1's only asset is the inventory. The T1 stock and inventory each have a fair market value of $50,000, and the inventory has a basis of $10,000. A section 338 election is made for T1 (as well as T), and T1 has no liabilities other than a tax liability resulting from the deemed sale gain. Under paragraph (c) of this section, T recognizes no gain or loss on its deemed sale of T1 stock.

(b) The ADSP exceeds $20,000. Thus, $10,000 of the ADSP is allocated to the cash and $10,000 to the marketable securities.

(c) T1 stock is purchased in the deemed sale of T assets, T does not recognize any gain on the deemed sale of the T1 stock under paragraph (c) of this section, and a section 338 election is made for T1. Thus, under paragraph (b)(2) of this section, in determining the allocation of ADSP among T's Class III assets, including the T1 stock, appropriate adjustments must be made to reflect accurately the fair market value of the

T and T1 assets. In preliminarily calculating $ADSP_{III}$ in this case, the T1 stock can be disregarded and, because T owns all of the T1 stock, the T1 asset can be treated as a T asset. Under this assumption, $ADSP_{III}$ is $243,666.67. See paragraph (d) of *Example 2*.

(d) Because the portion of the preliminary ADSP allocable to Class III assets ($243,666.67) does not exceed their aggregate fair market value ($250,000), no amount is allocated to Class IV assets for T. Further, this amount is allocated among T's Class III assets in proportion to their fair market values. See paragraph (e) of *Example 2*. Tentatively, $48,733.34 of this amount is allocated to the T1 stock.

(e) The amount tentatively allocated to the T1 stock, however, reflects the tax incurred on the deemed sale of the T1 asset equal to $13,169.34 (.34 × ($48,733.34 − $10,000)). Thus, the ADSP allocable to the Class III assets of T, and the allocable ADSP amount for the T1 stock, as preliminarily calculated, each must be reduced by $13,169.34. Consequently, these amounts, respectively, are $230,497.33 and $35,564.00. In determining the ADSP for T1, the grossed-up basis of T's recently purchased T1 stock is $35,564.00.

(f) The facts are the same as in paragraph (a) of this *Example 5*, except that the T1 inventory has a $12,500 basis and $62,500 value, the T1 stock has a $62,500 value, and T owns 80% of the T1 stock. In preliminarily calculating $ADSP_{III}$, the T1 stock can be disregarded but, because T owns only 80% of the T1 stock, only 80% of T1 asset basis and value should be taken into account in calculating T's ADSP. By taking into account 80% of these amounts, the remaining calculations and results are the same as in paragraphs (b), (c), (d), and (e) of this *Example 5*, except that the grossed-up basis in T's recently purchased T1 stock is $44,455.00 ($35,564.00/0.8).

§ 1.338–4 Asset and stock consistency.

(a) *Introduction*—(1) *Overview*. This section implements the consistency rules of sections 338(e) and (f). Under this section, no election under section 338 is deemed made or required with respect to target or any target affiliate. Instead, the person acquiring an asset may have a carryover basis in the asset.

(2) *General application*. The consistency rules generally apply if the purchasing corporation acquires an asset directly from target during the target consistency period and target is a subsidiary in a consolidated group. In such a case, gain from the sale of the asset is reflected under the investment adjustment provisions of the consolidated return regulations in the basis of target stock and may reduce gain from the sale of the stock. See § 1.1502–32 (investment adjustment provisions). Under the consistency rules, the purchasing corporation generally takes a carryover basis in the asset, unless a section 338 election is made for target. Similar rules apply if the purchasing corporation acquires an asset directly from a lower-tier target affiliate if gain from the sale is reflected under the investment adjustment provisions in the basis of target stock.

(3) *Extensions of the general rules*. If an arrangement exists, paragraph (f) of this section generally extends the carryover basis rule to certain cases in which the purchasing corporation acquires assets indirectly from target (or a lower-tier target affiliate). To prevent avoidance of the consistency rules, paragraph (j) of this section also may extend the consistency period or the 12-month acquisition period and may disregard the presence of conduits.

(4) *Application where certain dividends are paid*. Paragraph (g) of this section extends the carryover basis rule to certain cases in which dividends are paid to a corporation that is not a member of the same consolidated group as the distributing corporation. Generally, this rule applies where a 100 percent dividends received deduction is used in conjunction with asset dispositions to achieve an effect similar to that available under the investment adjustment provisions of the consolidated return regulations.

(5) *Application to foreign target affiliates*. Section 1.338–4T(h) extends the carryover basis rule to certain cases involving target affiliates that are controlled foreign corporations.

(6) *Stock consistency*. This section limits the application of the stock consistency rules to cases in which the rules are necessary to prevent avoidance of the asset consistency rules. Following the general treatment of a section 338(h)(10) election, a sale of a corporation's stock is treated as a sale of the corporation's assets if a section 338(h)(10) election is made. Because gain from this asset sale may be reflected in the basis of the stock of a higher-tier target, the carryover basis rule may apply to the assets.

(b) *Consistency for direct acquisitions*—(1) *General rule*. The basis rules of paragraph (d) of this section apply to an asset if—

(i) The asset is disposed of during the target consistency period;

(ii) The basis of target stock, as of the target acquisition date, reflects gain from the disposition of the asset (see paragraph (c) of this section); and

(iii) The asset is owned, immediately after its acquisition and on the target acquisition date, by a corporation that acquires stock of target in the qualified stock purchase (or by an affiliate of an acquiring corporation).

(2) *Section 338(h)(10) elections*. For purposes of this section, if a section 338(h)(10) election is made for a corporation acquired in a qualified stock purchase—

(i) The acquisition is treated as an acquisition of the corporation's assets (see § 1.338(h)(10)–1); and

(ii) The corporation is not treated as target.

(c) *Gain from disposition reflected in basis of target stock*. For purposes of this section:

(1) *General rule*. Gain from the disposition of an asset is reflected in the basis of a corporation's stock if the gain is taken into account under § 1.1502–32, directly or indirectly, in determining the basis of the stock, after applying section 1503(e) and other provisions of the Internal Revenue Code.

(2) *Gain not reflected if section 338 election made for target*. Gain from the disposition of an asset that is otherwise reflected in the basis of target stock as of the target acquisition date is not considered reflected in the basis of target stock if a section 338 election is made for target.

(3) *Gain reflected by reason of distributions*. Gain from the disposition of an asset is not considered reflected in the basis of target stock merely by reason of the receipt of a distribution from a target affiliate that is not a member of the same consolidated group as the distributee. See paragraph (g) of this section for the treatment of dividends eligible for a 100 percent dividends received deduction.

(4) *Controlled foreign corporations*. For a limitation applicable to gain of a target affiliate that is a controlled foreign corporation, *see* § 1.338–4T(h)(2).

(5) *Gain recognized outside the consolidated group*. Gain from the disposition of an asset by a person other than target or a target affiliate is not reflected in the basis of a corporation's stock unless the person is a conduit, as defined in paragraph (j)(4) of this section.

(d) *Basis of acquired assets*—(1) *Carryover basis rule*. If this paragraph (d) applies to an asset, the asset's basis immediately after its acquisition is, for all purposes of the Internal Revenue Code, its adjusted basis immediately before its disposition.

(2) *Exceptions to carryover basis rule for certain assets*. The carryover basis rule of paragraph (d)(1) of this section does not apply to the following assets—

(i) Any asset disposed of in the ordinary course of a trade or business (see section 338(e)(2)(A));

(ii) Any asset the basis of which is determined wholly by reference to the adjusted basis of the asset in the hands of the person that disposed of the asset (see section 338(e)(2)(B));

(iii) Any debt or equity instrument issued by target or a target affiliate (*see* § 1.338–4T(h)(3) for an exception relating to the stock of a target affiliate that is a controlled foreign corporation);

(iv) Any asset the basis of which immediately after its acquisition would otherwise be less than its adjusted basis immediately before its disposition; and

(v) Any asset identified by the Internal Revenue Service in a revenue ruling or revenue procedure.

(3) *Exception to carryover basis rule for de minimis assets.* The carryover basis rules of this section do not apply to an asset if the asset is not disposed of as part of the same arrangement as the acquisition of target and the aggregate amount realized for all assets otherwise subject to the carryover basis rules of this section does not exceed $250,000.

(4) *Mitigation rule*—(i) *General rule.* If the carryover basis rules of this section apply to an asset and the asset is transferred to a domestic corporation in a transaction to which section 351 applies or as a contribution to capital and no gain is recognized, the transferor's basis in the stock of the transferee (but not the transferee's basis in the asset) is determined without taking into account the carryover basis rules of this section.

(ii) *Time for transfer.* This paragraph (d)(4) applies only if the asset is transferred before the due date (including extensions) for the transferor's income tax return for the year that includes the last date for which a section 338 election may be made for target.

(e) *Examples*—(1) *In general.* For purposes of the examples in this section, unless otherwise stated, the basis of each asset is the same for determining earnings and profits and taxable income, the exceptions to paragraph (d)(1) of this section do not apply, the taxable year of all persons is the calendar year, and the following facts apply: S is the common parent of a consolidated group that includes T, T1, T2, and T3; S owns all of the stock of T and T3; and T owns all of the stock of T1, which owns all of the stock of T2. B is unrelated to the S group and owns all of the stock of P, which owns all of the stock of P1. Y and Y1 are partnerships that are unrelated to the S group but may be related to the P group. Z is a corporation that is not related to any of the other parties.

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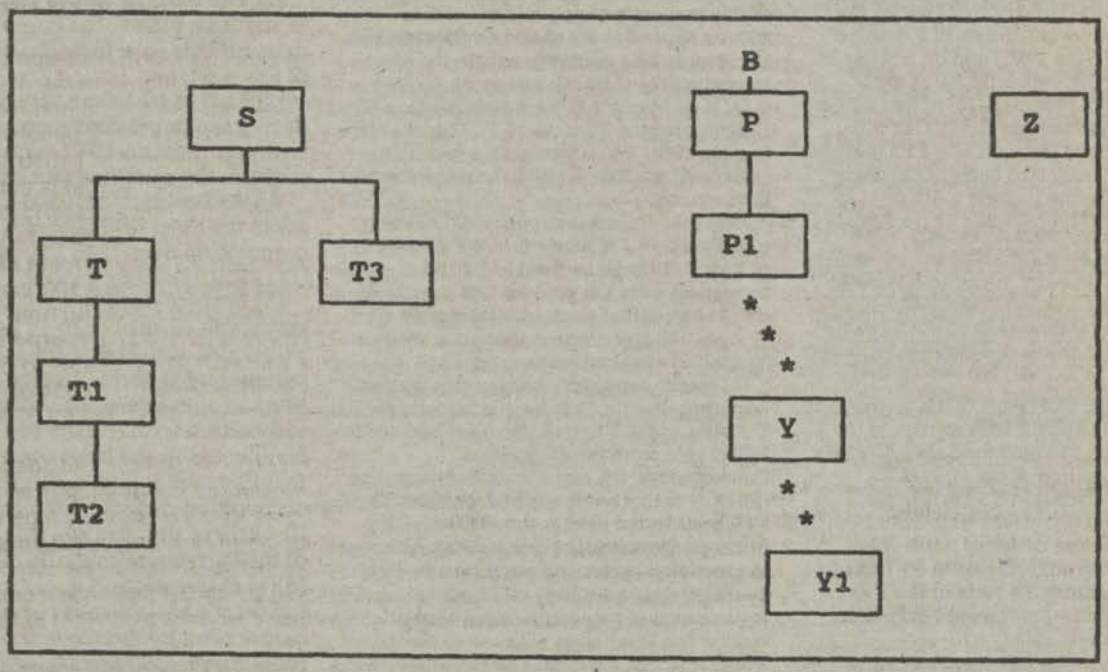

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(2) *Direct acquisitions.* Paragraphs (b), (c), and (d) of this section may be illustrated by the following examples:

Example 1. Asset acquired from target by purchasing corporation. (a) On February 1 of Year 1, T sells an asset to P1 and recognizes gain. T's gain from the disposition of the asset is taken into account under § 1.1502–32 in determining S's basis in the T stock. On January 1 of Year 2, P1 makes a qualified stock purchase of T from S. No section 338 election is made for T.

(b) T disposed of the asset during its consistency period, gain from the asset disposition is reflected in the basis of the T stock as of T's acquisition date (January 1 of Year 2), and the asset is owned both immediately after the asset disposition (February 1 of Year 1) and on T's acquisition date by P1, the corporation that acquired T stock in the qualified stock purchase. Consequently, under paragraph (b) of this section, paragraph (d)(1) of this section applies to the asset and P1's basis in the asset is T's adjusted basis in the asset immediately before the sale to P1.

Example 2. Gain from section 338(h)(10) election reflected in stock basis. (a) On February 1 of Year 1, P1 makes a qualified stock purchase of T2 from T1. A section 338(h)(10) election is made for T2 and T2 recognizes gain on each of its assets. T2's gain is taken into account under § 1.1502–32 in determining S's basis in the T stock. On January 1 of Year 2, P1 makes a qualified stock purchase of T from S. No section 338 election is made for T.

(b) Under paragraph (b)(2) of this section, the acquisition of the T2 stock is treated as an acquisition of T2's assets on February 1 of Year 1, because a section 338(h)(10) election is made for T2. The gain recognized by T2 under section 338(h)(10) is reflected in S's basis in the T stock as of T's acquisition date. Because the other requirements of paragraph (b) of this section are satisfied, paragraph (d)(1) of this section applies to the assets and new T2's basis in its assets is old

T2's adjusted basis in the assets immediately before the disposition.

Example 3. Corporation owning asset ceases affiliation with corporation purchasing target before target acquisition date. (a) On February 1 of Year 1, T sells an asset to P1 and recognizes gain. On December 1 of Year 1, P disposes of all of the P1 stock while P1 still owns the asset. On January 1 of Year 2, P makes a qualified stock purchase of T from S. No section 338 election is made for T.

(b) Immediately after T's disposition of the asset, the asset is owned by P1 which is affiliated on that date with P, the corporation that acquired T stock in the qualified stock purchase. However, the asset is owned by a corporation (P1) that is no longer affiliated with P on T's acquisition date. Although the other requirements of paragraph (b) of this section are satisfied, the requirements of paragraph (b)(1)(iii) of this section are not satisfied. Consequently, the basis rules of paragraph (d) of this section do not apply to the asset by reason of P1's acquisition.

(c) If P acquires all of the Z stock and P1 transfers the asset to Z on or before T's acquisition date (January 1 of Year 2), the asset is owned by an affiliate of P both on February 1 of Year 1 (P1) and on January 1 of Year 2 (Z). Consequently, all of the requirements of paragraph (b) of this section are satisfied and paragraph (d)(1) of this section applies to the asset and P1's basis in the asset is T's adjusted basis in the asset immediately before the sale to P1.

Example 4. Gain reflected in stock basis notwithstanding offsetting loss or distribution. (a) On April 1 of Year 1, T sells an asset to P1 and recognizes gain. In Year 1, T distributes an amount equal to the gain. On March 1 of Year 2, P makes a qualified stock purchase of T from S. No section 338 election is made for T.

(b) Although, as a result of the distribution, there is no adjustment with respect to the T stock under § 1.1502–32 for Year 1, T's gain from the disposition of the asset is considered reflected in S's basis in the T stock. The gain is considered to have been taken into account under § 1.1502–32 in determining the adjustments to S's basis in the T stock because S's basis in the T stock is different from what it would have been had there been no gain.

(c) If T distributes an amount equal to the gain on February 1 of Year 2, rather than in Year 1, the results would be the same because S's basis in the T stock is different from what it would have been had there been no gain. If the distribution in Year 2 is by reason of an election under § 1.1502–32(f)(2), the results would be the same.

(d) If, in Year 1, T does not make a distribution and the S group does not file a consolidated return, but, in Year 2, the S group does file a consolidated return and makes an election under § 1.1502–32(f)(2) for T, the results would be the same. S's basis in the T stock is different from what it would have been had there been no gain. Paragraph (c)(3) of this section (gain not considered reflected by reason of distributions) does not apply to the deemed distribution under the election because S and T are members of the same consolidated group. If T distributes an amount equal to the gain in Year 2 and no election is made under § 1.1502–32(f)(2), the results would be the same.

(e) If, in Year 1, T incurs an unrelated loss in an amount equal to the gain, rather than distributing an amount equal to the gain, the results would be the same because the gain is taken into account under § 1.1502–32 in determining S's basis in the T stock.

Example 5. Gain of a target affiliate reflected in stock basis after corporate reorganization. (a) On February 1 of Year 1, T3 sells an asset to P1 and recognizes gain. On March 1 of Year 1, S contributes the T3 stock to T in a transaction qualifying under section 351. On January 15 of Year 2, P1 makes a qualified stock purchase of T from S. No section 338 election is made for T.

(b) T3's gain from the asset sale is taken into account under § 1.1502–32 in determining S's basis in the T3 stock. Under section 358, the gain that is taken into account under § 1.1502–32 in determining S's basis in the T3 stock is also taken into account in determining S's basis in the T stock following S's contribution of the T3 stock to T. Consequently, under paragraph (b) of this section, paragraph (d)(1) of this section applies to the asset and P1's basis in the asset is T3's adjusted basis in the asset immediately before the sale to P1.

(c) If on March 1 of Year 1, rather than S contributing the T3 stock to T, S causes T3 to merge into T in a transaction qualifying under section 368(a)(1)(D), the results would be the same.

Example 6. Gain not reflected if election under section 338 made. (a) On February 1 of Year 1, T1 sells an asset to P1 and recognizes gain. On January 1 of Year 2, P1 makes a qualified stock purchase of T1 from T. A section 338 election (but not a section 338(h)(10) election) is made for T1.

(b) Under paragraph (c)(2) of this section, because a section 338 election is made for T1, T's basis in the T1 stock is considered not to reflect gain from the disposition. Consequently, the requirement of paragraph (b)(1)(ii) of this section is not satisfied. Thus, P1's basis in the asset is not determined under paragraph (d) of this section. Although the section 338 election for T1 results in a qualified stock purchase of T2, the requirement of paragraph (b)(1)(ii) of this section is not satisfied with respect to T2, whether or not a section 338 election is made for T2.

(c) If, on January 1 of Year 2, P1 makes a qualified stock purchase of T from S and a section 338 election for T, rather than T1, S's basis in the T stock is considered not to reflect gain from T1's disposition of the asset. However, the section 338 election for T results in a qualified stock purchase of T1. Because the gain is reflected in T's basis in the T1 stock, the requirements of paragraph (b) of this section are satisfied. Consequently, P1's basis in the asset is determined under paragraph (d)(1) of this section unless a section 338 election is also made for T1.

(f) *Extension of consistency to indirect acquisitions*—(1) *Introduction.* If an arrangement exists (see paragraph (j)(5) of this section), this paragraph (f) generally extends the consistency rules to indirect acquisitions that have the same effect as direct acquisitions. For example, this paragraph (f) applies if, pursuant to an arrangement, target sells an asset to an unrelated person who then sells the asset to the purchasing corporation.

(2) *General rule.* This paragraph (f) applies to an asset if, pursuant to an arrangement—

(i) The asset is disposed of during the target consistency period;

(ii) The basis of target stock as of, or at any time before, the target acquisition date reflects gain from the disposition of the asset; and

(iii) The asset ownership requirements of paragraph (b)(1)(iii) of this section are not satisfied, but the asset is owned, at any time during the portion of the target consistency period following the target acquisition date, by—

(A) A corporation—

(*1*) The basis of whose stock, as of, or at any time before, the target acquisition date, reflects gain from the disposition of the asset; and

(*2*) That is affiliated, at any time during the target consistency period, with a corporation that acquires stock of target in the qualified stock purchase; or

(B) A corporation that at the time it owns the asset is affiliated with a corporation described in paragraph (f)(2)(iii)(A) of this section.

(3) *Basis of acquired assets.* If this paragraph (f) applies to an asset, the principles of the basis rules of paragraph (d) of this section apply to the asset as of the date, following the disposition with respect to which gain is reflected in the basis of target's stock, that the asset is first owned by a corporation described in paragraph (f)(2)(iii) of this section. If the principles of the carryover basis rule of paragraph (d)(1) of this section apply to an asset, the asset's basis also is reduced (but not below zero) by the amount of any reduction in its basis occurring after the disposition with respect to which gain is reflected in the basis of target's stock.

(4) *Examples.* This paragraph (f) may be illustrated by the following examples:

Example 1. Acquisition of asset from unrelated party by purchasing corporation. (a) On February 1 of Year 1, T sells an asset to Z and recognizes gain. On February 15 of Year 1, P1 makes a qualified stock purchase of T from S. No section 338 election is made for T. P1 buys the asset from Z on March 1 of Year 1, before Z has reduced the basis of the asset through depreciation or otherwise.

(b) Paragraph (b) of this section does not apply to the asset because the asset ownership requirements of paragraph (b)(1)(iii) of this section are not satisfied. However, the asset ownership requirements

of paragraph (f)(2)(iii) of this section are satisfied because, during the portion of T's consistency period following T's acquisition date, the asset is owned by P1 while it is affiliated with T. Consequently, paragraph (f) of this section applies to the asset if there is an arrangement for T to dispose of the asset during T's consistency period, for the gain to be reflected in S's basis in the T stock as of T's acquisition date, and for P1 to own the asset during the portion of T's consistency period following T's acquisition date. If the arrangement exists, under paragraph (f)(3) of this section, P1's basis in the asset is determined as of March 1 of Year 1, under the principles of paragraph (d) of this section. Consequently, P1's basis in the asset is T's adjusted basis in the asset immediately before the sale to Z.

(c) If P1 acquires the asset from Z on January 15 of Year 2 (rather than on March 1 of Year 1), and Z's basis in the asset has been reduced through depreciation at the time of the acquisition, P1's basis in the asset as of January 15 of Year 2 would be T's adjusted basis in the asset immediately before the sale to Z, reduced (but not below zero) by the amount of the depreciation. Z's basis and depreciation are determined without taking into account the basis rules of paragraph (d) of this section.

(d) If P, rather than P1, acquires the asset from Z, the results would be the same.

(e) If, on March 1 of Year 1, P1 acquires the Z stock, rather than acquiring the asset from Z, paragraph (f) of this section would apply to the asset if an arrangement exists. However, under paragraph (f)(3) of this section, Z's basis in the asset would be determined as of February 1 of Year 1, the date the asset is first owned by a corporation (Z) described in paragraph (f)(2)(iii) of this section. Consequently, Z's basis in the asset as of February 1 of Year 1, determined under the principles of paragraph (d) of this section, would be T's adjusted basis in the asset immediately before the sale to Z.

Example 2. Acquisition of asset from target by target affiliate. (a) On February 1 of Year 1, T contributes an asset to T1 in a transaction qualifying under section 351 and in which T recognizes gain under section 351(b) that is deferred under § 1.1502–13. On March 1 of Year 1, P1 makes a qualified stock purchase of T from S and, pursuant to § 1.1502–13(f), the deferred gain is taken into account by T immediately before T ceases to be a member of the S group. No section 338 election is made for T.

(b) Paragraph (b) of this section does not apply to the asset because the asset ownership requirements of paragraph (b)(1)(iii) of this section are not satisfied.

(c) T1 is not described in paragraph (f)(2)(iii)(A) of this section because the basis of the T1 stock does not reflect gain from the disposition of the asset. Although, under section 358(a)(1)(B)(ii), T's basis in the T1 stock is increased by the amount of the gain, the gain is not taken into account directly or indirectly under § 1.1502–32 in determining T's basis in the T1 stock.

(d) T1 is described in paragraph (f)(2)(iii)(B) of this section because, during the portion of T's consistency period following T's acquisition date, T1 owns the asset while it is affiliated with T, a corporation described in paragraph (f)(2)(iii)(A) of this section. Consequently, paragraph (f) of this section applies to the asset if there is an arrangement. Under paragraph (j)(5) of this section, the fact that, at the time T1 acquires the asset from T, T1 is related (within the meaning of section 267(b)) to T indicates that an arrangement exists.

Example 3. Acquisition of asset from target and indirect acquisition of target stock. (a) On February 1 of Year 1, T sells an asset to P1 and recognizes gain. On March 1 of Year 1, Z makes a qualified stock purchase of T from S. No section 338 election is made for T. On January 1 of Year 2, P1 acquires the T stock from Z other than in a qualified stock purchase.

(b) The asset ownership requirements of paragraph (b)(1)(iii) of this section are not satisfied because the asset was never owned by Z, the corporation that acquired T stock in the qualified stock purchase (or by a corporation that was affiliated with Z at the time it owned the asset). However, because the asset is owned by P1 while it is affiliated with T during the portion of T's consistency period following T's acquisition date, paragraph (f) of this section applies to the asset if there is an arrangement. If there is an arrangement, the principles of the carryover basis rule of paragraph (d)(1) of this section apply to determine P1's basis in the asset unless Z makes a section 338 election for T. See paragraph (c)(2) of this section.

(c) If P1 also makes a qualified stock purchase of T from Z, the results would be the same. If there is an arrangement, the principles of the carryover basis rule of paragraph (d)(1) of this section apply to determine P1's basis in the asset unless Z makes a section 338 election for T. However, these principles apply to determine P1's basis in the asset if P1, but not Z, makes a section 338 election for T. The basis of the T stock no longer reflects, as of T's acquisition date by P1, the gain from the disposition of the asset.

(d) Assume Z purchases the T stock other than in a qualified stock purchase and P1 makes a qualified stock purchase of T from Z. Paragraph (b) of this section does not apply to the asset because gain from the disposition of the asset is not reflected in the basis of T's stock as of T's acquisition date (January 1 of Year 2). However, because the gain is reflected in S's basis in the T stock before T's acquisition date and the asset is owned by P1 while it is affiliated with T during the portion of T's consistency period following T's acquisition date, paragraph (f) of this section applies to the asset if there is an arrangement. If there is an arrangement, the principles of the carryover basis rule of paragraph (d)(1) of this section apply to determine P1's basis in the asset even if P1 makes a section 338 election for T. The basis of the T stock no longer reflects, as of T's acquisition date, the gain from the disposition of the asset.

Example 4. Asset acquired from target affiliate by corporation that becomes its affiliate. (a) On February 1 of Year 1, T1 sells an asset to P1 and recognizes gain. On February 15 of Year 1, Z makes a qualified stock purchase of T from S. No section 338 election is made for T. On June 1 of Year 1, P1 acquires the T1 stock from T, other than in a qualified stock purchase.

(b) The asset ownership requirements of paragraph (b)(1)(iii) of this section are not satisfied because the asset was never owned by Z, the corporation that acquired T stock in the qualified stock purchase (or by a corporation that was affiliated with Z at the time it owned the asset).

(c) P1 is not described in paragraph (f)(2)(iii)(A) of this section because gain from the disposition of the asset is not reflected in the basis of the P1 stock.

(d) P1 is described in paragraph (f)(2)(iii)(B) of this section because the asset is owned by P1 while P1 is affiliated with T1 during the portion of T's consistency period following T's acquisition date. T1 becomes affiliated with Z, the corporation that acquired T stock in the qualified stock purchase, during T's consistency period, and, as of T's acquisition date, the basis of T1's stock reflects gain from the disposition of the asset. Consequently, paragraph (f) of this section applies to the asset if there is an arrangement.

Example 5. De minimis rules. (a) On February 1 of Year 1, T sells an asset to P and recognizes gain. On February 15 of Year 1, T1 sells an asset to Z and recognizes gain. The aggregate amount realized by T and T1 on their respective sales of assets is not more than $250,000. On March 1 of Year 1, T3 sells an asset to P and recognizes gain. On April 1 of Year 1, P makes a qualified stock purchase of T from S. No section 338 election is made for T. On June 1 of Year 1, P1 buys from Z the asset sold by T1.

(b) Under paragraph (b) of this section, the basis rules of paragraph (d) of this section apply to the asset sold by T. Under paragraph (f) of this section, the principles of the basis rules of paragraph (d) of this section apply to the asset sold by T1 if there is an arrangement. Because T3's gain is not reflected in the basis of the T stock, the basis rules of this section do not apply to the asset sold by T3.

(c) The de minimis rule of paragraph (d)(3) of this section applies to an asset if the asset is not disposed of as part of the same arrangement as the acquisition of T and the aggregate amount realized for all assets otherwise subject to the carryover basis rules does not exceed $250,000. The aggregate amount realized by T and T1 does not exceed $250,000. (The asset sold by T3 is not taken into account for purposes of the de minimis rule.) Thus, the de minimis rule applies to the asset sold by T if the asset is not disposed of as part of the same arrangement as the acquisition of T.

(d) If, under paragraph (f) of this section, the principles of the carryover basis rules of paragraph (d)(1) of this section otherwise apply to the asset sold by T1 because of an arrangement, the de minimis rules of this section do not apply to the asset because of the arrangement.

(e) Assume on June 1 of Year 1, Z acquires the T1 stock from T, other than in a qualified stock purchase, rather than P1 buying the T1 asset, and paragraph (f) of this section applies because there is an arrangement. Because the

asset was disposed of and the T1 stock was acquired as part of the arrangement, the de minimis rules of this section do not apply to the asset.

(g) *Extension of consistency if dividends qualifying for 100 percent dividends received deduction are paid*—(1) *General rule for direct acquisitions from target.* Unless a section 338 election is made for target, the basis rules of paragraph (d) of this section apply to an asset if—

(i) Target recognizes gain (whether or not deferred) on disposition of the asset during the portion of the target consistency period that ends on the target acquisition date;

(ii) The asset is owned, immediately after the asset disposition and on the target acquisition date, by a corporation that acquires stock of target in the qualified stock purchase (or by an affiliate of an acquiring corporation); and

(iii) During the portion of the target consistency period that ends on the target acquisition date, the aggregate amount of dividends paid by target, to which section 243(a)(3) applies, exceeds the greater of—

(A) $250,000; or

(B) 125 percent of the yearly average amount of dividends paid by target, to which section 243(a)(3) applies, during the three calendar years immediately preceding the year in which the target consistency period begins (or, if shorter, the period target was in existence).

(2) *Other direct acquisitions having same effect.* The basis rules of paragraph (d) of this section also apply to an asset if the effect of a transaction described in paragraph (g)(1) of this section is achieved through any combination of disposition of assets and payment of dividends to which section 243(a)(3) applies (or any other dividends eligible for a 100 percent dividends received deduction). See § 1.338–4T(h)(4) for additional rules relating to target affiliates that are controlled foreign corporations.

(3) *Indirect acquisitions.* The principles of paragraph (f) of this section also apply for purposes of this paragraph (g).

(4) *Examples.* This paragraph (g) may be illustrated by the following examples:

Example 1. Asset acquired from target paying dividends to which section 243(a)(3) applies. (a) The S group does not file a consolidated return. In Year 1, Year 2, and Year 3, T pays dividends to S to which section 243(a)(3) applies of $200,000, $250,000, and $300,000, respectively. On February 1 of Year 4, T sells an asset to P and recognizes gain. On January 1 of Year 5, P makes a qualified stock purchase of T from S. No section 338 election is made for T. During the portion of T's consistency period that ends on T's acquisition date, T pays S dividends to which section 243(a)(3) applies of $1,000,000.

(b) Under paragraph (g)(1) of this section, paragraph (d) of this section applies to the asset. T recognizes gain on disposition of the asset during the portion of T's consistency period that ends on T's acquisition date, the asset is owned by P immediately after the disposition and on T's acquisition date, and T pays dividends described in paragraph (g)(1)(iii) of this section. Consequently, under paragraph (d)(1) of this section, P's basis in the asset is T's adjusted basis in the asset immediately before the sale to P.

(c) If T is a controlled foreign corporation, the results would be the same if T pays dividends in the amount described in paragraph (g)(1)(iii) of this section that qualify for a 100 percent dividends received deduction. See sections 243(e) and 245.

(d) If S and T3 file a consolidated return in which T, T1, and T2 do not join, the results would be the same because the dividends paid by T are still described in paragraph (g)(1)(iii) of this section.

(e) If T, T1, and T2 file a consolidated return in which S and T3 do not join, the results would be the same because the dividends paid by T are still described in paragraph (g)(1)(iii) of this section.

Example 2. Asset disposition by target affiliate achieving same effect. (a) The S group does not file a consolidated return. On February 1 of Year 1, T2 sells an asset to P and recognizes gain. T pays dividends to S described in paragraph (g)(1)(iii) of this section. On January 1 of Year 2, P makes a qualified stock purchase of T from S. No section 338 election is made for T.

(b) Paragraph (g)(1) of this section does not apply to the asset because T did not recognize gain on the disposition of the asset. However, under paragraph (g)(2) of this section, because the asset disposition by T2 and the dividends paid by T achieve the effect of a transaction described in paragraph (g)(1) of this section, the carryover basis rule of paragraph (d)(1) of this section applies to the asset. The effect was achieved because T2 is a lower-tier affiliate of T and the dividends paid by T to S reduce the value to S of T and its lower-tier affiliates.

(c) If T2 is a controlled foreign corporation, the results would be the same because T2 is a lower-tier affiliate of T and the dividends paid by T to S reduce the value to S of T and its lower-tier affiliates.

(d) If P buys an asset from T3, rather than T2, the asset disposition and the dividends do not achieve the effect of a transaction described in paragraph (g)(1) of this section because T3 is not a lower-tier affiliate of T. Thus, the basis rules of paragraph (d) of this section do not apply to the asset. The results would be the same whether or not P also acquires the T3 stock (whether or not in a qualified stock purchase).

Example 3. Dividends by target affiliate achieving same effect. (a) The S group does not file a consolidated return. On February 1 of Year 1, T1 sells an asset to P and recognizes gain. On January 1 of Year 2, P makes a qualified stock purchase of T from S. No section 338 election is made for T. T does not pay dividends to S described in paragraph (g)(1)(iii) of this section. However, T1 pays dividends to T that would be described in paragraph (g)(1)(iii) of this section if T1 were a target.

(b) Paragraph (g)(1) of this section does not apply to the asset because T did not recognize gain on the disposition of the asset and did not pay dividends described in paragraph (g)(1)(iii) of this section. Further, paragraph (g)(2) of this section does not apply because the dividends paid by T1 to T do not reduce the value to S of T and its lower-tier affiliates.

(c) If both S and T own T1 stock and T1 pays dividends to S that would be described in paragraph (g)(1)(iii) of this section if T1 were a target, paragraph (g)(2) of this section would apply because the dividends paid by T1 to S reduce the value to S of T and its lower-tier affiliates. If T, rather than T1, sold the asset to P, the results would be the same. Further, if T and T1 pay dividends to S that, only when aggregated, would be described in paragraph (g)(1)(iii) of this section (if they were all paid by T), the results would be the same.

Example 4. Gain reflected by reason of dividends. (a) S and T file a consolidated return in which T1 and T2 do not join. On February 1 of Year 1, T1 sells an asset to P and recognizes gain. On January 1 of Year 2, P makes a qualified stock purchase of T from S. No section 338 election is made for T. T1 pays dividends to T that would be described in paragraph (g)(1)(iii) of this section if T1 were a target.

(b) The requirements of paragraph (b) of this section are not satisfied because, under paragraph (c)(3) of this section, gain from T1's sale is not reflected in S's basis in the T stock by reason of the dividends paid by T1 to T.

(c) Although the dividends paid by T1 to T do not reduce the value to S of T and its lower-tier affiliates, paragraph (g)(2) of this section applies because the dividends paid by T1 to T are taken into account under § 1.1502–32 in determining S's basis in the T stock. Consequently, the carryover basis rule of paragraph (d)(1) of this section applies to the asset.

(h) *Special rules for controlled foreign corporations.* [Reserved]

(i) [Reserved]

(j) *Anti-avoidance rules.* For purposes of this section—

(1) *Extension of consistency period.* The target consistency period is extended to include any continuous period that ends on, or begins on, any day of the consistency period during which a purchasing corporation, or any person related, within the meaning of section 267(b) or 707(b)(1), to a purchasing corporation, has an arrangement—

(i) To purchase stock of target; or

(ii) To own an asset to which the carryover basis rules of this section apply, taking into account the extension.

(2) *Qualified stock purchase and 12-month acquisition period.* The 12-month acquisition period is extended if, pursuant to an arrangement, a corporation acquires by purchase stock of another corporation satisfying the requirements of section 1504(a)(2) over a period of more than 12 months.

(3) *Acquisitions by conduits*—(i) *Asset ownership*—(A) *General rule.* A corporation is treated as owning any portion of an asset attributed to the corporation from a conduit under section 318(a) (treating any asset as stock for this purpose), for purposes of—

(*1*) The asset ownership requirements of this section; and

(*2*) Determining whether a controlled foreign corporation is a target affiliate for purposes of § 1.338–4T(h).

(B) *Application of carryover basis rule.* If the basis rules of this section apply to the asset, the basis rules of this section apply to the entire asset (not just the portion for which ownership is attributed).

(ii) *Stock acquisitions*—(A) *Purchase by conduit.* A corporation is treated as purchasing stock of another corporation attributed to the corporation from a conduit under section 318(a) on the day the stock is purchased by the conduit. The corporation is not treated as purchasing the stock, however, if the conduit purchased the stock more than two years before the date the stock is first attributed to the corporation.

(B) *Purchase of conduit by corporation.* If a corporation purchases an interest in a conduit (treating the interest as stock for this purpose), the corporation is treated as purchasing on that date any stock owned by a conduit on that date and attributed to the corporation under section 318(a) with respect to the interest in the conduit that was purchased.

(C) *Purchase of conduit by conduit.* If a conduit (the *first* conduit) purchases an interest in a second conduit (treating the interest as stock for this purpose), the first conduit is treated as purchasing on that date any stock owned by a conduit on that date and attributed to the first conduit under section 318(a) with respect to the interest in the second conduit that was purchased.

(4) *Conduit.* A person (other than a corporation) is a conduit as to a corporation if—

(i) The corporation would be treated under section 318(a)(2)(A) and (B) (attribution from partnerships, estates, and trusts) as owning any stock owned by the person; and

(ii) The corporation, together with its affiliates, would be treated as owning an aggregate of at least 50 percent of the stock owned by the person.

(5) *Existence of arrangement.* The existence of an arrangement is determined under all the facts and circumstances. For an arrangement to exist, there need not be an enforceable, written, or unconditional agreement, and all the parties to the transaction need not have participated in each step of the transaction. One factor indicating the existence of an arrangement is the participation of a related party. For this purpose, persons are related if they are related within the meaning of section 267(b) or 707(b)(1).

(6) *Predecessor and successor*—(i) *Persons.* A reference to a person (including target, target affiliate, and purchasing corporation) includes, as the context may require, a reference to a predecessor or successor. For this purpose, a predecessor is a transferor or distributor of assets to a person (the successor) in a transaction—

(A) To which section 381(a) applies; or

(B) In which the successor's basis for the assets is determined, directly or indirectly, in whole or in part, by reference to the basis of the transferor or distributor.

(ii) *Assets.* A reference to an asset (the first asset) includes, as the context may require, a reference to any asset the basis of which is determined, directly or indirectly, in whole or in part, by reference to the first asset.

(7) *Examples.* This paragraph (j) may be illustrated by the following examples:

Example 1. Asset owned by conduit treated as owned by purchaser of target stock. (a) P owns a 60-percent interest in Y. On March 1 of Year 1, T sells an asset to Y and recognizes gain. On January 1 of Year 2, P makes a qualified stock purchase of T from S. No section 338 election is made for T.

(b) Under paragraph (j)(4) of this section, Y is a conduit with respect to P. Consequently, under paragraph (j)(3)(i)(A) of this section, P is treated as owning 60% of the asset on March 1 of Year 1 and January 1 of Year 2. Because P is treated as owning part or all of the asset both immediately after the asset disposition and on T's acquisition date, paragraph (b) of this section applies to the asset. Consequently, paragraph (d)(1) of this section applies to the asset and Y's basis in the asset is T's adjusted basis in the asset immediately before the sale to Y.

Example 2. Corporation whose stock is owned by conduit treated as affiliate. (a) P owns an 80-percent interest in Y. Y owns all of the stock of Z. On March 1 of Year 1, T sells an asset to Z and recognizes gain. On January 1 of Year 2, P makes a qualified stock purchase of T from S. No section 338 election is made for T.

(b) Under paragraph (j)(4) of this section, Y is a conduit with respect to P. Consequently, under paragraph (j)(3)(i)(A) of this section, P is treated as owning 80% of the Z stock and Z is therefore treated as an affiliate of P for purposes of applying the asset ownership requirements of paragraph (b)(1)(iii) of this section. Because Z, an affiliate of P, owns the asset both immediately after the asset disposition and on T's acquisition date, paragraph (b) of this section applies to the asset, and the asset's basis is determined under paragraph (d) of this section.

(c) If, instead of owning an 80-percent interest in Y, P owned a 79-percent interest in Y, Z would not be treated as an affiliate of P and paragraph (b) of this section would not apply to the asset.

Example 3. Qualified stock purchase by reason of stock purchase by conduit. (a) P owns a 90-percent interest in Y. Y owns a 60-percent interest in Y1. On February 1 of Year 2, T sells an asset to P and recognizes gain. On January 1 of Year 3, P purchases 70% of the T stock from S and Y1 purchases the remaining 30% of the T stock from S.

(b) Under paragraph (j)(3)(ii)(A) of this section, P is treated as purchasing on January 1 of Year 3, the 16.2% of the T stock that is attributed to P from Y and Y1 under section 318(a). Thus, for purposes of this section, P is treated as making a qualified stock purchase of T on January 1 of Year 3, paragraph (b) of this section applies to the asset, and the asset's basis is determined under paragraph (d) of this section. However, because P is not treated as having made a qualified stock purchase of T for purposes of making an election under section 338, no election can be made for T.

(c) If Y1 purchases 20% of the T stock from S on December 1 of Year 1, rather than 30% on January 1 of Year 3, P would be treated as purchasing 10.8% of the T stock on December 1 of Year 1. Thus, if paragraph (j)(2) of this section (relating to extension of the 12-month acquisition period) does not apply, P would not be treated as making a qualified stock purchase of T, because P is not treated as purchasing T stock satisfying the requirements of section 1504(a)(2) within a 12-month period.

Example 4. Successor asset. (a) On February 1 of Year 1, T sells stock of X to P1 and recognizes gain. On December 1 of Year 1, P1 exchanges its X stock for stock in new X in a reorganization qualifying under section 368(a)(1)(F). On January 1 of Year 2, P1 makes a qualified stock purchase of T from S. No section 338 election is made for T.

(b) The asset ownership requirements of paragraph (b)(1)(iii) of this section are satisfied because, under paragraph (j)(6)(ii) of this section, P1 is treated as owning the X stock on T's acquisition date. P1 is treated as owning the X stock on that date because P1 owns the new X stock and P1's basis in the new X stock is determined by reference to P1's basis in the X stock. Consequently, under paragraph (d)(1) of this section, P1's basis in the X stock on February 1 of Year 1 is T's adjusted basis in the X stock immediately before the sale to P1.

§ 1.338–5 International aspects of section 338.

(a) *Scope.* This section provides guidance regarding international aspects of section 338. As provided in § 1.338–1(c)(14), a foreign corporation, a DISC, or a corporation for which a section 936 election has been made is considered a target affiliate for all purposes of section 338. In addition, stock described in section 338(h)(6)(B)(ii) held by a target affiliate is not excluded from the operation of section 338.

(b) *Application of section 338 to foreign targets*—(1) *In general.* For purposes of subtitle A, the deemed sale gain, as defined in § 1.338–3(b)(4), of a foreign target for which a section 338 election is made (FT), and the corresponding earnings and profits, are taken into account in determining the taxation of FT and FT's direct and indirect shareholders. See, however, section 338(h)(16). For example, the income and earnings and profits of FT are determined, for purposes of sections 551, 951, 1248, and 1293, by taking into account the deemed sale gain.

(2) *Ownership of FT stock on the acquisition date.* A person who transfers FT stock to the purchasing corporation on FT's acquisition date is considered to own the transferred stock at the close of FT's acquisition date. See, e.g., § 1.951–1(f) (relating to determination of holding period for purposes of sections 951 through 964). If on the acquisition date the purchasing corporation owns a block of FT stock that was acquired before FT's acquisition date, the purchasing corporation is considered to own such block of stock at the close of the acquisition date.

(3) *Carryover FT stock*—(i) *Definition.* FT stock is carryover FT stock if—

(A) FT was a controlled foreign corporation within the meaning of section 957 (taking into account section 953(c)) at any time during the portion of the 12-month acquisition period that ends on the acquisition date; and

(B) Such stock is owned as of the beginning of the day after FT's acquisition date by a person other than a purchasing corporation, or by a purchasing corporation if the stock is nonrecently purchased and is not subject to a gain recognition election under § 1.338(b)–1(e)(2).

(ii) *Carryover of earnings and profits.* The earnings and profits of old FT (and associated foreign taxes) attributable to the carryover FT stock (adjusted to reflect deemed sale gain) carry over to new FT solely for purposes of—

(A) Characterizing an actual distribution with respect to a share of carryover FT stock as a dividend;

(B) Characterizing gain on a post-acquisition date transfer of a share of carryover FT stock as a dividend under section 1248 (if such section is otherwise applicable);

(C) Characterizing an investment of earnings in United States property as income under sections 951(a)(1)(B) and 956 (if such sections are otherwise applicable); and

(D) Determining foreign taxes deemed paid under sections 902 and 960 with respect to the amount treated as a dividend or income by virtue of this paragraph (b)(3)(ii) (subject to the operation of section 338(h)(16)).

(iii) *Cap on carryover of earnings and profits.* The amount of earnings and profits of old FT taken into account with respect to a share of carryover FT stock is limited to the amount that would have been included in gross income of the owner of such stock as a dividend under section 1248 if—

(A) The shareholder transferred that share to the purchasing corporation on FT's acquisition date for a consideration equal to the fair market value of that share on that date; or

(B) In the case of nonrecently purchased FT stock treated as carryover FT stock, a gain recognition election under section 338(b)(3)(A) applied to that share. For purposes of the preceding sentence, a shareholder that is a controlled foreign corporation is considered to be a United States person, and the principle of section 1248(c)(2)(D)(ii) (concerning a United States person's indirect ownership of stock in a foreign corporation) applies in determining the correct holding period.

(iv) *Post-acquisition date distribution of old FT earnings and profits.* A post-acquisition date distribution with respect to a share of carryover FT stock is considered to be derived first from earnings and profits derived after FT's acquisition date and then from earnings and profits derived on or before FT's acquisition date.

(v) *Old FT earnings and profits unaffected by post-acquisition date deficits.* The carryover amount for a share of carryover FT stock is not reduced by deficits in earnings and profits incurred by new FT. This rule applies for purposes of determining the amount of foreign taxes deemed paid regardless of the fact that there are no accumulated earnings and profits. For example, a distribution by new FT with respect to a share of carryover FT stock is treated as a dividend by the distributee to the extent of the carryover amount for that share notwithstanding that new FT has no earnings and profits.

(vi) *Character of FT stock as carryover FT stock eliminated upon disposition.* A share of FT stock is not considered carryover FT stock after it is disposed of provided that all gain realized on the transfer is recognized at the time of the transfer, or that, if less than all of the realized gain is recognized, the recognized amount equals or exceeds the remaining carryover amount for that share.

(4) *Passive foreign investment company stock.* Stock that is owned as of the beginning of the day after FT's acquisition date by a person other than a purchasing corporation, or by a purchasing corporation if the FT stock is nonrecently purchased stock not subject to a gain recognition election under § 1.338(b)–1(e)(2), is treated as passive foreign investment company stock to the extent provided in section 1297(b)(1).

(c) *Dividend treatment under section 1248(e).* The principles of this paragraph (b) apply to shareholders of a domestic corporation subject to section 1248(e).

(d) *Allocation of foreign taxes.* If a section 338 election is made for target (whether foreign or domestic), and target's taxable year under foreign law (if any) does not close at the end of the acquisition date, foreign income taxes attributable to the foreign taxable income earned by target during such foreign taxable year are allocated to old target and new target. Such allocation is made under the principles of § 1.1502–76(b).

(e) *Operation of section 338(h)(16).* [Reserved]

(f) *Examples.* (1) Except as otherwise provided, all corporations use the calendar year as the taxable year, have no earnings and profits (or deficit) accumulated for any taxable year, and have only one class of outstanding stock.

(2) This section may be illustrated by the following examples:

Example 1. Gain recognition election for carryover FT stock. (a) A has owned 90 of the 100 shares of CFCT stock since CFCT was organized on March 13, 1989. P has owned the remaining 10 shares of CFCT stock since CFCT was organized. Those 10 shares constitute nonrecently purchased stock in P's hands within the meaning of section 338(b)(6)(B). On November 1, 1994, P purchases A's 90 shares of CFCT stock for $90,000 and makes a section 338 election for CFCT. P also makes a gain recognition election under section 338(b)(3)(A) and § 1.338(b)–1(e)(2).

(b) CFCT's earnings and profits for its short taxable year ending on November 1, 1994, are $50,000, determined without taking into account the deemed asset sale. Assume A recognizes gain of $81,000 on the sale of the CFCT stock. Further, assume that CFCT recognizes gain of $40,000 by reason of its deemed sale of assets under section 338(a)(1).

(c) A's sale of CFCT stock to P is a transfer to which section 1248 and paragraphs (b) (1) and (2) of this section apply. For purposes of applying section 1248(a) to A, the earnings and profits of CFCT for its short taxable year ending on November 1, 1994, are $90,000 (the earnings and profits for that taxable year as determined under § 1.1248–2(e) ($50,000) plus earnings from the deemed sale ($40,000)). Thus, A's entire gain is characterized as a dividend under section 1248 (but see section 338(h)(16)).

(d) Assume that P recognizes a gain of $9,000 with respect to the 10 shares of nonrecently purchased CFCT stock by reason of the gain recognition election. Because P is treated as selling the nonrecently purchased stock for all purposes of the Internal Revenue Code, section 1248 applies. Thus, under § 1.1248–2(e), $9,000 of the $90,000 of earnings and profits for 1994 are attributable to the block of 10 shares of CFCT stock deemed sold by P at the close of November 1, 1994 ($90,000 × 10/100). Accordingly, P's entire gain on the deemed sale of 10 shares of CFCT stock is included under section 1248(a) in P's gross income as a dividend (but see section 338(h)(16)).

Example 2. No gain recognition election for carryover FT stock. (a) Assume the same facts as in *Example 1*, except that P does not make a gain recognition election.

(b) The 10 shares of nonrecently purchased CFCT stock held by P is carryover FT stock under paragraph (b)(3) of this section. Accordingly, the earnings and profits (and attributable foreign taxes) of old CFCT carry over to new CFCT solely for purposes of that block of 10 shares. The amount of old CFCT's earnings and profits taken into account with respect to that block in the event, for example, of a distribution by new CFCT with respect to that block is the amount of the section 1248 dividend that P would have recognized with respect to that block had it made a gain recognition election under section 338(b)(3)(A). Under the facts of *Example 1*, P would have recognized a gain of $9,000 with respect to that block, all of which would have been a section 1248 dividend ($90,000 × 10/100). Accordingly, the carryover amount for the block of 10 shares of nonrecently purchased CFCT stock is $9,000.

Example 3. Sale of controlled foreign corporation stock prior to and on the acquisition date. (a) X and Y, both U.S. corporations, have each owned 50% of the CFCT stock since 1986. Among CFCT's assets are assets the sale of which would generate subpart F income. On December 31, 1994, X sells its CFCT stock to P. On June 30, 1995, Y sells its CFCT stock to P. P makes a section 338 election for CFCT. In both 1994 and 1995, CFCT has subpart F income resulting from operations.

(b) For taxable year 1994, X and Y are United States shareholders on the last day of CFCT's taxable year, so pursuant to section 951(a)(1)(A) each must include in income its pro rata share of CFCT's subpart F income for 1994. Because P's holding period in the CFCT stock acquired from X does not begin until January 1, 1995, P is not a United States shareholder on the last day of 1994 for purposes of section 951(a)(1)(A) (see § 1.951–1(f)). X must then determine the extent to which section 1248 recharacterizes its gain on the sale of CFCT stock as a dividend.

(c) For the short taxable year ending June 30, 1995, Y is considered to own the CFCT stock sold to P at the close of CFCT's acquisition date. Because the acquisition date is the last day of CFCT's taxable year, Y and P are United States shareholders on the last day of CFCT's taxable year. Pursuant to section 951(a)(1)(A), each must include its pro rata share of CFCT's subpart F income for the short taxable year ending June 30, 1995. This includes any income generated on the deemed sale of CFCT's assets. Y must then determine the extent to which section 1248 recharacterizes its gain on the sale of the CFCT stock as a dividend, taking into account any increase in CFCT's earnings and profits due to the deemed sale of assets.

Example 4. Acquisition of control for purposes of section 951 prior to the acquisition date. FS owns 100% of the FT stock. On July 1, 1994, P buys 60% of the FT stock. On December 31, 1994, P buys the remaining 40% of the FT stock and makes a section 338 election for FT. For tax year 1994, FT has earnings and profits of $1,000 (including earnings resulting from the deemed sale). The section 338 election results in $500 of subpart F income. As a result of the section 338 election, P must include in gross income the following amount under section 951(a)(1)(A) (see § 1.951–(b)(2)):

FT's subpart F income for 1994 ...	$500.00
Less: reduction under section 951(a)(2)(A) for period (1–1–94 through 7–1–94) during which FT is not a controlled foreign corporation ($500×182/365)	249.32
Subpart F income as limited by section 951 (a)(2)(A)	250.68
P's pro rata share of subpart F income as determined under section 951(a)(2)(A) (60%×250.68)	150.41

Example 5. Coordination with section 936. (a) T is a corporation for which a section 936 election has been made. P makes a qualified stock purchase of T and makes a section 338 election for T.

(b) T's deemed sale of assets under section 338 constitutes a sale for purposes of subtitle A of the Internal Revenue Code, including section 936(a)(1)(A)(ii). To the extent that the assets deemed sold are used in the conduct of an active trade or business in a possession for purposes of section 936(a)(1)(A)(i), and assuming all the other conditions of section 936 are satisfied, the income from the deemed sale qualifies for the credit granted by section 936(a). The source of income from the deemed sale is determined as if the assets had actually been sold and is not affected for purposes of section 936 by section 338(h)(16).

(c) Because new T is treated a new corporation for purposes of subtitle A of the Internal Revenue Code, the three year testing period in section 936(a)(2)(A) begins again for new T on the day following T's acquisition date. Thus, if the character or source of old T's gross income disqualified it for the credit under section 936, a fresh start is allowed by a section 338 election.

§ 1.338(b)–1 Adjusted grossed-up basis.

(a) *Scope.* This section provides rules under section 338(b) to determine the adjusted grossed-up basis (AGUB) for target. The AGUB is the amount for which new target is deemed to have purchased all of its assets in the deemed purchase under section 338(a)(2). The AGUB is allocated among target's assets in accordance with § 1.338(b)–2T to determine the price at which the assets are deemed to have been purchased. Subsequent adjustments to AGUB and the allocation of such adjustments to target's assets may be made under § 1.338(b)–3T.

(b) *Adjustment events.* Adjustment events are increases (or decreases) in the consideration paid for recently or nonrecently purchased stock, reductions in target's liabilities included in AGUB as of the beginning of the day after the acquisition date, and old target liabilities that become fixed and determinable.

(c) *AGUB*—(1) *In general.* AGUB is the sum of—

(i) The grossed-up basis in the purchasing corporation's recently purchased target stock;

(ii) The purchasing corporation's basis in nonrecently purchased target stock;

(iii) The liabilities of new target; and

(iv) Other relevant items.

(2) *Time when AGUB determined.* AGUB is initially determined at the beginning of the day after the acquisition date of target. However, adjustment events that occur during new target's first taxable year are taken into account for purposes of determining AGUB and the basis of target's assets as if they had occurred at the beginning of the day after the acquisition date.

(d) *Grossed-up basis of recently purchased stock*—(1) *General rule.* The purchasing corporation's grossed-up basis of recently purchased target stock is the product of—

(i) The purchasing corporation's basis in recently purchased target stock (as defined in section 338(b)(6)(A)) at the beginning of the day after the acquisition date; multiplied by

(ii) A fraction the numerator of which is 100 percent minus the percentage of target stock (by value) attributable to the purchasing corporation's nonrecently purchased target stock and the denominator of which is the percentage of target stock (by value) attributable to the purchasing corporation's recently purchased target stock. See section 338(b)(4).

(2) *Application.* If target has a single class of outstanding stock, the grossed-up basis in the purchasing corporation's recently purchased target stock reflects

the total price the purchasing corporation would have paid for all outstanding target stock (other than the purchasing corporation's nonrecently purchased target stock, as defined in section 338(b)(6)(B)) had the purchasing corporation purchased all such stock (other than the nonrecently purchased target stock) for a price per share equal to the average price per share that the purchasing corporation paid for the recently purchased target stock.

(e) *Basis of nonrecently purchased stock*—(1) *In general.* In the absence of an election under section 338(b)(3) (gain recognition election), the purchasing corporation retains its basis in the nonrecently purchased stock. A gain recognition election applies to nonrecently purchased stock of target (or a target affiliate) only if a section 338 election is made for target (or the target affiliate).

(2) *Effect of gain recognition election*—(i) *In general.* If the purchasing corporation makes a gain recognition election, for all purposes of the Internal Revenue Code—

(A) The purchasing corporation is treated as if it sold on the acquisition date the nonrecently purchased target stock for the basis amount determined under paragraph (e)(2)(ii) of this section; and

(B) The purchasing corporation's basis on the acquisition date in nonrecently purchased target stock is the basis amount.

(ii) *Basis amount.* The basis amount is equal to the purchasing corporation's grossed-up basis in recently purchased target stock multiplied by a fraction the numerator of which is the percentage of target stock (by value) attributable to the purchasing corporation's nonrecently purchased target stock and the denominator of which is 100 percent minus the numerator amount. Thus, if target has a single class of outstanding stock, the purchasing corporation's basis in each share of nonrecently purchased target stock after the gain recognition election is equal to the average price per share of the purchasing corporation's recently purchased target stock.

(iii) *Losses not recognized.* Only gains (unreduced by losses) on the nonrecently purchased target stock are recognized.

(iv) *Stock subject to election.* The gain recognition election applies to—

(A) All nonrecently purchased target stock; and

(B) Any nonrecently purchased stock in a target affiliate having the same acquisition date as target if such target affiliate stock is held by the purchasing corporation on such date.

(3) *Procedure for making gain recognition election*—(i) *In general.* The gain recognition election is made by attaching a gain recognition statement to a timely filed Form 8023 for target. The gain recognition statement must contain the information specified in the form and its instructions. The gain recognition election is irrevocable.

(ii) *Section 338(h)(10) election.* If a section 338(h)(10) election is made for target, the purchasing corporation is deemed to have made a gain recognition election.

(4) *Comparison with ADSP formula.* Whenever the purchasing corporation holds nonrecently purchased target stock at a basis that differs from the purchasing corporation's basis in recently purchased target stock, the grossed-up basis in the purchasing corporation's recently purchased target stock as calculated for purposes of the AGUB differs from the grossed-up basis of the purchasing corporation's recently purchased target stock as calculated in the ADSP formula. The ADSP formula treats the purchasing corporation's nonrecently purchased target stock in the same manner as target stock not held by the purchasing corporation. If a gain recognition election is made, the sum of the grossed-up basis in the purchasing corporation's recently purchased target stock and the purchasing corporation's basis in nonrecently purchased target stock equals the grossed-up basis of the purchasing corporation's recently purchased target stock as calculated in the ADSP formula.

(f) *Liabilities of new target*—(1) *In general.* The liabilities of new target are its liabilities (and the liabilities to which target's assets are subject) as of the beginning of the day after the acquisition date (other than liabilities that were neither liabilities of old target nor liabilities to which old target's assets were subject). The amount of the liabilities of new target taken into account to determine AGUB is determined as if new target had acquired old target's assets from an unrelated person and, as part of the transaction, had assumed or taken property subject to the liabilities.

(2) *Excluded obligations*—(i) *In general.* In order to be included in AGUB at the beginning of the day after the acquisition date, an obligation must be a bona fide liability of target as of that date which is properly includible in basis under principles of tax law that would apply if new target had acquired old target's assets from an unrelated person and, as part of the transaction, had assumed or taken property subject to the obligation. For example, if, as of the beginning of the day after the acquisition date, the amount of a contingent or speculative obligation of target is not properly includible in basis under the preceding sentence, the obligation is not initially included in AGUB.

(ii) *Time when excluded obligations taken into account.* Obligations that, under this paragraph (f)(2), are initially excluded from AGUB are taken into account in redetermining AGUB and the basis of target's assets under principles of tax law that would apply if new target had acquired old target's assets directly from an unrelated person and, as part of the transaction, had assumed or taken property subject to those obligations. For the application of these principles of tax law to certain contingent liabilities that are initially excluded from AGUB under this paragraph (f)(2), see § 1.338(b)–3T.

(3) *Liabilities taken into account in determining amount realized on subsequent disposition.* In determining the amount realized on a subsequent sale or other disposition of property deemed purchased by new target, the entire amount of any liability included in AGUB is considered to be an amount taken into account in determining new target's basis in property which secures the liability for purposes of applying § 1.1001–2(a). Thus, if a liability is included in AGUB, § 1.1001–2(a)(3) does not prevent the amount of such liability from being treated as discharged within the meaning of § 1.1001–2(a)(4) as a result of new target's sale or disposition of the property which secures such liability.

(g) *Other relevant items*—(1) *In general.* AGUB may be increased (or decreased) for *other relevant items.* For this purpose, other relevant items may only arise from adjustment events that occur after the close of new target's first taxable year and adjustments under paragraph (g)(3) of this section. See § 1.338(b)–3T (relating to the treatment of certain subsequent adjustments to AGUB). Unlike in the determination of ADSP or MADSP, other relevant items do not include reductions for acquisition costs incurred by the purchasing corporation in connection with the qualified stock purchase that are capitalized in the basis of recently purchased target stock.

(2) *Flow-through of relevant item adjustment to target subsidiary.* If the amount of AGUB of target (T) allocated to the stock of a target affiliate (T1) is subsequently increased (or decreased) by reason of an other relevant item under this paragraph (g), the grossed-up basis of the T1 stock (and, if a section 338 election is made for T1, T1's AGUB) is also increased (or decreased) as if the

increase (or decrease) in the basis of the stock was an adjustment to the purchase price deemed paid by T for such stock. The resulting increase (or decrease) in AGUB of T1 is allocated among T1's assets in accordance with §§ 1.338(b)–2T and 1.338(b)–3T.

(3) *Adjustments by the Internal Revenue Service.* In connection with the examination of a return, the District Director may increase (or decrease) AGUB for items other than those described in paragraphs (g)(1) and (2) of this section under the authority of section 338(b)(2) and allocate such amounts to target's assets under the authority of section 338(b)(5) so that AGUB and the basis of target's assets properly reflect the cost to the purchasing corporation of its interest in target's assets. Such items may include distributions from target to the purchasing corporation, capital contributions from the purchasing corporation to target during the 12-month acquisition period, or acquisitions of target stock by purchasing corporation after the acquisition date from minority shareholders.

(h) *Examples.* (1) For purposes of the examples in this paragraph (h), T has no liabilities other than a tax liability resulting from the deemed sale of assets.

(2) This section may be illustrated by the following examples:

Example 1. (a) Before July 1 of Year 1, P purchases 10 of the 100 shares of T stock for $5,000. On July 1 of Year 2, P purchases 80 shares of T stock for $60,000 and makes a section 338 election for T. As of July 1 of Year 2, T's only asset is raw land with an adjusted basis to T of $50,400 and a fair market value of $100,000. T has no loss or tax credit carryovers to Year 2. T's marginal tax rate for any ordinary income or net capital gain resulting from the deemed sale of assets is 34%. The 10 shares purchased before July 1 of Year 1 constitute nonrecently purchased T stock with respect to P's qualified stock purchase of T stock on July 1 of Year 2.

(b) The ADSP formula as applied to these facts is the same as in *Example 2* of § 1.338–3(d)(9). Accordingly, the ADSP of T is $87,672.72. The existence of nonrecently purchased T stock is irrelevant for purposes of the ADSP formula, because that formula treats P's nonrecently purchased T stock in the same manner as T stock not held by P.

(c) The total tax liability resulting from T's deemed sale of assets, as calculated under the ADSP formula, is $12,672.72.

(d) If P does not make a gain recognition election, the AGUB of new T's assets is $85,172.72, determined as follows. (In the formula below, GRP is the grossed-up basis in P's recently purchased T stock, BNP is P's basis in nonrecently purchased T stock, L is T's liabilities, and X is other relevant items.)

AGUB=GRP+BNP+L+X
AGUB=$60,000×[(1−.1)/.8]+$5,000+$12,672.72+0
AGUB=$85,172.72

(e) If P makes a gain recognition election, the AGUB of new T's assets is $87,672.72, determined as follows:

AGUB=$60,000×[(1−.1)/.8]+$60,000×[(1−.1)/.8]×[.1/(1−.1)]+$12,672.72
AGUB=$87,672.72

(f) The calculation of AGUB if P makes a gain recognition election may be simplified as follows:

AGUB=$60,000/.8+$12,672.72
AGUB=$87,672.72

(g) As a result of the gain recognition election, P's basis in its nonrecently purchased T stock is increased from $5,000 to $7,500 (i.e., $60,000×[(1−.1)/.8]×[.1/(1−.1)]). Thus, P recognizes a gain in Year 2 with respect to its nonrecently purchased T stock of $2,500 (*i.e.*, $7,500−$5,000).

Example 2. On January 1 of Year 1, P purchases one-third of the T stock. On March 1 of Year 1, T distributes a dividend to all of its shareholders. On April 15 of Year 1, P purchases the remaining T stock and makes a section 338 election for T. In appropriate circumstances, the District Director may decrease the AGUB of T to take into account the payment of the dividend and properly reflect the fair market value of T's assets deemed purchased.

Example 3. (a) T's sole asset is a building worth $100,000. On August 1 of Year 1, P purchases 10 of the 100 shares of T stock for $8,000. On June 1 of Year 2, P purchases 50 shares of T stock for $50,000. On June 15 of Year 2, P contributes a tract of land to the capital of T and receives 10 additional shares of T stock as a result of the contribution. Both the basis and fair market value of the land at that time are $10,800. On June 30 of Year 2, P purchases the remaining 40 shares of T stock for $40,000 and makes a section 338 election for T. The AGUB of T is $108,800.

(b) To prevent the shifting of basis from the contributed property to other assets of T, the District Director may allocate $10,800 of the AGUB to the land, leaving $98,000 to be allocated to the building.

Par. 5. Section 1.338(b)–2T(a)(2) and (d) *Example (1)* (i) are revised to read as follows:

§ 1.338(b)–2T Allocation of adjusted grossed-up basis among target assets (temporary).

(a) * * *

(2) *Fair market value.* The "fair market value" of an asset is the gross fair market value of that asset (*i.e.*, fair market value determined without regard to mortgages, liens, pledges, or other liabilities).

* * * * *

(d) * * *

Example (1). (i) T owns 90% of the outstanding T1 stock. P purchases 100% of the outstanding T stock for $2,000. A section 338 election is made for T and, as a result, T1 is considered acquired in a qualified stock purchase. A section 338 election is made for T1. The grossed-up basis of the T stock is $2,000 (i.e., $2,000 × 1/1).

* * * * *

Par. 5a. Section 1.338(b)–3T(b) is revised to read as follows:

§ 1.338(b)–3T Subsequent adjustments to adjusted grossed-up basis (temporary).

* * * * *

(b) *Definitions*—(1) *Contingent liability.* A contingent liability is a liability of target at the beginning of the day after the acquisition date that is not fixed and determinable by the close of new target's first taxable year.

(2) *Contingent amount.* The term *contingent amount* means the amount of the consideration to be paid for recently or nonrecently purchased stock that is not fixed or determinable by the close of new target's first taxable year, plus contingent liabilities of target.

(3) *Reduction amount.* The term *reduction amount* means a reduction after the close of new target's first taxable year in either—

(i) The consideration paid for recently or nonrecently purchased stock; or

(ii) A liability of target (or a liability to which one or more of its assets are subject) that has been taken into account in determining AGUB.

(4) *Acquisition date asset.* The term *acquisition date asset* means any asset held by new target at the beginning of the day after the acquisition date (other than Class I assets).

* * * * *

Par. 6. Sections 1.338(h)(10)–1 and 1.338(i)–1 are added to read as follows:

§ 1.338(h)(10)–1 Deemed asset sale and liquidation.

(a) *Scope.* This section prescribes rules relating to section 338(h)(10) elections. If an election is made, target generally is deemed to sell all of its assets and distribute the proceeds in complete liquidation. Thus, the sale of target stock included in the qualified stock purchase generally is ignored. A section 338(h)(10) election may be made for target only if it is a member of a selling consolidated group, a member of a selling affiliated group filing separate returns, or an S corporation.

(b) *Nomenclature.* For purposes of this section, the nomenclature in § 1.338–1(b) does not apply; instead:

(1) T is a section 338(h)(10) target. Old T refers to T for periods ending on or before the close of T's acquisition date; new T refers to T for subsequent periods.

(2) P is the purchasing corporation. Unless the context otherwise requires,

any reference to P is a reference to all purchasing corporations. See sections 338(h) (5) and (8).

(c) *Definitions*—(1) *Section 338(h)(10) target.* A *section 338(h)(10) target* is a domestic corporation that is a target for which a section 338(h)(10) election is made.

(2) *S corporation shareholders. S corporation shareholders* are the T shareholders if T is an S corporation immediately before T's acquisition date. Thus, if T is an S corporation, for T to be a section 338(h)(10) target, P can purchase no T stock before the acquisition date.

(3) *Selling consolidated group.* A *selling consolidated group* is a selling group that files a consolidated return for the period that includes T's acquisition date. Thus, T is a member of the selling consolidated group on the acquisition date.

(4) *Selling affiliate.* A *selling affiliate* is a domestic corporation that is not a member of the selling consolidated group and from which, on the acquisition date, P purchases an amount of T stock that satisfies the requirements of section 1504(a)(2). Thus, on the acquisition date, the selling affiliate and T are affiliated (within the meaning of section 1504) but are not includible members of the same consolidated group.

(d) *Section 338(h)(10) election*—(1) *In general.* A section 338(h)(10) election may be made for T if P acquires T in a qualified stock purchase from—

(i) A selling consolidated group;

(ii) A selling affiliate; or

(iii) S corporation shareholders.

(2) *Simultaneous joint election requirement.* A section 338(h)(10) election is made jointly by P and the selling consolidated group (or the selling affiliate or the S corporation shareholders) on Form 8023 in accordance with the instructions to the form. The section 338(h)(10) election must be made not later than the 15th day of the 9th month beginning after the month in which the acquisition date occurs.

(3) *Irrevocability.* A section 338(h)(10) election is irrevocable. If a section 338(h)(10) election is made for T, a section 338 election is deemed made for T.

(4) *Effect of invalid election.* If a section 338(h)(10) election for T is not valid, the section 338 election for T is also not valid.

(e) *Certain consequences of section 338(h)(10) election.* This paragraph (e) applies if an election under section 338(h)(10) is made.

(1) *Old T.* Old T recognizes gain or loss as if, while old T was a member of the selling consolidated group (or owned by the selling affiliate or S corporation shareholders), it sold all of its assets in a single transaction at the close of the acquisition date (but before the deemed liquidation). Old T's gain or loss on each asset is determined under paragraph (f) of this section. If P makes a qualified stock purchase from a selling affiliate or S corporation shareholders, the principles of §§ 1.338–1(c)(6) and (e)(1), (5), and (6)(i) apply to the return filed by old T that includes the gain or loss and tax liability from the deemed sale.

(2) *Selling consolidated group, selling affiliate, or S corporation shareholders*—(i) *In general.* This paragraph (e)(2) describes the treatment of members of the selling consolidated group, the selling affiliate, and S corporation shareholders.

(ii) *Deemed liquidation for old T.* For purposes of subtitle A of the Internal Revenue Code, old T is treated as if, while T is a member of the selling consolidated group (or owned by the selling affiliate or S corporation shareholders), it distributed all of its assets in complete liquidation. If T is an S corporation immediately before the acquisition date, nothing in this section prevents a holder of T stock from taking deemed sale gain into account under section 1366 and 1367. See section 331 or 332 for gain or loss recognized by the old T shareholders as a result of the deemed liquidation.

(iii) *Basis of T stock not acquired.* The basis of T stock retained by the selling consolidated group (or the selling affiliate or an S corporation shareholder) is its fair market value. For purposes of this paragraph, the fair market value of all of the T stock equals G less any reductions in determining MADSP for acquisition costs of P incurred in connection with the qualified stock purchase that are capitalized in the basis of recently purchased T stock. See paragraph (f) of this section for the definition of G and a description of MADSP.

(iv) *T stock sale.* No gain or loss is recognized on the sale or exchange by the selling consolidated group (or the selling affiliate or an S corporation shareholder) of T stock included in the qualified stock purchase. If T is an S corporation immediately before T's acquisition date, the sale or exchange of old T stock to P on the acquisition date does not result in a termination of the section 1362(a) election for the S corporation.

(v) *Example.* This paragraph (e)(2) may be illustrated by the following example.

Example. (a) S1 owns all of the T stock and T owns all of the stock of T1 and T2. S1 is the common parent of a consolidated group that includes T, T1, and T2. P makes a qualified stock purchase of all of the T stock from S1. A section 338(h)(10) election is made for T. A section 338(h)(10) election also is made for the deemed purchase of T1. A section 338 election is not made for T2.

(b) S1 does not recognize gain or loss on the sale of the T stock and T does not recognize gain or loss on the sale of the T1 stock because T and T1 are section 338(h)(10) targets. Thus, for example, gain or loss realized on the sale of the T or T1 stock is not taken into account in earnings and profits. However, because a section 338 election is not made for T2, T must recognize any gain or loss realized on the deemed sale of the T2 stock. See § 1.338–3(c).

(c) The results would be the same if S1, T, T1, and T2 are not members of any consolidated group, because S1 and T are selling affiliates.

(3) *Certain minority shareholders*—(i) *In general.* This paragraph (e)(3) describes the treatment of shareholders of old T other than members of the selling consolidated group, the selling affiliate, S corporation shareholders, and P. A shareholder to which this paragraph (e)(3) applies is called a *minority shareholder.*

(ii) *T stock sale.* Notwithstanding paragraph (e)(2)(iv) of this section, a minority shareholder recognizes gain or loss on the shareholder's sale or exchange of T stock included in the qualified stock purchase.

(iii) *T stock not acquired.* A minority shareholder does not recognize gain or loss under this section with respect to shares of T stock retained by the shareholder. The shareholder's basis and holding period for that T stock is not affected by the section 338(h)(10) election.

(4) *P.* P is treated as making a gain recognition election for its nonrecently purchased T stock. See § 1.338(b)–1(e)(2) (effect of a gain recognition election) and § 1.338(b)–1(e)(3)(ii) (gain recognition election deemed made).

(5) *New T.* The adjusted grossed-up basis for new T's assets is determined in accordance with § 1.338(b)–1(c) and is allocated among the assets in accordance with §§ 1.338(b)–2T and 1.338(b)–3T. Notwithstanding paragraph (e)(2)(ii) of this section, new T remains liable for the tax liabilities of old T (including tax liabilities resulting from the deemed sale of assets). For example, new T remains liable for the tax liabilities of the members of any consolidated group that are attributable to taxable years in which those corporations and old T joined in the same consolidated return. See § 1.1502–6(a).

(6) *Consolidated return of selling consolidated group.* If P acquires T in a qualified stock purchase from a selling consolidated group—

(i) The selling consolidated group must file a consolidated return for the taxable period that includes the acquisition date;

(ii) A consolidated return for the selling consolidated group for that period may not be withdrawn on or after the day that a section 338(h)(10) election is made for T; and

(iii) Permission to discontinue filing consolidated returns cannot be granted for, and shall not apply to, that period or any of the immediately preceding taxable periods during which consolidated returns continuously have been filed.

(f) *Deemed sale price*—(1) *General rule.* The price at which each asset of old T is deemed to have been sold is calculated by—

(i) Determining the modified ADSP (MADSP); and

(ii) Then allocating MADSP among the assets of old T in accordance with § 1.338(b)–2T (without taking into account § 1.338(b)–2T(c)(2)).

(2) *Formula.* (i) The MADSP formula is as follows:

MADSP=G+L+X

(ii) For purposes of this formula—

(A) *G* is the grossed-up basis of P's recently purchased T stock determined under § 1.338–3(d)(2).

(B) *L* is new T's liabilities.

(C) *X* is other relevant items.

(3) *Liabilities.* Liabilities taken into account are the liabilities of new target described in § 1.338(b)–1(f). The amount of the liabilities of new T taken into account to determine MADSP is determined as if old T had sold its assets to an unrelated person for consideration that included the liabilities.

(4) *Other relevant items.* Other relevant items include reductions for—

(i) Acquisition costs of P incurred in connection with the qualified stock purchase that are capitalized in the basis of recently purchased T stock (e.g., brokerage commissions and any similar costs incurred by P to acquire T stock); and

(ii) Selling costs of the selling consolidated group (or selling affiliate or S corporation shareholders) incurred in connection with the qualified stock purchase that reduce the amount realized on the sale of recently purchased T stock (e.g., brokerage commissions and any similar costs incurred by the selling group to sell T stock).

(5) *Cross-reference.* For adjustments to MADSP because of events occurring after the acquisition date, see § 1.338(b)–3T(h).

(g) *Examples.* (1) For purposes of the examples in this paragraph (g), unless otherwise provided, T, a member of a selling consolidated group, has only one class of stock, all of which is owned by S1. As of the close of Year 1, old T had no items described in section 381(c) (including no accumulated earnings and profits nor deficit in earnings and profits). On March 1 of Year 2, S1 sells its T stock to P for $80,000, and a section 338(h)(10) election is made for T. As of the close of March 1 of Year 2, old T's current earnings and profits, other than those generated from the deemed sale of its assets, are $21,950.

(2) Paragraphs (e) and (f) of this section may be illustrated by the following examples:

Example 1. (a) On March 1 of Year 2, T owns land with a $50,000 basis and $75,000 fair market value and equipment with a $30,000 adjusted basis, $70,000 recomputed basis, and $60,000 fair market value. T also has a $40,000 liability. S1 pays old T's allocable share of the selling group's consolidated tax liability for Year 2, which is $13,600 and attributable to the deemed sale of T's assets.

(b) The MADSP of $120,000 ($80,000+$40,000+0) is allocated to each asset as follows:

Assets	Basis	FMV	Fraction	Allocable MADSP
Land	$50,000	$75,000	5/9	$66,667
Equipment	30,000	60,000	4/9	53,333
Total	80,000	135,000	1	120,000

(c) Under paragraph (e)(1) of this section, old T has gain on the deemed sale of $40,000 (consisting of $16,667 of capital gain and $23,333 of ordinary income), which produces $40,000 of earnings and profits. As of the close of the acquisition date but after the deemed sale of its assets, old T's earnings and profits are $48,350 ($21,950 (its earnings and profits other than from the deemed sale) plus $40,000 (T's deemed sale gain) less $13,600 (T's allocable share of the consolidated tax liability)).

(d) Under paragraph (e)(2) of this section, S1 does not recognize gain or loss upon its sale of the old T stock to P. See section 332. S1 takes into account old T's earnings and profits of $48,350, determined as of the close of the acquisition date but after the deemed sale.

(e) P's basis in new T stock is P's cost for the stock, $80,000. See section 1012.

(f) Under § 1.338(b)–1, the adjusted grossed-up basis for new T is $120,000, i.e., P's cost for the old T stock ($80,000) plus T's liability ($40,000). (Assume there are no other relevant items.) This adjusted grossed-up basis is allocated as basis among the new T assets under §§ 1.338(b)–2T and 1.338(b)–3T.

Example 2. (a) The facts are the same as in *Example 1*, except that S1 sells 80% of the old T stock to P for $64,000, rather than 100% of the old T stock for $80,000.

(b) The consequences to P, T, and S1 are the same as in *Example 1*, except that:

(i) P's basis for its 80-percent interest in the new T stock is P's $64,000 cost for the stock. See section 1012.

(ii) Under § 1.338(b)–1, the adjusted grossed-up basis for new T is $120,000 (i.e., $64,000/.8+$40,000+$0).

(iii) Under paragraph (e)(2) of this section, S1 does not recognize gain or loss with respect to the retained stock in T. See section 332.

(iv) Under paragraph (e)(2)(iii) of this section, the basis of the T stock retained by S1 is $16,000 (i.e., $120,000 – $40,000 (the MADSP amount for the old T assets over the sum of new T's liabilities immediately after the acquisition date) × .20 (the proportion of T stock retained by S1)).

Example 3. (a) The facts are the same as in *Example 2*, except that K, a shareholder unrelated to T or P, owns the 20% of the T stock that is not acquired by P in the qualified stock purchase. K's basis in its T stock is $5,000.

(b) The consequences to P, T, and S1 are the same as in *Example 3*, except that S1 takes into account only $38,680 of T's earnings and profits (80% of $48,350).

(c) Under paragraph (e)(3) of this section, K recognizes no gain or loss, and K's basis in its T stock remains at $5,000.

Example 4. (a) The facts are the same as in *Example 1*, except that the equipment is held by T1, a wholly-owned subsidiary of T, and a section 338(h)(10) election is made for T1. The T1 stock has a fair market value of $60,000. T1 has no assets other than the equipment and no liabilities. S1 pays old T's and old T1's allocable shares of the selling group's consolidated tax liability for Year 2, which are $5,667 and $7,933, respectively, and attributable to the deemed asset sales by T and T1. As of the close of the acquisition date, but before the deemed sale of the equipment, old T1 has none of the attributes listed in section 381(c).

(b) The MADSP for T1 is $53,333 (i.e., $53,333+$0+$0). On the deemed sale, T1 recognizes ordinary income of $23,333. As of

the close of the acquisition date, but after the deemed sale of the equipment, T1's earnings and profits are $15,400 ($0 plus $23,333 (T1's deemed sale gain) less $7,933 (T1's allocable share of the consolidated tax liability)).

(c) The MADSP for T is $120,000, allocated $66,667 to the land and $53,333 to the stock. Old T's deemed sale gain is $16,667 (the capital gain on its deemed sale of the land). Under paragraph (e)(2) of this section, old T does not recognize gain or loss on its deemed sale of the T1 stock. See section 332.

(d) Old T takes into account old T1's earnings and profits of $15,400, determined as of the close of the acquisition date but after the deemed sale by T1 of its asset. Thus, as of the close of the acquisition date, but after the deemed sale of old T's assets, old T's earnings and profits are $48,350, ($21,950 (its earnings and profits other than from the deemed sale) plus $15,400 (from T1) plus $16,667 (T's deemed sale gain) less $5,667 (T's allocable share of the consolidated tax liability)).

(e) Under paragraph (e)(2) of this section, S1 does not recognize gain or loss upon its sale of the old T stock to P and takes into account old T's earnings and profits of $48,350, determined as of the close of the acquisition date but after the deemed sale of old T's assets.

Example 5. (a) The facts are the same as in *Example 4*, except that P already owns 20% of the T stock, which is nonrecently purchased stock with a basis of $6,000, and that P purchases the remaining 80% of the T stock from S1 for $64,000.

(b) The results are the same as in *Example 4*, except that:

(i) S1 takes into account only $38,680 of old T's earnings and profits.

(ii) Under paragraph (e)(4) of this section and § 1.338(b)–1(e)(2), P is deemed to have made a gain recognition election for its nonrecently purchased T stock. As a result, P recognizes gain of $10,000 and its basis in the nonrecently purchased T stock is increased from $6,000 to $16,000. P's basis in all the T stock is $80,000 (i.e., $64,000+$16,000). The computations are as follows:

(A) P's grossed-up basis for the recently purchased T stock is $64,000 (i.e., $64,000 (the basis of the recently purchased T stock)×(1 – .2)/(.8) (the fraction in section 338(b)(4)).

(B) P's basis amount for the nonrecently purchased T stock is $16,000 (i.e., $64,000 (the grossed-up basis in the recently purchased T stock)×(.2)/(1.0 – .2) (the fraction in section 338(b)(3)(B)).

(C) The gain recognized on the nonrecently purchased stock is $10,000 (i.e., $16,000 – $6,000).

(h) *Inapplicability of provisions.* The provisions of section 6043, § 1.331–1(d), and § 1.332–6 (relating to information returns and record keeping requirements for corporate liquidations) do not apply to the deemed liquidation of old T under paragraph (e)(2) of this section.

§ 1.338(i)–1 Effective dates.

(a) *In general.* Sections 1.338–1 through 1.338–5, 1.338(b)–1, and 1.338(h)(10)–1 generally are effective for targets with acquisition dates on or after January 20, 1994.

(b) *Elective retroactive application.* A target with an acquisition date on or after January 14, 1992 and before January 20, 1994 may apply §§ 1.338–1 through 1.338–5, 1.338–4T(h), 1.338(b)–1, and 1.338(h)(10)–1 by including a statement with its return (including an amended return) for the period that includes the acquisition date to the effect that it is applying all of these sections pursuant to § 1.338(i)–1(b).

(c) *MADSP.* Section 1.338(h)(10)–1(f), which requires use of the MADSP formula to determine deemed sale price, is effective for qualified stock purchases for which the acquisition date is on or after November 10, 1986, unless the acquisition occurs pursuant to a binding contract entered into before that date.

(d) *Deemed election.* The District Director's discretion to impose (without the taxpayer's consent) a deemed election under section 338(e)(1) and § 1.338–4T(f)(6)(i) (as contained in the CFR edition revised as of April 1, 1993) is revoked for all open tax years.

Par. 7. Section 1.1502–75(k) is added to read as follows:

§ 1.1502–75 Filing of consolidated returns.

* * * * *

(k) *Cross-reference.* See § 1.338(h)(10)–1(e)(6) for special rules regarding filing consolidated returns when a section 338(h)(10) election is made for a target acquired from a selling consolidated group.

§ 1.1502–75T [Removed]

Par. 8. Section 1.1502–75T is removed.

Par. 9. In the list below, for each section indicated in the left column, remove the wording indicated in the middle column from wherever it appears in that section, and add the wording indicated in the right column.

Affected section	Remove	Add
§ 1.338(b)–2T(c)(2)	§ 1.338(b)–1T(f)(2)	§ 1.338(b)–1(f)(2).
§ 1.338(b)–2T(c)(3)(i)	§ 1.338–4T(j)(2)	§ 1.338(b)–1(e)(2).
§ 1.338(b)–2T(c)(3)(i)	§ 1.338(b)–1T(c)(1)	§ 1.338(b)–1(c)(1).
§ 1.338(b)–2T(c)(3)(ii)	§ 1.338–4T(h)(3) *Answer 2*(ii)	§ 1.338–3(d)(2).
§ 1.338(b)–2T(d) introductory text	§ 1.338(b)–1T	§ 1.338(b)–1.
§ 1.338(b)–2T(d) *Example (2)*(ii)	paragraph (d) of § 1.338(b)–1T	§ 1.338(b)–1(d).
§ 1.338(b)–2T(d) *Example (2)*(iv)	§ 1.338–4T(h)	§ 1.338–3(d)(2).
§ 1.338(b)–3T(a)(1)	§ 1.338(b)–1T	§ 1.338(b)–1.
§ 1.338(b)–3T(g)(1)(i)	§ 1.338(b)–1T	§ 1.338(b)–1
§ 1.338(b)–3T(h)(1)(ii)	§ 1.338–4T(h) (or § 1.338(h)(10)–1T(f)(2).	§ 1.338–3(d) (or § 1.338(h)(10)–1(f).
§ 1.338(b)–3T(j) *Example (4)*(ii)	§ 1.338–4T(h)(3) *Answer 2*(ii)(B)	§ 1.338–4T(h)(3) *Answer 2*(ii)(B) (as contained in the CFR edition revised as of April 1, 1993).
§ 1.338(b)–3T(j) *Example (6)*(vii)	§ 1.338–4T(h)(3)	§ 1.338–4T(h)(3) (as contained in the CFR edition revised as of April 1, 1993).
§ 1.338(b)–3T(j) *Example (7)*(v)	§ 1.338–4T(h)(3)	§ 1.338–4T(h)(3) (as contained in the CFR edition revised as of April 1, 1993).
§ 1.921–1T(b)(1) A–1	§ 1.338–1T(c)	§ 1.338–1(d).

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 10. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 11. a. Section 602.101(c) is amended—

a. By removing the following entries from the table:

CFR part or section where identified and described	Current OMB control No.
[REMOVED]	
* * * * *	
1.338–1T	1545–0702

CFR part or section where identified and described	Current OMB control No.
	1545–1115
1.338–2T	1545–0702
	1545–1115
1.338–3T	1545–0702
1.338–4T	1545–0702
	1545–1115
1.338–5T	1545–0702
1.338–6T	1545–1115
1.338(b)–4T	1545–0702
1.338(h)(10)–1T	1545–0702
* * * * *	

b. By adding the following entries in numerical order to the table to read as follows:

CFR part or section where identified and described	Current OMB control No.
[ADDED]	
* * * * *	
1.338–1	1545–1295
1.338(b)–1	1545–1295
1.338(h)(10)–1	1545–1295
* * * * *	

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: December 22, 1993.

Leslie Samuels,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 94–665 Filed 1–12–94; 2:54 pm]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Part 402

Tariff of Tolls

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Final rule.

SUMMARY: The Saint Lawrence Seaway Development Corporation and the St. Lawrence Seaway Authority of Canada have jointly established and presently administer the St. Lawrence Seaway Tariff of Tolls. This Tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the Corporation and the Authority. The Authority proposed to the Corporation that the Tariff be amended to provide a separate commodity entry for coal for the 1993 season, which is now included under the bulk rate entry. The toll for coal will be lowered to 65 cents per metric ton for the Montreal to or from Lake Ontario section of the Seaway. The Corporation and the Authority are doing this as a first step in developing a market oriented toll structure to attract commodities with the greatest potential for growth. The Authority also proposed to the Corporation that the business incentive toll for passenger vessels be discontinued. Experience has shown that this incentive toll has caused an undesirable competitive imbalance among passenger vessel concerns using the Seaway.

EFFECTIVE DATE: January 20, 1994.

FOR FURTHER INFORMATION CONTACT: Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–0091.

SUPPLEMENTARY INFORMATION: Paragraph (b)(5) of § 402.3 is amended by deleting "coal" from the list of ores and minerals included within the definition of "bulk cargo" and adding the phrase, "but excluding coal" to that list. In addition, § 402.8(a)(2) is amended to add "coal" as a separate entry with a 1993 toll of 65 cents per metric ton for the Montreal to or from Lake Ontario section of the Seaway and a 1993 toll of 55 cents per metric ton for the Lake Ontario to or from Lake Erie (Welland Canal) section. The latter remains at the same rate as that for bulk cargo. The Corporation and the Authority are doing this as a first step in developing a market oriented toll structure to attract commodities with the greatest potential for growth. It is hoped that the toll reduction will encourage new trade, such as the movement of low-sulfur coal from the Powder River Basin of Montana

Section 402.9 also is amended to remove paragraphs (f) through (i), the business incentive toll for passenger vessels. The removed provisions provided a new business incentive toll for any passenger vessel that did not move through a Seaway lock during the 1988 and 1989 navigation seasons or the three navigation seasons immediately preceding the season in which a new business refund is submitted. Under this program, a qualifying passenger vessel received a 25% discount of the passenger per lock charge each transit it carried 20 passengers or more and a 50% discount for each transit it carried 20 or more passengers. Experience has shown that this incentive toll caused an undesirable competitive imbalance among passenger vessel concerns using the Seaway. One comment on this amendment was received in response to the Notice of Proposed Rulemaking. The commentor, a passenger vessel concern that had qualified for the incentive toll, objected to its removal. After considering the comment, the Authority and the Corporation still agree that the provision unfairly favored passenger vessel concerns that had not previously used the Seaway system over those that had. Notwithstanding, the Corporation has made it clear to the Authority that it intends to pursue agreement in negotiations between them for the 1994 Tariff on a new passenger vessel incentive toll that is fair to all concerns.

An exchange of diplomatic notes between Canada and the United States approving this amendment occurred on December 7, 1993.

Regulatory Evaluation

This final rule involves a foreign affairs function of the United States, and therefore, Executive Order 12866 does not apply. This final rule has also been evaluated under the Department of Transportation's Regulatory Policies and Procedures and is not considered significant under those procedures and its economic impact is expected to be so minimal that a full economic evaluation is not warranted.

Regulatory Flexibility Act Determination

The Saint Lawrence Seaway Development Corporation certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Tariff of Tolls relates to the activities of commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne mostly by foreign vessels.

Environmental Impact

This final rule does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, *et seq.*) because it is not a major federal action significantly affecting the quality of human environment.

Federalism

The Corporation has analyzed this final rule under the principles and criteria in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 402

Vessels, Waterways.

Accordingly, the Saint Lawrence Seaway Development Corporation amends part 402—Tariff of Tolls (33 CFR part 402) as follows:

PART 402—[AMENDED]

1. The authority citation for 33 CFR part 402 continues to read as follows:

Authority: 68 Stat. 93, 33 U.S.C. 981–990.

2. Section 402.3 is amended by revising paragraph (b)(5) to read as follows:

§ 402.3 Interpretation.

* * * * *

(b) * * *

(5) Ores and minerals (crude, screened, sized or concentrated, but not otherwise processed) loose or in sacks, including alumina, bauxite, gravel, phosphate rock, sand, stone and sulphur, but excluding coal;

* * * * *

3. Section 402.8 is amended by adding a new entry at the end of paragraph (a)(2) in the table to read as follows:

§ 402.8 Schedule of tolls.

	Tolls					
	Montreal to or from Lake Ontario			Lake Ontario to or from Lake Erie		
	1991	1992	1993	1991	1992	1993
(a) * * *.						
(2) * * *.						
—Coal	NA	NA	0.65	NA	NA	0.55
* * * * *			*			*

§ 402.9 [Amended]

4. Section 402.9 is amended by removing paragraphs (f) through (i).

Issued at Washington, DC on January 11, 1994.

Saint Lawrence Seaway Development Corporation.

Stanford E. Parris,

Administrator.

[FR Doc. 94–1296 Filed 1–19–94; 8:45 am]

BILLING CODE 4910–61–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 200

Organization, Functions, and Procedures; Land Status Records System

AGENCY: Forest Service, USDA.

ACTION: Final rule, technical amendment.

SUMMARY: The Forest Service adopted regulations establishing a Land Status Records System on June 26, 1991 (56 FR 29181). Implementation of these regulations has revealed that they may conflict with regulations governing the Public Land Record System maintained by the Bureau of Land Management, Department of the Interior. This notice clarifies that the Land Status Record System is maintained by the Forest Service only for those landownership records pertaining to land, or interests in land, in the National Forest System.

EFFECTIVE DATE: This rule is effective January 20, 1994.

FOR FURTHER INFORMATION CONTACT: J. Kenneth Myers, Assistant Director, Lands Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, (202) 453–9353.

SUPPLEMENTARY INFORMATION: On June 26, 1991, the Forest Service adopted final regulations establishing a Land Status Records System (56 FR 29181). This system is the official, permanent repository for all agency realty records and land title documents for National Forest System lands. The system was established to comply with the statutory direction set forth in the Transfer Act of February 1, 1905 (16 U.S.C. 472), the Weeks Act of March 1, 1911 (16 U.S.C. 521), Title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010–1012), and supplemental and amendatory acts. Collectively, these acts impose a duty upon the Secretary of Agriculture to execute the laws affecting lands permanently reserved, held, and administered as National Forests or for National Forest purposes. In addition, the National Forest Management Act of 1976 (16 U.S.C. 1600) requires that the Secretary of Agriculture develop and maintain an appropriately detailed inventory of all National Forest System lands and resources.

Following adoption of regulations establishing the Land Status Records System, the Bureau of Land Management (BLM), Department of the Interior, notified the Forest Service that the regulations may be in conflict with those regulations at 43 CFR Part 1813 which establish a Public Land Record System and designate the BLM as the official repository for boundary survey and patent records of public domain lands. In response to the concerns of the BLM and to ensure that the role of the Land Status Record System is clearly defined, the Forest Service is amending its regulations at 36 CFR 200.12.

The Forest Service does not intend that its Land Status Record System be the only official depository for realty records and land title documents for the National Forest System. It recognizes that the BLM maintains a depository for public land records and that National Forest System land records are a part of that record. The Forest Service also recognizes that it must maintain a record system to have readily accessible land ownership and title information in order to properly manage National Forest System lands.

Thus, to clarify the respective responsibilities of the agencies in maintaining land record systems, the Forest Service will amend its regulations establishing the Land Status Record System. This is accomplished by inserting the word "agency" at two locations in the rule to distinguish the Forest Service Land Status Records System from the Public Land Record System.

Therefore, this rule establishes and gives public notice that the Forest Service Land Status Records System contains the official agency records evidencing the landownership title, status, and jurisdiction for all National Forest System lands. Information in the Land Status Record system is complimentary to, and may be a summarization of, case files and patent records in the Public Land Records maintained by the BLM.

Environmental Impact

Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures,

program processes or instructions." Based on the nature and scope of this rulemaking, the Department has determined that this rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

Controlling Paperwork Burdens on the Public

This rule will not result in additional paperwork not already required by law or not already approved for use. Therefore, the review provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) and implementing regulations at 5 CFR part 1320 do not apply.

Regulatory Impact

This final rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not a significant rule. This rule will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this final rule is not subject to OMB review under Executive Order 12866.

Moreover, this final rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by that Act. This rule imposes no requirements on the public.

Further, because this rule relates to internal agency management, it is, pursuant to 5 U.S.C. 553, not necessary to provide prior notice and opportunity to comment, and this rule may, therefore, be made effective less than 30 days from publication in the **Federal Register**.

List of Subjects 36 CFR Part 200

Administrative practice and procedure, Freedom of information, and Organization and functions (Government agencies).

Therefore, for the reasons set forth in the preamble, Part 200 of chapter II of title 36 of the Code of Federal Regulations is hereby amended as follows:

PART 200—ORGANIZATION, FUNCTIONS, AND PROCEDURES

1. The authority citation for part 200 continues to read as follows:

Authority: 5 U.S.C. 552; 16 U.S.C. 4721, 521, 1603.

2. Section 200.12 is amended by revising paragraphs (a) introductory text and (a)(1)(ii) introductory text as follows:

§ 200.12 Land status and title records.

(a) *Land Status Records System.* The Land Status Records System is the official, permanent repository for all agency realty records and land title documents for National Forest System lands. It includes an automated database which contains an accurate account of: acreage, condition of title, administrative jurisdiction, rights held by the United States, administrative and legal use restrictions, encumbrances, and access rights on land or interests in land in the National Forest System.

(1) * * *

(i) * * *

(ii) A master Land Status File, from which the agency data for the Atlas is derived and which includes the following:

* * * * *

Date: January 12, 1994.

J. Lamar Beasley,

Acting Chief.

[FR Doc. 94–1378 Filed 1–19–94; 8:45 am]

BILLING CODE 3410–11–M

POSTAL SERVICE

39 CFR Part 962

Rules of Practice in Proceedings Relative to the Program Fraud Civil Remedies Act

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule revises the regulation concerning settlement of cases brought under the Program Fraud Civil Remedies Act. Currently, the Postmaster General must approve any settlement reached in a Program Fraud case while an administrative appeal of an initial decision is pending. This rule revises the current regulation to delegate authority to settle a case in this posture to the General Counsel.

EFFECTIVE DATE: January 20, 1994.

FOR FURTHER INFORMATION CONTACT: George C. Davis (202) 268–3076.

SUPPLEMENTARY INFORMATION: The Program Fraud Civil Remedies Act vests exclusive authority to settle a case brought under this act in the "reviewing official" from the date that the Department of Justice approves an action to the date on which a "presiding official" renders an initial decision. 31 U.S.C. 3803(j). After a presiding official renders an initial decision, settlement authority shifts to the agency's "authority head." 31 U.S.C. 3803(i)(2)(C). Settlement authority remains with the authority head until either the respondent in the administrative proceeding seeks judicial review of the final agency decision, or the Department of Justice files a judicial action to collect the amount awarded by the final agency decision. 31 U.S.C. 3806(f).

The Postal Service has designated the General Counsel as its reviewing official and the Postmaster General as its authority head. It has assigned Administrative Law Judges to serve as presiding officials. 39 CFR 962.2.

The purpose of this amendment is to delegate the Postmaster General's settlement authority to the General Counsel. Under the current language of 39 CFR 962.26, only the Postmaster General may settle a Program Fraud case from the date that an Administrative Law Judge renders an initial decision until the date that an action for judicial review or collection is filed in a U.S. District Court. This amendment would vest such settlement authority in the General Counsel.

List of Subjects in 39 CFR Part 962

Administrative practice and procedure, Fraud, Penalties, Postal Service.

In consideration of the foregoing, 39 CFR part 962 is amended as set forth below.

PART 962—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO THE PROGRAM FRAUD CIVIL REMEDIES ACT

1. The authority citation for part 962 continues to read as follows:

Authority: 31 U.S.C. Chapter 38; 39 U.S.C. 401.

2. Section 962.26 is amended by revising the phrase "The Postmaster General" in paragraph (c) to read "The Attorney General"; by removing paragraph (e); and by revising paragraphs (b) and (d) to read as follows:

§ 962.26 Settlement.

* * * * *

(b) The Reviewing Official has the exclusive authority to compromise or settle any allegations or determinations of liability under 31 U.S.C. 3802 without the consent of the Presiding Officer, except during the pendency of an appeal to the appropriate United States district court pursuant to 31 U.S.C. 3805 or during the pendency of an action to collect any penalties or assessments pursuant to 31 U.S.C. 3806.

* * * * *

(d) The Reviewing Official may recommend settlement terms to the Attorney General, as appropriate.

Stanley F. Mires,

Chief Counsel, Legislative Division.

[FR Doc. 94–1348 Filed 1–19–94; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MT–8–1–5488; FRL–4789–6]

Approval and Promulgation of State Implementation Plans; State of Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, EPA is approving revisions to the Montana State Implementation Plan (SIP) submitted on April 25, 1988, by the Governor of Montana. EPA proposed to approve these revisions in the October 20, 1989, **Federal Register**. EPA is taking final action to approve those portions of the SIP submittal which include: The adoption of the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10); deletion of the total suspended particulate (TSP) ambient air quality standard; amendments to the prevention of significant deterioration of air quality (PSD) program to include protection of the PM–10 NAAQS and assure consistency with EPA requirements; commitments to monitor and develop plans if PM–10 violations are found in Group II PM–10 areas; a revised emergency episode plan for PM–10; and a listing of the control measures in the SIP which will be relied on to maintain the PM–10 NAAQS, including the Montana Smoke Management Plan. The effect of approval is to make the plans federally enforceable. At this time, EPA is taking no action on the remainder of the submittal.

EFFECTIVE DATE: This approval will be effective on February 22, 1994.

ADDRESSES: Copies of the State submittal are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday, at the following offices: Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, suite 500, Denver, Colorado 80202–2466; and Montana Department of Health and Environmental Sciences, Air Quality Bureau, Cogswell Building, Helena, Montana 59620.

FOR FURTHER INFORMATION CONTACT: Meredith A. Bond, 8ART-AP, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2405, (303) 293–1764.

SUPPLEMENTARY INFORMATION: The 1977 amendments to the Clean Air Act require EPA to review periodically and, if appropriate, revise the criteria on which each NAAQS is based along with the NAAQS themselves. In response to these requirements, EPA published a notice to promulgate revised NAAQS for particulate matter under ten microns in size (known as PM–10) on July 1, 1987 (52 FR 24634). As a result, States were to revise their State Implementation Plans (SIPs) to attain and maintain the new NAAQS.

To implement the new SIP requirements, all areas in the country were divided into three groups. Group I areas had violated the PM–10 NAAQS or had air quality data showing high probabilities (greater than 95%) of violating the NAAQS. Group II areas were estimated to have a moderate probability (between 20 and 95%) of violating the PM–10 NAAQS. Group III areas were estimated to have a low probability (less than 20%) of violating the PM–10 NAAQS. This SIP revision was submitted to EPA by the Governor of Montana on April 25, 1988, as a plan for maintaining the PM–10 NAAQS statewide, and in particular in those areas designated Group II and III. Separate SIPs including control strategies and attainment demonstrations were required for the Group I areas.

Upon enactment of the Clean Air Act Amendments of 1990 (November 15, 1990), Group I areas and Group II areas with exceedances monitored before January 1, 1989, were designated and classified as moderate PM–10 nonattainment areas by operation of law. (Section 107(d)(4)(B) of the Clean Air Act as amended ("the Act"); see 56 FR 56694, November 6, 1991.) The amended Act continues to require states to submit full SIPs for such moderate PM–10 nonattainment areas.

Those Montana areas initially designated, upon enactment of the Clean Air Act Amendments of 1990, as moderate PM–10 nonattainment areas, and for which the State has submitted part D plans, include: Butte, Kalispell, Libby, Missoula, and Columbia Falls. The Thompson Falls area is currently being redesignated to nonattainment (57 FR 43846, September 22, 1992).

Some of the commitments made (with the April 25, 1988 submittal) for Group II areas and statewide control measures are still appropriate to meet requirements under section 110(a)(1) of the amended Act. Therefore, EPA is taking final action to approve these portions of the April 25, 1988, submittal in order that the measures may become a part of the federally approved SIP.

Montana SIP

Section 110(a)(1) of the Act requires states to submit plans which provide for implementation, maintenance, and enforcement of the NAAQS. The April 25, 1988, Montana submittal addresses these requirements for PM–10 as follows:

(1) PM–10 Air Quality Standards

The State has adopted ambient air quality standards for PM–10 in revisions to ARM 16.8.821.

(2) Preconstruction Review of Stationary Sources of PM–10

The State administers a New Source Review (NSR) program for stationary sources and modifications, which was approved by EPA on September 23, 1980 (45 FR 62982). By adopting ambient air quality standards for PM–10 in ARM 16.8.821, the State has triggered a requirement (under the State regulations) for preconstruction review of all sources of PM–10. The State also administers a PSD program which was originally approved by EPA on May 5, 1983 (48 FR 20231). The submittal contains revisions to these regulations which are approved with this document.

In ARM 16.8.941(1)(a), the State did not amend the maximum allowable increase, in Class I areas receiving a variance from the increment, from "particulate matter" to "particulate matter: TSP" as in 40 CFR 51.166(p)(4). This leaves the maximum allowable increase somewhat ambiguous since "particulate matter" is defined as either PM–10 or TSP. The State submitted a SIP revision on September 5, 1989, which corrected this oversight. EPA approved the September 5, 1989 revision at 55 FR 22332 (June 1, 1990).

EPA is approving the remainder of the regulations since it is clear that, in all other instances, the increments are in terms of TSP.

(3) Revised Emergency Episode Plans

EPA revised the significant harm level for particulate matter in 40 CFR 51.151, to 600 μg/m³ measured as PM–10, and deleted the combined sulfur dioxide-particulate matter significant harm level. In addition, the example alert, warning, and emergency levels of particulate matter in appendix L to part 51 were also revised from TSP to PM–10 concentrations. In its submittal, the State has revised its emergency episode plans in Chapter 7 of its SIP to reflect the changes in the federal regulations due to PM–10.

(4) PM–10 Monitoring Networks

Revisions to 40 CFR part 58 set forth the requirements for design of national, state and local PM–10 air monitoring networks. The revised monitoring networks must be submitted for EPA approval. The required monitoring frequency varies with area grouping: Group I areas are required to monitor daily at least one site representative of the expected maximum concentration, Group II areas are required to monitor every other day at such a site, and Group III areas are required to monitor every sixth day at such a site. Monitoring frequency can be reduced after the first year of data collection depending on the values monitored. EPA approved Montana's PM–10 monitoring network as meeting 40 CFR part 58 criteria on March 30, 1989.

(5) Committal SIP

The State's submittal includes a Committal SIP for the Montana Group II PM–10 areas. The SIP commits the State to continue to monitor for PM–10, report data, and submit a full SIP if a violation of the PM–10 NAAQS is detected. Specifically, the provisions are:

(a) Collection of Ambient PM–10 Data

The State has begun monitoring for PM–10 in all Group I and II areas. The State has continued to monitor for TSP as a surrogate for PM–10 in Group III areas and has committed to implement PM–10 monitoring if a TSP monitor being used as a surrogate PM–10 monitor records an exceedance of the PM–10 NAAQS.

(b) Reporting Exceedances to EPA Within 45 Days

The State has committed to analyze and verify the ambient PM–10 data and report 24-hour PM–10 NAAQS exceedances to the appropriate Regional Office within 45 days of each exceedance.

(c) Immediate Notification of EPA if the Area Moves Into Nonattainment

The State has committed to acknowledge that a nonattainment problem exists and immediately notify EPA if the applicable number of verifiable 24-hour NAAQS exceedances has occurred, (see section 2.0 of the PM–10 SIP Development Guideline) or when an annual arithmetic mean (AAM) above the level of the annual PM–10 NAAQS has occurred.

(d) Determination of Adequacy of the Existing SIP

The State has determined that the existing SIP as amended is adequate to maintain the PM–10 standards in areas currently in attainment. The standards will be maintained by continuing surrogate TSP monitoring, instituting PM–10 monitoring when excursions above the PM–10 standards occur, developing a full SIP revision if actual PM–10 standard violations occur, enforcing the control measures listed below (items 1–18), and continuing to enforce the PSD/NSR program.

(e) The Committal SIP also provides for development of control strategies and enforceable schedules for assuring attainment of the PM–10 NAAQS as expeditiously as practicable should an area experience ambient exceedances as described in (c) above. The requirements of the Clean Air Act amendments of 1990 have superseded these provisions. Therefore, EPA is taking no action on the provisions for these items.

Control Strategies

The State submittal lists the control measures which are being relied on to maintain the PM–10 NAAQS. These control measures are described below, together with their previous SIP approval status (some were approved as part of the SIP prior to this action) and EPA's approval status with respect to this SIP action:

1. Ambient Air Quality Standards for PM–10 (ARM 16.8.821), effective April 29, 1988. In this action, EPA is approving this regulation as part of the PM–10 SIP for Montana.

2. Prevention of Significant Deterioration of Air Quality (ARM 16.8.921–16.8.943), effective April 29, 1988. These rules were originally approved by EPA on May 5, 1983, (48 FR 20231). Revisions submitted on August 21, 1985, and May 27, 1987, and September 5, 1989, were approved at 55 FR 22332 (June 1, 1990). Revisions effective April 29, 1988, to include PM–10 in the program and to make other minor revisions consistent with EPA requirements were submitted on April 25, 1988. In this action, EPA is approving this regulation and its revisions as part of the PM–10 SIP for Montana.

3. Visibility Impact Assessment (ARM 16.8.1001–16.8.1008), effective September 13, 1985, approved by EPA on June 6, 1986 (51 FR 20646). In this action, EPA is approving this regulation as part of the PM–10 SIP for Montana.

4. Permits, Construction and Operation of Air Contaminant Sources (ARM 16.8.1101–16.8.1118), effective February 14, 1987. These rules were originally approved by EPA on September 23, 1980 (45 FR 62982). The State has submitted revisions to these rules which are not being addressed in this action. These revisions will be addressed in a separate action.

5. Stack Height and Dispersion Techniques (ARM 16.8.1204–16.6.1206), effective June 13, 1986, approved by EPA on June 7, 1989 (54 FR 24334). In this action, EPA is approving this regulation as part of the PM–10 SIP for Montana.

6. Open Burning (ARM 16.8.1301–16.8.1308), effective April 16, 1982, approved by EPA on July 15, 1982 (47 FR 30762). In this action, EPA is approving this regulation as part of the PM–10 SIP for Montana.

7. Particulate Matter, Airborne (ARM 16.8.1401), effective February 16, 1979, approved by EPA on March 4, 1980 (44 FR 14036). In this action, EPA is approving this regulation as part of the PM–10 SIP for Montana.

8. Particulate Matter, Fuel Burning Equipment (ARM 16.8.1402), effective December 31, 1972, approved by EPA on March 4, 1980 (44 FR 14036). On December 2, 1988 (53 FR 48643), EPA approved revisions submitted by the Governor on March 9, 1988 (effective on March 11, 1988), which exempt residential combustion units from this rule. In this action, EPA is approving this regulation as amended on March 9, 1988, as part of the PM–10 SIP for Montana.

9. Particulate Matter, Industrial Process (ARM 16.8.1403), effective September 5, 1975, approved by EPA on March 4, 1980 (44 FR 14036). In this action, EPA is approving this regulation as part of the PM–10 SIP for Montana.

10. Visible Air Contaminants (ARM 16.8.1404), effective June 13, 1986. EPA has not acted on this revision previously. In this action, EPA is approving this regulation as part of the PM–10 SIP for Montana.

11. Incinerators (ARM 16.8.1406), effective December 29, 1978, approved by EPA on March 4, 1980 (44 FR 14036). In this action, EPA is approving this regulation as part of the PM–10 SIP for Montana.

12. Wood Waste Burners (ARM 16.8.1407), effective December 29, 1979, approved by EPA on March 4, 1980 (44 FR 14036). In the proposal to this action, EPA indicated that we were proposing to approve this regulation as part of the PM–10 SIP for Montana. However, after further review, EPA has determined that there are enforceability concerns with this regulation. Therefore, EPA is not taking final action on this regulation at this time.

13. Fluoride Emissions—Phosphate Processing (ARM 16.8.1419), effective December 31, 1972, approved by EPA on March 4, 1980 (44 FR 14036). In this action, EPA is approving this regulation as part of the PM–10 SIP for Montana.

14. Standard of Performance of New Stationary Sources (NSPS) (ARM 16.8.1423), effective February 29, 1988, which incorporates by reference 40 CFR part 60, effective July 1, 1987. Enforcement of the federal NSPS has been delegated to Montana. In this action, EPA is approving this regulation as part of the PM–10 SIP for Montana.

15. Prohibited Materials for Wood or Coal Residential Stoves or Coal Residential Stoves (ARM 16.8.1428), effective June 13, 1986. EPA has not acted on this revision previously. In this action, EPA is approving this regulation as part of the PM–10 SIP for Montana.

16. Emission Standards for Existing Aluminum Plants (ARM 16.8.1501–16.8.1505), effective February 26, 1982. EPA has not acted on this revision previously. In the proposal to this action, EPA proposed to approve this regulation as part of the PM–10 SIP for Montana. However, after further review, EPA has determined that there are enforceability concerns with this regulation. Therefore, EPA is not taking final action on this regulation at this time.

17. Combustion Device Tax Credit (ARM 16.8.1601–16.8.1602), effective December 27, 1985. EPA has not acted on this revision previously. In this action, EPA is approving this regulation as part of the PM–10 SIP for Montana.

18. Montana Smoke Management Plan (SMP) (Memorandum of Agreement effective 7/31/78). In this action, EPA is approving the SMP as part of the PM–10 SIP for Montana. The SMP is a memorandum of agreement between the State Department of Health and Environmental Sciences, the U.S. Forest Service, the State Division of Forestry, the Bureau of Indian Affairs, the Bureau of Land Management, Burlington Northern, St. Regis Paper, Champion Timberlands, the National Weather Service, the State Department of Fish and Game, Wickes Forest Industries, the National Park Service, the U.S. Fish and Wildlife Service, and the Missoula City-County Air Pollution Control Board. The SMP requires prescribed burning for land management purposes to be carried out only when meteorological conditions are found to allow the dispersion of emissions and requires the burning to be curtailed when air quality or meteorological conditions so warrant.

As indicated, EPA is approving control strategy items 1 through 3, 5 through 11, 13 through 15, 17 and 18, as part of the PM–10 SIP for Montana. EPA finds that these items will help assure maintenance of the PM–10 NAAQS in Montana. At this time, EPA is not taking final action on control strategy items 4, 12, and 16, as part of the PM–10 SIP for Montana. EPA will address these items in a separate action.

The submittal also contains a request to extend the attainment date for the PM–10 NAAQS for up to two years should such an extension later be demonstrated to be necessary. The Clean Air Act Amendments of 1990 changed attainment date requirements. All areas to which this request applied have since been designated nonattainment, and the Act lays out specific schedules for SIP submittal and attainment of the PM–10 NAAQS for such nonattainment areas. In the proposal to this action, EPA had proposed to approve the extension request. However, because of the changes to the Act made by the 1990 Amendments, at this time EPA is not taking final action on this request.

In this submittal, the State also requested to redesignate the TSP nonattainment areas to unclassified for TSP. As indicated in the proposal to this action, EPA will take separate action on this request at a later time.

The State has satisfied EPA requirements for administrative procedures, adequate legal authority to implement the SIP, and intergovernmental relations. These procedures have been approved as part of the State SIP in previous **Federal Register** notices. See 40 CFR 52.1370 *et seq.* EPA proposed to approve these revisions in the October 20, 1989 **Federal Register** (54 FR 43083). No comments were received pursuant to the proposal.

Final Action

EPA approves the revisions to the Montana State Implementation Plan (SIP) submitted on April 25, 1988, by the Governor of Montana, with the exception of commitments to set schedules and develop SIPs for areas which experience exceedances of the PM–10 NAAQS, and with the exception of the State's request to extend attainment dates for the PM–10 NAAQS. The requirements of the Clean Air Act Amendments of 1990 have replaced these provisions. In addition, EPA is not taking final action on the control measures identified as items 4, 12, and 16 under the section entitled "Control Strategies" in this document. EPA will address them at a later date. The approved revisions include the adoption of PM–10 ambient air quality standards, deletion of the total suspended particulate (TSP) ambient air quality standard, amendments to the new source review program, commitments to monitor and develop plans if necessary in Group II PM–10 areas, a revised emergency episode plan for PM–10, a listing of the control measures in the SIP which will be relied on to maintain the PM–10 NAAQS, and the Montana Smoke Management Plan.

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

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds.

Union Electric C. v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 21, 1994. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has continued the waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Incorporation by reference, Intergovernmental relations, Particulate matter.

Note: Incorporation by reference of the SIP for the State of Montana was approved by the Director of the Federal Register on July 1, 1982.

Dated: October 1, 1993.

Jack McGraw,

Acting Regional Administrator.

PART 52 [AMENDED]

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

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

Authority: 42 U.S.C. 7401–7671q.

Subpart BB—Montana

2. Section 52.1370 is amended by adding paragraph (c)(27) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(27) On April 25, 1988, the Governor submitted a plan to help assure attainment and maintenance of the PM–10 NAAQS throughout the State of Montana.

(i) Incorporation by reference.

(A) Amendments to the Administrative Rules of Montana (ARM) 16.8.821 (Ambient Air Quality Standards), and ARM 16.8.701, ARM 16.8.806, and ARM 16.8.921 (Definitions), effective April 29, 1988.

(B) Amendments to the ARM, subchapter 9 (Prevention of Significant Deterioration): sections 16.8.924, 16.8.925, and 16.8.936, effective April 29, 1988; section 16.8.937, effective March 11, 1988; section 16.8.930, effective April 1, 1988; and sections 16.8.922, 16.8.923, 16.8.926, 16.8.927, 16.8.928, 16.8.929, 16.8.931, 16.8.932, 16.8.933, 16.8.934, 16.8.935, 16.8.938, 16.8.939, 16.8.940, 16.8.941, 16.8.942, 16.8.943, effective January 1, 1983.

(C) Amendments to the ARM, subchapter 10 (Visibility Impact Assessment): section 16.8.1007, effective April 29, 1988; and sections 16.8.1001, 16.8.1002, 16.8.1003, 16.8.1004, 16.8.1005, 16.8.1006, and 16.8.1008, effective March 11, 1988; section 16.8.930, effective September 13, 1985.

(D) Amendments to the ARM, subchapter 12 (Stack Heights and Dispersion Techniques), sections 16.8.1204, 16.8.1205, and 16.8.1206, effective June 13, 1986.

(E) Amendments to the ARM, subchapter 13 (Open Burning), sections 16.8.1301, 16.8.1302, 16.8.1303, 16.8.1304, 16.8.1305, 16.8.1306, 16.8.1307, and 16.8.1308, effective April 16, 1982.

(F) Amendments to the ARM, subchapter 14 (Emission Standards): section 16.8.1401, effective February 16, 1979; section 16.8.1402, effective March 11, 1988; section 16.8.1403, effective September 5, 1975; section 16.8.1404, effective June 13, 1986; section 16.8.1406, effective December 29, 1978; section 16.8.1419, effective December 31, 1972; section 16.8.1423, effective March 11, 1988; and section 16.8.1428, effective June 13, 1986.

(G) Amendments to the ARM, Sub-Chapter 16 (Combustion Device Tax Credit), sections 16.8.1601 and 16.8.1602, effective December 27, 1985.

(H) Appendix G–2, Montana Smoke Management Plan, effective April 15, 1988.

[FR Doc. 94–1270 Filed 1–19–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[TX–34–1–6167; FRL–4824–1]

Approval and Promulgation of Air Quality Plans, Texas; Revision to the Texas State Implementation Plan; Alternate Reasonably Available Control Technology Demonstration for Air Force Plant 4 by Lockheed Corporation of Fort Worth, Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving a site specific revision to the Texas State Implementation Plan (SIP) for Lockheed Corporation of Fort Worth. This revision was submitted by the Governor on August 19, 1993, to establish alternate reasonably available control technology (ARACT) to enforce Volatile Organic Compounds (VOC) emission limits for the surface coating processes at Air Force Plant 4 (AFP4), operated by Lockheed Corporation of Fort Worth. The EPA has determined that these emission limits represent Reasonably Available Control Technology (RACT). This ARACT plan is approvable because Lockheed has demonstrated that it is not cost effective to control their VOC emissions to the presumptive norm set forth in the EPA's Control Technique Guidelines (CTG) document (EPA 450/2–78–015), and the alternate emission rate at the facility is the lowest that is economically reasonable and technically feasible.

EFFECTIVE DATE: This action will become effective on March 21, 1994, unless notice is received by February 22, 1994, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register** (FR).

ADDRESSES: Comments should be mailed to Thomas H. Diggs, Chief, Air Planning Section (6T-AP), USEPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. Copies of the State's submittal and other information relevant to this action are available for inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-A), 1445 Ross Avenue, Suite 700,Dallas, Texas 75202–2733.

Mr. Jerry Kurtzweg (ANR–443), U.S. Environmental Protection Agency, 401 M. Street, SW., Washington, DC 20460.

Texas Natural Resource Conservation Commission, Office of Air Quality, P.O. Box 13087, Austin, Texas 78711–3087. Anyone wishing to review these documents at the USEPA office is asked

to contact the person below to schedule an appointment 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Mr. Mick Cote, Planning Section (6T-AP), Air Programs Branch, U.S. Environmental Protection Agency (EPA) Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 655–7219.

SUPPLEMENTARY INFORMATION:

Background

Part D of the Clean Air Act Amendments (CAAA) requires ozone nonattainment plans to include regulations providing for VOC emission reductions from existing sources through the adoption of RACT. The EPA defined RACT in a September 17, 1979, FR notice (44 FR 53762) as:

> The lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.

Through the publication of CTG documents, the EPA has identified pollution control levels that the EPA presumes to constitute RACT for various categories of sources. Where the State finds the presumptive norm applicable to an individual source or group of sources, the State typically adopts requirements consistent with the presumptive norm. However, States may develop case-by-case RACT determinations. The EPA will approve these RACT determinations as long as the State demonstrates they will satisfy the CAAA RACT requirements based on adequate documentation of the technical and economical circumstances of the particular source being regulated. Texas adopted the CTG entitled *Miscellaneous Metal Parts and Products* as the presumptive norm for VOC limits on aerospace surface coating processes. These VOC limits were adopted as part of Texas Regulation V, § 115.421, *Emission Specifications*. The presumptive norm for the exterior of aircraft in Dallas and Tarrant Counties is 6.7 pounds per gallon of solids delivered to the application system.

The EPA developed a guidance document entitled *Guidance for developing an Alternate Reasonably Available Control Technology (RACT) Demonstration for the Tulsa Aerospace Industry*, dated October 2, 1989. This document applies to the Aerospace industry and was applicable to Lockheed's ARACT analysis as well. This document was issued for States and industries to follow in developing documents to justify deviation from the recommended CTG approach. The EPA has reviewed the Lockheed ARACT proposal based on this guidance.

Lockheed Corporation

Lockheed Corporation operates AFP4 in Tarrant County, Texas, at which F–16 aircraft are produced and aircraft components are coated for the U.S. Air Force. Lockheed recently purchased the contract and the product from General Dynamics Corporation [1]. On August 19, 1993, the State of Texas submitted to the EPA a request for an ARACT approval for surface coating operations at Lockheed Corporation's AFP4 facility. This site-specific SIP revision was submitted to meet RACT for AFP4's surface coating operations. The EPA believes that Lockheed and the State of Texas have provided adequate documentation that the emission limits developed under this site-specific SIP revision are RACT based on consideration of economical reasonableness and technical feasibility. Since case-by-case RACT determinations are allowable under the EPA's definition of RACT, Lockheed and the State opted for this ARACT approach to fulfill compliance requirements.

Legal History

A notice of violation (NOV) was issued by EPA to General Dynamics on July 11, 1985, alleging violations of State Rule 115.191(9)(a)(iii), which regulated "extreme performance coatings" applied to miscellaneous metal parts and products, for both the PRC Prime operation and the Chemical Milling Maskant operation. A second NOV was issued by the EPA to General Dynamics on February 24, 1987, alleging violations of Rule 115.191(9)(a)(iii) for the Adhesive Prime operation. Both NOVs stated that VOC emission limits were being violated. An agreed board order was entered on January 17, 1986, which intended to provide for the full resolution of all violations alleged in the NOVs issued by the EPA. The board order created a bubble under General Rule § 101.23, which allowed for control of emissions from an alternate facility located on the affected property in lieu of compliance with the requirement as prescribed in the regulation.

However, the EPA contended that the order was a departure from the requirements of the Texas SIP. The EPA did not find the provisions agreed to by the State and General Dynamics in the bubble as acceptable, and sued General Dynamics to renegotiate their proposal. On January 2, 1991, the U.S. District Court ruled that the State's interpretation of the Texas SIP was not consistent with the Clean Air Act because the board order would encourage the uncontrolled use of VOC-emitting solvents. The court ordered General Dynamics to develop and implement a suitable plan to meet the Texas SIP requirements no later than January 1994. General Dynamics elected to pursue an ARACT, discussed under section 115.423 of Texas Regulation V. For specific details of the suit, see *United States of America* v. *General Dynamics Corporation*, Civil Action Number CA–4–87–312-K dated February 23, 1990 (suit), and Civil Action Number CA–4–87–312-A, dated January 2, 1991 (ruling).

Alternate RACT Analysis

Lockheed [2] investigated the options available for reducing emissions from its surface coating operations. Among those were coating reformulation, enhanced application techniques that would improve transfer efficiency, facility redesign, and add-on control equipment to reduce VOC emissions.

Lockheed investigated the use of low-solvent coating technologies. Among those were high-solids coatings, water-borne coatings, and powder coatings. The current suppliers of surface coatings to Lockheed were contacted to determine if such coatings were either currently available or soon to be available. Where substitute coatings were discovered, these substitutes have been incorporated into the provisions of this ARACT determination. For those coatings not replaced with low-solvent coatings, individual coating limits have been established.

In addition to researching alternate low solvent coatings and developing alternate VOC limits for other coatings, Lockheed investigated several control VOC systems. Two permanent total enclosures with a thermal incinerator system have been installed on the adhesive prime booth and paint booth number four. Two degreasers were replaced with an alkaline cleaning process that reduces the VOC emissions by 106.5 tons per year (tpy), and a cloth management system was developed to handle wipe solvent VOC emissions. This cloth management system will reduce VOC emissions from cleaning operations by 50%. Air atomization has

[1] The research on the ARACT proposal was accomplished by General Dynamics Corporation prior to the Lockheed purchase. The operations of AFP4 have not changed significantly since the time of the sale.

[2] Further discussions concerning ARACT development and analysis will refer to Lockheed Corporation of Fort Worth, the current operator of AFP4.

been eliminated as an application method and replaced with a high volume low pressure application system with an application efficiency of 60 to 80%. This application process results in emission reductions of 14 tpy. Finally, the maskant operations have all been subcontracted or phased out as of October 1, 1993. The estimated VOC reductions are 133 tpy. Please refer to the EPA's technical support document for a summary of the feasibility of various control technologies, a precise listing of those suppliers contacted, as well as a listing of the new coatings.

As mentioned above, Lockheed investigated the use of add-on control equipment in its operations. Control technology vendors were contacted to determine if such equipment could be suitable for Lockheed's specific operations. Cost estimates for the various types of add-on controls were prepared and analyzed for feasibility. Cost estimates were developed based on tons per year of VOC removed. The actual concentration of VOC in the exhaust stream and the total volume of air to be treated are the primary factors considered when determining cost effectiveness. Where those add-on control systems were deemed feasible, the ARACT provisions reflect their implementation. Lockheed now emits roughly 65 tpy. of VOCs from its approximately 20 separate paint booths. One booth emits approximately 20 tpy., the rest each emit six tpy. or less.

In order to meet RACT requirements for surface coating operations, Lockheed would need to reduce its overall VOC emissions from the coatings used by an additional 15.79 tpy. The required offset for moderate nonattainment areas is 1.2 tpy., requiring a 17.3 tpy. reduction to meet the presumptive norm for surface coatings. However, the emission reductions from the cloth management system as well as the implementation of low-VOC wipe solvent reduces the VOC emissions from Lockheed's wipe solvent operation by 63.4 tpy.; this reduces the overall emissions from the surface coating operations more than would be required under RACT.

The EPA reviewed the information developed by Lockheed and agrees that the majority of the costs should not be considered cost effective in this situation relative to the cost effectiveness assumed in the CTG for miscellaneous metal parts and products. Again, please refer to the EPA's technical support document for a complete listing of the vendors contacted, emission reduction calculations for various control systems, as well as the cost determinations for add-on controls.

Summary

The EPA's review of the information submitted by both the State of Texas and the current operator of AFP4, Lockheed Corporation, indicates that, at this time, low VOC coatings for certain applications and processes are not commercially available. Furthermore, the cost effectiveness of controls on emissions from certain processes at this facility are not economically feasible. The EPA finds that the requirements in the recommended CTG are not reasonable for certain processes and that the proposed source specific alternate RACT determinations in Board Order Number 93–13 should be considered RACT in this case.

Final Action

The EPA is approving Texas' source-specific RACT determination issued by the State of Texas under Board Order Number 93–13 on June 18, 1993, as a revision to the Texas SIP. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will become effective on March 21, 1994, unless notice is received that adverse or critical comments will be received by February 22, 1994.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action, and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on March 21, 1994. The EPA has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 CAAA enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements. Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economical, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, under U.S.C. 605(b), the EPA may certify that the rule will not have a significant impact on a substantial number of small entities (see 46 FR 8709). Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over population of less than 50,000.

SIP approvals under section 110 and subchapter I, part D, of the Clean Air Act (CAA) do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2)).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 21, 1994. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

Executive Order 12291

This action has been classified as a table three action by the Acting Regional Administrator under the procedures published in the FR on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived table two and three SIP revisions from the requirements of section three of Executive Order 12291 for a period of two years (54 FR 2222). The EPA has submitted a request for a permanent waiver for table two and three SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on the EPA's request. This request continues in effect under Executive Order 12866, which superseded Executive Order 12291 on September 30, 1993.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmentalrelations, Reporting and recordkeeping, Ozone, Volatile organic compounds.

Dated: December 22, 1993.

W.B. Hathaway,

Acting Regional Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart SS—Texas

2. Section 52.2270 is amended by adding paragraph (c) (80) to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

(80) A revision to the Texas State Implementation Plan to adopt an alternate control strategy for the surface coating processes at Lockheed Corporation of Fort Worth.

(i) Incorporation by reference.

(A) Texas Air Control Board Order Number 93–13 issued and effective June 18, 1993, for Lockheed Corporation, Fort Worth approving an Alternate Reasonably Available Control Technology (ARACT). A letter from the Governor of Texas dated August 19, 1993, submitting to the EPA the ARACT demonstration.

(ii) Additional material–the document prepared by GD titled "The Proposed Alternate Reasonably Available Control Technology Determination for U.S. Air Force Plant Number Four and Ancillary Facilities of General Dynamics" dated September 16, 1991.

[FR Doc 94–1271 Filed 1–19–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[WA 13–6–6121; WA 15–3–6122; WA 13–5–6120; FRL–4824–5]

Approval and Promulgation of Air Quality Implementation Plans; Washington

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Environmental Protection Agency (EPA) approves a State Implementation Plan (SIP) revision submitted by the State of Washington. This revision implements an oxygenated gasoline program in King County, Pierce County, Snohomish County, Clark County, and Spokane County. This SIP revision was submitted to satisfy the requirement of section 211(m) of the Clean Air Act as amended by the Clean Air Act Amendments of 1990 (the Act) which requires all carbon monoxide nonattainment areas with a design value of 9 5 parts per million (ppm) or greater based generally on 1988 and 1989 air quality monitoring data to implement an oxygenated gasoline program.

EFFECTIVE DATE: This action will become effective on March 21, 1994, unless notice is received by February 22, 1994, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to:

Montel Livingston, SIP Manager, Air and Radiation Branch (AT–082), United States Environmental Agency, 1200 6th Avenue, Seattle, Washington 98101.

Copies of the documents relevant to this action are available for public inspection during normal business hours at: Air and Radiation Branch (Docket #WA13–6–6121 (Spokane); #WA15–3–6122 (Vancouver); and #WA13–5–6120 (Puget Sound)), United States Environmental Protection Agency, 1200 Sixth Avenue (AT–082), Seattle, Washington 98101, and Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504–7600. Attn: Carol Piening.

FOR FURTHER INFORMATION CONTACT: Stephanie Cooper, Air and Radiation Branch (AT–082), United States Environmental Agency, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–6917.

SUPPLEMENTARY INFORMATION:

I. Introduction

Motor vehicles are significant contributors of carbon monoxide emissions. An important measure toward reducing these emissions is the use of cleaner-burning oxygenated gasoline. Extra oxygen enhances fuel combustion and helps to offset fuel-rich operating conditions, particularly during vehicle starting, which are more prevalent in the winter.

Section 211(m) of the Act requires that various states submit revisions to their SIPs and implement oxygenated gasoline programs by no later than November 1, 1992. This requirement applies to all states with carbon monoxide nonattainment areas with design values of 9.5 parts per million or more based generally on 1988 and 1989 data. Each state's oxygenated gasoline program must require gasoline for the specified control area(s) to contain not less than 2.7 percent oxygen by weight during that portion of the year in which the areas are prone to high ambient concentrations of carbon monoxide. Under section 211(m)(2), the oxygenated gasoline requirements are to generally cover all gasoline sold or dispensed in the larger of the Consolidated Metropolitan Statistical Area (CMSA) or the Metropolitan Statistical area (MSA) in which the nonattainment area is located. Under section 211(m)(2), the length of the control period, to be established by the EPA Administrator, shall not be less than four months unless a state can demonstrate that, because of meteorological conditions, a reduced control period will assure that there will be no carbon monoxide exceedances outside of such reduced period EPA announced guidance on the establishment of control periods by area in the **Federal Register** on October 20, 1992.

In addition to the guidance on establishment of control period by area, EPA has issued additional guidance related to the oxygenated gasoline program. On October 20, 1992 EPA announced the availability of oxygenated gasoline credit program guidelines in the **Federal Register**. Under a credit program, marketable oxygen credits may be generated from the sale of gasoline with a higher oxygen content than is required (i.e. an oxygen content greater than 2.7 percent by weight). These oxygen credits may be used to offset the sale of gasoline with a lower oxygen content than is required. Where a credit program has been adopted, EPA's guidelines provide that no gallon of gasoline should contain less than 2.0 percent oxygen by weight.

EPA issued labeling regulations under section 211(m)(4) of the Act. These labeling regulations were published in the **Federal Register** on October 20, 1992.

II. Background for this Action

Washington state has three "nonattainment" areas for carbon monoxide: Central Puget Sound, including parts of King, Pierce, and Snohomish Counties; a portion of Spokane County around Spokane; and a portion of Clark County around Vancouver. The Puget Sound area was classified using 1987–88 data, while the Spokane and Vancouver areas were classified using 1988–89 data. The Puget Sound and Spokane nonattainment areas are classified as high moderate, while the Vancouver nonattainment area is classified as moderate.

Under section 211(m) of the Act, Washington was required to submit a revised SIP under section 110 and part D of title I of the Act which includes an oxygenated gasoline program for the Puget Sound nonattainment area, the Spokane nonattainment area, and the Vancouver Nonattainment area by November 15, 1992. The oxygenated gasoline program, adopted October 6, 1992, became effective November 1, 1992, and was submitted as an

amendment to the State Implementation Plan on November 16, 1992. EPA summarizes its analysis of the state submittal below.

Type of Program and Oxygen Content Requirement

As discussed above, section 211(m)(2) of the Act requires that gasoline sold or dispensed for use in the specified control areas contain not less than 2.7 percent oxygen by weight. Under section 211(m)(5), the EPA Administrator issued guidelines for credit programs allowing the use of marketable oxygen credits. Washington has elected to adopt a regulation requiring control area responsible parties (CARs) to supply an average of at least 2.7 percent oxygen for each control area serviced. A CAR is defined as a person who owns oxygenated gasoline which is sold or dispensed from a control area terminal. A blender CAR is, in general, a party downstream from a terminal who blends oxygenates into gasoline or who otherwise changes the oxygen content of the gasoline intended for use in a control area.

To achieve an average of 2.7 percent oxygen, a blender will be allowed to supply a minimum of 2.0 percent oxygenated gasoline and a maximum of 3.7 percent. Each gallon of fuel pumped by the retailer must be, at minimum, 2.0 percent oxygen by weight. Trading of oxygen credits is allowed. The following sections of this notice address some specific elements of the state's submittal.

Applicability and Program Scope

Section 211(m)(2) requires oxygenated gasoline to be sold during a control period, based on air quality monitoring data and established by the EPA Administrator, spanning not less than four months. Washington has established a control period for the Vancouver and Puget Sound nonattainment areas from November through February, and for Spokane, from September through February. This control period is consistent with EPA guidance.

All gasoline sold or dispensed for use within a given control area and during a given control period must comply with the average 2.7 percent oxygen content requirement and must contain not less than 2.0 percent oxygen by weight. Marketable oxygen credits may be used or traded only within the boundaries of the control area in which they were created, and only during the applicable control period.

Washington's oxygenated gasoline program has both an "averaging period" compliance scheme and a "per-gallon" compliance scheme. When registering, each blender must choose whether to comply on an average basis or on a per gallon basis. Under the averaging period scheme, all gasoline sold or dispensed within the control areas during a given averaging period must be, on average, at least 2.7 percent by weight. The averaging period in Washington's program is 2 months. The blender may also choose to comply on a per-gallon basis. Under the per-gallon compliance scheme, each gallon of gasoline offered for use in a control area must contain at least 2.7 percent oxygen by weight.

The Federal CAA requires oxygenated gasoline to be sold in the Metropolitan Statistical Area (MSA), or the Consolidated Metropolitan Statistical Area (CMSA), whichever is larger. The oxygenated fuel rule covers the Seattle-Tacoma CMSA (King, Pierce, and Snohomish Counties), the Spokane MSA (Spokane County), and the Washington State portion of the Portland-Vancouver CMSA (Clark County).

Registration and Reporting Requirements

EPA's credit program guidelines specify that all parties intending to trade marketable oxygen credits should register with the state at least 30 days in advance of each control season. The 30 day time period is intended to allow the state flexibility and is a suggested provision. Upon acceptance, CAR identification numbers should be issued by the state. EPA guidelines specify that no party should be allowed to generate, trade, buy or sell credits without a CAR identification number.

Within at least 30 days before the control period in which a person meets the definition of CAR or blender CAR, that person shall petition for registration as a CAR or blender CAR. A person may petition for registration as a CAR or blender CAR after the beginning of the control period but must do so at least 30 days before conducting activities as a CAR or blender CAR.

Registration requests must be on forms approved by and available from Washington State Department of Ecology or the local air pollution control authority. Ecology or the authority will issue each blender a permit containing a unique identification number within 30 days after submission of a registration application. All terminals, distributors and service stations which service control areas during the control period will be required to register with Ecology or the authority and receive a permit. Blenders will register with the local air pollution control authority within their control areas (Puget Sound Air Pollution Control Agency for the King, Pierce, and Snohomish Counties control area; Southwest Air Pollution Control Agency for the Clark County control area; and Spokane County Air Pollution Control Authority for the Spokane County control area).

Blenders must pay a registration fee to compensate for the costs of administering the registration program, including on-site inspections. The registration fee is based on the estimated volume of gallons of oxygenated gasoline offered for sale or sold per control season month in a control area. Registration fees are required per control area, so a blender dispensing oxygenated gasoline in the three control areas must pay three registration fees. Fees have been determined only for the 1992 control season. As outlined by WAC–173–492–050, small volume blenders pay $500, medium volume blenders pay $1,000, large volume blenders pay $10,000, and very large volume blenders pay $25,000. While the blender can upgrade to a larger category, re-registration to a lower category is not permitted. For 1993 and beyond, Ecology must solicit input from affected parties and incorporate comments into their fee requirements.

EPA has also specified that records should be retained by all parties in the gasoline distribution system. EPA's guidelines impose responsibilities on various parties in the gasoline industry. Persons who produce or import gasoline (refiners and importers) are responsible for assuring that the gasoline is tested and that the accompanying documentation accurately reflects oxygen content. Persons who transport, store, or sell gasoline (refiners, importers, blenders, distributors, resellers, retailers, wholesale purchaser-consumers) have various responsibilities associated with assuring that only oxygenated gasoline is sold or dispensed for use in control areas. Terminal owners and operators are responsible for assuring that the oxygen content of the gasoline they receive, handle, or dispense is accurate. Retailers and wholesale purchaser-consumers are responsible for assuring that gasoline intended for sale during the control period contains at least 2.0 percent oxygen by weight.

At the end of the control period, blenders who comply on a per-gallon basis shall submit one report per control area in which they are registered. The reports, which must be filed on forms provided by Ecology or the authority, are due March 31.

For blenders who comply on an averaging basis, a report is due to Ecology or the authority for each two-

month averaging period. Reports are due on the last day of the month following the close of the averaging period for which the information is required. For both per-gallon and averaging blenders, Washington's rule allows a reporting time frame of 30 days rather than EPA's suggested 15 days. EPA feels that providing businesses extra compliance time will not compromise environmental benefits.

EPA guidelines require that all parties in the gasoline distribution network who are located or do business within a control area, and whose product is eventually sold into the control area for ultimate use, should be required to keep records concerning certain day-to-day activities. Under these guidelines, refiners and importers should be required to keep a copy of all the tests that are performed on batches of gasoline prior to shipment, as well as copies of the bills of lading or transfer documents for each batch. Carriers and distributors should be required to keep copies of the documents which accompany every batch of gasoline their employees handle. Terminal owners and operators and CARs and blender CARs (in an averaging program) should be required to keep records of both the gasoline they receive from upstream parties, as well as copies of all the tests performed and records created before the gasoline was transferred to a downstream party. Washington meets these requirements.

EPA guidelines recommend that CARs commission an annual attest engagement, performed by either an internal auditor or independent Certified Public Account (CPA). The guidelines encourage the state to provide the internal auditor or CPA with standardized forms specifying the methodology to be used for attest engagements.

Washington's program encourages blenders to use attest engagements as a defense for liability. If EPA notes that the state's program suffers from compliance problems related to lack of attest engagements, EPA may require the use of attest engagements as a corrective action.

Washington offers fuel tax exemptions and tax credits for alcohol produced by companies certified by the Washington Department of Licensing as having manufactured less than 8 million gallons during the previous year. Washington offers a fuel tax exemption for alcohol of any proof that is sold for use as fuel in motor vehicles. Additionally, every gallon of alcohol used in an alcohol-gasoline blend containing at least nine and one-half percent or more by volume alcohol is eligible for a tax credit of sixty percent of the tax rate imposed. EPA believes as blenders perform intensive reviews for tax purposes, they will simultaneously order their records for the purpose of the oxyfuel program. Ecology plans to do comprehensive annual reviews of gasoline blender records to insure compliance. EPA approves of this approach for the state of Washington.

Prohibited Activities

EPA's credit program guidelines contain provisions designed to ensure that gasoline failing to meet the 2.0 percent by weight minimum oxygen content requirement is not available for use within a control area. Generally, CARs or blender CARs may not transfer gasoline for use in a control area that contains less than the minimum percent of oxygen by weight to parties who are not themselves registered as CARs or blender CARs. Under EPA's credit program guidelines, regulated parties, including refiners, importers, oxygenate blenders, carriers, distributors, or resellers may not fail to comply with recordkeeping requirements. In addition, a terminal that sells or dispenses gasoline intended for use in a control area should accept gasoline only if transfer documentation accompanies it, or unless the terminal is a blender registered in compliance with WAC 173–492–050. Misrepresenting the oxygen content of the gasoline in accompanying documents is a violation. Transfer documents must accompany the gasoline in every link of the gasoline distribution network except for the final consumer. Non-oxygenated gasoline may not be sold to an ultimate consumer in any control area during the control period.

Transfer Documents

EPA's credit program guidelines specify that transfer documents should include the following information: date of the transfer, name and address of the transferor, name and address of the transferee, the volume of gasoline which is being transferred, the proper identification of the gasoline as oxygenated or nonoxygenated, the location of the gasoline at the time of the transfer, the type of oxygenate, and the oxygen content of the gasoline (for transfers upstream of the control area terminal and for transfers between CARs, include the oxygenate volume of the gasoline). Records are to be kept in a location where they are available for state review. Washington meets EPA's recommendation.

Washington has included requirements related to transfer documentation in its regulation. These transfer document requirements will enhance the enforcement of the oxygenated gasoline regulation by providing a paper trail for each gasoline sample taken by state enforcement personnel.

Enforcement and Penalty Schedules

State oxygenated gasoline regulations must be enforceable by the state oversight agency. Each state should devise a comprehensive penalty schedule. Penalties should reflect the severity of a party's violation, the compliance history of the party, as well as the potential environmental harm associated with the violation.

To insure compliance, the authority or Ecology plans to obtain and test samples from each blender on a monthly basis throughout the control season. The authority or Ecology plans to obtain samples from 20 percent of retail stations in a control area during a control season, and to examine records as needed.

The Clean Air Washington Act, Chapter 70.94 RCW, provides for both criminal and civil penalties for oxygenated fuel violations. Criminal penalties include fines up to $10,000 and/or imprisonment for up to one year. Civil penalties include fines up to $10,000 per day for each violation.

Test Methods and Laboratory Review

EPA's sampling procedures are detailed in appendix D of 40 CFR part 80. EPA has recommended, in its credit program guidelines, that states adopt these sampling procedures. Washington has adopted EPA sampling procedures.

Each state regulation must include a test method. EPA's guidelines recommend the use of the OFID test, although parties may elect to use ASTM-D4815–89 or another method, if approved by EPA. Washington has elected to use the ASTM 4815–89 or other test methods determined by Ecology and EPA as being equivalent.

EPA has established an interim testing tolerance, which states appropriate ranges for credit and per-gallon programs (See Memorandum dated October 5, 1992 from Mary T. Smith). As EPA states in that memorandum, the purpose of the testing in a credit program is to determine if a sample meets the 2.0 percent minimum oxygen content requirement and to determine whether the documentation that accompanied that gasoline is correct. For a per-gallon program, the purpose of the testing is to determine whether the gasoline contains less than 2.7 percent oxygen by weight. Washington has established that during the control period and in each control area,

oxygenated gasoline blenders must supply an average of at least 2.7 percent oxygen for each control area serviced. To achieve an average of 2.7 percent oxygen a blender will be allowed to supply a minimum of 2.0 percent oxygenate gasoline and a maximum of 3.7 percent. Each gallon of fuel pumped by the retailer must have a minimum of 2.0 percent oxygen.

Labeling

EPA was required to issue Federal labeling regulations under section 211(m)(4) of the Act. These regulations, published in the **Federal Register** on October 20, 1992, required the following statement be posted for a per-gallon program or credit program with minimum oxygen content requirement:

"The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles." The Federal regulation also specifies the appearance and placement requirements for the labels.

EPA has strongly recommended that states adopt their own labeling regulations, consistent with the Federal regulation. Washington has adopted labeling regulations that differ from the Federal regulation in the following way(s). The lettering on the label is in block style of at least 20 point, and should appear in a color that contrasts the intended background. The label should be placed on each side of the dispenser from which the gasoline can be dispensed and on the upper half of the dispenser, in a position that will be clear and conspicuous to the consumer. EPA approves Washington's labeling requirement.

EPA's review of the material indicates that the state has adopted an oxygenated gasoline regulation in accordance with the requirements of the Act. EPA approves the Washington SIP revision for an oxygenated gasoline program, which was submitted on January 22, 1993, together with referenced Washington State SIP Appendix B, "State Regulations," and Appendix D, "State Policies and Guidelines." The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective March 21, 1994, unless, by February 22, 1994, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective March 21, 1994.

III. Conclusion

EPA, in this action, is approving this revision to the Washington SIP for an oxygenated gasoline program.

IV. Administrative Review

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

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

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 21, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See 42 U.S.C. 7607(b)(2))

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Ozone, Volatile organic compounds.

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

Dated: December 27, 1993.

Gerald A. Emison,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart WW—Washington

2. Section 52.2470 is amended by adding paragraph (c)(42) to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

(42) On January 22, 1993, the State of Washington Department of Ecology submitted revisions to the State Implementation Plan for the State of Washington addressing the attainment and maintenance of the National Ambient Air Quality Standards for carbon monoxide in the King, Pierce, Snohomish, Clark and Spokane Counties.

(i) Incorporation by reference.

(A) January 22, 1993, letters from the State of Washington Department of Ecology to EPA Region 10 submitting amendments to the Washington State Implementation Plan for Carbon Monoxide in the King, Pierce, Snohomish, Clark, and Spokane Counties.

(B) Supplements to the State Implementation Plan for Washington State—a plan for attaining and maintaining National Ambient Air Quality Standards (NAAQS) for the Spokane Carbon Monoxide Nonattainment Area, Vancouver Air Quality Maintenance Area, and Puget Sound Carbon Monoxide Nonattainment Area, adopted on January 22, 1993.

(C) State Regulations Appendix B-Part 2, "Motor Fuel Specifications for Oxygenated Gasoline, Chapter 173–492 WAC," of the Washington State SIP appendices, adopted October 6, 1992.

(D) State Policies and Guidelines Appendix D, "Oxygenated Gasoline Program, Implementation Guidelines, Washington State Department of Ecology, September 1992."

[FR Doc 94–1272 Filed 1–19–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 271

[FRL–4828–1]

Minnesota: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

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

EFFECTIVE DATE: Final authorization for Minnesota's program revisions shall be effective March 21, 1994, unless EPA publishes a prior **Federal Register** (FR) action withdrawing this immediate final rule. All comments on Minnesota's final authorization must be received by 4:30 p.m. central time on February 22, 1994. If an adverse comment is received, EPA will publish either: (1) A withdrawal of this immediate final rule or (2) a notice containing a response to the comment which either affirms that the immediate final decision takes effect or reverses the decision.

ADDRESSES: Copies of Minnesota's final authorization application are available for inspection and copying from 9 a.m. to 4 p.m. at the following addresses: Ms. Carol Nankivel, Supervisor, Rules Unit, Minnesota Pollution Control Agency, 520 Lafayette Road, St. Paul, Minnesota 55155, Phone 612/297–8369; Ms. Christine Klemme, USEPA, Region V, Office of RCRA, 77 W. Jackson, 7th Floor, Chicago, Illinois 60604, Phone (312) 886–3715. Written comments should be sent to Ms. Christine Klemme, USEPA, Region V, Program Management Branch, Office of RCRA, 77 W. Jackson, HRM–7J, Chicago, Illinois 60604, Phone (312) 886–3715.

FOR FURTHER INFORMATION CONTACT: Christine Klemme, Minnesota Regulatory Specialist, U.S. Environmental Protection Agency, Region V, Office of RCRA, Program Management Branch, Regulatory Development Section, HRM–7J, 77 W. Jackson, Chicago, Illinois 60604, (312) 886–3715.

SUPPLEMENTARY INFORMATION

A. Background

States with final authorization under section 3006(b) of RCRA, 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program.

In accordance with 40 CFR 271.21(a), revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessary because of changes to EPA's regulations in 40 CFR parts 124, 260–268, and 270.

B. Minnesota

Minnesota initially received final authorization for its base RCRA program effective on February 11, 1985 (see 50 FR 3756, January 28, 1985). Effective on September 18, 1987; June 23, 1989; August 14, 1990; August 23, 1991; May 18, 1992, and May 17, 1993 (see 52 FR 27199, July 20, 1987; 54 FR 16361, April 24, 1989; 55 FR 24232, June 15, 1990; 56 FR 28709, June 24, 1991; 57 FR 9501, March 19, 1992, and 58 FR 14321, March 17, 1993, respectively), Minnesota received authorization for additional program revisions.

The Minnesota Pollution Control Agency completed a revision application on November 18, 1993. EPA reviewed this application and made an immediate final decision that Minnesota's hazardous waste program revision satisfies all the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant Minnesota final authorization for this additional program revision.

On March 21, 1994, (unless EPA publishes a prior FR action withdrawing this immediate final rule), Minnesota will be authorized to carry out, in lieu of the Federal program, those provisions of the State's program which are analogous to the following provisions of the Federal program:

Federal requirement	Analogous state authority
Delay of Closure Period for Hazardous Waste Management Facilities, August 14, 1989 (54 FR 33376).	MN 7045.0458(1) & (2); 7045.0478(2); 7045.0486(5)(B); 7045.0488(1),(2), & (2a); 7045.0502(1); 7045.0564(1) & (2); 7045.0594(3); 7045.0596(1), (2), and (2a) 7045.0610(1); effective 11/25/91.
Changes to Part 124 Not Accounted for by Present Checklists, January 4, 1989 (54 FR 246).	MN 7001.0020; 7001.0030; 7001.0050; 7001.0060; 7001.0100(2 & 5), 7001.0130(2); 7001.0150(2); 7001.0190; 7001.0200; 7001.0520(7); 7001.0650(5); 7001.0670(3); 7001.0720; effective 11/25/91.
*Listing of 1,1–Dimethylhydrazine Production Wastes, May 2, 1990 (55 FR 18496).	MN 7045.0065; 7045.0135(3); 7045.0139; effective 4/27/92.
*Toxicity Characteristics—Correction 1, June 29, 1990 (55 FR 26986).	MN 7045.0120(K&Q); 7045.0131(7&8); 7045.0135; 7045.0634(3a); effective 1/9/91.

Federal requirement	Analogous state authority
*Organic Air Emission Standards for Process Vents and Equipment Leaks, June 21, 1990 (55 FR 25454).	MN 7001.0560; 7001.0625; 7001.0626; 7045.0065; 7045.0125(9); 7045.0547; 7045.0452(5); 7045.0458(2); 7045.0478(3); 7045.0482(4); 7045.0548; 7045.0564(2); 7045.0556(5); 7045.0584(3); 7045.0588(4); 7045.0647; 7045.0648; effective 4/27/92.
*Toxicity Characteristics: Refrigerants, February 13, 1991 (56 FR 5910).	MN 7045.0120; effective 8/17/92.
Removal of Strontium Sulfide from List of Hazardous Wastes: Amendment, February 25, 1991 (56 FR 7657).	MN 7045.0135(4)(E); 7045.0141(18); effective 10/23/90.
Mining Waste Exclusion III, June 13, 1991, (56 FR 27300)	MN 7045.0120; effective 11/18/88.

*indicates HSWA Requirement.

EPA shall administer any RCRA hazardous waste permits or portions of permits that contain conditions based upon the Federal program provisions for which the State is applying for authorization, and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization. EPA has previously suspended issuance of permits for the other provisions on February 11, 1985, September 18, 1987, June 23, 1989, August 14, 1990, August 23, 1991, May 18, 1992, and May 17, 1993, the effective dates of Minnesota's final authorization for the RCRA base program, and for subsequent program revisions.

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

C. Decision

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

E. Incorporation by Reference

EPA incorporates by reference authorized State programs in 40 CFR part 272 to provide notice to the public of the scope of the authorized program in each State. Incorporation by reference of the Minnesota program will be completed at a later date.

Compliance with Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Certification under the Regulatory Flexibility Act

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

Paperwork Reduction Act

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

Lists of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

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

Dated: December 23, 1993.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 94-1399 Filed 1-19-94; 8:45 am]

BILLING CODE 6560-50-P

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40 CFR Part 707

[OPPTS-120004B; FRL-4756-7]

Clarification of Change to Reporting for Export Notification Requirement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Clarification of reporting requirements.

SUMMARY: This document clarifies export notification reporting requirements amended in the **Federal Register** of July 27, 1993 (58 FR 40238). Although the **Federal Register** states that the effective date of the rule will be January 1, 1994, the Agency does not expect exporters to re-submit notices that were already submitted. Therefore, any export notice submitted prior to January 1, 1994, would satisfy the one-time reporting requirement established in the new rule, which will take effect January 1, 1994. There are no substantive or language changes; therefore, notice and public comment are not required.

EFFECTIVE DATE: This document is effective January 20, 1994.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Room E-545, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

List of Subjects in 40 CFR Part 707

Environmental protection, Chemicals, Exports, Hazardous substances, Imports, Recordkeeping and reporting requirements.

Dated: January 13, 1994.

Mark A. Greenwood,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 94–1401 Filed 1–19–94; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43-CFR Public Land Order 7027

[CO–942–4210–06; COC–50893]

Withdrawal of Public Lands for the Future Expansion of Walker Field Airport; CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 2,163.46 acres of public lands from location and entry under the mining laws for up to 20 years for the Federal Aviation Administration to protect lands adjacent to the Walker Field Airport at Grand Junction, Colorado, in the interest of future airport expansion. The lands will remain open to mineral leasing and to management by the Bureau of Land Management.

EFFECTIVE DATE: January 20, 1994.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7036, 303–239–3706.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from location and entry under United States mining laws (30 U.S.C. Ch.2 (1988)), but not from leasing under the mineral leasing laws, to protect the lands pending the future expansion of the Walker Field Airport:

Ute Principal Meridian

T. 1 N., R. 1 E.,
Sec. 19, lots 1 to 4, inclusive, E½W½, and SE¼;
Sec. 20, S½SW¼;
Sec. 29, N½, N½SE¼, and SE¼SE¼;
Sec. 30, lot 1, NE¼, and NE¼NW¼;
Sec. 32, NE¼NE¼.
T. 1 N., R. 1 W.,
Sec. 13, N½SW¼, SW¼SW¼, and S½SE¼;
Sec. 14, SE¼;
Sec. 23, NE¼ and N½NW¼;
Sec. 24, NE¼, N½SE¼, and SE¼SE¼.

The areas described aggregate 2,163.46 acres in Garfield, County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. The United States Department of the Interior, through the Bureau of Land Management, retains the right to administer the lands under the general land laws.

4. This withdrawal will expire 20 years from the effective date of this order unless, as a result of review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: January 10, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–1292 Filed 1–19–94; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 90899–0015; I.D. 120893B]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Change in observer coverage.

SUMMARY: NMFS requires the operators of catcher or processor vessels equal to or greater than 60 feet (18.3 m) length overall (LOA) and less than 125 feet (38.1) LOA to have a NMFS-certified observer on board the vessel each day it is used to participate in a directed fishery for groundfish in statistical area 517 during the period that the 1994 directed fishery is open for Pacific cod in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to collect further information on prohibited species bycatch rates experienced by vessels fishing in this area for purposes of assessing current and future bycatch management measures. It is intended to carry out the goals and objectives of the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP).

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), January 13, 1994, until 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Ellen R. Varosi, Fishery Biologist, Fisheries Management Division, Alaska Region, NMFS, (907) 586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the FMP prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

At its September 1993 meeting, the Council recommended that the Director of the Alaska Region, NMFS (Regional Director), require an increase in observer coverage for catcher or processor vessels, as defined in § 675.2, equal to or greater than 60 feet (18.3 m) length overall (LOA) and less than 125 feet (38.1 m) LOA that are used to participate in a directed fishery for groundfish in statistical area 517 during the period that the 1994 directed fishery is open for Pacific cod in the BSAI management area (BSAI). NMFS published the Council's recommended change in observer coverage requirements in the **Federal Register** (58 FR 65574, December 15, 1993) for public review and comment. The comment period ended on December 27, 1993, and no comments were received. Upon reviewing the reasons for the recommended change in observer coverage requirements, the Regional Director has determined that this action is necessary for fishery conservation and management and implements the Council's recommendation of observer coverage requirements. Therefore, the operators of catcher or processor vessels equal to or greater than 60 feet (18.3 m) length overall (LOA) and less than 125 feet (38.1 m) LOA must have a NMFS-certified observer on board the vessel each day that it is used to participate in a directed fishery for groundfish in statistical area 517 during the period that the 1994 directed fishery is open for Pacific cod in the BSAI. Catcher vessels only delivering unsorted cod-ends are exempt from this increased observer coverage requirement. Requirements for observer coverage are contained in § 675.25. This action implements a change in those coverage requirements as authorized under § 675.25(c)(1)(i) and is necessary to effectively monitor prohibited species bycatch rates experienced by vessels in the 60 (18.3 m) through 124 feet (37.8 m) LOA category and to identify specific locations with high bycatch rates in statistical area 517. This information

will be used to help assess future management bycatch measures.

Further explanation of the reasons for this change in observer coverage requirements are contained in the December 15, 1993, **Federal Register** notice.

Classification

This action is taken under 50 CFR 675.25.

The Assistant Administrator for Fisheries, NOAA (AA), has determined, under section 553(d) (3) of the Administrative Procedure Act, that good cause exists for waiving the 30-day delayed effectiveness period for this action. The directed fishery for Pacific cod using hook-and-line gear began on January 1 and the trawl fishery begins on January 20, 1994. The objectives for increased observer coverage for vessels equal to or greater than 60 feet LOA will be jeopardized if a delay in the effective date exceeds the opening dates for the 1994 Pacific cod fisheries. Additional coverage is necessary during this period to collect more comprehensive data on prohibited species bycatch rates experienced by the small boat fleet. This information will be used to help assess future bycatch management measures, and to identify specific areas with high bycatch rates in statistical area 517. Therefore, the AA is waiving the 30-day delayed effectiveness period for these changes to observer coverage requirements.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

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

Dated: January 13, 1994

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94-1268 Filed 1-13-94; 2:38 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 59, No. 13
Thursday, January 20, 1994

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

7 CFR Part 319

[Docket No. 91–074–3]

RIN 0579–AA47

Importation of Logs, Lumber, and Other Unmanufactured Wood Articles

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We propose to amend our foreign quarantine regulations by adding a new "Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles" to establish prohibitions and restrictions concerning imported unmanufactured wood articles. The new subpart would affect persons importing logs, lumber, bark chips, wood chips, certain wood packing materials, and other unmanufactured wood articles. The new subpart would not affect imports of manufactured wood products such as furniture. We also propose to change several existing foreign quarantine regulations that currently restrict importation of certain wood articles, to state that such articles would instead be regulated under the proposed new subpart. These changes appear necessary because there is increased interest in importing large volumes of unmanufactured wood articles into the United States, and prohibitions and restrictions appear necessary to eliminate any significant plant pest risk associated with importing these articles.

DATES: Consideration will be given only to comments received on or before April 20, 1994. We also will consider comments made at public hearings to be held on February 10, 1994, in Portland, Oregon, and on February 23, 1994, in Washington, DC.

ADDRESSES: A public hearing in Portland, Oregon, will be held at Cheatham Hall, World Forestry Center, 4033 S.W. Canyon Road, Portland, Oregon 97221. A Washington, DC, public hearing will be held at the Jefferson Auditorium, United States Department of Agriculture, South Building, 14th Street and Independence Avenue SW., Washington, DC.

To submit comments by mail, please send an original and three copies of your comments 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 No. 91–074–3. 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. Persons wishing to inspect comments are encouraged to call ahead (202–690–2817) to facilitate entry into the comment reading room.

You may also submit comments to an electronic bulletin board APHIS has established for this purpose, and review online comments posted to this bulletin board by other commenters. Printed copies of comments posted to this bulletin board will also be available in our comment reading room. To access the bulletin board via modem at 1200 through 14,400 baud, dial (703) 243–9696. Set your modem parity, data bits, and stop bits to N,8,1. You can also access the bulletin board via INTERNET with the command TELNET tmn.com. To log in to the bulletin board, use the userid "woodrule" and the password "aphis23" (type both in lower case, not capital letters).

FOR FURTHER INFORMATION CONTACT: Mr. Richard L. Orr, Senior Entomologist, Planning and Risk Analysis Systems, PPD, APHIS, USDA, room 810, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8939.

SUPPLEMENTARY INFORMATION:

Public Hearings

The public hearings will be held on February 10, 1994, in Portland, Oregon, and on February 23, 1994, in Washington, DC. The Portland, Oregon, public hearing will begin at 10 a.m. at Cheatham Hall, World Forestry Center, 4033 S.W. Canyon Road, Portland, Oregon 97221. The Washington, DC, public hearing will begin at 10 a.m. at the Jefferson Auditorium, United States Department of Agriculture, South Building, 14th Street and Independence Avenue SW., Washington, DC.

Persons wishing to speak at a public hearing are requested to contact Mr. Richard Kelly no later than ten days prior to the hearing date, at (301) 436–5455, or by writing to him at APHIS, PPD, RAD, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 (FAX number 301–436–8934).

A representative of the Animal and Plant Health Inspection Service (APHIS) will preside at each public hearing. Any interested person may appear and be heard in person, by attorney, or by other representative.

Each public hearing will begin each day at 10 a.m. local time and is scheduled to end at 5 p.m. local time. However, the hearing may be terminated at any time after it begins if all persons desiring to speak have been heard. We request that all persons who wish to speak at the public hearing contact us as requested above, and provide their name, organization, the hearing they plan to attend, and the approximate length of their presentation. This will allow us to determine whether we need to schedule additional time for a hearing. Speakers who register in advance will be informed prior to the hearing of the time they are scheduled to speak. Attendees who do not register in advance will be allowed to speak after all scheduled speakers have been heard. We ask that anyone who reads a statement provide two copies to the presiding officer at the hearing.

If the number of speakers at a hearing warrants it, the presiding officer may limit the time for each presentation so that everyone wishing to speak has the opportunity.

The purpose of the hearings is to give interested persons an opportunity for oral presentations of data, views, and arguments. Questions about the content of the proposed rule may be part of the commenters' oral presentations. However, neither the presiding officer nor any other representative of APHIS will respond to comments at a hearing, except to clarify or explain provisions of the proposed rule.

Background

The Animal and Plant Health Inspection Service (APHIS) is proposing to establish comprehensive regulations to eliminate any significant pest risks

presented by the importation [1] of logs, lumber, and other unmanufactured wood articles.

Although serious plant pests have been introduced into the United States in association with wood imports in the past, little wood has been imported recently in forms, or from places, that pose significant risks of introducing plant pests that could harm United States forests or agriculture. A changing national and world economy has recently increased the incentives to import wood that may present a significant increase in plant pest risk. An example of this change is the interest of sawmills and other wood processors in utilizing foreign sources of wood to offset expected harvest reductions in the United States, or to provide raw materials for their facilities at prices competitive with or better than domestic prices.

Trees produced in many foreign locations are attacked by a wide variety of exotic plant pests and pathogens which do not occur in this country. Logs and other unmanufactured wood articles imported into the United States could pose a significant hazard of introducing plant pests and pathogens detrimental to agriculture and to natural, cultivated, and urban forest resources. Plant pests and pathogens introduced into the United States in the past, such as the gypsy moth and the agents of Dutch elm disease and chestnut blight, have caused billions of dollars of damage to United States forest and plant resources.

Until recently the quantity and variety of unmanufactured wood imported were very limited, and consequently no regulations were developed specifically to address such imports. APHIS has been dealing with such imports only by detaining shipments at ports of first arrival for inspection, and ordering further action if warranted pursuant to the Federal Plant Pest Act and regulations issued under the Federal Plant Pest Act (7 CFR part 330). In addition, APHIS has prohibited the entry into the United States of logs from the Soviet Far East and Siberia, because a detailed pest risk assessment found that dangerous plant pests could occur in such logs and may be introduced with them. APHIS has also published interim regulations allowing importation of certain logs from Chile and New Zealand, discussed below.

However, when large volumes of wood imports are involved, inspection at the port of first arrival without other conditions relating to the wood imports may not be practical or adequate for preventing the introduction of plant pests associated with imported wood in all cases. Interest in importing logs and other unmanufactured wood articles from various countries is increasing rapidly toward a point where inspection and control activities solely at the port of first arrival will not be feasible. There is currently an intense commercial interest in developing a long-term industry in the Pacific Northwest for importing and processing logs from foreign countries. There is also potential for increased log and other unmanufactured wood article imports into other areas of the United States.

Representatives of domestic timber industries, State governments, academia, and environmental organizations have requested that we propose to add regulations to 7 CFR part 319 to establish an organized system for importing unmanufactured wood articles under conditions adequate to prevent the introduction into the United States of plant pests and pathogens. These groups have suggested that the current practice of allowing unmanufactured wood articles to enter the United States based solely on inspection and other actions at the port of first arrival (or prohibiting imports in the case of logs from Siberia and nearby areas) is not sufficient for dealing with large-volume imports of unmanufactured wood articles from many sources.

We believe that establishing a more comprehensive procedure for importing logs and other unmanufactured wood articles would result in a greater level of pest protection, and would also allow importers to plan their transactions in an orderly way, to meet known regulatory requirements.

In developing this proposal, APHIS worked with Federal and State regulatory and forestry officials from many States, and representatives from Agriculture Canada, the Foreign Agricultural Service and the Forest Service of the United States Department of Agriculture, and key industries with an immediate interest or involvement in present or potential importations. We also solicited public comment on approaches to regulating wood imports in an Advance Notice of Proposed Rulemaking published in the **Federal Register** on September 22, 1992 (57 FR 43628–43631, Docket No. 91–074–2). We received 66 comments on the Advance Notice prior to the closing date of November 23, 1992. Almost all the comments favored establishing regulations on the importation of wood products, and many provided useful technical information which was considered in developing this proposed rule.

As part of the development of this proposed rule, the Forest Service of the United States Department of Agriculture completed pest risk assessments for the importation of certain types of wood from Siberia [2], New Zealand [3], and Chile [4]. APHIS employed a great deal of the information generated by these assessments in developing this proposed rule. These studies helped us expand and adapt methodologies for addressing plant pest risks associated with importing unmanufactured wood articles on a worldwide basis, by providing valuable case studies in how to identify, evaluate, and control plant pest risks associated with particular unmanufactured wood articles from particular areas. We wish to stress that these proposed regulations do not simply extrapolate the requirements found appropriate for Siberia, New Zealand, and Chile to apply them on a world-wide basis. That approach would have reduced validity due to the immense variety of forest types, plant pests, and risk situations in other countries. However, experience from the Siberian, New Zealand and Chile assessments did give us insight into better ways to identify plant pest risks and develop controls for other situations world-wide.

Interim Rules Affecting Certain Logs From Chile and New Zealand

An interim rule published in the **Federal Register** on February 16, 1993, and effective upon signature on January 19, 1993 (58 FR 8524–8533, Docket No. 91–074–4), established importation requirements for Monterey pine and Douglas-fir logs from New Zealand. Plant pest risks associated with importing these articles, and import requirements that would reduce these risks to insignificant levels, were identified early in the course of developing comprehensive wood import regulations. Therefore, to reduce these plant pest risks as soon as possible, we

[1] Throughout this document, the words "import" and "importation" are used to mean moving or bringing articles into the territorial limits of the United States.

[2] "Pest Risk Assessment of the Importation of Larch from Siberia and the Soviet Far East," USDA, Forest Service, Miscellaneous Publication No. 1495, September, 1991; "An Efficacy Review of Control Measures for Potential Pests of Imported Soviet Timber," USDA, APHIS, Miscellaneous Publication No. 1496, September 1991.

[3] "Pest Risk Assessment of the Importation of *Pinus radiata* and Douglas-fir Logs from New Zealand," USDA, Forest Service, Miscellaneous Publication No. 1508, October 1992.

[4] "Pest Risk Assessment of the Importation of *Pinus radiata*, *Nothofagus dombeyi* and *Laurelia philippiana* Logs from Chile," USDA, Forest Service, Miscellaneous Publication, May 1993.

established regulatory requirements in 7 CFR 319.40–1 through 319.40–8 for certain logs from New Zealand.

A second interim rule published in the **Federal Register** on November 9, 1993, (58 FR 59348–59353, Docket No. 91–074–5), and effective November 2, 1993, established importation requirements for Monterey pine logs from Chile. This interim rule applied the same requirements to Monterey pine logs from Chile that the first interim rule applied to Monterey pine and Douglas-fir logs from New Zealand.

This proposed rule would replace the regulations established by the interim rules with comprehensive wood import regulations affecting importation of unmanufactured wood articles from all places, including Chile and New Zealand. The provisions contained in this proposed rule for Monterey pine logs from Chile, and for Monterey pine and Douglas-fir logs from New Zealand are essentially the same as the requirements imposed by the interim rule, except that the interim rule used slightly different definitions due to its limited scope.

Policy of the Proposed Regulations

These proposed regulations attempt to establish a comprehensive, user-friendly framework for the importation of unmanufactured wood articles into the United States. A primary goal of the regulations is to protect the nation's forests and other plant resources against the introduction of plant pests. The scientific literature contains a very large inventory of known plant pests associated with trees and wood articles in various parts of the world. Ample scientific evidence indicates that there is an equal or larger number of unknown plant pests associated with wood in foreign countries that could be harmful if introduced into the United States. The history of inadvertent introductions of plant pests supports this concern about currently unknown plant pests. For example, two plant pests that have caused immense damage in the United States, the Dutch elm disease fungus and the dogwood anthracnose fungus, were not identified as significant plant pests prior to their introduction into the United States, and their place of origin and exact method of introduction into the United States are still disputed.

Therefore, our proposed regulations use a dual approach that addresses both known and unknown plant pests. The regulations would establish sufficient controls to deter the introduction of known plant pests. The regulations also would establish procedures for identifying and assessing risks associated with currently unknown plant pests, and maintain a threshold level of deterrence for all imported unmanufactured wood articles that will prevent the introduction of currently unknown plant pests. Any lessening of the threshold requirements for importation of unmanufactured wood articles must be based on adequate knowledge about the plant pest risks associated with importing the regulated articles involved.

Approach of the Proposed Regulations

We have attempted to accomplish the following objectives in this proposed rule:

- Identify the types of articles proposed to be regulated;
- Propose requirements that can reduce plant pest risks associated with the importation of unmanufactured wood articles to an insignificant level (e.g., permits issued by APHIS; documentation by the importer of the nature and quantity of the articles; harvesting, storage, and shipping practices; chemical and physical treatments; restriction of destinations or uses for the imported articles);
- Propose universal importation requirements for certain types of regulated articles. Using this alternative, an importer would know that a given regulated article may be imported and entered from anywhere if the proposed requirements are met;
- Propose specific importation and entry requirements for particular article-origin combinations. These proposed requirements would allow some articles from some locations to be imported under less restrictive conditions than the proposed universal importation requirements;
- Propose a procedure for making case-by-case evaluations of whether unmanufactured wood articles could be imported without significant risk under conditions less stringent than the proposed universal importation requirements. Under this procedure, APHIS would first identify plant pest risks associated with importation of a regulated article. We would then apply risk assessment standards contained in the regulations to analyze the entry potential, colonization potential, spread potential, and damage potential of the plant pests. APHIS would then evaluate the effectiveness of available mitigation measures to prevent introduction of the plant pests. If safe importation of the regulated article is feasible with no plant pest mitigation measures, APHIS would issue a permit authorizing the regulated article to be imported. However, if the plant pest risk assessment shows that the regulated article may be safely imported if it is subjected to requirements not currently in the regulations, APHIS would propose regulations containing requirements for its importation. After the regulations are adopted as a final rule, the regulated article could be imported in accordance with them.

These objectives should establish a useful framework to eliminate significant plant pest risks associated with importing unmanufactured wood articles. This proposed rule addresses these objectives through a variety of regulatory requirements contained in the proposed 7 CFR 319.40–1 through 319.40–11, "Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles" (referred to below as the regulations).

Permits, Certificates, and Other Documents Employed by the Proposed Regulations

Importing wood articles under the proposed regulations would involve a certain amount of paperwork. We would require several forms and other documents to record and transmit information that would be necessary for effective implementation of our wood importation regulations. This section explains how these documents would be used and why they appear to be necessary.

This proposed rule attempts to limit paperwork to documents that actively support the pest exclusion goals of the regulations, and to require a document only if the information contained in it is not readily available through other means. To reduce the paperwork burden, the proposed regulations would require certificates only for the importation of a few specified articles. The proposed regulations would also provide for the use of multi-product, multi-shipment permits, and informal documents written by the importer. Another important feature of the proposed regulations is that some types of articles may be imported under a general permit (an authorization contained in the text of the proposed regulations) instead of an individual specific permit issued by APHIS to an importer.

1. Permits (Required by Proposed § 319.40–2(a))

A permit is written authorization issued or promulgated by APHIS that allows an importer to bring specified articles into the United States. The specific permit specifies, or refers to regulations that specify, the type of articles allowed import and the requirements the articles must meet to be eligible for importation. A general

permit is a permit that is contained in the text of the regulations.

We refer to the document that authorizes an importer to bring articles into the United States in accordance with our regulations as a "permit," because "permit" is the term used in the Federal Plant Pest Act and the Plant Quarantine Act, two statutes that constitute the statutory basis for this proposal. Our permit serves the same function as documents that other national governments call authorizations, affidavits, licenses, or various other names; all refer to a document that a government gives to importers to notify them that they may import certain articles.

There are both legal and practical reasons for using permits in the proposed regulations. The primary legal reason is that the Federal Plant Pest Act, in 7 U.S.C. 150bb, requires that, except for plant pests from Canada, a person may move a plant pest into the United States only "under general or specific permit from the Secretary [of Agriculture]," and the Plant Quarantine Act, in 7 U.S.C. 154, requires that certain articles may not be imported "unless and until a permit shall have been issued therefor by the Secretary of Agriculture, provided however that the Secretary of Agriculture may waive this permit requirement for nursery stock imported or offered for entry from Canada." Articles requiring a permit include nursery stock and other plant products whose unrestricted importation may result in the entry into the United States of injurious plant diseases or insect pests (7 U.S.C. 159). We have determined that unmanufactured wood is such an article, due to the wide range of pests associated with unmanufactured wood and discussed elsewhere in this document. Therefore, a permit would be required to import wood articles that will be regulated if this proposed rule is adopted.

There are also practical reasons for using permits in connection with importing wood. These are:

• A permit shows that risks associated with a shipment were evaluated, and the necessary mitigation measures were prescribed, prior to import. The proposed regulations are designed to ensure that articles with unacceptably high pest risks do not even get to U.S. ports of arrival. Regulations referenced by specific permits inform importers of our entry requirements before they ship articles, rather than at the port of arrival. Permits give importers pre-arrival notice of our requirements. By requiring permits, APHIS also discourages the arrival of unexpected shipments of articles that present unknown pest risks.

• A permit expedites processing at the port of arrival. The application for a permit provides crucial information about shipments, which is provided to our inspectors at ports. Without a permit, inspectors would have to obtain this information from a variety of sources—shipping documents, physical inspection and inventory, even phone calls—which would delay inspection and release of arriving shipments.

• A permit preserves data needed for future pest risk assessments and program operations. Without permit application data, it would be difficult for APHIS to collect the data it needs to continue to operate and improve its regulations for importing unmanufactured wood articles. Permit information allows us to track the type and quantity of wood articles arriving at U.S. ports, and the conditions and treatments employed for their importation. We need to accumulate this data to continually evaluate whether our regulatory restrictions are effectively preventing the introduction of pests associated with wood, and whether any of our regulatory restrictions are unnecessarily severe.

• APHIS permits tend to be broad rather than narrow. Most of our import permits are issued to allow importation of multiple articles through multiple shipments, over extended time periods. Under such a permit, it is not necessary to obtain a new permit each time articles are imported by the same permittee. Once our wood importation program is well established, we intend to use permits for multiple articles through multiple shipments wherever possible. However, many of the permits issued during the first year of implementing the program may be limited to cover one or a few shipments, or a period of only a few months, to allow us to confirm that the program is operating effectively before we issue permits that are effective for long periods of time.

• Obtaining an APHIS permit is usually not a long and frustrating process. Whatever delays an importer encounters in obtaining authorization to import new articles into the United States are usually the result of a pest risk assessment or rulemaking that often must precede new import requirements, not the result of actually issuing the permit. Our Plant Protection and Quarantine Port Operations staff issues thousands of permits each year. Most of these permits are for articles that are already being imported, by some other importer. Some permits are for articles specifically allowed to be imported by our regulations, but that no one happens to be importing currently. We can usually issue a permit in these cases within about 10 days after the request is received. For new articles whose risks have not been evaluated, we must conduct risk assessments before we allow such articles to be imported. If any risk assessment identifies plant pest risks, we would need to conduct rulemaking to establish requirements to control these risks. In such cases a permit may not be issued until several to many months after the request is made. However, this delay does not result from the requirement for a permit; it reflects risk assessment and rulemaking activities we would perform even if our regulations did not employ permits.

• In some cases importers will not need a specific permit. In some cases a general authorization to import is provided in the text of the regulations covering certain classes of articles, so that importers of these articles need not obtain a specific written permit to import these articles. (Under 7 U.S.C. 150bb, articles must be imported "under general or specific permit"; this is an example of a "general" permit.)[5] See our discussion below of proposed § 319.40–3, "General permits; articles that may be imported without a specific permit or importer document." In that section, we would exempt certain articles from the requirement for a specific permit, because we already know a great deal about the plant pest risks associated with these articles. Our inspectors at the ports already have substantial experience dealing with such articles. Therefore, most of the reasons discussed above for using specific permits do not apply to these articles, and we do not intend to require specific permits for them.

We will probably establish "general permits" in the regulations for more classes of articles over time, as we gain enough experience with the importation of additional classes of articles. Over time, we would expect to see fewer and fewer specific permit requirements for importation of wood articles.

2. Application for a Permit (Required by Proposed § 319.40–4(a))

We propose to require that in order to obtain a specific permit a person must

[5] The general permits discussed in this document should not be confused with the "general permits" utilized in 7 CFR part 355, which are written permits issued to particular persons authorizing them to engage in business as importers, exporters, or reexporters of any terrestrial plants protected under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and listed in 50 CFR 17.12 or 23.23.

complete a written application. This application would require the submission of information we would need to consider in deciding whether the regulations allowed a person to import the articles requested in the application. We would also use this information to determine what conditions, restrictions, and treatments in the regulations would apply to a request.

The completed application would provide information about the place of harvest of the tree from which the regulated article was derived; the type and quantity of articles the applicant wishes to import; any processing or treatments the applicant plans to apply to the articles either before or after they are imported; the port of arrival and final destination in the United States for the articles; the identity and address of the applicant, and other matters.

You could use the permit application to your advantage by providing as much information as possible in your answers. For example, if you wished to import logs and you answered the question about their place of origin with the name of a country, we would have no way of knowing where in that country the logs originated. Some localities in that country may present lower pest risks than other localities. If we knew the logs came from a low pest risk locality, we might be able to impose less stringent requirements. But if we only knew the country of origin, we would have to impose requirements that protect against pest risk from all localities in that country.

Similarly, it could help an applicant to be forthcoming about processing and treatments, the final destination and use of the articles, and other information we request. To the extent the regulations allow, we would use all this information to impose the minimum requirements necessary to protect against introduction of plant pests.

The permit application is discussed in more detail below in § 319.40–4, "Application for a permit to import regulated articles; issuance and withdrawal of permits."

3. Certificates (Required for a few Articles by Proposed § 319.40–5(b))

In many of its plant import regulations, APHIS requires that the articles be accompanied by certificates of inspection issued by foreign governments. These certificates indicate that an article has been inspected, and may make additional certifications concerning the origin, treatment, or handling of the article.

Certificates issued by foreign governments would only be required in these proposed regulations in a few cases, discussed below. Instead, we propose in most cases to require articles to be accompanied by written declarations signed by the importer of the article ("importer documents"), or, at the option of the importer, a certificate issued by a government.

Certificates would be required in certain cases where there is no adequate substitute for involvement of a foreign government's plant protection or forestry officials in the inspection or treatment of articles. There are two situations in the proposed rule where certificates are required: the importation of logs from both Chile and New Zealand (see proposed § 319.40–5(b)). In both these situations, industry and government in the exporting country worked together to develop programs where government officials monitor the harvest, treatment, and movement of unmanufactured wood articles, and issue certificates documenting that these activities followed our regulations. The request presented to APHIS by these groups for importation of logs specified use of certificates, and we agree that certificates are a useful tool in these cases. The certificate would officially record a determination by officials authorized by the government of Chile or New Zealand that the logs meet the requirement of proposed § 319.40–5(b)(1)(i)(A), which requires the logs must be from live healthy trees which are apparently free of plant pests, plant pest damage, and decay organisms. It would be difficult to enforce this requirement without employing certification.

4. Importer Documents (Required by Proposed § 319.40–2(b))

Instead of requiring certificates for most importations, we propose to require a document written by the importer to provide certain information we will need at the port of arrival. We believe that an importer could compose a document far more easily that he or she could obtain a certificate from a foreign government, and that this requirement would minimize the paperwork burden on importers. We believe importer documents would provide APHIS with information we need regarding regulated articles to be imported. An importer document (or at the importer's option, a certificate containing the information required by an importer document) must accompany every shipment of regulated articles imported into the United States, with a few exceptions discussed below under proposed § 319.40–3, "General permits; articles that may be imported without a specific permit; articles that may be imported without either a specific permit or an importer document."

We are not concerned about the form the importer document takes as long as it is an accurate written declaration by the importer. All that we would require for an importer document is that it be signed by the importer, and that it contain the required information. The information that would be required is described in detail in proposed § 319.40–2(b). The importer document would be required to include the following information: (1) The genus and species of the tree from which the regulated article was derived; (2) the country and locality, if known, where the tree from which the regulated article was derived was harvested; (3) the quantity of the regulated article to be imported; (4) the use for which the regulated article is imported; and (5) any treatment or handling of the regulated article performed prior to arrival at the port of first arrival.

5. Compliance Agreements, Notice of Arrival, Withdrawal and Appeal Letters

Compliance agreements would be developed on a case-by-case basis between APHIS and U.S. processing facilities that would subject regulated articles to processing necessary to eliminate pest risk associated with the articles. Proposed § 319.40–8 would allow persons who operate facilities in which imported regulated articles are processed to enter into compliance agreements to facilitate importation. We expect to develop only a few compliance agreements each year. These agreements would provide a clear standard for both APHIS and the persons operating these processing facilities as to what procedures and safeguards must be employed during processing to ensure the elimination of plant pests.

Proposed § 319.40–9(b) would require that persons to whom permits have been issued or their agents give APHIS notice of the impending arrival of a shipment in the United States at least 7 days prior to the expected date of arrival. We do not believe this notice would be particularly burdensome to persons who have been issued permits or their agents, and we believe it is needed to allow our inspectors to prepare for a shipment.

Proposed §§ 319.40–4(d) and 319.40–8(b) would allow APHIS to withdraw permits and cancel compliance agreements with a written notice, and allow the holders of withdrawn documents to appeal the withdrawal or cancellation in writing to the Administrator of APHIS. Based upon past experience with other similar

programs, we believe that withdrawal of permits and cancellation of compliance agreements will occur infrequently. Therefore, the paperwork burden of appealing withdrawal of permits and cancellation of compliance agreements should not impose a significant paperwork burden. Further, the written appeal would only be required to include the facts and reasons upon which a person relies to show that the permit was wrongfully withdrawn or the compliance agreement was wrongfully canceled.

Section-by-Section Description of Proposed Rule

The proposed rule consists of the following sections:

Section 319.40–1 Definitions

This section would establish definitions of terms used throughout the regulations. The definitions of *Administrator, APHIS, Certificate, Compliance agreement, Departmental permit, Import, Inspector, Permit, Plant pest, Port of first arrival, Treatment Manual,* and *United States* are consistent with our use of these terms in other foreign quarantine regulations in part 319, and describe the framework in which we propose to conduct operations to enforce our regulations.

A key definition, *Regulated article,* identifies the articles to which the requirements of the proposed rule would apply. Our intent is to make any imported wood article a regulated article if it has not been sufficiently processed and manufactured to remove, and prevent reinfestation by, any pests that might be associated with the tree from which the article was derived.

The definition of regulated article would include a great variety of materials derived from trees. Regulated articles would include logs; lumber; solid wood packing materials; any whole tree; any cut tree or any portion of a tree, not solely consisting of leaves, flowers, fruits, buds or seeds; bark; cork; laths; hog fuel (small wood fragments used as fuel to fire a furnace, kiln, or boiler); sawdust; painted raw wood products; excelsior (wood wool); wood chips; wood mulch; wood shavings; pickets; stakes; shingles; humus; compost; and litter. Regulated articles are the types of wood and wood products that often have pests associated with them. Sometimes the pests are from the tree from which the article was derived, and sometimes pests that attack wood can become associated with regulated articles later in the production and shipping process.

The definition of regulated article would also include any article designated as a regulated article in accordance with § 319.40–2(f). This provision would allow an inspector to designate articles other than the articles identified in the definition of the term *regulated article* in proposed § 319.40–1 as regulated articles. An inspector may designate any article as a regulated article by giving written notice of the designation to the owner or person in possession or control of the article. Inspectors may designate an article as a regulated article after determining that: (1) The article was imported in the same container or hold as a regulated article; (2) other articles of the same type imported from the same country have been found to carry plant pests; or (3) the article appears to be contaminated with regulated articles or soil. This provision would give APHIS inspectors authority to regulate articles that are not defined in proposed § 319.40–1 as regulated articles in situations where the articles appear to present a risk of introducing plant pests. The Administrator will implement rulemaking to add articles temporarily designated as regulated articles to the definition of regulated article in proposed § 319.40–1 if importation of the article appears to present a recurring risk of introducing plant pests.

Manufactured wood articles such as furniture made of kiln dried lumber and wooden artwork or ornaments (without bark) would not be regulated articles. No article is entirely free from the risk of introducing plant pests, and there have been occasional reports of plant pests found in or associated with imported furniture and similar articles; for example, wood borers emerging from imported furniture months after importation. However, addressing all risks would require practically unlimited resources, and the proposed regulations must focus available resources on those articles which pose the greatest plant pest risk. Therefore, the definition of regulated articles includes only articles that are unprocessed or have received only primary processing. Primary processing is defined to include cleaning (removal of soil, limbs, and foliage), debarking, rough sawing (bucking or squaring), rough shaping, spraying with fungicide or insecticide sprays, and fumigation.

Articles that have received more than primary processing present less of a risk because their manufacturing processes destroy many plant pests associated with the articles, and, therefore, they would not be included in the proposed definition of the term "regulated article." The provision discussed above to allow inspectors to designate additional articles as regulated articles would address plant pest risks associated with occasional situations where manufactured articles present a significant plant pest risk. In addition, APHIS will continue to evaluate plant pest risks associated with importation of articles not included in the proposed definition of regulated articles, and may propose further regulations in the future to address these risks.

Solid wood packing materials (dunnage, crating, pallets, etc.) which are unprocessed or subjected only to primary processing would be regulated. Solid wood packing materials are commonly used in association with the movement of a very large volume of goods imported into the United States. Currently, the only requirement applied to imported solid wood packing materials is that they are subject to inspection at the port of first arrival, followed by mandatory treatment, destruction, or re-export if certain plant pests are found. Under the proposed regulations, certain solid wood packing materials would have to meet additional requirements to be eligible for entry.

We also propose to define the term "Sealed (sealable) container" as follows. "A completely enclosed container designed for the storage or transportation of cargo and constructed of metal or fiberglass, or other rigid material, providing an enclosure which prevents the entrance or exit of plant pests and is accessed through doors that can be closed and secured with a lock or seal. Sealed (sealable) containers are distinct and separable from the means of conveyance carrying them."

This definition of sealed container is important because the proposed regulations require that various regulated articles be enclosed in such containers at various times, to prevent the movement of plant pests to or from the regulated articles in the containers.

The word "lot" is defined as all the regulated articles on a single means of conveyance that are derived from the same species of tree and were subjected to the same treatments prior to importation, and that are consigned to the same person. This definition is necessary to prevent manipulation of articles because some of the proposed requirements apply to each "lot" of regulated articles. For example, proposed § 319.40–5(c)(3) imposes certain requirements on tropical hardwood logs imported in lots of 15 or fewer logs; the definition of "lot" would prevent an importer from importing a shipment of 60 such logs on a single means of conveyance as four "separate" lots.

The proposed regulations require that to be eligible for importation, certain

regulated articles must be free from rot, because rot is sometimes caused by plant pests, and rot also renders wood more susceptible to some other plant pests. We propose to define "free from rot" to mean "[n]o more than two percent by weight of the regulated articles in a lot show visual evidence of fructification of fungi or growth of other microorganisms that cause decay and the breakdown of cell walls in the regulated articles." We believe this standard is consistent with common industrial standards for rot in wood chips and other regulated articles, and is also an effective standard for minimizing plant pests associated with rot. Our inspectors can readily enforce this standard for wood chips by examining samples taken from wood chip shipments, and calculating the percentage of rot by comparing the quantity of chips afflicted by rot in a sample to the total quantity of chips in the sample. The presence of rot in other types of regulated articles is also detectable through inspection.

Other proposed definitions establish certain subgroups of regulated articles so that requirements can be targeted to the subgroups based on the plant pest risks presented by each and the commercial practices and treatments available for each subgroup. The following subgroups of regulated articles would be separately defined.

Bark chips. Defined as bark fragments broken or shredded from log or branch surfaces. Bark chips would be regulated because many plant pests are associated with bark on trees, and some plant pests may remain with the bark even after it is chipped from the underlying wood.

Humus, compost, and litter. Defined as partially or wholly decayed plant matter. Humus, compost, and litter is often derived from forest products and byproducts. This material would be regulated because, if untreated, it is a good medium for plant pests, and it is often used as a soil amendment, where it could easily spread plant pests into the environment.

Log. Defined as the bole of a tree; trimmed timber that has not been further sawn. Logs are regulated because they provide ecological niches for a wide variety of plant pests. Logs and lumber (defined below) are the two most commercially important regulated articles, and constitute the major volume of wood imports.

Loose wood packing material. Defined as excelsior (wood wool), sawdust, and wood shavings, produced as a result of sawing or shaving wood into small, slender, and curved pieces. While the processes that produce these materials generally remove or destroy plant pests associated with these articles, they are regulated because they may become contaminated with plant pests after manufacture if the loose wood packing materials become wet or come in contact with other materials bearing plant pests.

Lumber. Defined as logs that have been sawn into boards, planks, or structural members such as beams. Lumber would be regulated because it can harbor deep-wood plant pests.

Solid wood packing material. Defined as wood packing materials other than loose wood packing materials, including but not limited to dunnage, crating, pallets, packing blocks, drums, cases, and skids, that are used or for use with cargo to prevent damage. Solid wood packing materials are used for packing and blocking in connection with both regulated and unregulated articles. Solid wood packing materials would be regulated because they present a plant pest risk in themselves (especially if they are not free from bark or treated), and because when used in connection with the movement of regulated articles, they may either spread plant pests to the regulated articles or be contaminated with plant pests from the regulated articles.

Tropical hardwoods. Defined as hardwood timber species which grow only in tropical climates. We particularly seek comments on how to improve this definition, since it is virtually impossible to list all hardwood species that grow only in tropical climates.

Wood chips. Defined as wood fragments broken or shredded from any wood. Wood chips are usually generated from raw wood, but occasionally from manufactured articles made of wood. All wood chips would be regulated because some plant pests survive the process that produces wood chips or may contaminate the wood chips at a later time.

Wood mulch. Defined as bark chips, wood chips, wood shavings, or sawdust intended for use as a protective or decorative ground cover. Like humus, compost, and litter, the use of wood mulch would tend to spread any plant pests that are associated with it.

Section 319.40–2 General Prohibitions and Restrictions; Relation to Other Regulations

This section would establish general requirements for importation that apply to regulated articles. These requirements would include a permit issued by APHIS, and a document signed by the importer that contains information about the genus of tree from which the regulated article was derived, quantity, and the treatment and handling of the regulated articles prior to arrival at the port of first arrival.

The proposed permit requirement would ensure that for each request to allow importation of a regulated article, APHIS has determined the regulated article is eligible for importation in accordance with the regulations and has given permission for importation of the regulated article into the United States.

The requirement for a document signed by the importer (an "importer document") is designed to provide APHIS with a declaration of certain information we need to determine the eligibility of a shipment for importation. We would require that the importer provide us with the following information in this document: The genus and species of the tree from which the regulated article was derived; the country and, if known, the locality where the tree from which the regulated article was derived was harvested; the quantity of the regulated article to be imported; any treatment or handling of the regulated article required by the proposed regulations which was performed prior to arrival at the port of first arrival in the United States; and the use for which the regulated article is imported.

This section would also state that articles that meet the definition of regulated article, but are allowed importation for propagation or human consumption under other regulations in 7 CFR part 319, will not be regulated under proposed § 319.40, but rather under the other appropriate regulations in part 319.

Finally, this section would establish a separate procedure for importing regulated articles by the United States Department of Agriculture under a Departmental permit for experimental, scientific, or educational purposes.

Section 319.40–3 General Permits; Articles That May Be Imported Without a Specific Permit; Articles That May Be Imported Without Either a Specific Permit or an Importer Document

General Permits. This section would establish a number of general permits issued by APHIS for the importation of articles listed in this section. To import these articles, importers would have to comply with the general permit conditions specified in this section, but they would not have to obtain a specific permit issued to them by APHIS.

Exemption from Specific Permits. This section would exempt most regulated articles that originate in Canada and states in Mexico bordering the United States from the specific permit requirements of proposed

§ 319.40–2, and from most of the other proposed requirements of the regulations. Most regulated articles from Canada and from Mexican border states do not present a risk of introducing exotic plant pests if imported into the United States. The climatic conditions in areas on both sides of these borders are similar, and there has been much trade across these borders for generations, with the result that the same plant pests generally exist on both sides of the borders. Therefore, we propose to allow most regulated articles from Canada and Mexican border states to be imported without restriction under the regulations, except that they must be accompanied by documents verifying their origin (to prevent transshipment of regulated articles from other places), and would be subject to inspection and other requirements in proposed § 318.40–9 (discussed below). To prevent the possibility that regulated articles from Canada or Mexican border states may have originated in or been moved through other areas where they may have been exposed to plant pests, regulated articles imported from Canada or Mexican border states must be accompanied by a document signed by the importer stating that the regulated articles are derived from trees harvested in, and never before moved outside, Canada or states in Mexico adjacent to the United States border.

However, certain regulated articles from Canada and Mexico present a risk of spreading citrus diseases, and would not be covered by this general exemption for regulated articles from Canada and Mexican border states. Regulated articles not covered by this exemption would include articles of the subfamilies Aurantioideae, Rutoideae, and Toddalioideae of the botanical family Rutaceae. Both Canada and Mexico are under quarantine for citrus diseases in accordance with 7 CFR 319.19, which prohibits importation into the United States of plants or plant parts, except fruit or seeds, of these subfamilies from Canada and Mexico. To address the citrus disease risk, the proposed regulations would allow regulated articles from these subfamilies to be imported from Canada and Mexico, but only if they are imported in accordance with the proposed regulations.

This section would also exempt solid wood packing materials used as packing for regulated articles from the specific permit requirements that would otherwise apply to imported solid wood packing materials. The exemption for solid wood packing materials would provide as follows:

• If the solid wood packing material is being used as packing for a regulated article, there is a risk that plant pests associated with the packing material could attack the regulated article in transit, and there is a risk that plant pests associated with the regulated article could attack the solid wood packing material. Therefore, we propose to require that solid wood packing materials used as packing for regulated articles be treated to destroy plant pests prior to importation, using a heat, fumigation, or preservative treatment described below in § 319.40–7. Alternatively, solid wood packing material which is free of bark and poses less of a risk of introducing plant pests would be eligible for importation if it meets all the importation and entry conditions specified in the permit issued for the regulated article the solid wood packing material is used to move. (It would generally be possible for solid wood packing materials to meet the same requirements imposed on the regulated articles moved with them only when the requirements are a specific treatment, e.g., heat, fumigation, or preservative. Regulated articles would often be subject to requirements packing materials cannot readily meet, e.g., a maximum time limit between harvest and shipment.)

While treatment of solid wood packing materials is necessary, we do not believe a separate permit for the solid wood packing material is needed, since in most cases the regulated article the solid wood packing materials accompany will have a permit and an importer document. Therefore, we propose that if the solid wood packing material was treated prior to importation, that fact could be recorded in a document signed by the importer and accompanying the shipment.

We do not propose to require that solid wood packing materials must be treated immediately before they are used to move regulated articles or within any maximum time preceding their use. Once solid wood packing materials are treated, the plant pest risk associated with the solid wood packing materials is reduced to a level similar to manufactured wood articles that are not regulated. We do not believe there is a significant enough risk of reinfestation after treatment of solid wood packing materials to require that they be treated within a fixed time prior to their use to move regulated articles. Also, in view of the vast volume of solid wood packing materials used and reused in shipping, we believe requiring that such materials be treated within a fixed time prior to their use, or retreated if they were treated earlier, would impose a substantial economic burden without significantly reducing plant pest risk.

• If the solid wood packing material is being used as packing for an article that is not a regulated article, there is less risk that plant pests from the solid wood packing material will attack the article being moved. Still, it is important to prevent such solid wood packing materials from introducing plant pests. The plant pests of particular concern are the type found on or under bark attached to solid wood packing materials. Such plant pests could spread to wood articles in the United States after the solid wood packing materials are unloaded and discarded or reused. Therefore, we propose that solid wood packing materials used as packing for articles that are not regulated articles must be either: (1) Totally free from bark, and apparently free from live plant pests, or (2) treated prior to importation, using a heat, fumigation, or preservative treatment described below in § 319.40–7. Again, we do not believe a specific permit is necessary to enforce this requirement. We propose that solid wood packing materials be accompanied by a document signed by the importer and accompanying the solid wood packing material. This document would affirm that the solid wood packing material either: (1) Is totally free from bark, and apparently free from live plant pests, or (2) was treated prior to importation, using a heat, fumigation, or preservative treatment described below in § 319.40–7.

Solid wood packing materials imported as cargo, i.e., not in actual use as packing, would not be exempted from the specific permit and importer document requirements and would have to be imported in accordance with requirements for lumber in proposed § 319.40–5 or § 319.40–6, discussed below.

Exemption From Both Specific Permit and Importer Document Requirements

This section would also exempt dry loose wood packing materials (excelsior, sawdust, and wood shavings) from the specific permit requirement and the importer document requirement, whether they are imported in use as packing material or not in use (i.e., as cargo). The processes by which loose wood packing materials are produced generally remove any significant pest risk that may be associated with them, and we propose to admit them only if they are dry (to control rot), and are inspected at the port of first arrival.

Bamboo timber that is free of leaves and seeds and that has been sawn or split lengthwise and dried presents only a minimal plant pest risk and therefore

would not require either a specific permit or an importer document. Such bamboo timber would be subject only to inspection and other requirements in proposed § 319.40–9.

Section 319.40–4 Application for a Permit to Import Regulated Articles; Issuance and Withdrawal of Permits

This proposed section describes the requirements for applying for a permit, how APHIS would evaluate the application and issue a permit, and how APHIS could withdraw a permit if the person to whom the permit is issued does not comply with importation requirements.

A person who wishes to obtain a permit must submit a written application that provides detailed information about the regulated articles proposed for importation. APHIS would evaluate this information to determine whether to issue a permit. The permit application would have to include the following information:

1. The specific type of regulated article to be imported, including the genus and species name of the tree from which the regulated article was derived;
2. Country, and locality if known, where the tree from which the regulated article was derived was harvested;
3. The quantity of the regulated article to be imported;
4. A description of any processing, treatment or handling of the regulated article performed prior to importation, including the location where any processing or treatment was or will be performed and the names of any chemicals employed in treatments;
5. A description of any processing, treatment, or handling of the regulated article intended to be performed following importation, including the location where any processing or treatment will be performed and the names of any chemicals employed in treatments;
6. Whether the regulated article will or will not be imported in a sealable container or in a hold;
7. The means of conveyance to be used to import the regulated article into the United States;
8. The intended port of first arrival in the United States of the regulated article, and any subsequent ports in the United States at which regulated articles may be unloaded;
9. The destination and general intended use of the regulated article. (General intended use means, for example, if the article is logs, will they be sawn into lumber, used for veneer, sold whole, or used otherwise; for wood chips, will they be pulped, burned, or composted; or similar information about the article's intended use that may affect pest dissemination risk);
10. The name and address of the applicant and, if the applicant's address is not within the United States, the name and address of an agent in the United States whom the applicant names for acceptance of service of process; and,
11. A statement certifying the applicant as the importer of record.

This information is needed to determine whether the regulated article covered by the application is eligible for importation and to coordinate APHIS activities for enforcing the regulations at ports of first arrival and elsewhere (e.g., at processing facilities operating under compliance agreements; see § 319.40–8 below).

Proposed § 319.40–4(b) states that when APHIS reviews a permit application, it would first determine whether the regulated article covered by the application is eligible for importation under either § 319.40–5, "Importation requirements for specified articles from specified countries," or § 319.40–6, "Universal importation options," discussed below. If the regulated article is eligible for importation under either of these sections, APHIS would issue a permit for the importation of the regulated article identified in the application. However, APHIS would not issue a permit to any applicant who has had a permit withdrawn due to noncompliance with the regulations within the past 12 months, unless the permit has been reinstated upon appeal.

If the regulated article is not eligible for importation under either proposed § 319.40–5 or proposed § 319.40–6, APHIS would review the application by applying the plant pest risk assessment standards contained in proposed § 319.40–11. This process is designed to deal with (1) regulated articles whose importation is not specifically provided for in the regulations, and (2) regulated articles that are named in the regulations, but that are proposed for importation without treatments or safeguards, or under a combination of treatments and safeguards not provided for in the regulations. Under this process, APHIS would assess the plant pest risk presented by the proposed importation and determine whether, and under what conditions, importation of the regulated article should be allowed.

If this pest risk assessment reveals that the nature of the regulated article presents a negligible risk of introducing plant pests into the United States, and, therefore, no importation conditions are needed, APHIS would issue a permit for importation of the regulated article. The permit may only be issued in unique and unforeseen circumstances when the importation is not expected to reoccur. We do not expect that many regulated articles would be found to qualify on this basis, because most regulated articles present greater than a negligible plant pest risk that justifies treatment, handling, or other importation conditions. However, we do expect that occasionally regulated articles may be found to present negligible plant pest risk. Under this provision we would allow the importation of such regulated articles with a minimum of regulatory burden, i.e., with only a permit to document that APHIS has determined that the regulated article may be imported subject to inspection and other requirements in proposed § 319.40–9.

Some applicants may wish to import regulated articles under conditions or treatments that are not currently prescribed by the regulations. If the pest risk assessment reveals that importation of the regulated articles under the conditions proposed in the application, or under other conditions acceptable to the applicant, would not result in a significant risk of introducing plant pests into the United States, APHIS would implement rulemaking containing the applicable conditions for importation. If the regulations are amended to include the new conditions, APHIS would issue a permit for importation of the regulated articles.

We propose that no permit will be issued to an applicant who has had a permit withdrawn during the 12 months prior to receipt of the permit application by APHIS, unless the withdrawn permit has been reinstated upon appeal. This provision appears necessary to ensure that applicants who have had a permit withdrawn under the procedures in proposed § 319.40–4(d) are not able to immediately reapply for a new permit. We believe this provision is necessary to discourage violation of the regulations, and to support the effectiveness of the permit system as a tool to help exclude plant pests from the United States.

Proposed § 319.40–4(c) states that even if a permit has been issued for the importation of a regulated article, the regulated article may be imported only if all applicable requirements of the subpart are met and only if an inspector at the port of arrival determines that no measures pursuant to the Federal Plant Pest Act or the Plant Quarantine Act are necessary with respect to the regulated article. We included this proposed provision to ensure that those who are issued a permit understand that the issuance of a permit does not guarantee

that the regulated articles that are the subject of the permit can be imported.

Proposed § 319.40–4 would also authorize us to withdraw a permit if an inspector or the Administrator determines that the person to whom a permit is issued has violated any provision of subpart 319.40. This section also allows a permit holder to appeal the denial or withdrawal of a permit, and to obtain a hearing on the denial or withdrawal.

Section 319.40–5 Importation and Entry Requirements for Specified Articles

This section proposes requirements for the importation of specific regulated articles.

Bamboo timber. Bamboo imported for propagation would not be regulated under proposed § 319.40, but would continue to be regulated in accordance with § 319.34, our regulations that currently apply to bamboo nursery stock.

Bamboo timber consisting of whole culms or canes would be allowed to be imported into Guam or the Northern Mariana Islands subject to inspection and other requirements in § 319.40–9. Any bamboo timber consisting of whole culms or canes would be allowed into Guam and the Northern Mariana Islands because the plant pests of concern associated with bamboo culms or canes are already present in these islands and not in other parts of the United States.

Bamboo timber consisting of whole culms or canes that are completely dry as evidenced by lack of moisture in node tissue may be imported into any part of the United States subject to inspection and other requirements in proposed § 319.40–9. Absence of moisture in the node tissue indicates that the bamboo is not capable of propagation, which would be the major avenue for spread of plant pests from bamboo timber.

Monterey pine logs and lumber from Chile and New Zealand; Douglas-fir logs and lumber from New Zealand. The importation requirements established for logs and lumber from these species are designed to control the plant pest risks identified in "Pest Risk Assessment of the Importation of *Pinus radiata* and Douglas-fir Logs from New Zealand" (the New Zealand assessment; see footnote 3) and the "Pest Risk Assessment of the Importation of *Pinus radiata* Logs from Chile" (the Chile assessment; see footnote 4).

The New Zealand assessment screened over 300 plant pests that have been recorded on Monterey pine and Douglas-fir in New Zealand, and included detailed studies of the plant pest risks associated with four insects and two pathogenic fungi that were identified as representative of the groups of organisms posing the greatest potential plant pest problem. The insects, which are all deep wood borers that would not be removed from logs by surface treatments, are *Kalotermes brouni* (New Zealand brownwood termite), *Platypus apicalis* (*Platypus gracilis*) (native pinhole borer), *Prionoplus reticularis* (huhu beetle), and *Sirex noctilio* (a woodwasp). The pathogenic fungi are *Leptographium truncatum* and *Amylostereum areolatum*.

The Chile assessment screened insect pests from eight orders associated with Monterey pine in Chile (Coleoptera, Hemiptera, Homoptera, Hymenoptera, Isoptera, Lepidoptera, Orthoptera, Thysanoptera). Ten insects with the greatest risk potential were chosen as subjects of individual pest risk assessments: introduced pine bark beetles (*Hylurgus ligniperda, Hylastes ater*, and *Orthotomicus erosus*); bark weevils of the genus *Rhyephenes;* a pine bark anobiid (*Ernobius mollis*); a siricid (*Urocerus gigas gigas*); wood-boring beetles (*Buprestis novemmaculata, Colobura alboplagiata, Callideriphus laetus*); termites (*Cryptotermes brevis, Neotermes chilensis, Porotermes quadricollis*); the spiny pine caterpillar (*Ormiscodes cinnamonea*); a bagworm (*Thanatopsyche chilensis*); white grubs (*Hylamorpha* spp., *Brachysternus* sp., *Sericoides* sp.); and the European pine shoot moth (*Rhyacionia buoliana*).

Four types of diseases of radiata pine in Chile were evaluated in detail for plant pest risk: Diplodia shoot blight (*Sphaeropsis sapinea*), needle diseases (*Dothistroma pini*, among others), stain fungi (*Ophiostoma* spp.), and root/stem rots (*Armillaria* spp., *Phellinus* spp.).

The plant pest risk assessment process was used to evaluate these plant pests of potentially high risk. Of the insect pests of Monterey pine in Chile, only the bark beetle *Hylurgus ligniperda* was found to have a high plant pest risk potential. Among the pathogens, the stain fungi (*Ophiostoma* spp.) present a moderate to high risk. Other plant pests found to present significant but lesser risks were bark weevils of the genus *Rhyephenes*, the siricid *Urocerus gigas gigas*, the termites *Neotermes chilensis* and *Porotermes quadricollis*, and the wood-boring beetles *Buprestis novemmaculata* and *Colobura alboplagiata*.

We are proposing that Monterey pine from Chile, and Monterey pine and Douglas-fir from New Zealand, may be imported only under conditions that will prevent the introduction of the plant pests discussed above. The importation requirements and treatments needed to control the risk of introducing these plant pests into the United States would also serve to prevent the introduction of other plant pests that were identified in the Chile and New Zealand assessments. For example, we propose to require methyl bromide fumigation of the logs prior to importation to help reduce the risk associated with the four insects named above. The required methyl bromide fumigation would also destroy other plant pests identified in the Chile and New Zealand assessments (such as insects of the families *Cerambycidae, Curculionidae, Termopsidae*, and *Scolytidae*), eliminating the need to develop separate requirements to address the risks presented by the other plant pests. Similarly, we propose to require that both logs and lumber imported from Chile and New Zealand be sent to facilities in the United States that will heat treat products generated from the logs and lumber. This requirement primarily addresses the pathogenic fungi *Leptographium truncatum, Ophiostoma*, and *Amylostereum areolatum*, but the heat treatment will also destroy any other plant pests associated with the logs and lumber, in the unlikely event that such plant pests survived the methyl bromide fumigation or became associated with the regulated article following methyl bromide fumigation.

We propose the following requirements for importation of Monterey pine logs from Chile and New Zealand, and for Douglas-fir logs from New Zealand. Some of the handling and treatment requirements apply prior to importation, some at the port of first arrival, and some after movement of the logs to a facility for processing in the United States.

The requirements that would apply to these logs prior to importation include a requirement that the logs be from live healthy trees which are apparently free of plant pests, plant pest damage, and decay organisms. This requirement would eliminate logs that present a high risk of introducing plant pests into the United States. Another pre-importation requirement is that the logs be debarked and fumigated with methyl bromide within 45 days of the date the trees are felled, in accordance with § 319.40–7 of the proposed regulations. Debarking would remove plant pests associated with the bark and would enable inspection to reveal holes made by wood-boring plant pests. Methyl bromide fumigation would be required because it effectively controls plant pests that may be associated with the

surface and subsurface of these logs and that might otherwise spread from the logs during movement to a processing facility in the United States. We would require this fumigation be performed within 45 days following the date the trees are felled because logs are more vulnerable to plant pest attack the longer they are stored untreated, and delaying fumigation for a longer period could result in plant pests multiplying in the logs to an extent that might not be effectively controlled by fumigation. The fumigation must be conducted in the same sealable container or hold in which the logs and solid wood packing materials are exported to the United States.

We propose that the logs must be kept segregated from other regulated articles during transit and after arrival in the United States (unless the other regulated articles were also fumigated, or were heat treated with moisture reduction), to control possible movement of plant pests to or from other regulated articles. After importation, the logs would be moved in as direct a route as reasonably possible from the port of first arrival to a sawmill or other processing facility that operates under a compliance agreement in accordance with proposed § 319.40–8. At the facility, any lumber sawn from the logs would have to be heat treated, or heat treated with moisture reduction. (We define what is meant by "heat treatment" and "heat treatment with moisture reduction" below in § 319.40–7, where we discuss treatments. We are using the term "heat treatment with moisture reduction" rather than the term "kiln dried" to avoid confusion caused by the wide variety of meanings assigned to the term "kiln dried" in the wood industry. However, we believe almost all articles that are considered "kiln dried" by common industry understanding would meet or exceed the standard we propose for "heat treated with moisture reduction").

If the facility generates products other than lumber from the logs, these products would also have to be heat treated, either with or without moisture reduction. Moisture reduction is not feasible for some non-lumber wood products such as veneer. We have determined that the proposed heat treatment (without moisture reduction) proposed in § 319.40–7(c) would provide sufficient protection against pests that might be associated with these non-lumber products.

Logs which are not cut or processed at the facility into lumber or other products would have to be heat treated, either with or without moisture reduction.

The facility must heat treat the logs, lumber, or other products within certain time limits, to minimize risks of plant pests spreading from the articles. For wood imported as logs, including sawdust, wood chips, or other products generated from the logs, this time limit is 60 days from the date the logs arrive at the port of first arrival. For imported raw lumber, the limit is 30 days. The time limit is longer for logs because it takes facilities longer to schedule and perform cutting operations to convert logs into lumber or other products, than it takes to heat treat articles that arrive at the facility as already cut lumber.

Sawdust, wood chips and waste generated from the logs at the processing facility would have to be burned, heat treated in accordance with proposed § 319.40–7(c) or proposed § 319.40–7(d), or otherwise processed in a manner that will destroy plant pests associated with the sawdust, wood chips, or waste.

These time limits would reduce opportunities for the logs and lumber to be processed other than in accordance with the regulations, and would reduce the time during which our inspectors monitor compliance to a manageable span of time for each shipment. The time limits also reduce the time during which any plant pests that may be associated with the regulated articles could escape to surrounding areas or contaminate other articles.

Composting or use as mulch of the sawdust, wood chips, and waste generated by sawing or processing the logs would be prohibited unless the composting or use as mulch was preceded by fumigation in accordance with proposed § 319.40–7(f)(3) or heat treatment in accordance with proposed § 319.40–7(c) or § 319.40–7(d). This would reduce the risk of the spread of plant pests. We also propose to allow wood chips, sawdust, and waste generated from processing the logs to be moved for processing to another facility operating under a compliance agreement for processing, if they are moved in enclosed trucks to control plant pest risk in transit.

The importation requirements we propose for raw lumber of Monterey pine species from Chile or New Zealand and Douglas-fir species from New Zealand are similar to the requirements for logs of the same species in proposed § 319.40–5(b)(1). The primary difference is that we do not propose to require fumigation with methyl bromide for the lumber[6]. Fumigation would not be required because in general, lumber is more easily inspected and therefore represents less plant pest risk than logs with regard to deep wood boring insects. For lumber cut in Chile or New Zealand, the waste material stays in Chile or New Zealand, reducing plant pest risk. Also, the process of cutting the lumber frequently exposes any deep wood boring insects that are present, and affected lumber would not be shipped. The remaining requirements, including heat treatment with moisture reduction at the destination in the United States, would provide protection against the introduction of plant pests.

Tropical hardwood logs and lumber. The importation of tropical hardwoods into the United States tends to involve relatively small shipments (compared to softwoods) of high-quality, high-value products such as teak and mahogany. In general, tropical hardwoods present less plant pest risk for the United States because the great majority of plant pests associated with them cannot successfully become established in most areas of the United States due to climatic conditions.

We anticipate, based on previous importations of tropical hardwoods, that most importers will wish to import debarked tropical hardwoods. We propose to allow debarked tropical hardwood logs and lumber to be imported subject to inspection and other requirements of proposed § 319.40–9. Inspection would allow us to confirm the nature of the shipment and check for pests on the logs.

Some importers may wish to import tropical hardwood logs that have not been debarked. We propose to require methyl bromide fumigation as a requirement for these logs, to control plant pests that may be associated with the bark. However, we also propose to allow small lots of logs with bark (15 logs or fewer) to be imported subject to inspection and other requirements in proposed § 319.40–9, rather than fumigation. Although effective inspection of logs with bark is time-consuming for our inspectors, some importers wish to import tropical hardwoods with bark, but are concerned that fumigation will damage their market value. We believe we can accommodate this desire by allowing inspection instead of fumigation for small lots (15 logs or fewer). Our operational experience inspecting hardwood log shipments at ports leads us to believe we can readily inspect lots of 15 or fewer hardwood logs. However, because Hawaii, Puerto Rico, and the

[6] However, raw lumber would have to be fumigated if it is moved in the same hold or container as logs. See proposed § 319.40–5(b)(1)(i)(D).

Virgin Islands of the United States have climates that are conducive to the establishment of tropical hardwood pests, we would not allow this provision to be used to import tropical hardwoods into these places.

Temperate hardwoods. Temperate hardwood logs and lumber from any place could be imported in accordance with the universal importation options described in § 319.40–6. Otherwise, we propose to establish lesser requirements for the importation of temperate hardwood logs and lumber (with or without bark) from all places except countries in Asia that are wholly or in part east of 60° East Longitude and north of the Tropic of Cancer. We would prohibit importing temperate hardwoods from this area (unless they are imported in accordance with the universal importation options in § 319.40–6) because the "Pest Risk Assessment of the Importation of Larch from Siberia and the Soviet Far East" (the Siberian assessment; see Footnote 2) identified a large variety of plant pests associated with larch and hardwoods in this area. Many of these plant pests have the potential to infest extensive areas of one or more forest types in the United States, where they could cause massive defoliation and other damage. At this time, we do not know of treatments or requirements, short of the universal importation options, that have been demonstrated to effectively destroy the plant pests of concern identified in countries in Asia that are wholly or in part east of 60° East Longitude and north of the Tropic of Cancer.

We propose that temperate hardwood logs (with or without bark) and lumber from all other places may be imported if fumigated in accordance with proposed § 319.40–7(f) prior to arrival in the United States and if subject to inspection and other requirements in proposed § 319.40–9. Although we do not have detailed plant pest risk assessment information of the type collected by the Siberian assessment for temperate hardwoods from all other areas of the world, both our operational experience and available plant pest distribution data suggest that requiring fumigation of such hardwood imports would effectively destroy plant pests of the type likely to be associated with temperate hardwood logs and lumber and is a reasonable measure to guard against possible unknown plant pests that could be associated with their importation. We have many years of experience inspecting small volumes of temperate hardwood logs imported each year from various parts of the world (not including the area covered by the Siberian assessment). Temperate hardwood articles imported to date tend to be high quality logs that were selected, harvested and handled with care, resulting in a low degree of plant pest risk. Our experience inspecting such shipments has not revealed them to be infested with plant pests, and consequently we propose to allow importation of temperate hardwood logs and lumber subject to fumigation and inspection and other requirements in proposed § 319.40–9. However, if future plant pest risk assessments or interceptions of plant pests associated with temperate hardwood shipments indicate a greater plant pest risk than is currently apparent, we would increase the restrictions on importation of temperate hardwoods.

Regulated Articles Associated With Exclusively Tropical Pests. There are some plant pests that would not be of concern unless they are introduced into areas of the United States with a tropical climate because they cannot survive outside of tropical areas. Regulated articles that have been identified by a pest risk assessment as possibly being infested solely with pests that can successfully become established only in tropical climates would therefore be subject to the following conditions:

(1) The regulated article may be imported only to a destination in the continental United States; and

(2) The regulated article may be prohibited entry into tropical or subtropical areas of the United States specified in the permit.

This provision would allow us to issue permits for the importation of regulated articles into nontropical areas of the United States, if the only pests associated with the articles need tropical conditions to survive.

Section 319.40–6 Universal Importation Options

This section would establish importation requirements for several classes of regulated articles. These standards are designed to allow importation of regulated articles from any source under conditions that will not present a significant risk of entry of known plant pests and unknown plant pests that may be associated with them. These standards may be used for importation of regulated articles not specifically addressed in § 319.40–5. For example, logs from Siberia could be imported in accordance with proposed § 319.40–6(a) of this section.

The efficacy of treatments and the standards for performing the treatments required by proposed § 319.40–6 are discussed below in proposed § 319.40–7. The requirements use a variety of approaches to destroy plant pests prior to importation, or to contain and segregate regulated articles so that plant pests cannot spread from them, until the regulated articles are processed in the United States in a manner that would destroy the plant pests. We propose universal importation options for the following regulated articles: logs; lumber; wood chips and bark chips; wood mulch, humus, compost, and litter; and cork and bark.

All regulated articles that would be allowed importation under proposed § 319.40–6 would require a permit in accordance with proposed § 319.40–4, and would be subject to inspection and other requirements of proposed § 319.40–9.

Logs. We propose that logs from any place may be imported if prior to importation the logs have been debarked in accordance with proposed § 319.40–7(b) and heat treated in accordance with proposed § 319.40–7(c). During the entire interval between treatment and export the logs must be stored and handled in a manner which excludes any access to the logs by plant pests.

Lumber. We propose that lumber from any place may be imported if prior to importation the lumber has been heat treated in accordance with proposed § 319.40–7(c), or heat treated with moisture reduction in accordance with proposed § 319.40–7(d), and if the lumber is imported under the following conditions:

- During shipment to the United States, no other regulated article (other than solid wood packing materials) is permitted on the means of conveyance with the lumber, unless the lumber and the other regulated articles are in separate holds or separate sealed containers, or, if the lumber and other regulated articles are mixed in a hold or sealed container, all the regulated articles have been heat treated in accordance with proposed § 319.40–7(c), or heat treated with moisture reduction in accordance with proposed § 319.40–7(d). Lumber on the vessel's deck must be in a sealed container, unless the lumber has been heat treated with moisture reduction in accordance with proposed § 319.40–7(d). These requirements would control possible movement of plant pests to or from other regulated articles.
- If lumber has been heat treated in accordance with proposed § 319.40–7(c), that fact must be recorded on the importer document accompanying the lumber, or by a permanent marking on each piece of lumber in the form of the letters "HT" or the words "Heat Treated." If lumber has been heat treated with moisture reduction in

accordance with proposed § 319.40–7(d), that fact must be recorded on the importer document accompanying the lumber, or by a permanent marking, on each piece of lumber or on the cover of bundles of lumber, in the form of the letters "KD" or the words "Kiln Dried."

We also propose that raw lumber (in contrast to lumber that has been heat treated or heat treated with moisture reduction, discussed above) may be imported from any place except countries in Asia that are wholly or in part east of 60° East Longitude and north of the Tropic of Cancer. (We exclude raw lumber from this area because the plant pests discussed above in reference to logs from this area may also be associated with raw lumber from this area.) Raw lumber must meet the following requirements.

• During shipment to the United States, no other regulated articles (other than solid wood packing materials) are permitted on the means of conveyance with the raw lumber, unless the raw lumber and the other regulated articles are in separate holds or separate sealed containers. Raw lumber on the vessel's deck must be in a sealed container. These requirements would control possible movement of plant pests to or from the regulated articles.

• After importation, the raw lumber must be consigned to a sawmill or other processing facility that operates under a compliance agreement in accordance with proposed § 319.40–8. At the facility, the raw lumber must be heat treated in accordance with proposed § 319.40–7 (c) or (d), no more than 30 days after the lumber is released from the port of arrival. If the raw lumber is to be cut, planed, or sawed, the heat treatment must be conducted prior to any cutting, planing, or sawing of the lumber, to prevent spread of any plant pests that might be associated with the raw lumber.

Wood chips and bark chips. We propose that wood chips and bark chips from any place except countries in Asia that are wholly or in part east of 60° East Longitude and north of the Tropic of Cancer may be imported under the following conditions:

• The wood chips must be accompanied by an importer document that states that the wood chips were either (1) derived from live, healthy, plantation-grown trees in tropical areas; or (2) fumigated in accordance with proposed § 319.40–7(f)(3) or heat treated in accordance with proposed § 319.40–7(c) or proposed § 319.40–7(d).

• During shipment to the United States, no other regulated articles (other than solid wood packing materials) are permitted in the holds or sealed containers carrying the wood chips or bark chips. Wood chips or bark chips on the vessel's deck must be in a sealed container. These requirements would control possible movement of plant pests to or from other regulated articles.

• Imported wood chips or bark chips must be consigned to a facility operating under a compliance agreement in accordance with § 319.40–8. The wood chips or bark chips must be burned, heat treated in accordance with proposed § 319.40–7(c) or § 319.40–7(d), or otherwise processed in a manner that will destroy any plant pests associated with the wood chips or bark chips within 30 days of arrival at the facility. We do not want to allow imported chips to be stored for long periods of time because this increases the opportunities for movement of plant pests from the chips. Mulching and composting of the wood chips or bark chips are prohibited unless, prior to use, the wood chips or bark chips that are to be mulched or composted are fumigated in accordance with proposed § 319.40–7(f)(3) or heat treated in accordance with proposed § 319.40–7(c) or proposed § 319.40–7(d). Mulching or composting of unfumigated chips would distribute the chips in soil and enhance opportunities for plant pest movement.

• The wood chips or bark chips must be free from rot at the time of importation, unless accompanied by an importer document stating that the entire lot was fumigated with methyl bromide in accordance with proposed § 319.40–7(f)(3) or heat treated in accordance with proposed § 319.40–7 (c) or (d). Wood chips or bark chips which have not been fumigated with methyl bromide in accordance with proposed § 319.40–7(f)(3) or heat treated in accordance with proposed § 319.40–7 (c) or (d) and which an inspector finds not to be free from rot will be refused entry into the United States.

Wood mulch, humus, compost, and litter. We propose that wood mulch, humus, compost, and litter from any place may be imported if accompanied by an importer document stating that the wood mulch, humus, compost, or litter was fumigated in accordance with proposed § 319.40–7(f)(3) or heat treated in accordance with proposed § 319.40–7 (c) or (d). These treatments effectively destroy all plant pests commonly found in wood mulch, humus, compost, and litter.

Cork and bark. Large amounts of cork are imported each year, and in general only hitchhiking and opportunistic plant pests have been associated with its importation. Varying amounts of other barks are imported for food or spices (particularly cinnamon), or for the manufacture of chemicals or medicines (e.g., yew bark for taxol production).

Based on APHIS inspections of imported bark at ports of entry, we do not believe that importations of cork and cork bark, cinnamon bark, and other bark intended for food or manufacture of medicine, or chemicals extraction represent a significant plant pest risk if the bark is free from rot when imported.

Therefore, we propose that cork and cork bark, cinnamon bark, and other bark to be used for food, manufacture of medicine, or chemical extraction may be imported if free from rot at the time of importation, and if subject to inspection and other requirements of proposed § 319.40–9.

Section 319.40–7 Treatments and Safeguards

This proposed section describes the methods for conducting several treatments that are required in other parts of the regulations in connection with importing regulated articles. The descriptions of the treatments generally establish minimum acceptable standards and attempt to allow persons employing the treatments a degree of latitude as to exactly how to meet the treatment standards.

APHIS has studied these treatments and determined that they are effective means for eliminating any significant plant pest risk in regulated articles for which their use is required. No one treatment is a panacea for all plant pests; the treatments assigned for various regulated articles reflect the plant pest risks associated with the regulated articles. We continue to evaluate the effectiveness of other treatments, and it is likely that this section of the regulations will be revised from time to time as new information on treatments becomes available.

Many regulated articles may only be imported if accompanied by an importer document that certifies that the regulated articles have been subjected to treatments which we propose to be required prior to importation of regulated articles. Proposed § 319.40–7(a) concerns APHIS actions in the event that importer documents or other documents accompanying regulated articles prove to be inaccurate. Under this proposed provision, if APHIS determined that a document required for the importation of regulated articles is inaccurate, the regulated articles which are the subject of the document would be refused entry into the United States. In addition, if the inaccurate document was a certificate issued by the government of a foreign country, APHIS could determine not to accept any further certificates for the importation of

regulated articles in accordance with this subpart from a country in which an inaccurate certificate is issued, and APHIS could determine not to allow the importation of any or all regulated articles from any such country, until corrective action acceptable to APHIS establishes that certificates issued in that country in the future will be accurate.

There is no general requirement in the proposed regulations that treatments performed outside the United States must be performed under the supervision of an APHIS inspector. To ensure the proper application of treatments and safeguards that do not occur under direct APHIS supervision, APHIS will conduct monitoring inspections of treatments and safeguards applied in foreign countries in accordance with this section.

Proposed paragraphs (b) through (g) of § 319.40–7 contain the minimum requirements for the following treatments: Debarking; heat treatment; heat treatment with moisture reduction; surface pesticide treatments; methyl bromide fumigation; and preservative treatments. Various combinations of these treatments are required for the importation of regulated articles in accordance with proposed § 319.40–5 and § 319.40–6. The requirements for performing each treatment are discussed below.

Debarking. The proposed standard is that for regulated articles except raw lumber, no more than 2 percent of the surface of all regulated articles in a lot may retain bark, with no single regulated article retaining bark on more than 5 percent of its surface. For raw lumber, debarking must remove 100 percent of the bark. (Heat treated lumber may retain up to 2 percent of bark because the heat treatment substantially reduces the plant pest risk.)

Debarking would be effective in eliminating plant pests and pathogens on the surface of the logs, as well as those found within and immediately beneath the bark. Debarking would facilitate inspection for the presence of boring insects at the port of first arrival. Inspecting bark on large quantities of logs is a difficult, time-consuming process and would not be practical.

To be effective, bark removal must be thorough. From a practical viewpoint, APHIS recognizes that complete removal of every scrap of bark is probably impossible, except for lumber. A tolerance level of 2 percent, with no single regulated article, except raw lumber, retaining bark on more than 5 percent of its surface, appears reasonable to us based on our experience inspecting regulated articles at ports and observing commercial debarking operations. We believe that the plant pest risk associated with the remaining 2 percent of bark on an imported regulated article would not be significant because of the other regulatory measures applied to importation of the regulated article, which may include (depending on the type of regulated article) treatments such as surface pesticide sprays and fumigation.

Heat treatment. We propose that heat treatment procedures may employ steam, hot water, kilns, exposure to microwave energy, or any other method that raises the temperature of the center of each treated regulated article to at least 56 °C and maintains the regulated article at that center temperature for at least 30 minutes. For regulated articles heat treated prior to arrival in the United States, during the entire interval between treatment and export the regulated article must be stored, handled, or safeguarded in a manner which excludes any reinfestation of the regulated article by plant pests.

Heat in various forms has long been used as a nonchemical treatment for wood. The efficacy of heat treatments depends on heating the treated article throughout to a temperature that will kill plant pests. Based on the available scientific literature [7] and inspection of heat-treated materials, we have determined that heating any article until the center of the article reaches at least 56 °C and maintaining that temperature for at least 30 minutes will destroy plant pests. To reduce the risk that heat-treated regulated articles could become recontaminated with plant pests, between heat treatment and export the regulated article must be stored, handled, or safeguarded in a manner which excludes any reinfestation of the regulated article by plant pests. This protection could be accomplished using a wide variety of methods, such as shrink-wrap plastic covers or storage in pest-free warehouses. Another safeguard available is treatment with surface pesticide sprays every 30 days prior to departure, in accordance with proposed §§ 319.40–6(a) and 319.40–7(e), and we believe these spray treatments would control risks of reinfestation of heat treated articles prior to shipment.

We do not believe we can currently develop a useful list of effective safeguarding methods without leaving out many possibilities that businesses may wish to employ. We intend to review importer proposals for safeguard techniques during our permit approval process, and we will inform importers at that time whether the safeguards they propose to use are adequate.

Heat treatment must be performed only at a facility where APHIS or an inspector authorized by the national government of the country in which the facility is located has inspected the facility and determined that its operation complies with the standards of the regulations for performing heat treatment. We believe such inspection is necessary to ensure that heat treatment facilities attain the necessary time-temperature combinations needed to destroy pests. However, inspection of facilities performing heat treatment with moisture reduction is not necessary, because the effectiveness of heat treatment with moisture reduction can be measured by testing the moisture content of treated articles at the port of arrival, as discussed below.

Heat treatment with moisture reduction. This is a form of heat treatment that is also designed to reduce the moisture content of the treated regulated article, eliminating deep wood plant pests and making the regulated article less vulnerable to reinfestation by some plant pests. We propose that heat treatment with moisture reduction may employ dry heat, exposure to microwave energy, or any other method that raises the temperature of the center of each treated regulated article to at least 56 °C, maintains the regulated articles at that center temperature for at least 30 minutes, and reduces the moisture content of the regulated article to 20 percent or less, as measured by an electrical conductivity meter. Electrical conductivity meters are devices in common use in wood industries that calculate the moisture content of wood by measuring the electrical conductivity of the wood, which varies with its moisture content and density. As necessary, our inspectors will use electrical conductivity meters to confirm the moisture content of regulated articles.

Regulated articles heat treated with moisture reduction prior to arrival in the United States would also have to be stored, handled, or safeguarded in a manner which excludes any reinfestation of the regulated article by plant pests during the time the articles are stored between heat treatment and export.

Surface pesticide treatments. In general, the proposed regulations do not employ surface pesticide sprays or dips as a primary treatment to eliminate plant pests; instead, these treatments are used to provide prophylactic protection during the period when treated

[7] Citations are contained in the rulemaking record, and are available upon request to the office identified in FOR FURTHER INFORMATION CONTACT.

regulated articles are awaiting shipment to the United States. Their purpose is to control reinfestation of treated regulated articles, and to control incidental or "hitchhiking" attachment of plant pests to regulated articles. We propose to authorize use of all United States Environmental Protection Agency (EPA) registered surface pesticide treatments for regulated articles. Surface pesticide treatments must be conducted in accordance with EPA-approved label directions. Surface pesticides must be applied within 48 hours following treatment to prevent reinfestation of the articles. Because many surface pesticide treatments lose some or all of their effectiveness after 30 days, the treatment must be repeated at least every 30 days during storage of the regulated article, with the final treatment occurring no more than 30 days prior to the departure of the means of conveyance that carries the regulated article to the United States.

Methyl bromide fumigation. Methyl bromide is very effective against plant pests, including all stages of insects, mites, snails, slugs, and nematodes, as well as most fungi. Its effectiveness as a fumigant was discovered in 1932. Since then, it has become the fumigant of choice in quarantine treatments.

Methyl bromide is currently in widespread use as a fumigant. However, the environmental effects of this use have undergone close review by international, Federal, and State agencies. The United States Environmental Protection Agency has recently evaluated data concerning the ozone depletion potential of methyl bromide and, as a result, has published a Notice of Proposed Rulemaking indicating their intent to reclassify methyl bromide as a Class I substance under the Clean Air Act as amended (58 FR 15014–15049, March 18, 1993). Should this proposal be finalized, methyl bromide production would be frozen at 1991 levels and the domestic use of methyl bromide would be phased out by the year 2000. APHIS is studying the effectiveness and environmental acceptability of alternative treatments to prepare for the unavailability of methyl bromide fumigation. For the interim, this proposed rule attempts to provide alternatives to the use of methyl bromide in as many circumstances as possible. For example, all regulated articles could be imported in accordance with one of the universal importation options in proposed § 319.40–6, without the use of methyl bromide fumigation.

However, our regulations assume continued use of methyl bromide fumigation for at least the next few years. The characteristics of methyl bromide treatments are discussed below.

Methyl bromide diffuses laterally and downward readily, and upward slowly. These characteristics make blower or fan circulation essential, at least during the first 15–60 minutes, to ensure thorough gas distribution. In addition, circulation enhances penetration. A volatilizer is necessary when introducing methyl bromide.

Studies have shown that methyl bromide fumigation effectively kills plant pests if conducted in a way that ensures exposure of the entire article to the necessary gas concentration for the necessary time. However, circumstances during treatment can reduce the effectiveness of the fumigation. In particular, because the diffusion of methyl bromide through frozen wood is sharply reduced, it is necessary that regulated articles be maintained at a temperature above freezing throughout fumigation.

The following minimum standards for methyl bromide fumigation treatment are proposed for the listed regulated articles. We are providing two options for applying each treatment. The person applying the treatment can follow a schedule in the Plant Protection and Quarantine Treatment Manual (the Treatment Manual), which is incorporated by reference at 7 CFR 300.1 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The treatment schedules specify the exact length of the treatment, the initial methyl bromide concentration, and subsequent points during the treatment when the concentration must be checked. Under an alternative option provided by our proposal, the Treatment Manual methyl bromide concentration is not used, although all other Treatment Manual requirements for fumigation must be followed. Instead, the treatment must produce a specified concentration-time product, which represents the concentration of methyl bromide multiplied by the hours of fumigation. The concentration-time product specified for each treatment was calculated to ensure that the treatment would effectively destroy plant pests at the temperature range allowed for the treatment.

For example, one treatment requirement for logs states that schedule T–312 from the Treatment Manual may be used, or else the treatment can be conducted at a temperature of over 5°C, by introducing methyl bromide at a concentration of at least 240 g/m³ and maintaining it long enough to achieve a concentration-time product of 17,280 gram-hours. Simple arithmetic allows calculation of the necessary duration of the treatment depending on the concentration of methyl bromide employed. If the concentration used is 240 g/m³, the logs must be fumigated for 72 hours (240 x 72 = 17,280). If a concentration of 300 g/m³ is used the logs must be fumigated for 57.6 hours, and so on.

Any method of fumigation that meets or exceeds the specified temperature/time/concentration products is acceptable. Information documenting the effectiveness of methyl bromide fumigation for various articles when used in accordance with the specified concentration-time products is available through the office identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. The methyl bromide fumigation treatments proposed by this document are as follows:

Logs. We propose two fumigation requirements for logs, based on treatment schedules T–312 and T–404 in the Plant Protection and Quarantine Treatment Manual. In general T–312 has been used in the past for logs, and T–404 for other wood products. Persons employing these fumigation treatments can either follow the specific T–312 or T–404 treatment schedules, or employ other fumigation techniques that result in the same methyl bromide exposure and concentration levels.

For the T–312 alternative, the logs and the ambient air must be at a temperature of 5°C or above throughout fumigation. The fumigation must be conducted using schedule T–312 contained in the Treatment Manual. In lieu of the schedule T–312 methyl bromide concentration, fumigation may be conducted with an initial methyl bromide concentration of at least 240 g/m³ with exposure and concentration levels adequate to provide a concentration-time product of at least 17,280 gram-hours calculated on the initial methyl bromide concentration.

For the T–404 alternative, the logs and the ambient air must be at a temperature of 5°C or above throughout fumigation. The fumigation must be conducted using schedule T–404 contained in the Treatment Manual. In lieu of the schedule T–404 methyl bromide concentration, fumigation may be conducted with an initial methyl bromide concentration of at least 120 g/m³ with exposure and concentration levels adequate to provide a concentration-time product of at least 1920 gram-hours calculated on the initial methyl bromide concentration.

Lumber. For fumigation of lumber, we propose that the lumber and the ambient air must be at a temperature of 5°C or above throughout fumigation.

The fumigation must be conducted using schedule T–404 contained in the Treatment Manual. In lieu of the schedule T–404 methyl bromide concentration, fumigation may be conducted with an initial methyl bromide concentration of at least 120 g/m³ with exposure and concentration levels adequate to provide a concentration-time product of at least 1920 gram-hours calculated on the initial methyl bromide concentration.

Regulated articles other than logs or lumber. We propose that if regulated articles other than logs and lumber and the ambient air are at a temperature of 21°C or above throughout fumigation, the fumigation must be conducted using schedule T–404 contained in the Treatment Manual (i.e., the subschedule applicable to articles at a temperature of 21°C or above). In lieu of the schedule T–404 methyl bromide concentration, fumigation may be conducted with an initial methyl bromide concentration of at least 48 g/m³ with exposure and concentration levels adequate to provide a concentration-time product of at least 760 gram-hours calculated on the initial methyl bromide concentration.

We propose that if the ambient air and the regulated articles other than logs or lumber are at a temperature of 4.5–20.5°C throughout fumigation, the fumigation must be conducted using schedule T–404 contained in the Treatment Manual (i.e., the schedule applicable to articles at a temperature of 4.5–20.5°C), or, using any fumigation method with an initial methyl bromide concentration of at least 120 g/m³ with exposure and concentration levels adequate to provide a concentration-time product of at least 1920 gram-hours calculated on the initial dosage.

Preservatives. Numerous chemicals are in commercial use as preservative treatments for wood, and application of some of these chemicals protects wood from insects and fungi for long periods of time, often years. However, some insects or pathogens already present deep in the wood may not be killed by topical applications.

Methods of application for preservatives include dipping, pressure treating, and injection into drill holes (either directly or in gelatin capsules). Target organisms are mainly wood-decay fungi. The most common purpose of application is to lengthen the useful life of rough timber used for fence posts, marine pilings, bridge timbers, railroad ties, and utility poles.

We propose to authorize any preservative treatment that uses a preservative product that is registered by the EPA. Preservative treatments would have to be performed in accordance with EPA-approved label directions.

Section 319.40–8 Processing at Facilities Operating Under Compliance Agreements

We propose to allow the importation of some regulated articles that may continue to present a low level risk of introducing plant pests into the United States until the time the regulated articles are processed. To prevent the introduction of plant pests from these regulated articles into the environment, we propose to require that such articles be moved from the port of first arrival to a processing facility and processed there, under conditions contained in the compliance agreement that are based on the nature of the regulated articles and the nature of the destination facility, that would prevent the introduction of plant pests.

To ensure that such facilities operate in a manner that will prevent introduction of plant pests, we propose to require that such facilities operate under a compliance agreement signed with APHIS. Each compliance agreement would be developed and signed in conjunction with issuance of a permit to import regulated articles. The compliance agreement would specify safeguards necessary to prevent spread of plant pests from the facility, such as disinfestation practices, covering or container requirements, requirements for disposal of waste wood or byproducts, requirements to ensure the processing method effectively destroys plant pests, and application of chemical materials in accordance with the Treatment Manual. Each compliance agreement would also state that APHIS inspectors must be allowed access to the facility to monitor compliance with the requirements of the compliance agreement and the regulations.

This section also proposes that an inspector supervising enforcement of a compliance agreement may cancel the agreement, orally or in writing, if the person who entered into the compliance agreement fails to meet its conditions. We also propose provisions to appeal cancellation of a compliance agreement and to obtain a hearing on the cancellation if there is a conflict as to any material fact. These requirements would aid enforcement of compliance agreement provisions and protect the rights of persons who enter into compliance agreements.

During initial implementation of the proposed regulations, the requirements of each compliance agreement would be set as we collect information about the regulated articles imported in accordance with this provision and the physical layout and operating procedures of the facilities. Over time, we may be able to develop standardized compliance agreements for different types of facilities. If this occurs, we will publish a proposed rule in the **Federal Register** describing standard compliance agreements.

Section 319.40–9 Inspection and Other Requirements at Port of First Arrival

This section proposes standards for enforcement of the proposed regulations at the ports where imported regulated articles arrive in the United States. This section states that an inspector may order imported regulated articles assembled for inspection at the port of first arrival, or at any other place prescribed by an inspector, at a place and time and in a manner designated by an inspector; that an inspector may order a regulated article to be treated or re-exported if the shipper or importer does not comply with regulatory requirements or the shipment is contaminated with plant pests or prohibited contaminants; and requires that regulated articles meet certain marking and identity requirements designed to assist inspection and processing of regulated articles at the port. This section also allows inspectors to take samples from regulated articles for the purpose of determining whether the regulated articles contain plant pests.

Proposed § 319.40–9 contains the following specific requirements:

• *Procedures for all regulated articles.* We propose that all regulated articles imported would be inspected. If the inspector finds signs of plant pests on or in the regulated article, or finds that the regulated article may have been associated with other articles infested with plant pests, the regulated article must be cleaned or treated as required by an inspector, and the regulated articles and any products of the regulated articles shall be subject to reinspection, cleaning, and treatment at the option of an inspector at any time and place before all applicable requirements of this subpart have been accomplished.

Regulated articles would be assembled for inspection at the port of first arrival at a place and time and in a manner designated by an inspector. If an inspector finds that a shipment of regulated articles imported into the United States is so infested with a plant pest that, in the judgment of the inspector, the regulated article cannot be cleaned or treated, or contains soil or other prohibited contaminants, the entire shipment may be refused entry into the United States.

No person could move any regulated article imported into the United States from the port of first arrival unless and until an inspector notifies the person, in writing or through an electronic database that preserves a record of the notice, that the regulated article has been inspected and found to be apparently free of plant pests, and is in compliance with all applicable regulations, or has been inspected and the inspector requires reinspection, cleaning, or treatment of the regulated articles at a place other than the port of first arrival.

• *Visual examination of regulated articles at port of first arrival.* We propose that regulated articles imported into the United States which have been debarked in accordance with § 319.40–7(b) and can be safely and practically inspected would be visually examined for plant pests at the port of first arrival. Treatment appropriate to the regulated article and contained in the Treatment Manual would be required if plant pests are found or if the regulated article cannot be safely and practically inspected.

• *Marking and identity of regulated articles.* We propose that any regulated article, at the time of importation, would be required to bear on the outer container (if in a container), on the regulated article (if not in a container), or on a document accompanying the regulated article, the following information:

1. General nature and quantity of the regulated articles;
2. Country and locality, if known, where the tree from which the regulated article was derived was grown;
3. Name and address of the person importing the regulated article;
4. Name and address of consignee of the regulated article;
5. Identifying shipper's mark and number; and
6. Number of the permit (if one was issued) authorizing the importation of the regulated article into the United States.

• *Sampling for plant pests at port of first arrival.* We propose that any imported regulated article may be sampled for plant pests at the port of first arrival. If an inspector finds it necessary to order treatment of a regulated article at the port of first arrival, any sampling would be done prior to treatment.

• *Notice of arrival by importers.* Proposed § 319.40–9(b) would require that importers give APHIS notice of arrival of a shipment 7 days prior to the expected date of arrival. The notice of arrival could be done by telephone, or by an informal letter containing the necessary arrival information. We do not believe this notice would be particularly burdensome to importers, and we believe it is needed to allow our inspectors to prepare for a shipment, and to allow them to ensure that incompatible shipments (i.e., situations where articles from one shipment could spread pests to another shipment) are not accidentally mingled on docks.

Section 319.40–10 Costs and Charges

This proposed section, which is consistent with similar language in our other regulations in part 319, addresses the availability of inspector services and the distribution of costs associated with importation of regulated articles. The services of an inspector during regularly assigned hours of duty and at the usual places of duty would be furnished without cost to the importer. The inspector may require the importer to furnish any labor, chemicals, packing materials, or other supplies required in handling regulated articles under the regulations. APHIS would not be responsible for any costs or charges, other than those identified in this section.

Section 319.40–11 Pest Risk Assessment Standards

As discussed above, proposed § 319.40–4(b)(2) states that if APHIS reviews an application to import regulated articles and finds that the proposed importation is not allowed under the existing regulations, a pest risk assessment would be performed to determine whether the importation could be accomplished under conditions not in the current regulations. If such conditions (e.g., treatment or handling requirements, limits on the source, type, or quantity of the regulated articles, etc.) are identified through a plant pest risk assessment, APHIS would implement rulemaking to add the newly identified conditions. After the regulations are amended, APHIS could issue an import permit for the request that initiated the plant pest risk assessment process.

Proposed § 319.40–11 contains the plant pest risk assessment standards we would apply in making such decisions. This section is based on a model of plant pest risk assessment developed by USDA and utilized extensively in the Chile, New Zealand, and Siberian assessments. This proposed section does not attempt to provide a complete foundation in the discipline of risk assessment, or to describe every factor that APHIS may find relevant to decisions on whether or not to propose new conditions for importation of regulated articles. Instead, these standards describe the type of plant pest risk information that must be collected and evaluated in the course of our plant pest risk assessments, and some factors used to distinguish risk categories and to evaluate the effectiveness of various mitigation measures. This proposed section does not provide an exact formula for how we would determine whether or not to admit a particular regulated article, because it is impossible to develop an exact formula for such decisionmaking. Although the proposed new section would not provide the public with an exact formula for determining whether particular regulated articles should be imported, it would provide a substantial amount of information about APHIS decisionmaking in this area.

For each pest risk assessment for a regulated article considered for importation, we need to collect and assess information regarding the probability that plant pests will accompany the regulated article, and the probability that any plant pests that may accompany the regulated article could become established in the United States, as plant pests of either the type of article imported or of other types of plants in the United States. We also need to consider information about the biological characteristics of such plant pests, their distribution in the area of origin of the imported regulated article and in the United States, and the type of damage the plant pests cause. We also need to consider information about the potential range of such plant pests in the United States, and the availability and effectiveness of mitigation methods to prevent the introduction, establishment, and spread of such pests.

Our plant pest risk assessment process involves:

• *Collecting commodity information.* This includes evaluating the application for information describing the regulated article and the origin, processing, treatment, and handling of the regulated article; and evaluating the history of past plant pest interceptions or introductions (including data from foreign countries) associated with the regulated article.

• *Cataloging quarantine pests.* This includes determining what plant pests or potential plant pests are associated with the type of tree from which the regulated article was derived, in the country and locality from which the regulated article is to be exported. A plant pest will be further evaluated if it is a:

• Non-indigenous plant pest not present in the United States;

• Non-indigenous plant pest, present in the United States and capable of

further dissemination in the United States;

• Non-indigenous plant pest that is present in the United States and has reached probable limits of its ecological range, but differs genetically from the plant pest in the United States in a way that demonstrates a potential for greater damage potential in the United States;

• Native species of the United States that has reached probable limits of its ecological range, but differs genetically from the plant pest in the United States in a way that demonstrates a potential for greater damage potential in the United States; or

• Non-indigenous or native plant pest that may be able to vector another plant pest of the types described above.

• *Determining which quarantine pests to assess* This involves dividing the group of plant pests identified above into three groups, each of which generally presents a different level of risk The three groups are plant pests found on or in the bark, under the bark, and in the wood. Within each group, the plant pests would then be ranked according to plant pest risk, from highest to lowest plant pest risk, based on the available information, and demonstrated plant pest importance.

The next step would be to conduct individual plant pest risk assessments for the highest ranked plant pest(s) in each group. In some cases, plant pests may have been previously subjected to a plant pest risk assessment in accordance with this section; such assessments may be used if they are still current and accurate.

The number of plant pests in each group to be evaluated through individual plant pest risk assessments would be based on biological similarities of members of the group as they relate to mitigation measures. For example, if the plant pest risk assessment for the highest ranked plant pest indicates a need for a mitigation measure that would result in the same reduction of risk for other plant pests ranked in the group, the other members need not be subjected to individual plant pest risk assessment.

• *Conducting individual pest risk assessments.* The individual pest risk assessments would estimate:

• The probability of the plant pest being on, with, or in the regulated article at the time of importation;

• The probability of the plant pest surviving in transit on the regulated article and entering the United States undetected;

• The probability of the plant pest colonizing once it has entered into the United States;

• The probability of the plant pest spreading beyond the colonized area;

• The damage that could be expected upon introduction and dissemination within the United States of the plant pest; and

• The overall plant pest risk associated with importing the regulated article, based on compilation of the individual plant pest risk assessments.

• *Evaluating available mitigation measures to determine whether they would allow safe importation of the regulated article.* Mitigation measures currently in use as requirements of this subpart, and any other mitigation measures relevant to the regulated article and plant pests involved, would be compared with the individual plant pest risk assessments in order to determine whether requiring particular mitigation measures in connection with importation of the regulated article would reduce the plant pest risk to an insignificant level. If APHIS determines that use of particular mitigation measures could reduce the plant pest risk to an insignificant level, and determines that sufficient APHIS resources are available to implement or ensure implementation of the appropriate mitigation measures, APHIS would implement rulemaking to allow importation of the requested regulated article under the appropriate requirements identified by the plant pest risk assessment process.

Changes to Other Regulations To Make Them Consistent With the Proposed Regulations

There is a degree of overlap between the subject matter of the proposed regulations and other regulations in 7 CFR part 319. We are proposing to make changes in several places in part 319, to clarify which regulations apply to which articles.

Subpart—Citrus Canker and Other Citrus Diseases

In the citrus canker regulations in § 319.19, we propose to add a statement that articles of the subfamilies Aurantioideae, Rutoideae, and Toddalioideae of the botanical family Rutaceae which are regulated articles under proposed § 319.40 may be imported in accordance with § 319.40, and without restriction by § 319.19. We also propose to edit this section to clarify it and remove surplus language.

Subpart—Bamboo

In the bamboo regulations in § 319.34, we propose to add language stating that this section applies to bamboo capable of propagation, and to add a footnote stating that bamboo not capable of propagation is regulated under § 319.40. We also propose to edit this section to clarify it and remove surplus language.

Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products

In the nursery stock regulations in § 319.37, we propose to amend the definition of "prohibited article" to exclude articles regulated under § 319.40. We also propose to edit this section to clarify it and remove surplus language.

Subpart—Packing Materials

In the packing materials regulations in § 319.69, we propose to remove paragraph (b)(3), which regulates imported willow twigs, since willow twigs would be regulated under subpart 319.40.

Executive Order 12866 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12866.

We have prepared a preliminary economic analysis concerning this proposed rule. This analysis indicates that this proposed rule would have an effect on the economy of less than $100 million. The economic analysis addresses the impacts of establishing the proposed regulations, and will be revised in response to comments received on this proposed rule. Copies of the economic analysis may be obtained by sending a written request to the Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Copies of the economic analysis are also available for inspection 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.

The United States has become the world's leading importer of wood and wood products. In 1990, the U S. imported the equivalent of 34.4 million cubic meters (CBM) of logs, lumber, and other wood products valued at about $5.1 billion. Total imports nearly tripled between 1950 and 1990, with most of this increase occurring after 1970. Historically, virtually all wood product imports have been from Canada.

Domestic production of logs, lumber, and other wood products has increased steadily since 1950 In roundwood equivalents, production in 1990 was 1.6 times greater than in 1950. Most timber

production occurs in southern and western States. In 1990, Oregon and Washington accounted for about 16 percent of the total U.S. tree harvest.

Domestic logging companies are facing increasing challenges from conservation groups. Conservationists are opposed to many tree harvesting practices, especially clear cutting. In addition, concern over habitats for wildlife has raised questions about replacement of old growth/diversified forests with monoculture. Conservation issues are likely to limit future tree harvests in several northwestern States.

Nationally, commercial forest lands are projected to decrease by about 4 percent over the next 50 years. Production is likely to decline in the Pacific Northwest and increase in the South and Rocky Mountain States.[8] A slightly limited domestic harvest combined with higher consumer demand would likely result in an increased demand for imported wood and wood products. Alternative supplies of logs and other wood products have been located in the former Soviet Union, New Zealand, Chile, Brazil, and other countries. Wood imports from alternative sources have the potential to introduce and disseminate exotic plant pests and diseases throughout the United States.

The proposed regulations would regulate the importation of logs and other unmanufactured wood products from all areas. There are exemptions from some proposed requirements for imports from Canada and Mexican border states because most insects and other wood pests in these areas are also indigenous to the United States. Therefore, wood imports from Canada and Mexican border States do not pose a significant biological risk of exotic plant pest introduction.

The proposed regulations would reduce to an insignificant level the risk of entry and dissemination of plant pests associated with wood imports. Prohibition of a regulated wood product would be based on plant pest risk assessments that reveal more than an insignificant risk of the introduction of plant pests. Unrestricted trade in wood products would likely result in losses to domestic agriculture from plant pest damages. Without governmental regulation, private entities might engage in trading activities that would result in the introduction of plant pests into the United States.

The following items would be subject to the regulations: (1) Logs; (2) wood chips; (3) lumber; (4) whole trees; (5) portions of trees not consisting solely of leaves, flowers, fruits, buds, or seeds; (6) bark; (7) cork; (8) laths; (9) hog fuel; (10) sawdust; (11) painted raw wood products; (12) excelsior; (13) wood mulch; (14) wood shavings; (15) pickets; (16) stakes; (17) shingles; (18) solid wood packing materials; (19) humus; (20) compost; and (21) litter. Manufactured wood products would not be regulated by the proposed rule. The proposed regulations would require that certain specified imported unmanufactured wood products be treated prior to arrival in the United States.

In 1990 the United States imported about 600,000 CBM of wood products that would require treatment under the proposed regulations. These wood imports accounted for less than one percent of total 1990 domestic supplies. Imported shipments of kiln dried lumber would not require treatment.

About 4.1 million newly manufactured units of wood dunnage were imported as cargo from proposed regulated areas in 1990. Dunnage imported as cargo can be manufactured from rough untreated lumber that has not been stripped of all tree bark.[9] Imports comprised about 27 percent of the newly manufactured dunnage products available in the United States during 1990.

Imports of regulated articles that would require treatment totaled about $80.2 million in 1990. Total domestic supplies of these articles exceeded $80 billion during the same year. Therefore, the value of imports that would require treatment under the proposed regulations represented less than one percent of total domestic supplies in 1990.

Our economic analysis estimates that domestic producers of regulated articles would benefit from a welfare gain of about $60.2 million, while domestic consumers of regulated articles would incur a welfare loss of about $64.3 million for U.S. society during the first year. A similar net loss could be expected for the next several years. This net loss occurs because the additional regulatory restrictions would raise prices and decrease the availability of imported unmanufactured wood articles. Therefore, the price and demand for less costly domestic wood would likely rise as higher import prices encourage U.S. consumers to change their purchasing practices.

The estimated $4.1 million loss in welfare to U.S. society represents the cost of plant pest exclusion. If the United States does not expend resources to exclude plant pests through the proposed regulations or through other means, such pests could become established and cause significant damage to domestic agriculture. For example, in the past few years plant pests including the Asian gypsy moth and the pine shoot beetle have been introduced into this country, and several million dollars have already been spent on efforts to control them. The Siberian assessment discussed above evaluated potential costs of various plant pest introduction scenarios, and that introduction of a single pest, larch canker, could cause direct timber losses of $129 million. The same study estimated that a worst-case scenario involving heavy establishment of exotic defoliators in the United States could cost $58 billion.

The initial net welfare loss will be offset over time as businesses adapt to new international wood marketing channels. If resource constraints remain constant, implementation of the proposed rule would result in domestic consumers buying a slightly higher volume of domestic production at slightly higher prices than currently prevail in the U.S. market. However, domestic consumers will continue to supplement their wood purchases with imports whenever the imported price is cheaper than the domestic price.

Foreign firms that import unmanufactured wood articles into the United States would incur a share of the estimated net reduction in importer welfare, since both foreign and domestic firms that import unmanufactured wood articles into the United States would face increased costs associated with entering those articles. However, APHIS cannot quantify the proportional loss between domestic and foreign importers of regulated articles.

APHIS does not expect the economic impact on U.S. producers of regulated articles to be uniform across the country. Producers in southern and Rocky Mountain States would likely gain more than producers in the Pacific Northwest. Conservation issues and resource constraints would likely limit the amount of welfare gain acquired by loggers and sawmills in Oregon and Washington.

Each year about 6 to 7.5 million non-bulk shipments of various commodities are imported into the United States. APHIS estimates that between 3.6 and 4.5 million (60 percent) of annual imported non-bulk shipments arrive in the United States packed in dunnage

[8] Over the next 50 years, new technologies may allow wood products companies to remove larger amounts of wood products from each tree.

[9] For the purpose of this economic analysis, dunnage imported as cargo includes dunnage produced for first time use, and does not include dunnage manufactured from used or scrap lumber.

made of rough untreated wood with bark. The proposed regulations would prohibit untreated dunnage with bark from entering the United States.

Initially, APHIS estimates that U.S. shipping lines would incur additional dunnage treatment and disposal costs of between $2.4 to $3.0 million dollars per year.[10] However, if the proposed regulations become effective, APHIS anticipates that shipping companies would take steps that ensure that wood dunnage is bark free.

The Regulatory Flexibility Act requires that APHIS specifically consider the economic impact of proposed regulations on small entities. Small Business Administration (SBA) data indicates that about 25,998 domestic entities could be impacted by the proposed restrictions on regulated articles. About 25,769 (99 percent) of these entities are classified as small according to SBA criteria. These consist of approximately 14,662 small logging companies or sawmills that produce domestic wood articles, and approximately 15,642 entities that could import foreign wood for processing or resale. (These two figures total more than 25,769 because some may process or resell both domestic and imported wood.) These small entities would experience most of the anticipated $64.3 million increase in domestic welfare. This increase would be a small average economic benefit for affected small entities, as it represents less than one percent of combined average annual sales for impacted small entities. A few small entities would undoubtedly accrue a disproportionate share of the domestic welfare increase due to their individual positions in their markets and variations in business strategies for dealing with new opportunities.

The estimated $4.1 million net welfare loss to the U.S. economy would be distributed among millions of ultimate consumers of wood products in the form of price increases, without significant impacts on small business entities. Therefore, the impact of the proposed regulations on small businesses is expected to derive from part of the $64.3 million gross increase in domestic welfare, and should be positive but minor for a large number of small entities.

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 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 inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule, except for the withdrawal or denial of a permit or cancellation of a compliance agreement.

National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), APHIS is preparing an environmental impact statement addressing the importation of logs, lumber, and other unmanufactured wood in accordance with this proposed rule. On July 26, 1993, a notice was published in the **Federal Register** (58 FR 39726–39727, Docket No. 92–195–1) informing the public of our intent to prepare an environmental impact statement and inviting comments.

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 proposed rule will be submitted for approval to the Office of Management and Budget. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a 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 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

PART 319—FOREIGN QUARANTINE NOTICES

Accordingly, 7 CFR part 319 would be amended as follows:

1. The authority citation for part 319 would be revised to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.17, 2.51, and 371.2(c).

Subpart—Citrus Canker and Other Citrus Diseases

2. In § 319.19, paragraphs (a), (b), (c), and (d) would be revised to read as follows:

§ 319.19 Notice of quarantine.

(a) In order to prevent the introduction into the United States of the citrus canker disease (*Xanthomonas citri* (Hasse) Dowson) and other citrus diseases, the importation into the United States of plants or any plant part, except fruit and seeds, of all genera, species, and varieties of the subfamilies Aurantioideae, Rutoideae, and Toddalioideae of the botanical family Rutaceae is prohibited, except as provided in paragraphs (b), (c), and (d) of this section.

(b) Plants or plant parts of all genera, species, and varieties of the subfamilies Aurantioideae, Rutoideae, and Toddalioideae of the botanical family Rutaceae may be imported into the United States for experimental or scientific purposes in accordance with conditions prescribed by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture.

(c) Plants or plant parts of all genera, species, and varieties of the subfamilies Aurantioideae, Rutoideae, and Toddalioideae of the botanical family Rutaceae may be imported into Guam in accordance with § 319.37–6.

(d) Plants or plant parts of all genera, species, and varieties of the subfamilies Aurantioideae, Rutoideae, and Toddalioideae of the botanical family Rutaceae which are regulated articles under subpart 319.40 may be imported into the United States in accordance with subpart 319.40 and without restriction by this subpart.

* * * * *

Subpart—Bamboo

§ 319.34 [Amended]

3. The title of subpart 319.34, "Subpart—Bamboo", would be revised to read "Subpart—Bamboo Capable of Propagation".

4. In § 319.34, paragraphs (a) and (c) would be removed; paragraphs (b) and (d) would be redesignated as paragraphs (a) and (b); and newly designated paragraph (a) would be revised to read as follows:

§ 319.34 Notice of quarantine.

(a) In order to prevent the introduction into the United States of

[10] United States shipping companies transport about two percent of annual imported shipments. APHIS estimates that the total cost of dunnage treatment and disposal would cost the shipping industry (foreign and domestic) between $119.5 and $149.4 million during the initial year.

dangerous plant diseases, including bamboo smut (Ustilago shiraiana), the importation into the United States of any variety of bamboo seed, bamboo plants, or bamboo cuttings capable of propagation,[1] including all genera and species of Bambuseae, is prohibited unless imported:

(1) For experimental or scientific purposes by the United States Department of Agriculture;

(2) For export, or for transportation and exportation in bond, in accordance with §§ 352.2 through 352 15 of this chapter; or,

(3) Into Guam in accordance with § 319 37–4(b).

* * * * *

Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products [1,2]

5. In § 319.37–1, the definition of "Prohibited article" would be revised to read as follows:

§ 319.37–1 Definitions.

* * * * *

Prohibited article. Any nursery stock, plant, root, bulb, seed, or other plant product designated in § 319 37–2(a) or (b), except wood articles regulated under § 319.40.

* * * * *

6 "Subpart—Logs from New Zealand," §§ 319.40–1 through 319 40–8, would be revised to read as follows:

Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles

Authority: 7 U.S C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U S C. 136 and 136a, 7 CFR 2 17, 2.51, and 371 2(c).

§ 319.40–1 Definitions.

Wherever in this subpart the following terms are used they shall be construed to mean:

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

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

Bark chips. Bark fragments broken or shredded from log or branch surfaces.

Certificate. A certificate of inspection relating to a regulated article, which is issued by an official authorized by the national government of the country in which the regulated article was produced or grown, which contains a description of the regulated article, which certifies that the regulated article has been inspected, is believed to be free of plant pests, and is believed to be eligible for importation pursuant to the laws and regulations of the United States, and which may contain any specific additional declarations required under this subpart.

Compliance agreement. A written agreement between APHIS and a person engaged in processing, handling, or moving regulated articles, in which the person agrees to comply with requirements contained in the agreement.

Departmental permit. A document issued by the Administrator authorizing the importation of a regulated article for experimental, scientific, or educational purposes.

Free from rot No more than two percent by weight of the regulated articles in a lot show visual evidence of fructification of fungi or growth of other microorganisms that cause decay and the breakdown of cell walls in the regulated articles.

General permit. A written authorization contained in § 319 40–3 for any person to import the articles named by the general permit, in accordance with the requirements specified by the general permit, without being issued a specific permit.

Humus, compost, and litter. Partially or wholly decayed plant matter.

Import (imported, importation). To bring or move into the territorial limits of the United States.

Importer document. A written declaration signed by the importer of regulated articles, which must accompany the regulated articles at the time of importation, in which the importer accurately declares information about the regulated articles required to be disclosed by § 319 40–2(b)

Inspector. Any individual authorized by the Administrator to enforce this subpart

Log. The bole of a tree, trimmed timber that has not been further sawn

Loose wood packing material. Excelsior (wood wool), sawdust, and wood shavings, produced as a result of sawing or shaving wood into small, slender, and curved pieces.

Lot All the regulated articles on a single means of conveyance that are derived from the same species of tree and were subjected to the same treatments prior to importation, and that are consigned to the same person.

Lumber. Logs that have been sawn into boards, planks, or structural members such as beams.

Permit A specific permit to import a regulated article issued in accordance with § 319 40–4, or a general permit promulgated in § 319 40–3.

Plant pest. Any living stage of any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts of parasitic plants, noxious weeds, viruses, or any organism similar to or allied with any of the foregoing, or any infectious substances, which can injure or cause disease or damage in any plants, parts of plants, or any products of plants.

Port of first arrival. The area (such as a seaport, airport, or land border station) where a person or a means of conveyance first arrives in the United States, and where inspection of regulated articles is carried out by inspectors.

Primary processing. Any of the following processes: cleaning (removal of soil, limbs, and foliage), debarking, rough sawing (bucking or squaring), rough shaping, spraying with fungicide or insecticide sprays, and fumigation.

Regulated article. The following articles, if they are unprocessed or have received only primary processing: logs; lumber; any whole tree; any cut tree or any portion of a tree, not solely consisting of leaves, flowers, fruits,

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[1] Regulations concerning the importation into the United States of bamboo not capable of propagation are set forth in § 319 40.

[1] The Plant Protection and Quarantine Programs also enforces regulations promulgated under the Endangered Species Act of 1973 (Public Law 93–205 as amended) which contain additional prohibitions and restrictions on importation into the United States of articles subject to this subpart (See 50 CFR Parts 17 and 23).

[2] One or more common names of articles are given in parentheses after most scientific names (when common names are known) for the purpose of helping to identify the articles represented by such scientific names; however, unless otherwise specified, a reference to a scientific name includes all articles within the category represented by the scientific name regardless of whether the common name or names are as comprehensive in scope as the scientific name.

buds, or seeds; bark; cork; laths; hog fuel; sawdust; painted raw wood products; excelsior (wood wool); wood chips; wood mulch; wood shavings; pickets; stakes; shingles; solid wood packing materials; humus; compost; and litter.

Sealed container; sealable container A completely enclosed container designed for the storage or transportation of cargo, and constructed of metal or fiberglass, or other rigid material, providing an enclosure which prevents the entrance or exit of plant pests and is accessed through doors that can be closed and secured with a lock or seal. Sealed (sealable) containers are distinct and separable from the means of conveyance carrying them.

Solid wood packing material. Wood packing materials other than loose wood packing materials, used or for use with cargo to prevent damage, including, but not limited to, dunnage, crating, pallets, packing blocks, drums, cases, and skids.

Specific permit. A written document issued by APHIS to the applicant in accordance with § 319.40–4 that authorizes importation of articles in accordance with this subpart and specifies or refers to the regulations applicable to the particular importation.

Treatment Manual. The Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at § 300.1 of this chapter in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

Tropical hardwoods. Hardwood timber species which grow only in tropical climates.

United States. All of the States of the United States, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, and all other territories and possessions of the United States.

Wood chips. Wood fragments broken or shredded from any wood.

Wood mulch. Bark chips, wood chips, wood shavings, or sawdust intended for use as a protective or decorative ground cover

§ 319.40–2 General prohibitions and restrictions; relation to other regulations.

(a) *Permit required.* Except for regulated articles exempted from this requirement by paragraph (c) of this section or § 319 40–3, no regulated article may be imported unless a specific permit has been issued for importation of the regulated article in accordance with § 319.40–4, and unless the regulated article meets all other applicable requirements of this subpart and any requirements specified by APHIS in the specific permit.

(b) *Importer document; documentation of type, quantity, and origin of regulated articles.* Except for regulated articles exempted from this requirement by paragraph (c) of this section or § 319.40–3, no regulated article may be imported unless it is accompanied by an importer document stating the following information. A certificate that contains this information may be used in lieu of an importer document at the option of the importer:

(1) The genus and species of the tree from which the regulated article was derived;

(2) The country, and locality if known, where the tree from which the regulated article was derived was harvested;

(3) The quantity of the regulated article to be imported;

(4) The use for which the regulated article is imported; and

(5) Any treatments or handling of the regulated article required by this subpart that were performed prior to arrival at the port of first arrival.

(c) *Regulation of articles imported for propagation or human consumption.* The requirements of this subpart do not apply to regulated articles that are allowed importation in accordance with § 319.19, "Subpart—Citrus Canker and Other Citrus Diseases," § 319.34, "Subpart—Bamboo Capable of Propagation," or § 319.37, "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products," or to regulated articles imported for human consumption that are allowed importation in accordance with § 319.56, "Subpart—Fruits and Vegetables."

(d) *Regulated articles imported for experimental, scientific or educational purposes.* Any regulated article may be imported without further restriction under this subpart if:

(1) Imported by the United States Department of Agriculture for experimental, scientific, or educational purposes;

(2) Imported pursuant to a Departmental permit issued for the regulated article prior to its importation and kept on file at the port of first arrival; and

(3) Imported under conditions specified on the Departmental permit and found by the Administrator to be adequate to prevent the introduction into the United States of plant pests.

(e) *Designation of additional regulated articles.* An inspector may designate any article as a regulated article by giving written notice of the designation to the owner or person in possession or control of the article. APHIS will implement rulemaking to add articles designated as regulated articles to the definition of regulated article in § 319.40–1 if importation of the article appears to present a recurring significant risk of introducing plant pests. Inspectors may designate an article as a regulated article after determining that:

(1) The article was imported in the same container or hold as a regulated article;

(2) Other articles of the same type imported from the same country have been found to carry plant pests; or

(3) The article appears to be contaminated with regulated articles or soil.

§ 319.40–3 General permits; articles that may be imported without a specific permit; articles that may be imported without either a specific permit or an importer document.

(a) *Canada and Mexico.* APHIS hereby issues a general permit to import articles authorized by this paragraph Regulated articles from Canada and from states in Mexico adjacent to the United States border, other than regulated articles of the subfamilies Aurantioideae, Rutoideae, and Toddalioideae of the botanical family Rutaceae, may be imported without restriction under this subpart, except that they must be accompanied by an importer document stating that the regulated articles are derived from trees harvested in, and have never been moved outside, Canada or states in Mexico adjacent to the United States border, and except that they are subject to the inspection and other requirements in § 319.40–9.

(b) *Solid wood packing materials*

(1) *Free of bark; used with non-regulated articles.* APHIS hereby issues a general permit to import regulated articles authorized by this paragraph Solid wood packing materials that are completely free of bark and are in actual use at the time of importation as packing materials for articles which are not regulated articles may be imported without restriction under this subpart, except that:

(i) The solid wood packing materials are subject to the inspection and other requirements in § 319.40–9; and

(ii) The solid wood packing materials must be accompanied at the time of importation by an importer document, stating that the solid wood packing materials are totally free from bark, and apparently free from live plant pests.

(2) *Free of bark; used with regulated articles.* APHIS hereby issues a general permit to import regulated articles authorized by this paragraph. Solid wood packing materials that are completely free of bark and are in actual

use at the time of importation as packing materials for regulated articles may be imported subject to the inspection and other requirements in § 319.40–9 and without other restriction under this subpart, if accompanied by an importer document stating that the solid wood packing materials:

(i) Are totally free from bark, and apparently free from live plant pests; and

(ii) Have been heat treated, fumigated, or treated with preservatives in accordance with § 319 40–7, or meet all the importation and entry conditions required for the regulated article the solid wood packing material is used to move.

(3) *Not free of bark, used with regulated or nonregulated articles.* APHIS hereby issues a general permit to import regulated articles authorized by this paragraph. Solid wood packing materials that are not completely free of bark and are in actual use as packing at the time of importation may be imported subject to the inspection and other requirements in § 319.40–9, and without other restriction under this subpart, if accompanied by an importer document stating that the solid wood packing materials have been heat treated, fumigated, or treated with preservatives in accordance with § 319.40–7.

(c) *Loose wood packing materials.* APHIS hereby issues a general permit to import regulated articles authorized by this paragraph. Loose wood packing materials (whether in use as packing or imported as cargo) that are dry may be imported subject to the inspection and other requirements in § 319.40–9 and without restriction under this subpart.

(d) *Bamboo timber.* APHIS hereby issues a general permit to import regulated articles authorized by this paragraph. Bamboo timber which is free of leaves and seeds and has been sawn or split lengthwise and dried may be imported subject to the inspection and other requirements in § 319.40–9 and without further restriction under this subpart.

(e) *Regulated articles the permit process has determined to present no pest risk.* Regulated articles for which a specific permit has been issued in accordance with § 319.40–4(b)(2)(i) may be imported without other restriction under this subpart, except that they are subject to the inspection and other requirements in § 319.40–9.

§ 319.40–4 Application for a permit to import regulated articles; issuance and withdrawal of permits.

(a) *Application procedure.* A written application for a permit [1] must be submitted to the Permit Unit, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. The completed application must include the following information:

(1) The specific type of regulated article to be imported, including the genus and species name of the tree from which the regulated article was derived;

(2) Country, and locality if known, where the tree from which the regulated article was derived was harvested;

(3) The quantity of the regulated article to be imported;

(4) A description of any processing, treatment or handling of the regulated article to be performed prior to importation, including the location where any processing or treatment was or will be performed and the names of any chemicals employed in treatments;

(5) A description of any processing, treatment, or handling of the regulated article intended to be performed following importation, including the location where any processing or treatment will be performed and the names of any chemicals employed in treatments;

(6) Whether the regulated article will or will not be imported in a sealed container or in a hold;

(7) The means of conveyance to be used to import the regulated article;

(8) The intended port of first arrival in the United States of the regulated article, and any subsequent ports in the United States at which regulated articles may be unloaded;

(9) The destination and general intended use of the regulated article;

(10) The name and address of the applicant and, if the applicant's address is not within the United States, the name and address of an agent in the United States whom the applicant names for acceptance of service of process; and

(11) A statement certifying the applicant as the importer of record.

(b) *Review of application and issuance of permit.* After receipt and review of the application, APHIS shall determine whether it appears that the regulated article at the time of importation will meet either the specific importation requirements in § 319.40–5 or the universal importation requirements in § 319.40–6.

(1) If it appears that the regulated article proposed for importation will meet the requirements of either § 319.40–5 or § 319.40–6, a permit stating the applicable conditions for importation under this subpart shall be issued for the importation of the regulated article identified in the application.

(2) If it appears that the regulated article proposed for importation will not meet the requirements of either § 319.40–5 or § 319.40–6 because these sections do not address the particular regulated article identified in the application, APHIS shall review the application by applying the plant pest risk assessment standards specified in § 319.40–11.

(i) If this review reveals that importation of the regulated article under a permit and subject to the inspection and other requirements in § 319.40–9, but without any further conditions, will not result in the introduction of plant pests into the United States, a permit for importation of the regulated article shall be issued. The permit may only be issued in unique and unforeseen circumstances when the importation of the regulated article is not expected to reoccur.

(ii) If this review reveals that the regulated article may be imported under conditions that would reduce the plant pest risk to an insignificant level, APHIS may implement rulemaking to add the additional conditions to this subpart, and after the regulations are effective, may issue a permit for importation of the regulated article.

(3) No permit will be issued to an applicant who has had a permit withdrawn under paragraph (d) of this section during the 12 months prior to receipt of the permit application by APHIS, unless the withdrawn permit has been reinstated upon appeal.

(c) *Permit does not guarantee eligibility for import.* Even if a permit has been issued for the importation of a regulated article, the regulated article may be imported only if all applicable requirements of this subpart are met and only if an inspector at the port of first arrival determines that no emergency measures pursuant to the Federal Plant Pest Act or other measures pursuant to the Plant Quarantine Act are necessary with respect to the regulated article.[2]

[1] Application forms for permits are available without charge from the Permit Unit, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, or local offices of Plant Protection and Quarantine which are listed in telephone directories.

[2] Section 105(a) of the Federal Plant Pest Act (7 U.S.C. 150dd(a)) provides, among other things, that

(d) *Denial and withdrawal of permits.* Any permit which has been issued may be withdrawn by an inspector or the Administrator if he or she determines that the person to whom the permit was issued has violated any requirement of this subpart. If the withdrawal is oral, the decision to withdraw the permit and the reasons for the withdrawal of the permit shall be confirmed in writing as promptly as circumstances permit. Any person whose permit has been denied or withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the withdrawal. The appeal shall state all of the facts and reasons upon which the person relies to show that the permit was wrongfully denied or withdrawn. The Administrator shall grant or deny the appeal, in writing, stating the reasons for granting or denying the appeal as promptly as circumstances permit. If there is a conflict as to any material fact and the person from whom the permit is withdrawn requests a hearing, a hearing shall be held to resolve the conflict. Rules of practice concerning the hearing shall be adopted by the Administrator.

§ 319.40–5 Importation and entry requirements for specified articles.

(a) *Bamboo timber.* Bamboo timber consisting of whole culms or canes may be imported into Guam or the Northern Mariana Islands subject to inspection and other requirements of § 319.40–9. Bamboo timber consisting of whole culms or canes that are completely dry as evidenced by lack of moisture in node tissue may be imported into any part of the United States subject to inspection and other requirements of § 319.40–9.

(b) *Monterey pine logs and lumber from Chile and New Zealand; Douglas-fir logs and lumber from New Zealand.*

(1) *Logs.* (i) *Requirements prior to importation.* Monterey or Radiata pine (*Pinus radiata*) logs from Chile or New Zealand and Douglas-fir (*Pseudotsuga menziesii*) logs from New Zealand that are accompanied by a certificate stating that the logs meet the requirements of paragraph (b)(1)(i)(A) through (D) of this section, and that are consigned to a facility in the United States that operates in accordance with § 319.40–8, may be imported in accordance with paragraphs (b)(1)(i)(A) through (b)(1)(iii) of this section.

(A) The logs must be from live healthy trees which are apparently free of plant pests, plant pest damage, and decay organisms.

(B) The logs must be debarked in accordance with § 319.40–7(b) prior to fumigation.

(C) The logs and any solid wood packing materials to be used with the logs during shipment to the United States must be fumigated in accordance with § 319.40–7(f)(1), within 45 days following the date the trees are felled and prior to arrival of the logs in the United States, in the holds or in sealable containers. Fumigation must be conducted in the same sealable container or hold in which the logs and solid wood packing materials are exported to the United States.

(D) During shipment to the United States, no other regulated article is permitted on the means of conveyance with the logs, unless the logs and the other regulated articles are in separate holds or separate sealed containers, or, if the logs and other regulated articles are mixed in a hold or sealed container, the other regulated articles either have been heat treated with moisture reduction in accordance with § 319.40–7(d), or have been fumigated in the hold or sealable container in accordance with paragraph (b)(1)(i)(C) of this section.

(ii) *Requirements upon arrival in the United States.* The following requirements apply upon arrival of the logs in the United States.

(A) The logs must be kept segregated from other regulated articles from the time of discharge from the means of conveyance until the logs are completely processed at a facility in the United States that operates under a compliance agreement in accordance with § 319.40–8.

(B) The logs must be moved from the port of first arrival to the facility that operates under a compliance agreement in accordance with § 319.40–8 in as direct a route as reasonably possible.

(iii) *Requirements at the processing facility.* The logs must be consigned to a facility operating under a compliance agreement in accordance with § 319.40–8 that includes the following requirements:

(A) Logs or any products generated from logs, including lumber, must be heat treated in accordance with § 319.40–7(c), or heat treated with moisture reduction in accordance with § 319.40–7(d).

(B) The logs, including sawdust, wood chips, or other products generated from the logs in the United States, must be processed in accordance with paragraph (b)(1)(iii) of this section within 60 days from the time the logs are released from the port of first arrival.

(C) Sawdust, wood chips, and waste generated by sawing or processing the logs must be disposed of by burning, heat treatment in accordance with § 319.40–7(c) or § 319.40–7(d), or other processing that will destroy any plant pests associated with the sawdust, wood chips, and waste. Composting and use of the sawdust, wood chips, and waste as mulch are prohibited unless composting and use as mulch are preceded by fumigation in accordance with § 319.40–7(f)(3) or heat treatment in accordance with § 319.40–7(c) or § 319.40–7(d). Wood chips, sawdust, and waste may be moved in enclosed trucks for processing at another facility operating under a compliance agreement in accordance with § 319.40–8.

(2) *Raw lumber.* Raw lumber, including solid wood packing materials imported as cargo, from Chile or New Zealand derived from Monterey or Radiata pine (*Pinus radiata*) logs and raw lumber from New Zealand derived from Douglas-fir (*Pseudotsuga menziesii*) logs may be imported in accordance with paragraphs (b)(2)(i) and (ii) of this section.

(i) During shipment to the United States, no other regulated article (other than solid wood packing materials) is permitted on the means of conveyance with the raw lumber, unless the raw lumber and the other regulated articles are in separate holds or separate sealed containers; *Except for* mixed shipments of logs and raw lumber fumigated in accordance with § 319.40–7(f)(2) and moved in accordance with paragraph (b)(1)(i)(D) of this section. Raw lumber on the vessel's deck must be in a sealed container.

(ii) The raw lumber must be consigned to a facility operating under a compliance agreement in accordance with § 319.40–8 that requires the raw lumber to be heat treated in accordance with § 319.40–7(c) or heat treated with moisture reduction in accordance with § 319.40–7(d) before any cutting, planing, or sawing of the raw lumber, and within 30 days from the time the lumber is released from the port of first arrival.

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the Secretary of Agriculture may, whenever he deems it necessary as an emergency measure in order to prevent the dissemination of any plant pest new to or not theretofore known to be widely prevalent or distributed within and throughout the United States, seize, quarantine, treat, apply other remedial measures to, destroy, or dispose of, in such manner as he deems appropriate, subject to section 105(d) of the Federal Plant Pest Act (7 U.S.C. 150dd(d)), any product or article, including any article subject to this subpart, which is moving into or through the United States, and which he has reason to believe is infested with any such plant pest at the time of the movement, or which has moved into the United States, and which he has reason to believe was infested with any such plant pest at the time of the movement. Section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and section 107 of the Federal Plant Pest Act (7 U.S.C. 150ff) also authorize measures against regulated articles which are not in compliance with this subpart.

(c) *Tropical hardwoods.* (1) *Debarked.* Tropical hardwood logs and lumber that have been debarked in accordance with § 319.40–7(b) may be imported subject to the inspection and other requirements of § 319.40–9.

(2) *Not debarked.* Tropical hardwood logs that have not been debarked may be imported if fumigated in accordance with § 319.40–7(f)(1) prior to arrival in the United States.

(3) *Not debarked; small lots.* Tropical hardwood logs that have not been debarked may be imported into the United States, other than into Hawaii, Puerto Rico, or the Virgin Islands of the United States, if imported in a lot of 15 or fewer logs and subject to the inspection and other requirements of § 319.40–9.

(d) *Temperate hardwoods.* Temperate hardwood logs and lumber (with or without bark) from all places except countries in Asia that are wholly or in part east of 60° East Longitude and north of the Tropic of Cancer may be imported if fumigated in accordance with § 319.40–7(f) prior to arrival in the United States and subject to the inspection and other requirements of § 319.40–9.

(e) *Regulated articles associated with exclusively tropical climate pests.* Regulated articles that have been identified by a plant pest risk assessment as associated solely with plant pests that can successfully become established only in tropical or subtropical climates may be imported if:

(1) The regulated article is imported only to a destination in the continental United States; and,

(2) the regulated article is not imported into any tropical or subtropical areas of the United States specified in the permit.

§ 319.40–6 Universal importation options.

(a) *Logs.* Logs may be imported if prior to importation the logs have been debarked in accordance with § 319.40–7(b) and heat treated in accordance with § 319.40–7(c). During the entire interval between treatment and export the logs must be stored and handled in a manner which excludes any access to the logs by plant pests.

(b) *Lumber*—(1) *Heat treated or heat treated with moisture reduction lumber.* Lumber that prior to importation has been heat treated in accordance with § 319.40–7(c), or heat treated with moisture reduction in accordance with § 319.40–7(d), may be imported in accordance with paragraphs (b)(1) (i) and (ii) of this section.

(i) During shipment to the United States, no other regulated article (other than solid wood packing materials) is permitted on the means of conveyance with the lumber, unless the lumber and the other regulated articles are in separate holds or separate sealed containers, or, if the lumber and other regulated articles are mixed in a hold or sealed container, all the regulated articles have been heat treated in accordance with § 319.40–7(c), or heat treated with moisture reduction in accordance with § 319.40–7(d). Lumber on the vessel's deck must be in a sealed container, unless it has been heat treated with moisture reduction in accordance with § 319.40–7(d).

(ii) If lumber has been heat treated in accordance with § 319.40–7(c), that fact must be stated on the importer document, or by a permanent marking on each piece of lumber in the form of the letters "HT" or the words "Heat Treated." If lumber has been heat treated with moisture reduction in accordance with § 319.40–7(d), that fact must be stated on the importer document, or by a permanent marking, on each piece of lumber or on the cover of bundles of lumber, in the form of the letters "KD" or the words "Kiln Dried."

(2) *Raw lumber.* Raw lumber, including solid wood packing materials imported as cargo, from all places except countries in Asia that are wholly or in part east of 60° East Longitude and north of the Tropic of Cancer may be imported in accordance with paragraphs (b)(2) (i) and (ii) of this section.

(i) During shipment to the United States, no other regulated article (other than solid wood packing materials) is permitted on the means of conveyance with the raw lumber, unless the raw lumber and the other regulated articles are in separate holds or separate sealed containers. Raw lumber on the vessel's deck must be in a sealed container.

(ii) The raw lumber must be consigned to a facility operating under a compliance agreement in accordance with § 319.40–8 that requires the raw lumber to be heat treated in accordance with § 319.40–7(c) or § 319.40–7(d), within 30 days from the time the lumber is released from the port of first arrival. If the raw lumber is to be cut, planed, or sawed, the heat treatment must be completed before any cutting, planing, or sawing of the raw lumber.

(c) *Wood chips and bark chips.* Wood chips and bark chips from any place except countries in Asia that are wholly or in part east of 60° East Longitude and north of the Tropic of Cancer may be imported in accordance with this paragraph.

(1) The wood chips or bark chips must be accompanied by an importer document that states that the wood chips or bark chips were either:

(i) Derived from live, healthy, plantation-grown trees in tropical areas; or

(ii) Fumigated with methyl bromide in accordance with § 319.40–7(f)(3) or heat treated in accordance with § 319.40–7(c) or § 319.40–7(d).

(2) During shipment to the United States, no other regulated articles (other than solid wood packing materials) are permitted in the holds or sealed containers carrying the wood chips or bark chips. Wood chips or bark chips on the vessel's deck must be in a sealed container.

(3) The wood chips or bark chips must be free from rot at the time of importation, unless accompanied by an importer document stating that the entire lot was fumigated with methyl bromide in accordance with § 319.40–7(f)(3) or heat treated in accordance with § 319.40–7(c) or § 319.40–7(d).

(4) Wood chips or bark chips imported in accordance with this paragraph must be consigned to a facility operating under a compliance agreement in accordance with § 319.40–8. The wood chips or bark chips must be burned, heat treated in accordance with § 319.40–7(c) or § 319.40–7(d), or otherwise processed in a manner that will destroy any plant pests associated with the wood chips or bark chips, within 30 days of arrival at the facility. If the wood chips or bark chips are to be used for mulching or composting, they must first be fumigated in accordance with § 319.40–7(f)(3) or heat treated in accordance with § 319.40–7(c) or § 319.40–7(d).

(d) *Wood mulch, humus, compost, and litter.* Wood mulch, humus, compost, and litter may be imported if accompanied by an importer document stating that the wood mulch, humus, compost, or litter was fumigated in accordance with § 319.40–7(f)(3) or heat treated in accordance with § 319.40–7(c) or § 319.40–7(d).

(e) *Cork and bark.* Cork and cork bark, cinnamon bark, and other bark to be used for food, manufacture of medicine, or chemical extraction may be imported if free from rot at the time of importation and subject to the inspection and other requirements of § 319.40–9.

§ 319.40–7 Treatments and safeguards.

(a) *Certification of treatments or safeguards.* If APHIS determines that a document required for the importation of regulated articles is inaccurate, the regulated articles which are the subject of the certificate or other document shall be refused entry into the United States. In addition, APHIS may determine not to accept any further

certificates for the importation of regulated articles in accordance with this subpart from a country in which an inaccurate certificate is issued, and APHIS may determine not to allow the importation of any or all regulated articles from any such country, until corrective action acceptable to APHIS establishes that certificates issued in that country will be accurate.

(b) *Debarking.* Except for raw lumber, no more than 2 percent of the surface of all regulated articles in a lot may retain bark, with no single regulated article retaining bark on more than 5 percent of its surface. For raw lumber, debarking must remove 100 percent of the bark.

(c) *Heat treatment.* Heat treatment must be performed only at a facility where APHIS or an inspector authorized by the national government of the country in which the facility is located has inspected the facility and determined that its operation complies with the standards of this paragraph. Heat treatment procedures may employ steam, hot water, kilns, exposure to microwave energy, or any other method (e.g., the hot water and steam techniques used in veneer production) that raises the temperature of the center of each treated regulated article to at least 56 °C and maintains the regulated article at that center temperature for at least 30 minutes. For regulated articles heat treated prior to arrival in the United States, during the entire interval between treatment and export the regulated article must be stored, handled, or safeguarded in a manner which excludes any reinfestation of the regulated article by plant pests.

(d) *Heat treatment with moisture reduction.* Heat treatment with moisture reduction may employ dry heat, exposure to microwave energy, or any other method that raises the temperature of the center of each treated regulated article to at least 56 °C, maintains the regulated articles at that center temperature for at least 30 minutes, and reduces the moisture content of the regulated article to 20 percent or less as measured by an electrical conductivity meter. For regulated articles heat treated with moisture reduction prior to arrival in the United States, during the entire interval between treatment and export the regulated article must be stored, handled, or safeguarded in a manner which excludes any reinfestation of the regulated article by plant pests.

(e) *Surface pesticide treatments.* All United States Environmental Protection Agency registered surface pesticide treatments are authorized for regulated articles imported in accordance with this subpart. Surface pesticide treatments must be conducted in accordance with label directions approved by the United States Environmental Protection Agency. When used on heat treated logs, a surface pesticide treatment must be first applied within 48 hours following heat treatment. The surface pesticide treatment must be repeated at least every 30 days during storage of the regulated article, with the final treatment occurring no more than 30 days prior to departure of the means of conveyance that carries the regulated articles to the United States.

(f) *Methyl bromide fumigation.* The following minimum standards for methyl bromide fumigation treatment are authorized for the regulated articles listed in paragraphs (f)(1) through (f)(3) of this section. Any method of fumigation that meets or exceeds the specified temperature/time/concentration products is acceptable.

(1) *Logs*—(i) *T–312 Alternative.* The entire log and the ambient air must be at a temperature of 5 °C or above throughout fumigation. The fumigation must be conducted using schedule T–312 contained in the Treatment Manual. In lieu of the schedule T–312 methyl bromide concentration, fumigation may be conducted with an initial methyl bromide concentration of at least 240 g/m³ with exposure and concentration levels adequate to provide a concentration-time product of at least 17,280 gram-hours calculated on the initial methyl bromide concentration.

(ii) *T–404 Alternative.* The entire log and the ambient air must be at a temperature of 5 °C or above throughout fumigation. The fumigation must be conducted using schedule T–404 contained in the Treatment Manual. In lieu of the schedule T–404 methyl bromide concentration, fumigation may be conducted with an initial methyl bromide concentration of at least 120 g/m³ with exposure and concentration levels adequate to provide a concentration-time product of at least 1920 gram-hours calculated on the initial methyl bromide concentration.

(2) *Lumber.* The lumber and the ambient air must be at a temperature of 5 °C or above throughout fumigation. The fumigation must be conducted using schedule T–404 contained in the Treatment Manual. In lieu of the schedule T–404 methyl bromide concentration, fumigation may be conducted with an initial methyl bromide concentration of at least 120 g/m³ with exposure and concentration levels adequate to provide a concentration-time product of at least 1920 gram-hours calculated on the initial methyl bromide concentration.

(3) *Regulated articles other than logs or lumber.* (i) If the ambient air and the regulated articles other than logs or lumber are at a temperature of 21 °C or above throughout fumigation, the fumigation must be conducted using schedule T–404 contained in the Treatment Manual. In lieu of the schedule T–404 methyl bromide concentration, fumigation may be conducted with an initial methyl bromide concentration of at least 48 g/m³ with exposure and concentration levels adequate to provide a concentration-time product of at least 760 gram-hours calculated on the initial methyl bromide concentration.

(ii) If the ambient air and the regulated articles other than logs or lumber are at a temperature of 4.5–20.5 °C throughout fumigation, the fumigation must be conducted using schedule T–404 contained in the Treatment Manual. In lieu of the schedule T–404 methyl bromide concentration, fumigation may be conducted with an initial methyl bromide concentration of at least 120 g/m³ with exposure and concentration levels adequate to provide a concentration-time product of at least 1920 gram-hours calculated on the initial methyl bromide concentration.

(g) *Preservatives.* All preservative treatments that use a preservative product that is registered by the United States Environmental Protection Agency are authorized for treatment of regulated articles imported in accordance with this subpart. Preservative treatments must be performed in accordance with label directions approved by the United States Environmental Protection Agency.

§ 319.40–8 Processing at facilities operating under compliance agreements.

(a) Any person who operates a facility in which imported regulated articles are processed may enter into a compliance agreement to facilitate the importation of regulated articles under this subpart. The compliance agreement shall specify the requirements necessary to prevent spread of plant pests from the facility, requirements to ensure the processing method effectively destroys plant pests, and the requirements for the application of chemical materials in accordance with the Treatment Manual. The compliance agreement shall also state that inspectors must be allowed access to the facility to monitor compliance with the requirements of the compliance agreement and of this subpart. Compliance agreement forms may be obtained from the Administrator or an inspector.

(b) Any compliance agreement may be canceled by the inspector who is supervising its enforcement, orally or in writing, whenever the inspector finds that the person who entered into the compliance agreement has failed to comply with the conditions of the compliance agreement. If the cancellation is oral, the decision to cancel the compliance agreement and the reasons for cancellation of the compliance agreement shall be confirmed in writing, as promptly as circumstances permit. Any person whose compliance agreement has been canceled may appeal the decision in writing to the Administrator within 10 days after receiving written notification of the cancellation. The appeal shall state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. The Administrator shall grant or deny the appeal, in writing, stating the reasons for granting or denying the appeal, as promptly as circumstances permit. If there is a conflict as to any material fact and the person whose compliance agreement has been canceled requests a hearing, a hearing shall be held to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator.

§ 319.40–9 Inspection and other requirements at port of first arrival.

(a) *Procedures for all regulated articles.* (1) All imported regulated articles shall be inspected at the port of first arrival. If the inspector finds signs of plant pests on or in the regulated article, or finds that the regulated article may have been associated with other articles infested with plant pests, the regulated article shall be cleaned or treated as required by an inspector, and the regulated article and any products of the regulated article shall also be subject to reinspection, cleaning, and treatment at the option of an inspector at any time and place before all applicable requirements of this subpart have been accomplished.

(2) Regulated articles shall be assembled for inspection at the port of first arrival, or at any other place prescribed by an inspector, at a place and time and in a manner designated by an inspector.

(3) If an inspector finds that an imported regulated article is so infested with a plant pest that, in the judgment of the inspector, the regulated article cannot be cleaned or treated, or contains soil or other prohibited contaminants, the entire lot may be refused entry into the United States.

(4) No person shall move any imported regulated article from the port of first arrival unless and until an inspector notifies the person, in writing or through an electronic database, that the regulated article:

(i) Is in compliance with all applicable regulations and has been inspected and found to be apparently free of plant pests;[3] or,

(ii) Has been inspected and the inspector requires reinspection, cleaning, or treatment of the regulated article at a place other than the port of first arrival.

(b) *Notice of arrival; visual examination of regulated articles at port of first arrival.*

(1) At least 7 days prior to the expected date of arrival in the United States of a shipment of regulated articles imported in accordance with this subpart, the permittee or his or her agent must notify the APHIS Officer in Charge at the port of arrival of the date of expected arrival. The address and telephone number of the APHIS Officer in Charge will be specified in any specific permit issued by APHIS.[4] This notice may be in writing or by telephone. The notice must include the number of any specific permit issued for the regulated articles; the name, if any, of the means of conveyance carrying the regulated articles; the type and quantity of the regulated articles; the expected date of arrival; the country of origin of the regulated articles; the name and the number, if any, of the dock where the regulated articles are to be unloaded; and the name of the importer or broker at the port of arrival.

(2) Imported regulated articles which have been debarked in accordance with § 319.40–7(b) and can be safely and practically inspected will be visually examined for plant pests by an inspector at the port of first arrival. If plant pests are found on or in the regulated articles or if the regulated article cannot be safely and practically inspected, the regulated articles must be treated in accordance with the Treatment Manual.

(c) *Marking and identity of regulated articles.* Any regulated article, at the time of importation shall bear on the outer container (if in a container), on the regulated article (if not in a container), or on a document accompanying the regulated article the following information:

(1) General nature and quantity of the regulated articles;

(2) Country and locality, if known, where the tree from which the regulated article was derived was grown;

(3) Name and address of the person importing the regulated article;

(4) Name and address of consignee of the regulated article;

(5) Identifying shipper's mark and number; and

(6) Number of the permit (if one was issued) authorizing the importation of the regulated article into the United States.

(d) *Sampling for plant pests at port of first arrival.* Any imported regulated article may be sampled for plant pests at the port of first arrival. If an inspector finds it necessary to order treatment of a regulated article at the port of first arrival, any sampling will be done prior to treatment.

§ 319.40–10 Costs and charges.

The services of an inspector during regularly assigned hours of duty and at the usual places of duty shall be furnished without cost to the importer.[5] The inspector may require the importer to furnish any labor, chemicals, packing materials, or other supplies required in handling regulated articles under this subpart. APHIS will not be responsible for any costs or charges, other than those identified in this section.

§ 319.40–11 Plant pest risk assessment standards.

When evaluating a request to import a regulated article not allowed importation under this subpart, or a request to import a regulated article under conditions other than those prescribed by this subpart, APHIS will conduct the following analysis to determine the plant pest risks associated with each requested importation in order to determine whether or not to issue a permit under this subpart or to propose regulations establishing conditions for the importation into the United States of the regulated article.

(a) *Collecting commodity information.*

(1) APHIS will evaluate the application for information describing the regulated article and the origin, processing, treatment, and handling of the regulated article; and

(2) APHIS will evaluate history of past plant pest interceptions or introductions (including data from foreign countries) associated with the regulated article.

(b) *Cataloging quarantine pests.* For the regulated article specified in an application, APHIS will determine what plant pests or potential plant pests are associated with the type of tree from

[3] Certain regulated articles may also be subject to § 319.56, or to Noxious Weed Act regulations under part 360 of this chapter, or to Endangered Species Act regulations under parts 355 and 356 of this chapter and 50 CFR parts 17 and 23.

[4] A list of APHIS Officers in Charge may be obtained from the Administrator, APHIS, c/o PPQ, Port Operations, room 635, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

[5] Provisions relating to costs for other services of an inspector are contained in part 354 of this chapter.

which the regulated article was derived, in the country and locality from which the regulated article is to be exported. A plant pest that meets one of the following criteria is a quarantine pest and will be further evaluated in accordance with paragraph (c) of this section:

(1) Non-indigenous plant pest not present in the United States;

(2) Non-indigenous plant pest, present in the United States and capable of further dissemination in the United States;

(3) Non-indigenous plant pest that is present in the United States and has reached probable limits of its ecological range, but differs genetically from the plant pest in the United States in a way that demonstrates a potential for greater damage potential in the United States;

(4) Native species of the United States that has reached probable limits of its ecological range, but differs genetically from the plant pest in the United States in a way that demonstrates a potential for greater damage potential in the United States; or

(5) Non-indigenous or native plant pest that may be able to vector another plant pest that meets one of the criteria in paragraphs (b) (1) through (4) of this section.

(c) *Determining which quarantine pests to assess.*

(1) APHIS will divide quarantine pests identified in paragraph (b) of this section into groups depending upon where the plant pest is most likely to be found. The plant pests would be grouped as follows:

(i) Plant pests found on the bark;

(ii) Plant pests found under the bark; and

(iii) Plant pests found in the wood.

(2) APHIS will subdivide each of the groups in paragraph (c)(1) of this section into associated taxa.

(3) APHIS will rank the plant pests in each group in paragraph (c)(2) of this section according to plant pest risk, based on the available biological information and demonstrated plant pest importance.

(4) APHIS will identify any plant pests ranked in paragraph (c)(3) of this section for which plant pest risk assessments have previously been performed in accordance with this section. APHIS will conduct individual plant pest risk assessments for the remaining plant pests, starting with the highest ranked plant pest(s) in each group.

(5) The number of plant pests in each group to be evaluated through individual plant pest risk assessment will be based on biological similarities of members of the group as they relate to measures taken in connection with the importation of the regulated article to mitigate the plant pest risk associated with the regulated article. For example, if the plant pest risk assessment for the highest ranked plant pest indicates a need for a mitigation measure that would result in the same reduction of risk for other plant pests ranked in the group, the other members need not be subjected to individual plant pest risk assessment.

(d) *Conducting individual plant pest risk assessments.* APHIS will evaluate each of the plant pests identified in paragraph (c)(4) of this section by:

(1) Estimation of the probability of the plant pest being on, with, or in the regulated article at the time of importation;

(2) Estimation of the probability of the plant pest surviving in transit on the regulated article and entering the United States undetected;

(3) Estimation of the probability of the plant pest colonizing once it has entered into the United States;

(4) Estimation of the probability of the plant pest spreading beyond any colonized area; and

(5) Estimation of the damage to plants that could be expected upon introduction and dissemination within the United States of the plant pest.

(e) *Estimating unmitigated overall plant pest risk.* APHIS will develop an estimation of the overall plant pest risk associated with importing the regulated article based on compilation of individual plant pest risk assessments performed in accordance with paragraph (d) of this section.

(f) *Evaluating available requirements to determine whether they would allow safe importation of the regulated article.* The requirements of this subpart, and any other requirements relevant to the regulated article and plant pests involved, will be compared with the individual plant pest risk assessments in order to determine whether particular conditions on the importation of the regulated article would reduce the plant pest risk to an insignificant level. If APHIS determines that the imposition of particular conditions on the importation of the regulated article could reduce the plant pest risk to an insignificant level, and determines that sufficient APHIS resources are available to implement or ensure implementation of the conditions, APHIS will implement rulemaking to allow importation of the requested regulated article under the conditions identified by the plant pest risk assessment process.

Subpart—Packing Materials

§ 319.69 [Amended]

9. The introductory language to § 319.69 would be removed.

10. In § 319.69, paragraph (a), the phrase "On and after July 1, 1933, the" would be removed and the word "The" would be added in its place.

11. In § 319.69, paragraph (b), the phrase "On and after June 8, 1953, the" would be removed and the word "The" would be added in its place.

12. In § 319.69, paragraph (b)(3) would be removed, and paragraphs (b)(4) and (b)(5) would be redesignated as paragraphs (b)(3) and (b)(4) respectively.

13. In § 319.69a, paragraph (a) would be amended by removing the phrase "(b)(1), (3), and (4)" and adding the phrase "(b)(1) and (3)" in its place.

Done in Washington, DC, this 13th day of January 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–1230 Filed 1–19–94; 8:45 am]

BILLING CODE 3410–34–P

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9 CFR Part 94

[Docket No. 93–159–1]

Change in Disease Status of Germany Because of Rinderpest and Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to declare Germany free of rinderpest and foot-and-mouth disease. Rinderpest has not existed in Germany since 1870 and there have been no outbreaks of foot-and-mouth disease since January 1988. This proposed revision would remove the prohibition on the importation from Germany into the United States of ruminants and fresh, chilled, and frozen meat from ruminants, and would relieve restrictions on the importation from Germany of milk and milk products from ruminants. This proposal, if adopted, would not relieve restrictions on the importation from Germany of swine and fresh, chilled, and frozen meat from swine, because Germany has not been declared free of hog cholera and swine vesicular disease.

We are also proposing to add Germany to a list of countries that, although declared free of rinderpest and foot-and-mouth disease, are subject to restrictions on the importation of their meat and other animal products into the United States. Finally, we are also

proposing to add Germany to the list of countries from which the importation into the United States of llamas and alpacas is restricted.

DATES: Consideration will be given only to comments received on or before March 21, 1994.

ADDRESSES: Please send an original and three copies of your comments 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 No. 93–159–1. 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. Persons wishing to inspect comments are encouraged to call ahead on (202–690–2817) to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Elizabeth Klontz, Staff Veterinarian, Import-Export Products Staff, National Center for Import and Export, VS, APHIS, USDA, room 758A, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7830.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as "the regulations") govern the importation into the United States of specified animals and animal products to prevent the introduction into the United States of various diseases, including rinderpest, foot-and-mouth disease (FMD), bovine spongiform encephalopathy, African swine fever, hog cholera, and swine vesicular disease (SVD). These are dangerous and destructive communicable diseases of ruminants and swine.

Section 94.1(a)(1) of the regulations provides that rinderpest or FMD exists in all countries of the world except those listed in § 94.1(a)(2), which are declared to be free of both diseases. We are proposing to add Germany to that list.

We will consider declaring a country to be free of rinderpest and FMD if there have been no reported cases of the diseases in that country for at least the previous 1-year period and no vaccinations for rinderpest or FMD have been administered to swine or ruminants in that country for at least the previous 1-year period. In the case of Germany, rinderpest has not occurred since 1870, there have been no outbreaks of FMD since January 1988, and vaccinations for FMD were discontinued in March 1991.

Germany has applied to the U.S. Department of Agriculture (USDA) to be recognized as free of rinderpest and FMD. The Animal and Plant Health Inspection Service (APHIS) has reviewed the documentation submitted by the government of Germany in support of its request. In addition, a team of APHIS officials recently conducted an on-site evaluation of the animal health program in Germany in regard to the FMD and rinderpest situation in that country. The evaluation consisted of a review of the capability of Germany's veterinary services, laboratory and diagnostic procedures, vaccination practices, and the administration of laws and regulations to ensure against the introduction of FMD and rinderpest into Germany through the importation of animals, meat, animal products, and garbage. The APHIS officials conducting the on-site evaluation concluded that Germany is free of FMD and rinderpest. Details concerning the on-site evaluation are available upon written request from the person listed under **FOR FURTHER INFORMATION CONTACT.**

Based on the information discussed above, we believe that Germany qualifies for listing in § 94.1(a)(2) of the regulations as a country declared free of rinderpest and FMD. This action would remove the prohibition on the importation from Germany of ruminants and fresh, chilled, and frozen meat from ruminants, and would relieve restrictions on the importation from Germany of milk and milk products from ruminants. Importations from Germany of swine and fresh, chilled, or frozen meat from swine would continue to be restricted under the regulations because Germany has not been declared free of hog cholera and SVD.

Special Restrictions

We also propose to add Germany to the list in § 94.11(a) of countries declared to be free of rinderpest and FMD that are subject to restrictions on the importation of their meat and other animal products into the United States. The countries listed in § 94.11(a) are subject to these restrictions because they:

1. Supplement their national meat supply by importing fresh, chilled, or frozen meat of ruminants or swine from countries that are designated in § 94.1(a) as infected with rinderpest or FMD;

2. Have a common land border with countries designated as infected with rinderpest or FMD; or

3. Import ruminants or swine from countries designated as infected with rinderpest or FMD under conditions less restrictive than would be acceptable for importation into the United States.

Germany supplements its national meat supply by the importation of fresh, chilled, and frozen meat of ruminants and swine from countries designated in § 94.1(a)(1) as countries in which rinderpest or FMD exists. As a result, even though Germany appears to qualify for designation as a country free of rinderpest and FMD, the meat and other animal products produced in Germany may be commingled with the fresh, chilled, or frozen meat of animals from a country in which rinderpest and FMD exists, resulting in an undue risk of introducing rinderpest or FMD into the United States. Additionally, Germany has common land borders with Austria, the Czech Republic, Luxembourg, and Switzerland, which are designated in § 94.1(a)(1) as countries in which rinderpest or FMD exists.

Therefore, we are proposing that meat and other animal products of ruminants and swine, and ship stores, airplane meals, and baggage containing these meat or animal products, imported into the United States from Germany be subject to the restrictions specified in § 94.11 of the regulations, in addition to other applicable requirements of title 9, chapter III. The restrictions placed on meat and meat products of ruminants and swine in § 94.11 generally require that the meat be:

1. Prepared in an inspected establishment that is eligible to have its products imported into the United States under the Federal Meat Inspection Act; and

2. Accompanied by an additional certificate, issued by an animal health official of the national government of the country declared free of the disease, assuring that the meat and meat products have not been commingled with or exposed to meat or other meat products originating in, imported from, or transported through a country infected with rinderpest or FMD, and are otherwise handled in accordance with the requirements of § 94.11.

We also propose to add Germany to the list in § 94.1(d)(1) of countries in which rinderpest or FMD has been known to exist and that were declared free of rinderpest and FMD on or after September 28, 1990. All countries in which rinderpest or FMD has been known to exist and that were declared free of rinderpest and FMD on or after September 28, 1990, must be added to this list. Adding Germany to this list would restrict the importation or entry of llamas and alpacas from Germany into the United States, unless in accordance with 9 CFR 92.435.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This proposed rule, if adopted, would add Germany to the list in part 94 of countries declared to be free of rinderpest and FMD. This action would remove the prohibition on the importation into the United States from Germany of ruminants and fresh, chilled, and frozen meat from ruminants, and would relieve restrictions on the importation from Germany of milk and milk products from ruminants. This action would not relieve restrictions on the importation of live swine and fresh, chilled, and frozen meat of swine from Germany because Germany is still considered to be affected with hog cholera and SVD.

Based on available information, the Department does not anticipate a major increase in exports of ruminants and fresh, chilled, or frozen meat of ruminants from Germany into the United States as a result of this proposed rule.

The value of total U.S. imports of cattle in 1992 was $1.24 billion; U.S. imports of sheep in 1992 totaled about $2 million. The United States did not import any cattle or sheep from Germany during 1992. In fact, no cattle or sheep were imported into the United States from any country in Western Europe during 1992 (USDA, National Agricultural Statistical Service [NASS], Agricultural Statistics Board [ASB] "Agricultural Statistics, 1992"). Western Europe is not a source of ruminants for the United States and we anticipate that any increase in the importation of ruminants from Germany as a result of this rule would have a negligible impact on existing trade patterns.

Currently, due to APHIS restrictions, the United States does not import uncooked meat or meat products from Germany. In 1991, total meat production in the United States (excluding pork) was just under 10.7 million metric tons, while total meat production in Germany (excluding pork) was 2.2 million metric tons, about 20 percent of United States production. It is improbable that Germany would begin to export any significant portion of its meat products to the United States as a result of this rule. Therefore, we estimate that the effect of this rule on domestic meat prices or supplies would be insignificant.

Similarly, we do not anticipate a major increase in exports of milk and milk products from Germany into the United States as a result of this proposed rule. Importation into the United States of all dairy products, except for casein and other caseinates, is restricted by quotas. Furthermore, while the United States imports more than half of the casein produced in the world and the regulations allow casein and other caseinates to be imported from countries where rinderpest or FMD exists (if the importer has applied for and obtained written permission from the Administrator), Germany currently exports only a small amount of casein to the United States. For example, in 1992, the United States imported 95,000 metric tons of casein worldwide, but only about 2,400 metric tons (2.53 percent of worldwide imports) from Germany. Consequently, we believe that declaring Germany free of rinderpest and FMD will have no significant effect on the amount of casein imported into the United States.

The effect of declaring Germany free of rinderpest and FMD on the trade in bovine embryos and semen would also be minimal. The United States is a net exporter of bovine embryos and semen; in 1991, the value of bovine embryo and semen exports totalled to $46.5 million and 10.2 million, respectively, while imports amounted to only $2.7 million and $89,159, respectively. Though similar trade data was not available for Germany, we believe that due to the relatively small size of the German market, any increase in the export of bovine embryos and semen from Germany would have a minimal impact on the United States market.

It is not likely that many United States importers, all of whom are considered small entities by Small Business Administration standards (defined as having fewer than 100 employees), would be interested in importing bovine embryos and semen from Germany. APHIS expects that the value of any imports would be minimal in comparison to the domestic production of these entities.

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 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 inconsistent with this rule will be preempted;

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

(3) Administrative proceedings will not be required before parties may file suit in court challenging this rule.

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 proposed rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0015.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 would be revised to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

§ 94.1 [Amended]

2. In § 94.1, paragraph (a)(2) would be amended by adding "Germany," immediately after "France,".

3. In § 94.1, paragraph (d)(1) would be amended by adding "Germany," immediately after "France,".

§ 94.11 [Amended]

4. In § 94.11, paragraph (a), the first sentence would be amended by adding "Germany," immediately after "France,".

Done in Washington, DC, this 13th day of January 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–1366 Filed 1–19–94; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–ACE–02]

Proposed Establishment of Class E Airspace; Harvard, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish Class E airspace extending from 700 feet above the surface at Harvard, Nebraska. The development of a standard instrument approach procedures (SIAP) at Harvard State Airport, Harvard, Nebraska, utilizing the Hastings, Nebraska, VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) as a navigational aid, has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the SIAP at Harvard, Nebraska.

DATES: Comments must be received on or before March 7, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ACE–530, Federal Aviation Administration, Docket No. 93–ACE–02, 601 East 12th Street, Kansas City, Missouri 64106.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Regional Office at the address shown above, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, at the address shown above.

FOR FURTHER INFORMATION CONTACT: Kathy J. Randolph, Airspace Technician, System Management Branch, ACE–530c, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES**. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–ACE–02." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 601 East 12th Street, Kansas City, Missouri, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, Air Traffic Division, 601 East 12th Street, Kansas City, Missouri 64106. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Harvard State Airport, Harvard, Nebraska, extending upward from 700 feet or more above the surface. The development of a new SIAP at Harvard State Airport, Harvard, Nebraska, based on the Hastings VOR/DME, made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace the aircraft executing the VOR/DME area navigation (RNAV) SIAP at Harvard State Airport, Harvard, Nebraska. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth when designated in conjunction with an airport are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE NE E5 Harvard, NE [New]

Harvard State Airport, NE

(lat. 40°39′15″ N, long. 98°04′31″ W)
Hastings VOR/DME (lat. 40°36′16″ N, long. 98°25′47″ W)

That airspace extending upward from 700 feet above the surface within a 6.4–mile

radius of the Harvard State Airport and within 2 miles each side of the 180-degree bearing of the Harvard State Airport extending from the 6.4-mile radius to 10 miles south of the airport.

* * * * *

Issued in Kansas City, Missouri, on January 7, 1994.

Herman J. Lyons,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 94–1353 Filed 1–19–94; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 275 and 279

[Release No. IA–1401; S7–2–94]

RIN 3235–AG02

Disclosure by Investment Advisers Regarding Wrap Fee Programs

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule and form amendments.

SUMMARY: The Commission is proposing for comment rule and form amendments that would specify the information that registered investment advisers that are sponsors of "wrap fee" programs would be required to provide to prospective clients in those programs. The amendments are intended to provide prospective wrap fee program clients with important information regarding the cost of the programs and the services provided.

DATES: Comments on the proposals should be received on or before March 7, 1994.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. All comment letters should refer to File No. S7–2–94. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Eric C. Freed, Senior Attorney, or Robert E. Plaze, Assistant Director, (202) 272–2107, Office of Disclosure and Investment Adviser Regulation, Division of Investment Management, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today is proposing for comment:

(1) Amendments to Form ADV [17 CFR 279.1] under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 *et seq.*] (the "Advisers Act") to require advisers that sponsor wrap fee programs ("sponsors") to file with the Commission as part of Form ADV a document (the "wrap fee brochure") containing certain disclosure about the sponsor and its wrap fee programs in a narrative (rather than check-the-box) format.

(2) Amendments to rule 204–3 under the Advisers Act [17 CFR 275.204–3] to require sponsors to deliver the wrap fee brochure to current and prospective wrap fee program clients in lieu of the disclosure document they are required to deliver to other clients and prospective clients.

(3) Related amendments to rule 204–1 under the Advisers Act [17 CFR 275.204–1] setting forth the requirements for updating the wrap fee brochure.

I. Background

In recent years, arrangements known as "wrap fee" programs have become increasingly popular among broker-dealers, investment advisers ("advisers"), and investors.[1] Typically, a wrap fee program provides an investor with a bundle of investment services, including asset allocation, portfolio management, custody of client funds and securities, execution of client transactions, and monitoring of portfolio manager performance for a single "wrap" fee, generally a percentage of assets under management. The wrap fee client is not charged brokerage commissions on a transactional basis. The sponsor, often a broker-dealer or an affiliate of a broker-dealer, selects or assists clients in selecting an adviser or advisers (who may or may not be affiliated with the sponsor) to manage the client's portfolio (the "portfolio manager") and periodically reviews the performance of the portfolio manager or managers.

The sponsor of a wrap fee program is generally required to register as an adviser under the Advisers Act.[2] A registered adviser is required to file and keep current Form ADV, the form used to register as an adviser with the Commission under section 203 of the Advisers Act (15 U.S.C. 80b–3) and with all states that require adviser registration.[3] A registered adviser must also deliver a written disclosure statement or "brochure" to prospective clients of the adviser and annually offer to deliver the brochure to existing clients. Part II of Form ADV ("Part II") sets forth the information that must be included in the brochure required by rule 204–3. An adviser has the option to use Part II, which consists of a series of questions answered by checking the appropriate boxes as well as some narrative information, as the required brochure, or to prepare a separate narrative brochure containing, at a minimum, the information required by Part II.[4]

The proposed amendments would specify the content, format, and delivery requirements of the brochure that a sponsor of a wrap fee program must provide clients and prospective clients.[5] The proposed amendments are intended to facilitate the development of clear, concise and informative wrap fee brochures.[6]

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[1] *See, e.g.*, Brown, The 'Wrap-Fee Account': Worth What It Costs?, Phila. Inquirer, Aug. 8, 1993, at E1; What's the Wrap?, The Economist, July 31, 1993, at 72; Shedding Light on Those Hot New Wrap Accounts, Boston Globe, May 13, 1993, at 61; White, As Money Rolls In, Meet the "Kings of Wrap", Wall St. J., Apr. 22, 1992, at C1.

[2] See National Regulatory Services, Inc. (pub. avail. Dec 2, 1992). The portfolio manager would also be an investment adviser unless subject to an exception from the Advisers Act. See Section 202(a)(11)(A) of the Adviser Act [15 U.S.C. 80b-2(a)(11)(A) (banks and bank holding companies are not investment advisers). The requirements of current Part II of Form ADV elicit relevant information about portfolio manager participation in wrap fee programs, see National Regulatory Services *supra*, and are not being proposed to be amended. Because of the similarity between the services portfolio managers provide to wrap program clients and the services they provide to other clients, there does not appear to be a need to require generally that portfolio managers prepare a separate disclosure document for wrap fee program clients. In certain limited circumstances, however, the proposed amendments would require that the portfolio manager provide a brochure to wrap program clients that is separate from the brochure it provides to other portfolio management clients. See Section II.C.4 *infra*.

[3] Uniform Form ADV was developed by the Commission and the North American Securities Administrators Association, Inc. ("NASAA"), the national organization of state securities administrators, to remove unnecessary administrative burdens on investment advisers registering with more than one governmental entity. See Investment Advisers Act Rel. No. 991 (Oct. 15, 1985) [50 FR 42903 (Oct. 23, 1985)]. The proposed amendments were prepared in cooperation with NASAA, which has voted to endorse the proposal of the amendments. See NASAA Reports (CCH) ¶4101 (Oct. 1993).

[4] Paragraph (a) of rule 204–3 [17 CFR 275.204–3(a)].

[5] Part II does not currently set forth disclosure requirements specific to wrap fee programs. The current form requires disclosure, however, regarding the adviser's fees and services, which encompasses wrap fee programs. Investment advisers, as fiduciaries, also have an obligation independent of the requirements of any form to disclose to clients all material facts about the advisory relationship. See *SEC* v. *Capital Gains Research Bureau*, 375 U.S. 180, 191, 201 (1963); *Laird* v. *Integrated Resources*, 897 F.2d 826, 835 (5th Cir. 1990); Investment Advisers Act Rel. No. 1092 (Oct. 8, 1987) [52 FR 38400 (Oct. 16, 1987)].

[6] Of course, compliance with the proposed amendments would not relieve an adviser of the obligation to disclose material facts that would not

Continued

II. Discussion

As the organizer of the program and the principal contact with clients, a wrap fee sponsor is generally in a better position than the portfolio manager to provide prospective clients with a basic description of the program. Therefore, the proposed amendments would require the sponsor, rather than the portfolio manager, to provide the basic disclosure regarding the operations of and the services offered by the program. As discussed in greater detail below, the proposed amendments would require that the sponsor disclose this information in a separate document provided in lieu of the brochure the sponsor provides to its other advisory clients.[7]

A sponsor would need to include only abbreviated disclosure about its wrap fee programs in the narrative portions of the brochure it delivers to clients outside the wrap fee programs. Comment is requested on whether an instruction to this effect should be added to Form ADV.

A. Applicability of Disclosure Requirements

1. The "Wrap Fee Program"

The wrap fee brochure would be required to be delivered only by sponsors of wrap fee programs. A "wrap fee program" would be defined to include a program under which any client is charged a specified fee or fees not based directly upon the transactions in the client's account for investment advisory services and execution of transactions.[8] The investment advisory services could include, among other services, advice regarding the selection of investment managers.[9]

In certain wrap fee programs, a fee is charged for advice regarding the allocation of client assets among mutual funds affiliated with the sponsor. Unlike typical wrap fee programs, these programs contemplate recommendations of mutual funds (and their advisers) rather than "portfolio managers," and do not provide brokerage as a service.[10] Like other wrap fee programs, however, mutual fund wrap fee programs offer assistance in selecting and allocating assets among managers. In light of this similarity, the definition of "wrap fee program" would include a program under which a specified fee is charged for recommendations regarding the allocation of client assets among mutual funds (or series of a single fund) for which the sponsor or a related person (as defined in Form ADV) serves as an investment adviser, principal underwriter, or administrator.[11] Comment is requested on whether the definition should encompass certain programs under which only unaffiliated funds are recommended, and, if so, how the definition of wrap fee program should be revised to encompass these programs without reaching all advisers that charge asset-based fees and recommend mutual funds to their clients. Comment is requested generally on the proposed definition of wrap fee program, and whether it encompasses the types of programs for which the required disclosure is material.

Under certain programs that are similar to wrap fee programs, clients are provided with advice regarding the selection of portfolio managers, continual monitoring of portfolio managers, and brokerage services, but no clients are charged a "wrap" fee.[12] Sponsors of these "managed account" programs would not be required under the proposed amendments to deliver a wrap fee brochure.[13] Comment is requested whether these managed account programs should be covered by the proposed brochure requirements, and, if so, how the definition of wrap fee program should be revised to encompass these programs. Comment is specifically requested on requiring delivery of the new brochure to clients participating in programs under which (1) advice regarding the selection of investment advisers is provided, and (2) a single broker provides the primary brokerage services for substantially all clients participating in the program.

2. The "Sponsor"

The brochure contemplated by the proposed amendments would be required to be delivered by a person that sponsors or organizes a wrap fee program, or selects or provides advice to clients regarding the selection of other investment advisers in connection with the wrap fee program.[14] This requirement is intended to include advisers that would typically be referred to as "sponsors," but not advisers that provide only portfolio management services to wrap fee program clients.

In some wrap fee programs, the services typically performed by a single sponsor are divided among two or more registered advisers. For instance, certain programs are organized by a person whose primary role is to monitor, evaluate and provide recommendations on portfolio managers. Clients for these programs are generally obtained through various brokers, registered representatives or financial planners who do not have their own wrap fee program. The brokers, representatives or planners assist their clients in developing investment objectives and assessing the type of portfolio manager that is appropriate. Both the program organizer and the persons that obtain clients for the program may be providing advisory services to clients and may be included within the general definition of "sponsor" discussed above. The Commission believes that unnecessary duplication might result, however, if both advisers were required to provide clients with the wrap fee brochure containing the comprehensive description of the program. Therefore, the proposed amendments would require that only one of the advisers

be specifically requested by the amendments. See paragraph (e) of rule 204–3 [17 CFR 275.204–3(e)].

[7] See Section II.B *infra*.

[8] Proposed paragraph (g)(4) of rule 204–3; Item 1 of proposed Schedule H of Form ADV ("Schedule H"). Other services, such as custody, may also be provided.

[9] A single "program" may provide clients with a choice of fee arrangements: a wrap fee or a traditional arrangement under which brokerage is paid for (on a transactional basis) separately from advisory services. Under the proposed amendments, the sponsor would provide a prospective client of such a program with only its wrap fee brochure, which would describe both fee arrangements. A wrap fee sponsor that offers traditional advisory services outside of the wrap fee program would be required to deliver two brochures (its wrap fee brochure and its general brochure) to a prospective client being offered both the wrap fee program and traditional advisory services. See proposed paragraph (f) of rule 204–3 (wrap fee brochure delivered to clients and prospective clients of the wrap fee program).

[10] An investor does not pay a "brokerage commission," as the term is commonly used, in connection with the purchase or sale of mutual fund shares. The investor may, however, pay a "sales load," which may be waived for a client of a wrap fee program, or a "12b-1 fee." If a registered representative of a broker that recommends mutual funds to clients is compensated solely through sales loads (transaction-based fees) or 12b-1 fees (fees not charged directly to clients), there would be no "wrap fee program" under the proposed amendments because there would be no specified, non-transaction-based fee charged to the client. Whether or not a wrap fee program exists, a registered adviser must disclose compensation it receives in connection with recommendations made to clients. See Items 9 and 13A of Part II.

[11] The definition would include programs that charge a fee for recommending asset allocation among specified mutual funds that are affiliated with the sponsor, regardless of whether the funds are primarily intended for investment by clients of the program.

[12] The programs described in Wall Street Preferred Money Managers (pub. avail. Apr. 10, 1992) and Morgan Keegan & Co. (pub. avail. Oct. 2, 1990) are examples of this type of program.

[13] A person that selects or assists clients in selecting portfolio managers generally would be an investment adviser, see Release 1092, *supra* note 5, and, if not subject to the proposed wrap fee requirements, would be subject to the general brochure requirements of paragraph (a) of Rule 204–3.

[14] Proposed paragraph (f)(1) of rule 204–3; Item 1 of proposed Schedule H.

need file and deliver the separate wrap fee brochure.[15] The advisers may allocate this responsibility as they choose.[16]

A sponsor in a multiple-sponsor program that is not responsible for delivering the wrap fee brochure would, as an adviser to clients participating in the program, be required to provide its regular brochure to those clients. These clients must also receive the brochure of the portfolio manager they choose under the program. The Commission is concerned that this multiplicity of disclosure documents will reduce client understanding of core information about the program, and requests comment on methods to alleviate this problem, including requiring that the wrap fee brochure, or a supplement, provide relevant information about all sponsors.

B. Format of Wrap Fee Program Brochure

The proposed wrap fee brochure would differ in two significant respects from the disclosure document generally provided under current requirements. First, the disclosure contemplated by the amendments would be presented in narrative text, rather than in a check-the-box format, as is currently permitted.[17] Second, the wrap fee brochure would include only information that pertains to the sponsor's wrap fee programs. A single document describing both the adviser's services under the wrap fee program and its other advisory services would not be permitted.

The departure from the check-the-box format is designed to facilitate a more complete and accurate explanation of the wrap fee programs offered by the sponsor, and thereby provide clients and prospective clients with a better understanding of the programs. Given the many variations of wrap fee programs and the dissimilarity of the services provided under wrap fee programs to more traditional investment advisory services, a check-the-box format may not accommodate a full explanation of the services provided under a wrap fee program or how a wrap fee arrangement compares to a fee-plus-commission arrangement.[18]

The Commission is proposing that wrap fee sponsors provide clients with a separate brochure to address disclosure problems that can arise when wrap fee sponsors engage in other advisory activities. Under current rules, these sponsors may combine in a single brochure information relevant to their wrap fee clients with information concerning other advisory services offered by the sponsor. Because the services provided by the sponsor for its wrap fee clients, such as manager selection and monitoring, differ substantially from the services the sponsor may provide to other advisory clients, such as money management, inclusion of wrap fee program disclosure in a brochure also intended for delivery to the sponsor's non-wrap fee clients may obscure the disclosure provided to both types of clients. This problem is compounded when a sponsor's brochure describes at length a variety of different advisory programs in addition to the wrap fee program. Therefore, the Commission is proposing to require that a separate brochure containing only information relevant to prospective wrap fee program clients be delivered to prospective clients of the wrap fee program in lieu of the brochure delivered to the sponsor's other clients.[19]

A sponsor would not be required to prepare a separate brochure for each wrap fee program it sponsors. As proposed to be amended, Rule 204–3 would specify that a sponsor of more than one wrap fee program has the option to prepare separate brochures for one or more programs or to prepare a single brochure covering all its programs.[20] The Commission is concerned, however, that a prospective client who receives a brochure relating only to a single program may not be made aware of all options offered by the sponsor, and requests comment on whether sponsors should be required to deliver a single brochure describing all their wrap fee programs. The Commission acknowledges that a brochure describing all the sponsor's wrap fee programs may be lengthy and difficult to read and requests comment whether sponsors should be required to prepare separate brochures for each wrap fee program.

C. Content of Wrap Fee Brochure

The wrap fee brochure would cover the following basic disclosure areas.

1. Cover Page

The cover page of the brochure would be required to include the sponsor's name, address and telephone number. In addition, the cover page would include a legend in bold type (or made prominent in some other fashion) stating that the brochure is intended to provide information about the sponsor and its wrap fee program or programs and that the contents of the brochure have not been approved or verified by any governmental authority.[21]

2. Fees and Other Program Costs

The amendments would require the wrap fee brochure to disclose the amount of the wrap fee and the services provided for that fee.[22] The wrap fee brochure would also be required to disclose whether the fee is negotiable.[23] Comment is requested on whether the wrap fee brochure should be required to disclose the range within which the wrap fee may be negotiated. Comment is also requested whether the wrap fee should be required to be disclosed more prominently than the other disclosure in the brochure, for example, by requiring the fee to be on the cover page of the brochure or in bold type.

The portion of the total wrap fee that is paid to portfolio managers (or the range of amounts paid to portfolio managers) would also be required to be disclosed. The amount received by a portfolio manager may be relevant in assessing the value of services provided by the respective parties and may facilitate negotiation of the wrap fee.[24] Comment is requested regarding the value to clients of this information about portfolio manager compensation. The proposed amendments would not require that the portion of the wrap fee

[15] Proposed paragraph (f)(3) of rule 204–3; Item 4 of proposed Schedule H. The wrap fee brochure would be required to discuss all services provided under the program, whether or not the adviser delivering the brochure provides all the services.

[16] While proposed amended rule 204–3 would permit the sponsors of a wrap fee program to allocate brochure obligations, it would not relieve a sponsor from liability for violating the rule if another sponsor failed to deliver the brochure.

[17] According to data derived from Form ADVs filed with the Commission, approximately 75% of advisers use Part II to fulfill their brochure obligations.

[18] A number of questions in Part II require that narrative explanations of check-the-box answers be provided in Schedule F. See, e.g., Items 1.D and 5 of Part II. While narrative disclosure about wrap fee programs could be provided in this manner, the proposed amendments would likely result in clearer and more readable disclosure than would the use of Schedule F.

[19] Proposed paragraph (f)(1) of rule 204–3; Item 2 of proposed Schedule H of Form ADV ("Schedule H").

[20] Proposed paragraph (f)(2) of rule 204–3. As noted below, a sponsor using more than one wrap fee brochure would be required to file each brochure as part of its Schedule H. The option to use either a single brochure or multiple brochures to provide the required wrap fee disclosure would be similar to the option, currently available to advisers that deliver narrative brochures to clients, to use either a single brochure or multiple brochures to describe different types of advisory services. See paragraph (d) of rule 204–3 [17 CFR 275.204–3(d)].

[21] Item 8(a) of proposed Schedule H.

[22] Item 8(b) of proposed Schedule H.

[23] Id.

[24] The portfolio manager is required to disclose in its brochure the schedule of the fees it receives under the wrap fee program. See National Regulatory Services, supra note 2.

paid to registered representatives of the sponsor be disclosed (unless the registered representatives are also the program's portfolio managers). Comment is requested whether disclosure of the portion of the wrap fee (or other amounts related to wrap fee accounts) paid to registered representatives (or other persons) should be required. Such information may be material because, depending upon the amount of the payments, the registered representative may have a substantial incentive to advise clients to participate in wrap fee programs. In this regard, comment is requested whether, if applicable, a statement that the registered representative has a financial incentive to recommend the wrap fee program over other services also should be required.

The wrap fee brochure would be required to explain that the wrap fee may be more or less than the cost of purchasing the same services separately, and to set out generally the factors bearing upon whether the total cost of the wrap fee program will be more or less than the cost of the same services purchased separately.[25] These factors would generally include the amount of the wrap fee, the level of trading activity that takes place in the client's account, and the brokerage commissions that the client would pay as a result of the trading activity in the absence of the wrap fee. Disclosure of the nature of any fees that a wrap fee client may pay in addition to the wrap fee, such as mutual fund expenses and mark-ups or mark-downs on principal transactions, would also be required.[26]

3. Portfolio Manager Selection, Review and Contact

A wrap fee program sponsor would be required to disclose how the program's portfolio managers are selected and reviewed and the basis upon which portfolio managers are recommended or chosen for particular clients. This disclosure would include how the qualifications of the portfolio manager are assessed and how the needs of the particular client are matched with the philosophy, style or expertise of the portfolio manager.[27] Disclosure of the factors that may lead the sponsor to replace or recommend the replacement of a portfolio manager would also be required.

Sponsors often provide existing and prospective wrap fee program clients with performance data for the portfolio managers or mutual funds used in the program. In some instances, the performance data is not calculated uniformly or verified as to its accuracy. The Commission believes that clients may incorrectly assume that all performance information they receive is calculated uniformly among portfolio managers and that the accuracy of information provided by a manager or a fund has been verified. Therefore, the Commission is proposing that, if the performance information is not calculated on a uniform or consistent basis, or is not verified by the sponsor or a third party, the brochure would be required to so state.[28] If the performance information is verified, the sponsor would be required to disclose by whom it is verified, and, if the information is calculated uniformly, the sponsor would be required to state the standards (*i.e.*, industry standards or standards used solely by the sponsor) under which it may be calculated, although a detailed description of the standards would not be required.[29] Comment is requested whether the wrap fee brochure should be required to describe the extent of the sponsor's (or third party's) review of the portfolio managers' performance information (*i.e.*, whether only the managers' calculations are reviewed, or whether the actual data used in those calculations have also been reviewed). Comment is requested whether the Commission should consider proposing the use of standardized formulas for the calculation of performance information for portfolio managers in wrap fee programs, or for investment advisers generally, and, if so, what those standardized formulas should be.

The sponsor of a wrap fee program would be required to disclose, in addition to the information described above, the nature of the information it conveys to the portfolio manager about the client's investment objectives and financial circumstances, as well as how often or under what circumstances the sponsor provides the portfolio manager with updated information about the client.[30] The sponsor would also be required to disclose any restrictions imposed upon client contact with portfolio managers.[31]

4. Portfolio Management Services

Under the Commission's proposal, the services of particular portfolio managers in a wrap fee program would typically be discussed in the brochure of each portfolio manager and would not be required to be discussed in the program sponsor's brochure.[32] In some programs, the sponsor or its divisions or employees covered under the same investment adviser registration act as portfolio managers for the program. Confusion and duplicative disclosure may result if clients who participate in these programs are provided with both the sponsor's wrap fee brochure and the brochure the sponsor delivers to non-wrap fee clients. Therefore, if the sponsor or its divisions or employees act as portfolio managers for the program, the wrap fee brochure would be required to discuss the nature of the portfolio management services provided by those persons.[33]

5. General Disclosure About Sponsor

The wrap fee brochure would be required to include narrative responses to a number of existing Part II questions about the sponsor generally, and about its practices and personnel as they are relevant to wrap fee clients.[34] For

[25] Item 8(c) of proposed Schedule H.

[26] Item 8(d) of proposed Schedule H.

[27] Item 8(e) of proposed Schedule H. A similar requirement would apply to programs that allocate client assets among mutual funds. Sponsors would be required to disclose the basis upon which recommendations regarding the allocation of client assets are developed. However, the advisory services in mutual fund wrap fee programs are performed by the sponsor and the mutual fund advisers, not by "portfolio managers." Therefore, the proposed disclosure requirements that relate to "portfolio managers" would generally be inapplicable to mutual fund wrap fee programs. Item 7 of proposed Schedule H.

[28] Item 8(f) of proposed Schedule H.

[29] Item 8(g) of proposed Schedule H.

[30] Item 8(h) of proposed Schedule H.

[31] Item 8(i) of proposed Schedule H.

[32] In describing the services provided under the program, a sponsor would be required to outline the types of portfolio management provided under the program (*e.g.*, equity, balanced, or fixed income). See Item 8(b) of Schedule H. Except in the circumstances explained in the text, however, it would not be necessary to describe the management styles of particular managers.

[33] Item 8(l) of proposed Schedule H. If a wrap fee program uses registered representatives of the sponsor to manage client accounts, Item 8(l) of proposed Schedule H would require the brochure to disclose the general nature of the management services provided or the nature of any investment discipline that registered representatives are required to follow. Item 6 of Part II, which the wrap fee brochure incorporates, requires disclosure of the educational and business backgrounds of only certain types of employees. Therefore, the wrap fee brochure would not be required to disclose the backgrounds for all registered representatives who provide portfolio management services. Nor would the brochure be required to disclose the investment strategies used by individual registered representatives. Nonetheless, information regarding the backgrounds and investment strategies of registered representatives may be material and may have to be provided to clients in some form. See note 5 supra. Information regarding a registered representative would ordinarily be material, among other circumstances, if the representative makes investment decisions for clients independently of any investment discipline imposed by the sponsor.

[34] See Item 8(j) of proposed Schedule H. Responses to Items 7 and 8 (Other Business Activities and Other Financial Industry Activities or Affiliations, respectively) of Part II would be required in the wrap fee brochure. Responses to Items 2 (Types of Clients), 5 (Education and

example, the brochure would be required to disclose the minimum account size for participation in the wrap fee program and the nature and frequency of the review of wrap fee client accounts.[35] Disclosure of arrangements for the payment of fees by and to the sponsor for referrals of wrap fee clients would also be required.[36] The balance sheet required by Item 14 of Part II would only be required to be provided to wrap fee program clients if the sponsor has custody of wrap fee program accounts or requires substantial prepayments from wrap fee clients.

A number of the Part II requirements incorporated into the wrap fee brochure concern advisory practices and business relationships that give rise to conflicts of interest between the adviser and its clients. To assist clients in understanding how these conflicts could be important to them, the wrap fee brochure would be required to disclose not merely the practices and the relationships, but also the nature of the conflicts of interest presented by those practices and relationships.[37]

Comment is requested whether other matters should also be required to be disclosed in the brochure by advisers sponsoring wrap fee programs.

D Filing, Delivery, and Updating

1 Filing and Delivery

The requirements for the wrap fee brochure would be set forth in a new Schedule to Form ADV, Schedule H. The wrap fee brochure would be prepared as a separate document (rather than on the Schedule itself), and would be filed with the Commission (and the states) by attaching it to the Schedule.[38] If the sponsor prepared separate wrap fee brochures for different wrap fee programs, each brochure used would be attached to a separate Schedule H.[39]

Sponsors would be required to deliver the wrap fee brochure to clients and prospective clients under the existing brochure delivery requirements. Under rule 204–3, an adviser must deliver a brochure to prospective clients not less than forty-eight hours before entering into an advisory contract or, if the contract may be terminated by the client without penalty within five business days of its execution, at the time of entering into the contract.[40] In addition, an adviser must at least annually deliver a brochure, or offer in writing to deliver a brochure, to its advisory clients.[41]

2. Updating

Rule 204–1, as proposed to be amended, would require that the wrap fee brochure be updated promptly to reflect material changes to the information it contains, or within 90 days after the end of the sponsor's fiscal year to reflect other changes. These updating requirements would be the same as the updating requirements applicable to most of the information required by Part II.[42] The updated brochure would be filed with the Commission and the states by attaching it to Schedule H and, as with any amendment to Form ADV, accompanying it with an executed signature page (page 1 of Part I). Comment is requested whether updates to the wrap fee brochure that reflect material changes in the program should be required to be delivered, rather than offered, to existing clients.[43]

Currently, advisers update Form ADV by replacing pages that require amendment. Because the wrap fee brochure would be a separate narrative document, updating it in this manner may not be practical. Reprinting the entire brochure for each amendment, however, may be unnecessarily expensive for sponsors. Therefore, the Commission is proposing to permit sponsors to update wrap fee brochures by using a brochure supplement or "sticker," unless the last two preceding updates were also made by sticker, in which case the amendments would have to be incorporated in a revised brochure.[44] The Commission is concerned that a succession of amendments, if not incorporated into the brochure, could make the document difficult for clients to understand.[45] Comment is requested on alternative approaches to assure that successive amendments would not affect the coherence of the brochure.

III. Transition Period

If proposed Schedule H is adopted, sponsors of wrap fee programs would be required to file amendments to their existing Form ADV to include the brochure that would be required by Schedule H. The Commission would provide an appropriate transition period for advisers to file any necessary amendments and to convert to the delivery of the wrap fee brochure. Comment is requested on requiring the transition to take place within 120 days of the adoption of the amendments.

IV. General Request for Comments

Any interested persons wishing to submit written comments on the rule and form changes that are the subject of this release, to suggest additional changes, or to submit comments on other matters that might have an effect on the proposals described in this release, are requested to do so.

V. Cost/Benefit Analysis

The rule and form changes proposed today are intended to improve disclosure by investment advisers and thereby improve the protection of investors. The Commission believes that the disclosure that would be required by new Schedule H of Form ADV would greatly increase the ability of clients and potential clients of wrap fee programs to understand and evaluate the services provided under the program and the

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Business Standards), 6 (Education and Business Background), 9A (relating to principal transactions) and 9C (relating to agency-cross transactions), 10 (Conditions for Managing Accounts), 11 (Review of Accounts), 13 (Additional Compensation) and 14 (Balance Sheet) of Part II would also be required, but only as such answers relate to wrap fee clients.

[35] Item 8(j) of proposed Schedule H and Items 10 and 11 of Part II.

[36] Item 8(j) of proposed Schedule H and Item 13 of Part II. Rule 206(4)–3 [17 CFR 275.206(4)–3], the cash solicitation rule under the Advisers Act, may apply to payments from portfolio managers to sponsors for recommending the manager to wrap fee program clients, or to payments by the sponsor to third parties for referrals of wrap fee clients. The allocation of a wrap fee between the sponsor and the portfolio manager for services provided under the program generally would not, however, constitute the payment of a referral fee to the sponsor for recommending the manager.

[37] Item 8(k) of proposed Schedule H. For example, Item 8C of Part II requires disclosure of, among other matters, whether the adviser has arrangements material to its advisory business with a related person who is also an investment adviser. If related persons of the sponsor are portfolio managers in the sponsor's wrap fee program, the wrap fee brochure would be required by Item 8(j) of proposed Schedule H to identify the related managers and describe the relationships and the arrangements. In addition, Item 8(k) of Schedule H would require the sponsor to explain in its wrap fee brochure that these relationships create a conflict between the interests of the sponsor and those of its clients because the sponsor has an incentive to recommend the related managers over other managers.

[38] Sponsors would be required to include on Schedule H cross-references to the pages of the wrap fee brochure on which the various disclosure requirements of Schedule H appear. Item 9 of Schedule H. In addition, any wrap fee brochure filed with the Commission would be required to include the adviser's registration number (801–) in the upper right hand corner of the cover page. Item 2 of proposed Schedule H.

[39] Item 5 of proposed Schedule H.

[40] Rule 204–3(b)(1) [17 CFR 275.204–3(b)(1)].

[41] Rule 204–3(c)(1) [17 CFR 275.204–3(c)(1)].

[42] See rule 204–1(b) [17 CFR 275.204–1(b)].

[43] While Part II is not currently required to be delivered annually to existing clients, an adviser's fiduciary responsibility, as well as Section 205 of the Advisers Act [15 U.S.C. 80b–5] and state contract law, may require clients to be notified regarding material changes in the advisory relationship.

[44] The sticker would be filed with the Commission by attaching it to Schedule H and including the required signature page.

[45] A single amendment may change a wrap fee brochure to an extent that would render the brochure unreadable if the amendment were made by sticker. Therefore, updating by sticker may be inappropriate in certain circumstances even if no prior amendments had been made by sticker.

nature of the relationships between the client and the sponsor and between the client and the portfolio manager.

By requiring a separate narrative brochure for wrap fee clients, the amendments would increase the costs to sponsors in complying with their disclosure and registration obligations. The Commission believes that this increase would be small in comparison with the benefits. Most of the increase in costs would be related to the initial preparation of the wrap fee brochure; any ongoing increase in costs would be minimal. Updating a narrative document would not be significantly more costly than updating a check-the-box document; nor would the duplication and distribution of the narrative brochure be more costly. Any increase in costs in the actual preparation of the brochure need not be substantial, since the brochure would not need to be professionally printed or bound. All the information required should be within the knowledge or easy access of the adviser, and much of the information is already required to be disclosed under existing Part II and the adviser's fiduciary obligations to clients.

VI. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding the proposed amendments. The analysis notes the Commission's belief that few wrap fee sponsors are small entities. The analysis also notes that the rule and form proposals contained in the release are intended to improve disclosure provided to wrap fee program clients. Other aggregate cost-benefit information reflected in the "Cost/Benefit Analysis" section of this release also is reflected in the analysis. The analysis notes that alternatives to the proposed amendments, such as amending Part II to require wrap fee disclosure in existing Schedule F, were considered, but concludes that these alternatives would result in less-comprehensive and less-understandable disclosure. A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Eric C. Freed, Office of Disclosure and Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549.

VII. Text of Proposed Rule and Form Amendments

List of Subjects in 17 CFR Parts 275 and 279

Investment advisers, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows.

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

1. The general authority citation for part 275 is revised to read as follows:

Authority: 15 U.S.C. 80b-3, 80b-4, 80b-6A, 80b-11, unless otherwise noted.

* * * * *

2. By revising paragraph (b)(1) of § 275.204–1 to read as follows:

§ 275.204–1 Amendments to application for registration.

* * * * *

(b)(1) If the information contained in the response to Items 1, 2, 3, 4, 5, 8, 11, 13A, 13B, 14A and 14B of Part I of any application for registration as an investment adviser, or in any amendment thereto, becomes inaccurate for any reason or if the information contained in response to any question in Items 9 and 10 of Part I, all of Part II (except Item 14), and all of Schedule H of any application for registration as an investment adviser, or in any amendment thereto, becomes inaccurate in a material manner, the investment adviser shall promptly file an amendment on Form ADV (§ 279.1 of this chapter) correcting such information.

* * * * *

3. By amending § 275.204–3 by redesignating paragraph (f) as paragraph (g), and by adding paragraphs (f) and (g)(4) to read as follows:

§ 275.204–3 Written disclosure statements.

* * * * *

(f) *Sponsors of Wrap Fee Programs.* (1) An investment adviser, registered or required to be registered pursuant to Section 203 of the Act, that sponsors or organizes a wrap fee program, or that selects or provides advice to clients regarding the selection of other investment advisers in connection with a wrap fee program, shall, in lieu of the written disclosure statement required by paragraph (a) of this section and in accordance with the other provisions of this section, furnish each client and prospective client of the wrap fee program with a written disclosure statement containing at least the information required by Schedule H of Form ADV (§ 279.1 of this chapter). Any information included in such disclosure statement that is not specifically required by Schedule H should be limited to information concerning wrap fee programs for which the investment adviser is required to furnish disclosure statements under this paragraph (f).

(2) If an investment adviser is required under this paragraph (f) to furnish disclosure statements to clients or prospective clients of more than one wrap fee program, the investment adviser may omit from the disclosure statement furnished to clients and prospective clients of a wrap fee program or programs any information required by Schedule H that is not applicable to clients or prospective clients of that wrap fee program or programs.

(3) An investment adviser need not furnish the written disclosure statement required by paragraph (f)(1) of this section to clients and prospective clients of a wrap fee program if another investment adviser is required to furnish and does furnish the written disclosure statement to all clients and prospective clients of the wrap fee program.

(g) *Definitions.* * * *

(4) *Wrap fee program* means a program under which any client is charged a specified fee or fees not based directly upon transactions in a client's account for:

(i) Investment advisory services (which may include advice regarding the purchase or sale of specific securities or advice concerning the selection of other investment advisers) and execution of client transactions, or

(ii) Advice regarding the allocation of client assets among investment companies or among series of a single investment company, if the adviser or a related person (as defined in Form ADV) serves as investment adviser, principal underwriter, or administrator for any such investment company.

PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

4. The authority citation for part 279 continues to read as follows:

Authority: The Investment Advisers Act of 1940, 15 U.S.C. 80b-1, *et seq.*

Note: The text of Form ADV does not and the amendments will not appear in the Code of Federal Regulations.

5. By revising Instructions 2, 6 and 7 of Form ADV (§ 279.1), and by adding Instruction 9 to read as follows:

Form ADV Instructions

* * * * *

2. Organization

The Form contains two parts. Parts I and II are filed with the SEC and the jurisdictions; Part II can generally be given to clients to satisfy the brochure

rule. The Form also contains the following schedules:

- Schedule A—for corporations;
- Schedule B—for partnerships;
- Schedule C—for entities that are not sole proprietorships, partnerships or corporations;
- Schedule D—for reporting information about individuals under Part I Item 12;
- Schedule E—for continuing responses to Part I items;
- Schedule F—for continuing responses to Part II items;
- Schedule G—for the balance sheet required by Item 14 of Part II; and
- Schedule H—for satisfaction of the brochure rule by sponsors of wrap fee programs.

* * * * *

6. Continuation Sheets—Schedules E and F provide additional space for continuing Form ADV items (Schedule E for Part I; Schedule F for Part II) but not for continuing Schedules A, B, C, D, G or H. To continue Schedules A, B, C, D and G, use copies of the schedule being continued. The response to Schedule H should be included as a separate document attached to the Schedule.

7. SEC Filings.

- Submit filings in triplicate to the Securities and Exchange Commission, Washington, D.C. 20549. To register, submit a check or money order for $150 payable to the Securities and Exchange Commission. This fee is non-refundable. There is no fee for amendments.
- Non-Residents—Rule 0–2 under the Investment Advisers Act of 1940 [17 CFR 275.0–2] covers those non-resident persons named anywhere in Form ADV that must file a consent to service of process and a power of attorney. Rule 204–2(j) under the Investment Advisers Act of 1940 [17 CFR 275.204–2] covers the notice of undertaking on books and records non-residents must file with Form ADV.
- Updating. Federal law requires filing amendments:

—promptly for *any* changes in:
Part I—Items 1, 2, 3, 4, 5, 8, 11, 13A, 13B, 14A, and 14B;
—promptly for *material* changes in:
Part I—Items 9 and 10, all Items of Part II except Item 14, and all Items of Schedule H;
—Within 90 days of the end of the fiscal year for any other changes.

- Federal Information Law and Requirements—Investment Advisers Act of 1940 Sections 203(c), 204, 206, and 211(a) authorize the SEC to collect the information on this Form from applicants for investment adviser registration. The information is used for regulatory purposes, including deciding whether to grant registration. The SEC maintains files of the information on this form and makes it publicly available. Only the Social Security Number, which aids identifying the applicant, is voluntary. The SEC may return as unacceptable Forms that do not include all other information. By accepting this Form, however, the SEC does not make a finding that it has been filled out or submitted correctly. Intentional misstatements or omissions constitute Federal criminal violations under 18 USC 1001 and 15 USC 80b–17.

* * * * *

9. Sponsors of Wrap Fee Programs—Sponsors of wrap fee programs must provide clients and prospective clients of wrap fee programs with a document containing the information required by Schedule H. This document is to be provided to clients of the wrap fee program in lieu of Part II (or the document containing the information required by Part II), which the sponsor is required to provide to other advisory clients.

* * * * *

6. By revising Item 16 of Part I of Form ADV (§ 279.1) to read as follows:

Form ADV

Part I

* * * * *

16. With a few exceptions, the "brochure rule" (Advisers Act Rule 204–3) requires that clients must be given information about the investment adviser. Will applicant be giving clients (other than wrap fee clients to be given Schedule H):

	Yes	No
A. Part II of this Form ADV?	___	___
B. Another document that includes at least the information contained in Form ADV Part II?	___	___

* * * * *

7. By adding Schedule H to Form ADV (§ 279.1) to read as follows:

Note: The proposed new Schedule H to Form ADV is attached as Appendix 1 to this document and the Schedule will not appear in the Code of Federal Regulations.

By the Commission.

January 13, 1994.

Margaret H. McFarland,

Deputy Secretary.

Appendix 1

Applicant:
SEC File No.:
801–
DATE
MM/DD/YY

(for sponsors of wrap fee programs)

Name of wrap fee program or programs described in attached brochure:

1. *Applicability of Schedule.* This Schedule must be completed by applicants that sponsor or organize any program, or that select, or provide advice to clients regarding the selection of, other investment advisers in connection with any program, that charges a specified fee or fees not based directly upon transactions in a client's account for (i) investment advisory services (which may include portfolio management or advice concerning the selection of other investment advisers) and execution of client transactions, or (ii) advice regarding the allocation of client assets among investment companies or series of a single company, if the applicant or a related person serves as investment adviser, principal underwriter, or administrator for any such investment company ("sponsors" of "wrap fee programs").

2. *Use of Schedule.* This Schedule sets forth the information the sponsor must include in the wrap fee brochure it is required to deliver or offer to deliver to clients and prospective clients of its wrap fee programs under Rule 204–3 under the federal Advisers Act and similar rules of the jurisdictions. The wrap fee brochure prepared in response to this Schedule must be filed with the Commission and the jurisdictions as part of Form ADV by completing the identifying information on this Schedule and attaching the brochure. Brochures should be prepared separately, not on copies of this Schedule. Any wrap fee brochure filed with the Commission as part of an amendment to Form ADV shall contain in the upper right hand corner of the cover page the applicant's registration number (801–).

3. *General Contents of Brochure.* Unlike Parts I and II of this form, this Schedule is not organized in "check-the-box" format. These Instructions, including the requests for information in Item 8 below, should not be repeated in the brochure. Rather, this Schedule describes minimum disclosures that must be made in the brochure to satisfy the applicant's duty to disclose all material facts about the applicant and its wrap fee programs. Nothing in this Schedule relieves the applicant from any obligation under any provision of the federal Advisers Act or rules thereunder, or other federal or state law to disclose information to its advisory clients or prospective advisory clients not specifically required by this Schedule.

4. *Multiple Sponsors.* If two or more persons fall within the definition of "sponsor" in Item 1 above for a single wrap fee program, only one such sponsor need complete the Schedule. The sponsors may choose among themselves the sponsor that will complete the Schedule.

5. *Omission of Inapplicable Information.* Any information not specifically required by this Schedule that is included in the brochure should be applicable to clients and prospective clients of the applicant's wrap fee programs. If the applicant is required to complete this Schedule with respect to more than one wrap fee program, applicant may omit from the brochure furnished to clients and prospective clients of any wrap fee program or programs information required by this Schedule that is not applicable to clients or prospective clients of that wrap fee program or programs. If the applicant prepares separate wrap fee brochures for clients of different programs, each brochure prepared must be filed with the Commission and the jurisdictions attached to a separate copy of this Schedule.

6. *Updating.* Applicants are required to file an amendment to the brochure promptly after any information in the brochure becomes materially inaccurate. Amendments may be made by use of a "sticker," *i.e.*, a piece of paper affixed to the brochure that indicates what information is being added or updated and states the new or revised information, unless the two most recent amendments to

the brochure were made by sticker. Stickers should be dated and should be incorporated into the text of the brochure when the brochure itself is revised.

7. *Mutual Fund Wrap Fee Programs.* The sponsor of a wrap fee program under which clients are provided with advice regarding the allocation of assets among mutual funds should provide disclosure regarding only those items that are applicable. In general, items that request information on "portfolio managers" will not be applicable to mutual fund wrap fee programs.

8. *Contents of Brochure.* Include in the brochure prepared in response to this Schedule:

(a) on the cover page, the sponsor's name, address, telephone number, and the following legend in bold type or some other prominent fashion:

This brochure provides clients with information about [name of sponsor] and the [name of program or programs] that should be considered before becoming a client of the [name of program or programs]. This information has not been approved or verified by any governmental authority.

(b) the amount of the wrap fee charged for each program, whether such fees are negotiable, the portion of the total fee (or the range of such amounts) paid to persons providing advice to clients regarding the purchase or sale of specific securities under the program ("portfolio managers"), and the services provided under each program (including the types of portfolio management services),

(c) a statement that the program may cost the client more or less than purchasing such services separately and a statement of the factors that bear upon the relative cost of the program (*e.g.*, the cost of the services if provided separately and the trading activity in the client's account),

8. (d) a description of the nature of any fees that the client may pay in addition to the wrap fee and the circumstances under which these fees may be paid (including, if applicable, mutual fund expenses and mark-ups and mark-downs paid to market makers from whom securities were obtained by the wrap fee broker),

(e) how the program's portfolio managers are selected and reviewed, the basis upon which portfolio managers are recommended or chosen for particular clients, and the circumstances under which the applicant will replace or recommend the replacement of the portfolio manager, or, in the case of a mutual fund wrap fee program, how the applicant develops recommendations regarding the allocation of client assets among mutual funds,

(f) if applicable, a statement to the effect that portfolio manager or mutual fund performance information is not verified by the sponsor or a third party and/or that performance information is not calculated on a uniform and consistent basis,

(g) the name of any party who verifies performance information if such information is verified, and a reference to any standards (i.e., industry standards or standards used solely by the sponsor) under which performance information may be calculated,

(h) a description of the information about the client that is communicated by the applicant to the client's portfolio manager, and how often or under what circumstances the applicant provides updated information about the client to the portfolio manager,

(i) any restrictions on the ability of clients to contact and consult with portfolio managers,

(j) in narrative text, the information required by Items 7 and 8 of Part II of this form and, as applicable to clients of the wrap fee program, the information required by Items 2, 5, 6, 9A and C, 10, 11, 13 and 14 of Part II,

(k) if any practice or relationship disclosed in response to Item 7, 8, 9A, 9C and 13 of Part II presents a conflict between the interests of the applicant and those of its clients, explain the nature of any such conflict of interest, and

(l) if the sponsor or its divisions or employees covered under the same investment adviser registration as the sponsor act as portfolio managers for a wrap fee program described in the brochure, a brief, general description of the investments and investment strategies utilized by those portfolio managers.

9. *Organization and Cross References.* Except for the cover page requirements in Item 8(a) above, information contained in the brochure need not follow the order of the items listed in Item 8. However, the brochure should not be organized in such a manner that important information called for by the form is obscured.

Set forth below the page(s) of the brochure on which the various disclosures required by Item 8 are provided.

Item	Page(s) cover
#8(a)	
#8(b)	
#8(c)	
#8(d)	
#8(e)	
#8(f)	
#8(g)	
#8(h)	
#8(i)	
#8(j)	
#8(k)	
#8(l)	

[FR Doc. 94–1336 Filed 1–19–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

20 CFR Ch. III

21 CFR Ch. I

42 CFR Ch. I–V

45 CFR Subtitle A, Ch. II–IV, X, XIII

48 CFR Ch. III

Periodic Review of Rules

AGENCY: Office of the Secretary, HHS.

ACTION: Plan for periodic review of rules.

SUMMARY: This document describes the Department's plan for periodic review of rules to minimize burden and improve effectiveness, as required by Executive Order 12866 and the Regulatory Flexibility Act. This document also invites the submission of data, information, and views to assist the Department in deciding priority order of the review and in identifying rules to develop or review using negotiated rulemaking.

DATES: Data, information, and views due date: February 28, 1994 for initial suggestions and any date thereafter for additional suggestions.

ADDRESSES: Addresses for submitting comments and information in response to this document are listed at the end of the document.

FOR FURTHER INFORMATION CONTACT: Walton Francis, Director for Policy and Regulatory Analysis, Office of the Assistant Secretary for Planning and Evaluation, Office of the Secretary, Department of Health and Human Services, Washington, DC 20201, (202) 690–8291 or the contact person for a specific division or agency of the Department listed at the end of this notice.

SUPPLEMENTARY INFORMATION:

Background

The President issued Executive Order 12866 on September 30, 1993. The basic purpose of the Executive Order is to make regulations less burdensome, more effective, and in greater alignment with the President's priorities and regulatory principles. Section 5 of the Executive Order requires that each agency periodically review its existing significant regulations to determine whether these rules should be modified or eliminated so as to make the agencies' regulatory programs more effective. Section 6(a) of the order

directs each agency to explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rule-making.

The Regulatory Flexibility Act, Public Law 96–354, was enacted on September 19, 1980. Section 610 of the Act requires each agency to review rules issued by the agency which have or will have a significant economic impact on a substantial number of small entities. The Department must review all such rules within ten years of their publication as final rules. The purpose of the periodic reviews is to determine whether such rules should be continued without change, or should be amended or rescinded, to minimize any significant economic impact of the rules upon a substantial number of small entities. In 1981, HHS issued a notice similar to this one and has since regularly reviewed rules with the goal of reducing their burden overall and on small entities.

Review Plan

To implement E.O. 12866 and to continue implementation the Regulatory Flexibility Act, the operating divisions of the Department and those staff divisions which administer rules will review all regulations for the purpose of selecting those that should receive early, in-depth review and revisions to reduce regulatory burdens. Existing regulations will be scheduled for review and reviewed in an order of priority established by each division, subject to Secretarial approval.

In prioritizing existing regulations for review, agencies and offices of the Department will seek to identify for earliest review those regulations for which revision will most advance the following principles:

- Reduce regulatory burden on the American people, their families, their communities, their State, local, and tribal governments, and their industries;
- Create consistency with the President's priorities and regulatory principles;
- Ensure compatibility among regulations, and eliminate those which are duplicative or burdensome in the aggregate;
- Eliminate requirements which have become unjustified or unnecessary as a result of changed circumstances.

The Secretary has selected four themes to focus Departmental action. These priorities will also guide selection of regulations for review:

Prevention: *Preventing future problems.* This requires anticipating problems, identifying problems while they are manageable, and supporting early interventions to avoid or correct them. For example, this includes ensuring that children are ready for school, reducing teen pregnancy and encouraging life style changes and other actions that prevent illness or disability.

Independence: *Fostering independence through empowering the people we serve.* Examples include developing strategies to ensure that welfare recipients have the means to become as self-sufficient as possible, seeking to help persons with disabilities to engage in meaningful activity, looking for available alternatives to institutional long-term care, and providing the public with information necessary to foster independent decisions.

Customer Service: *Improving services to our customers.* Our customers include the people we serve and the entities we do business with. Service improvements include enhanced access to needed services, reduced waiting times for disability determination, better responsiveness to requests for assistance, and including customers' needs and desires in the policy making process.

Modern Management: *Achieving these goals through modern management techniques.* Achieving these goals and making the department as effective and efficient as possible will require modern management techniques. These include empowering employees and managers to achieve results; effectively using new technology; moving authority, responsibility, and accountability to the most appropriate levels; and seeking continuous improvement in quality and program integrity to avoid unnecessary administrative expenses, and prevent fraud and program abuses.

Health care reform and welfare reform are themselves major initiatives that focus on fundamental reform of HHS regulations. In programs directly affected by those reforms, we will not plan additional reforms except in those instances where interim reforms are consistent with achieving the President's plan.

Careful review of regulations can require a significant amount of time and resources. Regulations that have been developed and amended over many years may have economic impacts that cannot be readily or hastily assessed. Therefore, a division may review only a few of its more complex regulations each year or it may review several less complex regulations. In deciding how much review activity can be undertaken each year, the Department will consider what is practicable and reasonable in light of its current resources and other responsibilities and comments made in response to this Notice. Although the Department will prioritize regulations for review, establishing long range schedules with specific dates for the beginning and ending of reviews is not feasible at this time. However, the Department will continue to meet the objective of screening those regulations that may affect small entities within 10 years of their publication date as required by the Act. Information on the Department's progress in reviewing existing regulations and in the selection of regulations for review will be published in the semi-annual Regulatory Agenda.

Agencies within the Department may issue supplementary notices or take other initiatives to help implement the regulation review requirements of the Act and Executive Order 12866. The Food and Drug Administration is issuing a notice, which accompanies this one, announcing its plan for review of its rules to minimize regulatory burdens while maintaining an acceptable level of consumer protection.

Public Participation

To achieve the maximum benefit from the review and modification of existing rules, we intend to the extent possible, to review the more costly and burdensome rules first. This, in turn, requires information on the potential for burden reduction. We believe that the public, especially those most affected by existing rules, is uniquely able to advise us on this potential. Accordingly, we are inviting data, information, and views to assist us in deciding priority order of review. We specifically encourage State, local, and tribal governments to assist in the identification of regulations that impose significant or unique burdens and that appear to have outlived their justification or be otherwise inconsistent with the public interest. We are particularly interested in reforms leading to the reduction of unfunded mandates, a Presidential priority communicated in his Executive Order 12875 on Enhancing the Intergovernmental Partnership.

Comments will be most helpful when they clearly identify the regulation to which the comment is addressed and specifically explain why and how the regulation imposes unnecessary or disproportionately burdensome demands on those regulated. Also, many regulations reflect statutory mandates and are not subject to Departmental discretion. The submission of information or references to information, particularly data concerning the costs of the regulation, that supports the comment is encouraged. Comments should identify, where possible, what statutory changes

would be necessary to implement suggested regulatory reforms.

The Department particularly invites nominations for future rules or reviews of existing rules that would be good candidates for a negotiated rule-making. Negotiated rulemaking is a process that brings together the Federal Government and external interests who would be significantly affected by a new rule, to reach consensus through open discussion on some or all issues under consideration before a rule is formally proposed in the Federal Register. Because negotiated rule-making is a resource intensive process, we believe it is more efficient to use it with rules for which (1) a limited number of adversarial interests can be identified, (2) the external parties have technical expertise and information not readily available to the Federal Government, and (3) there is a significant chance of litigation unless external parties' interests can be addressed through the negotiation process. Commenters should explain why a rule-making would be a good candidate for a negotiation.

Comments should be sent directly to the division of the Department which administers the particular rule(s) discussed. The major divisions of the Department are (1) The Administration for Children and Families which administers a broad range of programs that address the needs of children and families including child welfare services, Aid to Families with Dependent Children, Head Start, and Child Support Enforcement; (2) the Public Health Service, which stimulates and assists states and communities with the development of local health resources and the further development of education for health professions; assists with improvement of the delivery of health services to all Americans; conducts and supports research in the medical and related sciences and disseminates scientific information; provides national leadership for the prevention and control of communicable disease and other public health functions; and protects the health of the Nation against impure and unsafe foods, drugs and cosmetics, and other potential hazards (Food and Drug Administration); and (3) the Health Care Financing Administration, which oversees the Medicare program, which provides basic health benefits to recipients of social security, and the Medicaid program, which provides grants to states for medical services for the needy and medically needy; and the Federal Qualifications Program for Health Maintenance Organizations; (4) the Social Security Administration, which administers the national program of contributory social insurance, the supplemental security income program for the aged, blind, and disabled, and the black lung benefits provisions of the Federal Coal Mine Health and Safety Act of 1969; (5) the Administration on Aging, which administers programs under the Older Americans Act and serves as the advocate for older persons with the Department and the Federal Government; and (6) the Office of the Secretary, which administers civil rights compliance and enforcement policies pertaining to programs of the Department, Department-wide rules concerning grants and contracts. It also includes the Office of the Inspector General.

Comments should be sent to the addressees listed below, depending on the regulations addressed. Comments may be sent to the Office of the Secretary when the responsible division is not known, or when the comment covers several regulatory areas crossing agency lines.

Health Care Financing Administration: Mary Ann Troanovitch, Director, Regulations Management Unit, Office of Executive Operations, Health Care Financing Administration, room 309G, Hubert H. Humphrey Building, Washington, DC 20201. Phone 202–690–7890.

Administration on Children and Families: Madeline Mocko, Director, Division of Policy and Legislation, 7th Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447. Phone 202–401–9223.

Social Security Administration: Alan H. Wilder, Director, Office of Regulations, Social Security Administration, room 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235. Phone 410–965–1749.

Administration on Aging: David Bunoski, Executive Secretariat, room 4753 Wilbur H. Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201, phone: 202–260–0669.

Public Health Service (other than FDA): John Gallivan, Office of Health Planning and Evaluation, the Public Health Service, room 740G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. Phone 202–690–8484.

Food and Drug Administration: See the **Federal Register** notice appearing in this issue for information on submission of comments to the FDA.

Office of the Secretary: Jacquelyn Y. White, Deputy Executive Secretary, Office of the Executive Secretariat, room 603H, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Dated: January 1, 1994.

Donna E. Shalala,

Secretary.

[FR Doc. 94–1160 Filed 1–19–94; 8:45 am]

BILLING CODE 4510–04–M

Food and Drug Administration

21 CFR Ch. I

[Docket No. 92N–0180]

Withdrawal of Certain Proposed Rules; Final Action

AGENCY: Food and Drug Administration, HHS.

ACTION: Withdrawal of proposed rules.

SUMMARY: The Food and Drug and Administration (FDA) is announcing that it is withdrawing 9 of the 10 proposed rules that published in the notice of intent document that appeared in the **Federal Register** of January 19, 1993 (58 FR 4953). The nine proposed rules to be withdrawn include five proposals that were published before January 1, 1986, and four other proposed rules which were published on or after January 1, 1986, but which are no longer considered viable candidates for final action. FDA is taking this action as part of its continuing comprehensive review of the agency's regulations process.

DATES: The proposed rules are withdrawn January 20, 1994.

FOR FURTHER INFORMATION CONTACT: Edwin V. Dutra, Jr., Office of Policy (HF–26), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3480.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 28, 1991 (56 FR 42668), FDA announced that it had begun a comprehensive review of the agency's regulations process, including a review of the backlog of advance notices of proposed rulemaking, notices of proposed rulemaking, and other notices for which no final rule or notice of withdrawal has been issued. The review was begun partly in response to criticism that the agency's backlog of pending proposals dilutes the agency's ability to concentrate its attention on higher priority regulations mandated by statute or necessary to protect public health. In the **Federal Register** of December 30, 1991 (56 FR 67440), FDA published a final action withdrawing 89 proposals.

In the **Federal Register** of January 19, 1993 (58 FR 4953), FDA announced its intent to withdraw 10 proposed rules, 5

of which were published before January 1, 1986, but which were not withdrawn in the December 30, 1991, document and 5 other proposed rules which were published on or after January 1, 1986, but which are no longer considered viable candidates for final action.

FDA received a total of 4 comments regarding the agency's notice of intent to withdraw the 10 documents (58 FR 4953). Three of the comments addressed the document on the proposed revocation of xylitol that published on October 20, 1971 (36 FR 20306). The comments supported the agency's efforts to withdraw the proposal.

The fourth comment came from a drug manufacturer and disagreed with FDA's intention to withdraw the proposed amendments to the dissolution standard for erythromycin capsules that were published in the **Federal Register** of October 26, 1989 (54 FR 43592)). The October 1989 document proposed to amend the current dissolution standard from "85 percent at 45 minutes" to "80 percent at 60 minutes" in 21 CFR 436.542(c) and 452.110c(b)(3). The manufacturer contends that in comparative studies the results indicated that the two products were bioequivalent despite the differences in dissolution.

FDA agrees with this comment. The current United States Pharmacopeia (U.S.P.) dissolution standard requires "80 percent dissolution in 60 minutes." The October 1989 proposal to revise the dissolution method from "85 percent at 45 minutes" to "80 percent at 60 minutes" in 21 CFR 436.542(c) and 452.110c(b)(3) conforms with the current U.S.P. Data has been reviewed by the agency that would substantiate the claim that products from both the innovator firm and another manufacturer are bioequivalent in single as well as multiple dose studies. After further review of this matter, FDA has concluded that the current dissolution standard must be revised. Therefore, the agency is not withdrawing the proposed amendment for erythromycin capsules that was published on October 26, 1989 (54 FR 43592).

Therefore, for the reasons set forth above, and under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, the agency announces that it is withdrawing the following nine proposed rules, published in the **Federal Register** on the dates indicated:

Title and brief description	Docket No.	FR publication date and cite
Infection in Chickens; Proposed Nomenclature Change; proposal to modify the poultry disease term "chronic respiratory disease" to "complicated chronic respiratory disease".	None	Jan. 1, 1964, 29 FR 15
Xylitol; Proposed Revocation of Food Additive Regulation; revocation of unlimited use of xylitol in special dietary foods as codified in 21 CFR 121.1114 (as recodified in 21 CFR 172.395).	89N–0421	Oct. 20, 1971, 36 FR 20306
Imminent Hazard Criteria and Procedure; Proposed Rule; establishment of criteria and procedures for determining whether approval of certain human and animal drugs should be immediately suspended under the "imminent hazard" provisions of the act[1].	79N–0305	Aug. 21, 1979, 44 FR 48979
Imminent Hazard Determinations; Separation of Functions; Proposed Rule; rules to govern the separation of function in withdrawal proceedings involving products for which an imminent hazard has been made and revocation of FDA criteria for making recommendations to the Secretary concerning imminent hazard determinations.	79N–0306	Aug. 21, 1979, 44 FR 48983
Export of Investigational New Animal Drugs; Tentative Final Rule; provides for requirements on notification and labeling investigational animal drugs for export[1].	77N–0336	Nov. 9, 1984, 49 FR 44766
Medical Devices; Invitation for Offers to Submit or to Develop a Performance Standard for Vascular Graft Prosthesis of 6 Millimeters and Greater Diameter; request for any existing standard as a proposed performance standard for the vascular graft prosthesis of 6 millimeters and greater diameter, or to submit an offer to develop such a proposed standard or the agency will proceed to develop a performance standard.	83N–0190	Jan. 6, 1986, 51 FR 564
Medical Devices; Invitation for Offers to Submit or to Develop a Performance Standard for Central Nervous system Fluid Shunt and Components; request for any existing standard as a proposed performance standard for the central nervous system fluid shunt and components, or to submit an offer to develop such a proposed standard or the agency will proceed to develop a performance standard.	83N–0192	Feb. 26, 1986, 51 FR 6862
Medical Devices; Invitation for Offers to Submit or Develop a Performance Standard for Continuous Ventilator and Ventilator Tubing; request for any existing standard as a proposed performance standard for the continuous ventilator and for ventilator tubing, or to submit an offer to develop such a proposed standard or the agency will proceed to develop a performance standard.	85N–0030	Apr. 3, 1986, 51 FR 11516
Review of Investigational Device Exemptions Regulations; Invitation to Submit Comments, Data, and Information; request for information to assist FDA in assessing the benefits, costs, and need for revision of these regulations.	86N–0072	July 25, 1986, 51 FR 26830

[1] Signed by the Secretary of HHS.

Dated: Janauary 11, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–1161 Filed 1–19–94; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Ch. I

[Docket No. 94N–0002]

Regulations Review Program Under Executive Order 12866

AGENCY: Food and Drug Administration, HHS.

ACTION: Plan for periodic review.

SUMMARY: The Food and Drug Administration (FDA) is announcing its plan to review significant regulations pursuant to Executive Order 12866, which requires all Federal agencies to develop a program for periodically reviewing existing significant regulations. Under this program, the agency will determine whether its regulations need to be refined to achieve their public health goals more effectively or to avoid unnecessary burdens.

DATES: Written comments by May 20, 1994.

ADDRESSES: Submit 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: Edwin V. Dutra, Jr., Regulations Policy and Management Staff (HF-26), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3480.

SUPPLEMENTARY INFORMATION: Under section 5 of Executive Order 12866, each Federal agency must submit a plan to the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) for periodically reviewing its existing significant regulations. The goal is for agencies to determine whether existing significant regulations should be modified or eliminated to reduce their regulatory burden, to make the agency's regulatory program more effective, or to bring them into greater alignment with the President's priorities and the principles set forth in the Executive Order. The Department of Health and Human Services has submitted a plan to OIRA, and this notice is being published as part of that plan.

Over the past 12 years, FDA has completed formal reviews of many of its important existing regulations. These reviews were similar to those required by Executive Order 12866. For example, the reviews identified requirements that were unjustified or unnecessary as a result of changed circumstances. The reviews eliminated those requirements, thereby reducing the regulatory burden. Each review also eliminated duplicative regulations where possible. Reviews have been completed for the following nine regulatory areas.

(1) Antibiotic Certification, 1982 (47 FR 39155, September 7, 1982): This final rule amended the antibiotic drug and new animal drug regulations to exempt all classes of antibiotic drugs from batch certification requirements, and amended the medical device regulations to exempt antibiotic susceptibility devices from batch certification. Under the exemptions, manufacturers are not required to obtain premarketing certification of each batch of antibiotic drug or antibiotic susceptibility device.

(2) New Drug Application Procedural Rules (the NDA Rewrite), 1985 (50 FR 7452, February 22, 1985): FDA revised its regulations governing the approval for marketing of new drugs and antibiotic drugs for human use. The revisions were intended to expedite the availability of beneficial drugs to consumers by improving the efficiency of FDA's approval process for new drugs and antibiotic drugs and to help applicants prepare and submit higher quality applications, thereby permitting FDA to review them more efficiently and with fewer delays.

(3) Rewrite of Blood Labeling Requirements, 1985 (50 FR 35458, August 30, 1985): FDA revised its regulations for blood labeling to simplify the requirements for transfusible blood and blood component products that are collected or manufactured in a blood bank establishment and to unify these requirements.

(4) Investigational New Drug Application Procedural Rules, 1987 (52 FR 8798, March 19, 1982): FDA revised its regulations governing the submission and review of investigational new drug applications (IND's). This action, along with the NDA Rewrite in 1985, was an effort to improve the agency's drug approval process. The revised regulations ensure FDA's ability to monitor investigations, while also facilitating the development of new beneficial drug therapies, and help sponsors of clinical investigations prepare and submit high-quality IND's and permit FDA to review them efficiently with minimal delay.

(5) Rewrite of Additional Standards for Reagent Red Blood Cells, 1987 (52 FR 37446, October 7, 1987): FDA revised the standards for reagent red blood cells to make them more flexible and to reflect current experience and scientific knowledge.

(6) Rewrite of Additional Standards for Blood Grouping Reagents, 1988 (53 FR 12760, April 19, 1988): FDA revised the standards for blood grouping reagents to make them more flexible and to reflect current experience and scientific knowledge.

(7) Methadone, 1989 (54 FR 8954, March 2, 1989): The conditions for use of methadone in the maintenance and detoxification treatment of narcotic addicts are provided in 21 CFR part 291 (the methadone regulation). The revisions to the methadone regulation were designed to streamline the regulation, to delete the requirement that treatment programs using methadone submit annual reports to FDA, and to promote more efficient operation of narcotic treatment programs. The rule also provided standards for long-term detoxification, as required by the Alcohol Abuse, Drug Abuse, and Mental Health Amendments of 1984 (Pub. L. 98-509), which revised the statutorily defined length of detoxification treatment from 21 days to 180 days.

(8) X-ray Standards, 1993 (58 FR 26386, May 3, 1993): A final rule was issued that simplified, clarified, and updated the original standard. These changes reflected the current technology.

(9) Food Labeling, 1993 (58 FR 2066 *et seq.*, January 6, 1993): Beginning in 1989, and ultimately in response to the Nutrition Labeling and Education Act of 1990, FDA conducted a comprehensive review of the food label, including such issues as nutrition labeling, nutrient content claims for sodium, fat, cholesterol, and calories, and health claims. As part of this review, it considered the adequacy of its regulations implementing six misbranding sections of the act as well as its regulation on quantity of contents claims.

Due to limited resources, FDA prioritizes its reviews based on the following criteria: (1) Regulations that have a significant public health impact; (2) regulations that impose a significant burden on the agency and/or industry; and (3) regulations that impose no significant burden on the agency and/or industry. Cumulatively, the reviews listed above cover a significant majority of FDA's important regulations.

FDA's regulatory review program under Executive Order 12866 is as follows:

I. FDA-Initiated Review of Existing Regulations

FDA will continue the practice of reviewing its regulations on a continuing basis. These reviews are conducted on either an informal or a more formal basis. Informal reviews occur whenever FDA revises an existing regulation. The agency reviews the specific regulation being modified consistent with Executive Order 12866 to determine if it is still valid, and whether it should be updated based on current policy, data, and technology.

More formal reviews are undertaken consistent with available resources and regulatory priorities when FDA believes that changed circumstances create an opportunity to improve the effectiveness and efficiency of existing regulations or to reduce regulatory burden. Examples are listed above. FDA is currently conducting such reviews of regulations in the following areas:

(1) Medical Devices; Recordkeeping and Reporting for Electronic Products

(2) Medical Devices; Current Good Manufacturing Practice

(3) Hearing Aids

(4) Investigational New Animal Drug Applications Procedural Rules

(5) New Animal Drug Application (NADA) Procedural Rules

(6) NADA Records and Reports.

In addition, FDA's Center for Biologics Evaluation and Research (CBER) is in the process of establishing two task forces to perform reviews of all blood regulations and administrative and licensing regulations. CBER will conduct these reviews based on standards that incorporate the elements of Executive Order 12866.

FDA invites public comment on other regulations that warrant review and possible revision to more effectively achieve the agency's public health and regulatory objectives, reduce burdens on regulated industries and other affected parties, or better conform to the priorities and principles set forth in Executive Order 12866. Suggestions should be accompanied by specific examples of regulations that need to be reviewed, the improvement to be achieved, and the criteria contained in the Executive Order 12866 under which such a review should be focused.

Executive order 12866 requires agencies to identify any legislative mandates that require the agency to impose regulations that the agency believes are unnecessary or outdated by reason of changed circumstances. FDA invites public comment on this issue.

II. FDA Reduction of Backlog of Pending Proposed Regulations

As part of FDA's regulations streamlining initiative begun in 1991, the agency instituted an annual review of outstanding advance notices of proposed rulemaking, notices of proposed rulemaking, and other notices concerning proposed actions that had not been made final. In the **Federal Register** of December 30, 1991, the agency withdrew 89 outstanding proposals, and elsewhere in this issue FDA is withdrawing an additional 9 proposals. When the annual review identifies proposed rules as outdated, no longer necessary, or, based on agency priorities, unlikely to be completed in the foreseable future, FDA will publish a notice of intent to withdraw those proposals in the **Federal Register**. FDA will continue this periodic review to help the agency, regulated industries, and other affected parties focus more effectively on FDA's active rulemaking agenda. The agency invites public comment on other proposed actions that could be considered for withdrawal.

III. Citizen Petitions Process

Under FDA's procedural regulations any interested party may petition the agency. The petition process is a mechanism often used by industry and the public to request that the agency amend, revoke, or create a regulation. FDA encourages the continued use of citizen petitions as a means of identifying those FDA regulations which should be candidates for review under Executive Order 12866.

Interested persons may, on or before May 20, 1994, submit to the Dockets Management Branch (address above) written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 11, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94-1162 Filed 1-19-94; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-0177-90]

RIN 1545-AO73

Revisions of the Section 338 Consistency Rules With Respect to Target Affiliates That Are Controlled Foreign Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the IRS is issuing temporary regulations revising the consistency rules under section 338 of the Internal Revenue Code of 1986 applicable to certain cases involving controlled foreign corporations. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Comments and requests for a public hearing must be received by March 21, 1994.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:DOM:CORP:T:R (INTL-0177-90), room 5228, 1111 Constitution Avenue, NW., Washington, DC 20044. In the alternative, comments and requests may be hand delivered to: CC:DOM:CORP:T:R (INTL-0117-90), Internal Revenue Service, room 5228, 1111 Constitution Ave. NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Kenneth D. Allison at (202) 622-3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** revise § 1.338-4T of the Income Tax Regulations. The final regulations that will result from the regulations proposed in this notice would be based on the text of the temporary regulations and would revise the consistency rules relating to controlled foreign corporations under section 338 of the Internal Revenue Code of 1986.

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations, along with the preamble to the notice of proposed rulemaking published on January 14, 1992, in the **Federal Register** (57 FR 1409) under section 338, contains a full explanation of the reasons underlying the issuance of the proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. It also has 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 Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Request for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request by any person who submits written comments on the proposed rules. Notice of the time and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Kenneth D. Allison of the Office of Associate Chief Counsel (International), Internal Revenue Service. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.338–4 is amended by adding paragraphs (h) and (k) to read as follows:

§ 1.338–4 Asset and stock consistency.

* * * * *

(h) [The text of this proposed paragraph is the same as the text of § 1.338–4T(h) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(k) [The text of this proposed paragraph is the same as the text of § 1.338–4T(k) published elsewhere in this issue of the **Federal Register**.]

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 94–667 Filed 1–12–94; 2:54 pm]

BILLING CODE 4830–01–U

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R]

RIN 0720–AA20

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Hospital Payments for Ambulatory Care

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule establishes a new payment method for ambulatory care (other than ambulatory surgery) provided by hospitals to CHAMPUS beneficiaries, under which payment amounts would be based on the cost of the service rather than on the billed charge, as at present. In general, the effect of this change would be to reduce reimbursement amounts for ambulatory services provided by hospitals.

DATES: Written comments must be received on or before March 21, 1994.

ADDRESSES: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program Development, Aurora, CO 80045–6900. For copies of the **Federal Register** containing this proposed rule, contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

FOR FURTHER INFORMATION CONTACT: Steve Lillie, Office of the Assistant Secretary of Defense (Health Affairs), telephone (703) 695–3350.

Questions regarding payment of specific claims under the CHAMPUS allowable charge method should be addressed to the appropriate CHAMPUS contractor.

SUPPLEMENTARY INFORMATION:

I. Introduction

This proposed rule introduces a new payment method, based on facility costs, for ambulatory care (other than ambulatory surgery) provided by hospitals.

II. Provisions of Proposed Rule Concerning the Ambulatory Care Payment Method

CHAMPUS recently established a new payment method for ambulatory surgery performed by hospitals and freestanding ambulatory surgery centers. Prior to adoption of this new payment method, institutional charges for ambulatory surgery were based on billed charges of the facility. Payments to hospitals for ambulatory care other than ambulatory surgery continue to be made based on billed charges. Consistent with the established CHAMPUS policy, authorized by section 1079(j)(2) of title 10, United States Code, of adopting payment methods based on cost reimbursement, rather than payment of billed charges, we now propose a new payment method for this category of care based on facility costs. This payment method would apply to emergency room care, outpatient clinics, and other ambulatory care provided by the hospital, but it excludes all care covered by the recently established ambulatory surgery payment method.

The proposed rule would determine facility costs based on the billed charges for a service, multiplied by the ambulatory care cost-to-charge ratio for hospitals nationally and adjusted for certain special hospital characteristics. The special characteristics will be determined based on identifying any statistically significant differences in ambulatory care cost-to-charge ratios among hospitals based on these characteristics. The characteristics that will be considered are: The classification of the hospital as large urban, other urban, or rural in the DRG-based payment system; teaching hospital; state; and children's hospital. We invite comments on whether any other special characteristics should be considered. Comments in this regard would be most helpful if they include specific data supporting the suggestion.

The proposed rule also prohibits a hospital from submitting billed charges for an ambulatory care service in excess of the actual charge made for the service to the general public and applies a 25% payment reduction for such excessive billings.

III. Regulatory Procedures

Executive Order 12866 requires certain regulatory assessments for any "significant regulatory action," defined as one which would result in an annual effect on the economy of $100 million or more, or have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This is not a significant regulatory action under the provisions of Executive Order 12866, and it would not have a significant impact on a substantial number of small entities.

This proposed rule imposes no additional information collection requirements on the public under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

This is a proposed rule. Public comments are invited. All comments will be considered. A discussion of the major issues revised by public comments will be included with issuance of the final rule, anticipated approximately 60 days after the end of the comment period.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

Accordingly, 32 CFR part 199 is proposed to be amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. 1097, 1086.

2. Section 199.14 is proposed to be amended by revising the introductory text of paragraph (a)(3), by redesignating paragraph (a)(4) as paragraph (a)(5), and by adding a new paragraph (a)(4), as follows:

§ 199.14 Provider reimbursement methods.

(a) *Hospitals.*

* * * * *

(3) *Billed charges and set rates.* The allowable costs for authorized care in all hospitals for care not subject to the CHAMPUS DRG-based payment system, the CHAMPUS mental health per diem payment system, the CHAMPUS ambulatory surgery payment method, or the CHAMPUS ambulatory care payment method shall be determined on the basis of billed charges or set rates. Under this procedure the allowable costs may not exceed the lower of:

* * * * *

(4) *Ambulatory care payment method.* (i) *Applicability.* The ambulatory care payment method determines allowable costs in connection with all institutional charges from hospitals for outpatient care other than ambulatory surgery covered by the ambulatory surgery payment method.

(ii) *Determination of allowable costs.* Allowable costs are determined by multiplying the hospital's billed charges by the cost-to-charge ratio for hospital-based ambulatory care, as determined by the Director, OCHAMPUS based on Medicare cost reports filed by hospitals nationally, with adjustments for special hospital characteristics..

(iii) *Adjustments for special hospital characteristics.* For certain special hospital characteristics, the Director, OCHAMPUS will determine if there are statistically significant differences in ambulatory care cost-to-charge ratios based on certain hospital characteristics. To the extent that there are such differences, payment adjustments will be made to assure that the payment amounts reasonably reflect the special characteristics involved. The special characteristics that will be considered for such adjustments are: Large urban, small urban, and rural hospitals (as those categories are recognized in the CHAMPUS DRG-based payment system); teaching hospitals; state; and children's hospitals.

(iv) *Prohibition against excessive charges.* The billed charge for a service covered by the ambulatory care payment method may not exceed the actual charge for such service made to the general public. In any case in which the Director, OCHAMPUS determines that the billed charge exceeds such actual charge for such service made to the general public, the payment amount determined under the ambulatory care payment method shall consider the billed charge to be the actual charge for such service made to the general public, and, as an incentive for proper billing, the resulting payment amount shall be reduced by 25 percent.

* * * * *

Dated: January 7, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–715 Filed 1–19–94; 8:45 am]

BILLING CODE 5000–04–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. 1

[FRL–4827–9]

Open Meeting of the Committee on Hazardous Waste Identification

AGENCY: EPA.

ACTION: Public meeting.

SUMMARY: The Hazardous Waste Identification Committee will meet on February 7 and 8 to discuss work accomplished since the November 17 meeting, and to identify appropriate next steps. The meeting is open to the public without need for advance registration.

DATES: The Committee will meet on February 7 and 8. On February 7, the meeting will begin at 1 p.m. and run until completion. On February 8, the meeting will begin at 8:30 a.m. and run until 4 p.m.

ADDRESSES: The Committee will meet at the Hyatt Regency Hotel, 2799 Jeff Davis Highway, Crystal City, Arlington, Virginia, (703) 418–1234.

FOR FURTHER INFORMATION CONTACT: For further information on substantive matters, call Al Collins of EPA's Office of Solid Waste at (202) 260–4791. For further information on procedural matters, call Denise Madigan, the Committee Co-Facilitator, at (202) 429–8782.

Dated: January 13, 1994.

Chris Kirtz,

Director, Consensus and Dispute Resolution Program.

[FR Doc. 94–1249 Filed 1–19–94; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[MN17–2–5959; A–1–FRL–4828–4]

Approval and Promulgation of Implementation Plan; Carbon Monoxide; Oxygenated Gasoline Program; Minnesota

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Minnesota. This revision implements an oxygenated gasoline program in the Minneapolis-St. Paul Metropolitan Statistical Area (MSA), and the Duluth-Superior MSA. Both MSA's are required to implement an oxygenated gasoline program because of past violations of the carbon monoxide standard. This SIP revision was submitted to satisfy the requirement of section 211(m) of the Clean Air Act as amended by the Clean Air Act Amendments of 19909 (the Act), which requires all carbon monoxide nonattainment areas with a design value of 9.5 parts per million (ppm) or above based on 1988 and 1989 air quality monitoring data to implement an oxygenated gasoline program. The effect of this action is to propose approval of the oxygenated gasoline program. This action is being taken under section 110 of the Act.

DATES: Comments must be received on or before February 22, 1994.

ADDRESSES: Comments may be mailed to John Paskevicz, AE–17J Air Enforcement Branch, USEPA, 77 West Jackson Blvd., Chicago, Illinois 60604. Copies of the documents relevant to this action are available for public inspection during normal business hours at the USEPA Regional office on the 17th floor, at 77 West Jackson Blvd., Chicago.

FOR FURTHER INFORMATION CONTACT: John Paskevicz, (312) 886–6084.

SUPPLEMENTARY INFORMATION:

I. Introduction: Statutory Requirements and Guidance

Motor vehicles are significant contributors of carbon monoxide emissions. An important measure toward reducing these emissions is the use of cleaner-burning oxygenated gasoline. Extra oxygen enhances fuel combustion and helps to offset fuel-rich operating conditions, particularly during vehicle starting, which are more prevalent in the winter.

Section 211(m) of the Act requires that certain states submit revisions to the SIPs and implement oxygenated

gasoline programs by no later than November 1, 1992. This requirement applies to all states with carbon monoxide nonattainment areas with design values of 9.5 parts per million or more based on 1988 and 1989 data. Each state's oxygenated gasoline program must require gasoline for the specified control area(s) to contain not less than 2.7 percent oxygen by weight during that portion of the year in which the area(s) is/are prone to high ambient concentrations of carbon monoxide. Under section 211(m)(2), the oxygenated gasoline requirements apply to all gasoline sold or dispensed in the larger of the Consolidated Metropolitan Statistical Area (CMSA) or the Metropolitan Statistical Area (MSA) in which the nonattainment area is located. Under section 211(m)(2), the duration of the control period, to be established by the USEPA Administrator, shall not be less than four months unless a state can demonstrate that, because of meteorological conditions, a reduced control period will assure that there will be no carbon monoxide exceedances outside of such reduced period. USEPA announced guidance on the establishment of control periods by area in the **Federal Register** on October 20, 1992.[1]

In addition to the guidance on establishment of control periods by area, the USEPA has issued additional guidance related to the oxygenated gasoline program. Pursuant to the requirements of section 211(m)(5) of the Act on October 20, 1992, the USEPA announced the availability of oxygenated gasoline credit program guidelines in the **Federal Register**.[2] Under the credit program, marketable oxygen credits may be generated from the sale of gasoline with a higher oxygen content than is required (i.e. an oxygen content greater than 2.7 percent by weight). These oxygen credits may be used to offset the sale of gasoline with a lower required oxygen content. Where a credit program has been adopted, USEPA's guidelines provide that no gallon of gasoline should contain less than 2.0 percent oxygen by weight.

Section 211(m)(4) of the Act requires that any person selling the oxygenated gasoline label the fuel dispensing system. The USEPA promulgated the labeling regulations in the **Federal Register** on October 20, 1992.[3]

II. Background for this Action: State SIP Revision

The Minneapolis-St. Paul and Duluth-Superior areas in the State of Minnesota (the control areas) are designated nonattainment for carbon monoxide and classified as moderate with a design value of 11.4 and 9.9 parts per million respectively, based on 1988 and 1989 data.[4] Under section 211(m) of the Act, Minnesota was required to submit a revision SIP under section 110 and part D of title I of the Act which includes an oxygenated gasoline program for Minneapolis-St. Paul, and Duluth-Superior by November 15, 1992.[5] On November 9, 1992, the Commissioner, Minnesota Pollution Control Agency, submitted to USEPA a revised SIP including the oxygenated gasoline program containing rules that were signed by the Governor on April 29, 1992, and became effective on August 1, 1992. The USEPA issued a completeness letter to the State on January 20, 1993. The USEPA summarizes its analysis of the state submittal below. A more detailed analysis of the state submittal is contained in a Technical Support Document (TSD) dated June 11, 1993, which is available from the Region 5 office, listed in the **ADDRESSES** section of this proposed rulemaking.

Type of Program and Oxygen Content Requirement

Section 211(m)(2) of the Act requires that gasoline sold or dispensed for use in the specified control areas contain not less than 2.7 percent oxygen by weight. Under section 211(m)(5), the USEPA Administrator issued guidelines for credit programs allowing the use of marketable oxygen credits from gasoline with a higher oxygen content than required. However, Minnesota has adopted a system of oxygen content averaging that does not include oxygen credit trading. Each registered blender must maintain an individual average of 2.7 percent oxygen for all gasoline shipped into a control area during a control period. Gasoline sold in the control area during the control period must contain a minimum of 2.0 percent oxygen. A registrant cannot accumulate oxygen credits to be traded to other registrants. The Minnesota requirements to not distinguish between a control area responsible (CAR) party and blender CAR.[6] All registrants are classified as blenders. The following sections of this notice address some specific elements of the state's submittal. Parties desiring more specific information should consult the TSD.

Applicability and Program and Scope

Section 211(m)(2) requires oxygenated gasoline to be sold during a control period based on air quality monitoring data and established by the USEPA Administrator. Minnesota has established control periods consistent with the USEPA guidance. The 1992 carbon monoxide control period began on November 1, 1992, and extended through January 31, 1993. In subsequent years, the control periods will begin on October 1, and end after January 31.

All gasoline sold or dispensed for use within the control area and during the control period must comply with the average 2.7 percent oxygen content requirement and must contain not less than 2.0 percent oxygen by weight. The Minnesota program does not include oxygen credit trading.

Registration Requirements.

The registration requirements for the Minnesota program are similar to the guidelines established by the USEPA. The State treats all registrants as averaging blenders. Oxygenated gasoline purchased by a non-registered party will be counted into the average of the registered company that sold the product to the retailer or the non-registered distributor. Each registrant has the option to choose a per gallon blending method, or an averaging method. The registrant is required to maintain an average oxygen content of 2.7 percent or greater, for all gasoline distributed in the control area.

The Minnesota oxygen plan specifies that records of all gasoline-oxygenate blends, received, sold, or transferred, must be retained for at least one year after the control period ends. The records must include the original transfer documents showing the volume of blended product and the weight percent of oxygen in each blend. The registrant is required to commission an

[1] See "Guidelines for Oxygenated Gasoline Credit Programs and Guidelines on Establishment of Control Periods under section 211(m) of the Clean Air Act as Amended—Notice of Availability," 57 FR 47849 (October 20, 1992).

[2] See footnote 1. USEPA issued guidelines for credit programs under section 211(m)(5) of the Act.

[3] See "Notice of Final Oxygenated Fuels Labeling Regulations under section 211(m) of the Clean Air Act as Amended—Notice of Final Rulemaking," 57 FR 47769. The labeling regulations may be found in 40 CFR 80.35.

[4] See "Designation of Areas for Air Quality Planning Purposes," 56 FR 56694 (November 6, 1991.)

[5] See credit program guidelines in footnote 3, wherein the November 15, 1992 SIP revision due date was specified.

[6] The Implementation Guideline for Oxygenated Gasoline Programs, published on November 20, 1991, provides a definition of Control Area Responsible (CAR) party. A CAR party is a person who owns oxygenated gasoline which is sold or dispensed from a control area terminal. A blender CAR is a person who owns oxygenated gasoline which is sold or dispensed from a control area oxygenate blending facility.

attestation engagement within 120 days after the close of the control period. Records are also required to be kept by non-registered distributors.

All parties in the gasoline distribution network who are located in or do business within a control area, and whose product is eventually sold into the control area for the ultimate consumer, are required to keep records concerning quantity of blend sold and amount of oxygen in the product. Registered parties are not specifically required by State law or by rules or procedures to take samples and test the product. However, the State plan calls for an extensive sampling and testing program throughout the product lifecycle.

All refineries and terminals that ship gasoline into the control area will be inspected at least once each month during the control period by inspectors from the State Weights and Measures Division. Samples will be taken and tested for minimum oxygen content, and transfer documents will be inspected to ensure each contains required information on every batch shipped. At least 20 percent of all registered distributors and 20 percent of all retailers in the control area will be inspected/tested by the State.

Under these inspection requirements, refiners and importers are required to keep a copy of all the tests that are performed on batches of gasoline prior to shipment, as well as copies of the bills of lading or transfer documents for each batch. Terminal owners and operators and CARs are required to keep records of both the gasoline they receive from upstream parties, as well as copies of all the tests (if any) performed as part of the shipping documentation and records created before the gasoline was transferred to a downstream party.

The USEPA guidelines also require that CARs commission an annual attest engagement,[7] performed by either an internal auditor or independent Certified Public Account (CPA). The guidelines also specify that the standardized forms, specifying agreed-upon procedures for the conduct of the attest engagement, for use by the internal auditor or CPA be provided by the state.

The State requirement for maintaining records is found in Minnesota Statute, section 239.791. In addition to the record-keeping requirement, the registrant must commission an attestation engagement by a certified public accountant to demonstrate that the blending records are accurate. The registrant has 120 days after the end of the control period to report the results of the audit to the State. These requirements for the State program go beyond the requirements in USEPA guidelines for a per gallon program but, are acceptable. Comments are invited on this issue.

Prohibited Activities

The USEPA's credit program guidelines contain provisions designed to ensure that gasoline that fails to meet the 2.0 percent by weight minimum oxygen content requirement is not available for use within a control area. Generally, CARs or blender CARs may not transfer gasoline for use in a control area that contains less than the minimum percent of oxygen by weight to parties who are not themselves registered as CARs or blender CARs. Under USEPA's credit program guidelines, regulated parties, including refiners, importers, oxygenate blenders, carriers, distributors, or resellers may not fail to comply with recordkeeping requirements.[8]

The State enforces a variety of provisions in areas where oxygas is required. The primary focus is violations of the sale of gasoline containing less than 2.0 percent oxygen, pumps which are not labeled, and registrants who cannot produce records of blending or transfer records or shipping manifests.

Transfer Documents

The USEPA's credit program guidelines specify that transfer documents should include the following information: date of the transfer, name and address of the transferor, and name and address of the transferee, the volume of gasoline which is being transferred, the proper identification of the gasoline as oxygenated or nonoxygenated, the location of the gasoline at the time of the transfer, the type of oxygenate, and the oxygen content of the gasoline (for transfer upstream of the control area terminal and for transfers between CARs, include the oxygenate volume of the gasoline). Records are to be kept in a location where they are available for state review.

Minnesota's enforcement plan instructs investigators to inspect transfer documents to ensure they contain information regarding the quality and destination of the gasoline. Registration forms and oxygen units worksheets contain an adequate amount of information regarding the fuel and the registrants. The State's operation manual for distributors, refinery operators and terminal operators requires detailed record keeping and auditing to meet the requirements of the State legislation. These requirements go beyond what is required for the Minnesota program but, are acceptable to the USEPA.

Enforcement and Penalty Schedules

State oxygenated gasoline regulation must be enforceable by the state oversight agency. The USEPA recommends that states will visit at least 20 percent of regulated parties during a given control period. Inspections should consist of product sampling and record review. In addition, each state should devise a comprehensive penalty schedule. Penalties should reflect the severity of a party's violation, the compliance history of the party, as well as the potential environmental harm associated with the violation.

Minnesota Statutes contain a graduated penalty schedule for violations of any of the winter oxygas requirements. Violation of any of the requirements is a criminal offense, punishable as a misdemeanor. The State retains discretionary authority to apply the graduated penalty schedule including the authority to: issuing written warnings, issue stop sale orders, lock or seal any gasoline dispenser, and request a misdemeanor complaint against a violator.

At least 20 percent of the registered distributors will be inspected during the control period, and samples will be taken of each product at the facility, according to the State procedure. Samples will be analyzed by the State at the State laboratory using gas chromatography and a thermal conductivity detector following an unspecified ASTM test method. Similarly, retail gasoline stations will be inspected and samples taken during the control period. Approximately 20 percent of the retail outlets in the control area will be visited during the control period.

Inspections, which will be unannounced and at random, will include, in addition to sample collection, a visual check to ensure pumps are properly labeled, that transfer documentation is on hand, and that only oxygenated gasoline has been received during the control period.

Test Methods and Laboratory Review

The USEPA's sampling procedures are detailed in appendix D of 40 CFR part 80. The USEPA has recommended, in its credit program guidelines, that

[7] The USEPA does not require an attest engagement in a per gallon program.

[8] USEPA's recommended provisions for prohibited activities are found at pages 59–61 of the credit program guidelines.

states adopt these sampling procedures. Minnesota has not adopted USEPA sampling procedures. However, the State does intend to attempt a statistical validation which it will send to USEPA for approval.

Each state regulation must include a test method. The USEPA guidelines recommend the use of the OFID test, although parties may elect to use ASTM–D4815–89 or another method, if approved by the USEPA. Minnesota has elected to use an unspecified ASTM test method using gas chromatography with a thermal conductivity detector and the appropriate ASTM test method to determine oxygen content. The State will also use a contractor where needed if the sample is expected to contain a non-ethanol oxygenate. The State is also expected to use a field screening method based on a near infra-red spectrophotometer. Information from these tests will be sent to the USEPA for statistical validation as a primary oxygenate test method.

The USEPA has established an interim testing tolerance, which states appropriate ranges for credit and per-gallon programs.[9] As USEPA states in that memorandum, the purpose of the testing in a credit program is to determine if a sample meets the 2.0 percent minimum oxygen content requirement and to determine whether the documentation that accompanies that gasoline is correct. For a per-gallon program, the purpose of the testing is to determine whether the gasoline contains less than 2.7 percent oxygen by weight. Minnesota has not provided a description of its testing tolerance.

Labeling

The USEPA was required to promulgate Federal labeling regulations under section 211(m)(4) of the Act. These regulations were published in the **Federal Register** on October 20, 1992 [10]. The Minnesota requirement for labeling is consistent with that of the USEPA. The USEPA's review of the material indicates that the State of Minnesota has adopted an oxygenated gasoline regulation substantially in accordance with the requirements of the Act. The USEPA is proposing to approve the Minnesota SIP revision for an oxygenated gasoline program, which was submitted on November 9, 1992. The USEPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. Comments regarding program operation during the first and subsequent years of operation of the oxygenated gasoline program are invited.

These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the USEPA Regional office listed in the ADDRESSES section of this notice.

III. Proposed Action

The USEPA proposes to approve the oxygenated gasoline program revision to the Minnesota SIP. Public comment is solicited on the USEPA's proposed rulemaking action. Comments received on or before February 22, 1994 will be considered in the development of the final rulemaking.

This action is classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. The USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on USEPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604.) Alternatively, the USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. The USEPA certifies that this rule, which merely approves state requirements that are already in place, will not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: January 7, 1994.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 94–1400 Filed 1–19–94; 8:45 am]

BILLING CODE 6560–50–F–M

[9] See Memorandum dated October 5, 1992 from Mary T. Smith, Director, Field Operations and Support Division to State/Local Oxygenated Fuels Contacts.

[10] See footnote 3.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[ET Docket No. 93–62; DA 94–34]

Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Chief of the Commission's Office of Engineering and Technology has granted a 14 day extension for filing comments and reply comments in response to the Notice of Proposed Rule Making (NPRM). This extension is in response to a motion filed by CBS, Inc. ("CBS"). The additional time will allow for further analysis with respect to recent data and information relevant to the Commission's implementation of new radiofrequency exposure guidelines.

DATES: Comments are due by January 25, 1994. Reply comments are due by February 24, 1994.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Robert Cleveland, Office of Engineering and Technology, Federal Communications Commission, (202) 653–8169.

SUPPLEMENTARY INFORMATION: 1. On January 3, 1994, CBS Inc. ("CBS") filed with the Commission a "Motion for Extension of Time" in the above-named proceeding. CBS requested that the Commission extend, by a period of fourteen (14) days, the time for filing comments and reply comments.

2. The Commission has proposed to incorporate into its rules the newly revised standard of the American National Standards institute (ANSI) developed by the Institute of Electrical and Electronics Engineers (IEEE) and designated IEEE C95.1–1991 (also ANSI/IEEE C95.1–1992) for human exposure to radiofrequency (RF) fields.[1] The deadline originally established for filing comments in this proceeding was

[1] See Notice of Proposed Rule Making in ET Docket 93–62, 58 FR 19393 (1993).

August 13, 1993, and the date for reply comments was September 13, 1993.

3. Previously, on August 3, 1993, the Commission granted a request filed by the National Association of Broadcasters (NAB) for an extension of time of ninety (90) days for filing comments and reply comments.[2] This action established a new deadline for filing comments of November 12, 1993, and a new deadline for filing reply comments of December 13, 1993.

4. Subsequently, on November 2, 1993, CBS and Capital Cities/ABC Inc. filed a request to extend the comment and reply comment deadlines an additional sixty (60) days. The Commission approved this request establishing a new deadline for filing comments of January 11, 1994, and a new deadline for filing reply comments of February 10, 1994.[3]

5. The first extension was granted to allow NAB time to complete a study commissioned to develop non-measurement based techniques for determining compliance with new guidelines. THe second extension was granted in response to filings by CBS, Capital Cities, and Hammett and Edison, Inc., noting that new information from the NAB study and other experimental results relevant to the consequences of the proposed guidelines had only recently become available. CBS and Capital Cities maintained that additional time was necessary to consider the implications of the new data, both to determine whether further study was required and to assess the effect that the proposed guidelines will have on broadcast operations.

6. The most recent motion filed by CBS requests an additional fourteen day (14) extension of the comment and reply comment deadlines. CBS states that it has not had sufficient time to perform measures and analysis of data due to a delay in obtaining the equipment necessary to measure induced currents. CBS states that it has acquired preliminary data that it believes will be useful to the Commission in considering the implementation of the induced current limits. However, additional time is needed to organize and analyze the data. Further, CBS states that it hopes that the additional time will make possible the filing of a single set of comments representing the views of itself and several other broadcast entities.

[2] See Order Extending Time for Comments and Reply Comments, ET Docket 93-62, 58 FR 43091 (1993).

[3] 58 FR 60827 (1993).

7. The Commission does not routinely grant requests for extensions of time.[4] However, we continue to recognize the complexity of the issues raised by the new exposure guidelines and the difficulties in developing reasonable methods by which compliance can be evaluated. In that regard, the request by CBS for a nominal further extension does not appear to be unreasonable.

8. Accordingly, *it is ordered*, That the deadline for filing comments is extended to January 25, 1994, and the deadline for filing reply comments is extended to February 24, 1994. This action is taken pursuant to sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303, and pursuant to §§ 0.31, 0.241 and 1.46 of the Commission's Rules, 47 CFR 0.31, 0.241 and 1.46.

Federal Communications Commission.

Thomas P. Stanley,

Chief Engineer.

[FR Doc. 94-1328 Filed 1-19-94; 8:45 am]

BILLING CODE 6712-01-M

[4] 47 CFR Section 1.46 (1991).

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 212 and 234

[FRA Docket No. RSGC-5; Notice No. 6]

[RIN 2130-AA70]

Grade Crossing Signal System Safety

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

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: FRA proposes specific maintenance, inspection, and testing requirements for active highway-rail grade crossing warning systems. FRA also proposes to require that railroads take specific and timely actions to protect the traveling public and railroad employees from the hazards posed by malfunctioning highway-rail grade crossing warning systems. This action is taken in response to a statutory requirement that FRA issue rules, regulations, orders, and standards to ensure the safe maintenance, inspection, and testing of signal systems and systems at railroad highway grade crossings.

DATES: (1) Written comments must be received no later than March 21, 1994. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

(2) A public hearing will be held at 9:30 a.m. on March 1, 1994. Any person who desires to make an oral statement at the hearing is requested to notify the Docket Clerk at least five working days prior to the hearing, by telephone or by mail, and to submit three copies of the oral statement that he or she intends to make at the hearing.

ADDRESSES: (1) Written comments should be submitted to the Docket Clerk, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590. Persons desiring to be notified that their written comments have been received by FRA should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination, both before and after the closing date for comments, during regular business hours in room 8201 of the Nassif Building at the above address.

(2) A public hearing will be held in room 2230 of the Nassif Building, 400 Seventh Street, SW., Washington, DC. Persons desiring to make oral statements at the hearing should notify the Docket Clerk by telephone (202-366-0628) or by writing to the Docket Clerk at the address above.

FOR FURTHER INFORMATION CONTACT: William Goodman, Chief, Signal and Train Control Division, Office of Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone 202-366-2231), or Mark Tessler, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone 202-366-0628).

SUPPLEMENTARY INFORMATION:

Background

On June 29, 1992, FRA published a Notice of Proposed Rulemaking (NPRM) (57 FR 28819) in which FRA proposed to require that railroads take specific and timely actions to protect the travelling public and railroad employees from the hazards posed by malfunctioning highway-rail grade crossing warning systems. A public hearing was held in Washington, DC on September 15, 1992. Due to comments received and an intention to widen the scope of this rulemaking to include proposed standards for maintenance, inspection, and testing pursuant to the mandate of section 202(q) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431(q)) (Safety Act) as amended by section 2 of the Rail Safety Enforcement and Review Act (Pub. L. 102-365), an

open meeting was held on December 11, 1992. That meeting consisted of very frank and open discussions of both FRA's timely response proposal and the issue of maintenance, inspection, and testing regulations. In response to a participant's request, the comment period was extended to February 15, 1993. Among the comments received was a joint submission from the Brotherhood of Railroad Signalmen, the Association of American Railroads, and The American Short Line Railroad Association. In addition to commenting on the June NPRM, the labor/management group proposed specific regulatory language addressing both timely response and maintenance, inspection, and testing.

The NPRM issued today reflects the consolidation into one rulemaking docket of the timely response rulemaking (see 57 FR 28819) with proposed standards for maintenance, inspection, and testing of grade crossing warning systems.

Rather than issuing a final rule on timely response, FRA is today requesting comments on a revised proposed rule. FRA does however, reserve the right to issue a final rule consistent in whole or in part, either with the text contained in this NPRM, with the text of the prior NPRM on timely response, or in response to comments received in response to the various issues raised in these documents. In the following section-by-section analysis, FRA will discuss the range of comments received in response to our earlier "timely response" NPRM. It is perhaps an understatement to say the June 1992 NPRM did not receive universal acclaim among the railroad community. It was generally thought to be too burdensome, and its requirements, especially those regarding responses to false activations, were seen as unnecessary and overly complicated. The earlier proposed "timely response" rules would have required a railroad to take the following three steps after learning of a malfunctioning grade crossing warning system: (1) Notify trains and highway traffic authorities of the malfunction; (2) take appropriate actions to warn and control highway traffic pending inspection and repair of the system; and (3) repair the system. The NPRM issued today is consistent with the earlier proposal. FRA has, however, in response to helpful comments, revised certain requirements to better fit within the present railroad operating environment. Individual comments, and our response to them, will be discussed in the section-by-section analysis below. FRA is also issuing proposed maintenance, inspection and testing standards for all active grade crossing warning systems. As added by the Rail Safety Improvement Act of 1988, § 202(q) of the Safety Act provided that "[t]he Secretary shall, within one year after the date of the enactment of the Rail Safety Improvement Act of 1988, issue such rules, regulations, orders, and standards as may be necessary to ensure the safe maintenance, inspection, and testing of signal systems and devices at railroad highway grade crossings." On September 3, 1992, the Rail Safety Enforcement and Review Act was enacted. Section 2 of that act deleted from subsection (q) the phrase "such rules, regulations, orders, and standards as may be necessary" and replaced it with "rules, regulations, orders, and standards." Congress clearly intended to remove any doubt about whether maintenance, inspection, and testing standards must be issued. FRA is therefore proceeding with today's proposed maintenance, inspection and testing rules.

In an effort to gather sufficient data to determine the scope and content of possible Federal maintenance, inspection and testing standards, FRA published the present 49 CFR part 234, "Grade Crossing Signal System Safety," on September 23, 1991 (56 FR 33722). Those reporting rules were meant to provide the accurate factual information we felt was necessary to fashion an appropriate regulatory scheme for maintenance, inspection, and testing. While FRA was planning on a longer period during which to gather and analyze data generated by our new reporting rule, information received to date has been helpful in fashioning the proposed rules. FRA will, of course, study all additional data as it is received and will take whatever future regulatory action is necessary based on that additional information.

The proposed maintenance, inspection, and testing standards have been heavily influenced by the present FRA signal rules at 49 CFR part 236, "Rules, Standards, and Instructions Governing the Installation, Inspection, Maintenance, and Repair of Signal and Train Control Systems, Devices, and Appliances" (also known among railroad signalmen as the "Rules, Standards, and Instructions" or simply as the "RS&I"). These rules, which had their genesis with the Interstate Commerce Commission, are well known and understood among the railroad community and have contributed to extremely safe railroad signal systems nationwide. Generally, the same railroad employees or contract employees who maintain and inspect a railroad's signal system will also be maintaining the railroad's grade crossing signal system. The same signal principles and much of the equipment used on train control signal systems will apply to grade crossing systems. It is therefore appropriate that much of the technical requirements which have served the industry well in the past would be adopted to some extent in the proposed rules.

Another major influence on the proposed rule was the previously mentioned joint submission from the Brotherhood of Railroad Signalmen, the Association of American Railroads, and The American Short Line Railroad Association ("labor/management"). This submission, from organizations who have historically taken diverse positions in the area of grade crossing safety, has provided very helpful suggestions in the drafting of this proposal. The drafters of the labor/management submission appear to have also relied to a great extent on part 236 for guidance.

Section-by-Section Analysis

This section-by-section analysis of the proposed rules is intended to explain the rationale for each proposed rule. The analysis includes the requirements of each proposed rule, the purpose each proposed rule would serve in enhancing the effective operation of a highway-rail grade crossing warning system, the current industry practice, comments and recommendations contained in the industry submission, and other pertinent comments. The comments and recommendations contained in the industry submission are important factors in determining effective rules because, representing both labor and management, they reflect differing perspectives and collective grade crossing experience.

The analysis also reflects pertinent comments made at an open meeting with interested parties, held on December 11, 1992, to discuss current industry practices regarding maintenance, inspection, and testing of highway-rail grade crossing warning systems.

49 CFR Part 212

Section 212.231 Highway-Rail Grade Crossing Inspector

This amendment to 49 CFR Part 212 "State Safety Participation Program" creates a new category of state inspector within the State Participation Program. This program, which provides for state participation in investigative and surveillance activities under federal railroad safety laws and regulations, would now include a separate inspector

category of "Highway-rail grade crossing inspector." New § 212.231 would establish minimum qualification standards enabling state inspectors to enforce grade crossing signal system safety regulations at part 234. Additionally, this section provides that all state signal and train control inspectors qualified under § 212.207 are also thereby fully qualified under new § 212.231.

Section 212.233 Apprentice Highway-Rail Grade Crossing Inspector

New § 212.233 would establish minimum qualification standards which applicants must meet prior to being enrolled in the inspector training program.

49 CFR Part 234

Section 234.1 Scope

This section is revised to expand the scope of part 234 to include the areas covered by this NPRM. In addition to prescribing standards for the reporting of failures of highway-rail grade crossing warning systems, this part also prescribes minimum actions railroads must take when such warning systems malfunction and imposes maintenance, inspection, and testing standards for such systems. This section also clarifies that when any person performs any function required by this part, that person is required to perform that function in accordance with this part.

Section 234.3 Application

This section of the regulations is not being revised. However, a discussion of this section and its relationship to a petition for rulemaking is appropriate.

Section 234.3(a) provides that except as provided in paragraph (b) of the section, part 234 applies to railroads that operate on standard gage track that is part of the general railroad system of transportation. Paragraph (b) provides that part 234 does not apply to rail rapid transit operations conducted over track that is used exclusively for that purpose and that is not part of the general railroad system of transportation.

In 1992, the President of Berkshire Scenic Railway Museum, Inc. (Berkshire Scenic), filed a petition for rulemaking requesting that FRA propose a discrete set of regulations applicable to scenic railroads. The Administrator has granted the request to the extent that the petition raised issues related to ongoing regulatory projects. FRA has therefore reviewed the present rulemaking in light of Berkshire Scenic's petition.

FRA does not believe that scenic railroads which are part of the general railroad system of transportation should be treated differently than other railroads under the proposed rules issued today. The primary beneficiary of these rules will be the motoring public. A motorist should have the same assurance of safety whether crossing the tracks of a Class I railroad, a small short line, or those of a small scenic railroad. FRA invites public comment on this issue.

As stated above, part 234 applies to railroads that operate on standard gage track that is part of the general railroad system of transportation. Thus, the proposed rule would apply to all highway-rail grade crossings on trackage that is part of the general railroad system of transportation. FRA invites comment as to whether this section should be revised to include within the application of the rule, crossings on trackage not part of the general railroad system of transportation. We specifically solicit input on whether maintenance, inspection, and testing of grade crossing warning systems at crossings on plant or tourist railroads off the general railroad system should remain unregulated by the Federal government. Should timely response rules, or maintenance, inspection and testing rules, or both, be applied to crossings on trackage not located on the general railroad system? Should the answer depend on whether the crossing is a public or private crossing? Should a motorist on a public highway have a reasonable expectation that all active warning systems on that highway will be maintained, inspected, and tested under the same standards? Should a motorist entering a private crossing equipped with an active warning system (923 such crossings nationwide) have the same expectation?

Section 234.5 Definitions

Appropriately equipped flagger means a person other than a train crewmember who is equipped with an orange vest, shirt, or jacket for daytime flagging. For nighttime flagging, similar outside garments shall be retroreflective. The retroreflective material shall be either orange, white (including silver-colored coatings or elements that retroreflect white light), yellow, fluorescent red-orange, or fluorescent yellow-orange and shall be designed to be visible at a minimum distance of 1,000 feet. The design configuration of the retroreflective material shall provide recognition of the wearer as a person and shall be visible through the full range of body motions. Acceptable hand signalling devices for daytime flagging include STOP/SLOW paddles and red flags. For nighttime flagging, a flashlight, lantern, or other lighted signal shall be used. In addition to these minimum standards, railroads are encouraged to provide flagging equipment and training in accordance with "Traffic Controls for Street and Highway Construction, Maintenance, Utility and Emergency Operations" issued by the Federal Highway Administration as part VI of the Manual on Uniform Traffic Control Devices (MUTCD).

Persons needing to be appropriately equipped are railroad employees other than a train crewmember, or others acting on behalf of the railroad, who flag highway traffic at grade crossings with malfunctioning warning systems. The requirement that persons be appropriately equipped does not apply to train crewmembers who dismount from a locomotive to flag the train through a crossing in an emergency situation, or to law enforcement officers.

Credible report of system malfunction means specific information regarding a malfunction at an identified highway-rail grade crossing, supplied by an identified railroad employee, law enforcement officer, highway traffic official, or an employee of a public agency acting in an official capacity. The proposed definition would ensure that legitimate malfunction reports are received and acted upon by railroads.

FRA's original proposed definition of a credible report included "an individual who has provided his or her name together with a telephone number or other means of contact, and who does not have a history of making false or misleading reports to the railroad pertaining to system malfunctions." There was concern by various parties that it would be very burdensome to require that railroads immediately take the required responsive action upon a call from a member of the public. We agree. Instead, we expect that railroads will, as they have traditionally done, investigate reports of malfunctions received from the public. After determining the accuracy of the report a railroad would then take appropriate action in accordance with the today's regulations. Today's proposal would not prohibit a railroad from adopting internal rules that would trigger specific responses to an individual's complaint, but would only mandate the required responses to reports from "official" sources.

Warning system malfunction means an activation failure or a false activation of a highway-rail grade crossing warning system.

Section 234.6(a) Civil Penalties

This section is being amended to conform with § 209(a) of the Safety Act

as amended by section 9 of the Rail Safety Enforcement and Review Act. That section amended the definition of "person." The clarified definition of "person" includes, but is not limited to, such entities as manufacturers and lessors of railroad equipment and independent contractors. Congress' purpose in amending the definition of "person" was to clarify the Secretary's existing power over entities whose activities related to rail safety by explicitly defining that authority. See 1992 U.S. Code Cong. and Adm. News, p. 879. Congress made it clear that the included list of "persons" subject to the Secretary's authority was intended to by illustrative and not exhaustive.

Section 234.101 Employee Notification Rules

The proposed section requires that each railroad issue rules requiring employees to report to a designated railroad official, by the quickest means available, any warning system malfunction. Some railroads may determine that the dispatcher is the appropriate official to be contacted, while other railroads may decide that a different official is best placed to receive and take action on reports of malfunctions. The proposed section is consistent with the joint submission.

Section 234.103 Timely Response To Report of Malfunction

Subsection (a) requires that upon receipt of a credible report of a warning system malfunction, the railroad shall immediately investigate the report and determine the nature of the malfunction. The railroad shall then take action as required by § 234.207. This subsection would require the railroad to immediately investigate a credible report of malfunction. Based upon the results of that investigation, and in accordance with § 234.207, the railroad would be required to adjust, repair, or replace any faulty component without undue delay. Further discussion of the requirement for repair without undue delay can be found in the section-by-section analysis of § 234.207.

Subsection (b) requires that, until repair or correction of the warning is completed, the railroad shall provide alternative means of warning highway traffic and railroad employees in accordance with this subpart. Acceptable alternative means of protecting the travelling public and railroad employees are described in §§ 234.105 and 234.107, as appropriate.

Subsection (c) provides that nothing in this subpart requires repair or correction of a warning system, if, acting in accordance with applicable State law, the railroad proceeds to discontinue or dismantle the warning system, provided such warning system not be left in place unless the railroad complies with this subpart.

The proposed section is consistent with the labor/management's recommendation.

Section 234.105 Activation Failure

This section requires that upon receiving a credible report of an activation failure, a railroad having maintenance responsibility for the warning system shall immediately initiate efforts to warn motorists and railroad employees at the subject crossing by taking, at a minimum, certain actions. Paragraph (a) provides that prior to a train's arrival at the crossing, the railroad must notify the train crew of the report of activation failure and notify any other railroads operating over the crossing. Paragraph (b) requires that the railroad notify the highway traffic control authority having jurisdiction over the crossing, and paragraph (c) requires the railroad to provide or arrange for alternative means of actively warning motorists of approaching trains. Paragraph (c)(1) provides that until an appropriately equipped flagger or law enforcement officer is stationed at the crossing to warn highway traffic of approaching trains, each train must stop before entering the crossing to permit a crewmember to dismount to flag highway traffic to a stop. The locomotive may then proceed through the crossing to permit the flagging crewmember to reboard the locomotive before the remainder of the train proceeds through the crossing.

Paragraph (c)(2) provides that if an appropriately equipped flagger or law enforcement officer provides warning for each direction of highway traffic, trains may proceed through the crossing at normal speed.

Paragraphs (c)(1) and (c)(2) are the same as those proposed in FRA's original proposal. FRA recognizes that paragraph (c)(2) may present flagging problems in some situations. At those crossings which involve both higher speed trains and highways with higher speed limits, flaggers might need more warning time and greater warning distance (depending on track curvature and sight distances) in order to adequately warn approaching motorists of an approaching train. A flagger may need to provide warning further down a highway to provide sufficient stopping distance for a motorist. The flagger might also need to set out a series of fusees or flags to provide proper warning. It may be necessary to restrict train speeds in these situations in order to facilitate this preparation. FRA solicits comments on this issue.

Paragraph (c)(3) provides that if an appropriately equipped flagger or law enforcement officer provides warning for highway traffic, but there is not at least one flagger or law enforcement officer providing warning for each direction of highway traffic, trains may proceed with caution through the crossing at a speed not exceeding 10 miles per hour. Normal speed may be resumed after the locomotive has passed through the crossing.

Paragraph (c)(3) is different in certain respects from FRA's original proposal. The original proposal would have required a train to stop before entering a crossing if the crossing were not protected by at least one appropriately equipped flagger for each direction of highway traffic. In addition, if the crossing were flagged by a train crewmember, the train would be required to stop again for the crewmember to reboard the locomotive. Today's proposal would still require the stopping of a train if no flagger is present to warn highway traffic. However, if there is a flagger present, but there is not at least one flagger for each direction of highway traffic, the train would be required to pass through the crossing at a speed not exceeding 10 miles per hour.

In their comments and recommendations, labor/management argue that the presence of a flagger, combined with the reduction in train speed and the use of the locomotive's horn, would provide sufficient warning to the travelling public. The commenters state that the decision on whether to stop the train a second time for a train crewmember to reboard should be left to the discretion of the railroad, based on the particular circumstances involved. Requiring a second stop also increases the time during which the crossing is blocked by a train, thereby increasing the possibility of side collisions. We agree with the comments and have revised the proposed rule accordingly. To further limit the potential of side collisions at night with one flagger warning motorists, the provision has been revised to provide that railroads are only required to approach the crossing with caution at a speed not exceeding 10 miles per hour. When the locomotive of a train has passed through the crossing, normal speed may be resumed. This would reduce, by however small a margin, the time during which side collisions are possible.

While FRA is not at this time proposing that railroad employees be

required to comply with flagging procedures contained in the Manual on Uniform Traffic Control Devices (MUTCD) issued by the Federal Highway Administration, they are encouraged to comply as fully as possible with those or similar procedures.

Paragraph (c)(4) remains unchanged. This paragraph would require that a locomotive's audible warning device be activated in accordance with railroad rules. This provision addresses those instances in which a "whistle ban" may be in effect in a local jurisdiction. FRA is presently reviewing the entire "whistle ban" issue and, while there may be disagreement as to the effect on safety of whistle bans, there can be little doubt that a ban on sounding a train whistle or horn should be lifted when a grade crossing warning system is malfunctioning. In addressing whistle bans in this limited situation, FRA does not wish to give the impression it approves of or encourages whistle bans in other situations. FRA is opposed to local restrictions on the use of train whistles. *See* FRA Emergency Order No. 15, 56 FR 36190, July 31, 1991.

Section 234.107 False Activation

This section requires a railroad to take the same initial actions as it would take in cases of activation failure. Upon receiving a credible report of a false activation, a railroad having maintenance responsibility for the warning system shall immediately initiate efforts to warn motorists and railroad employees at the subject crossing by taking, at a minimum, certain actions.

Paragraph (a) provides that prior to a train's arrival at the crossing, the railroad must notify the train crew of the report of activation failure and notify any other railroads operating over the crossing. Paragraph (b) requires that the railroad notify the highway traffic control authority having jurisdiction over the crossing, and paragraph (c) requires the railroad to provide or arrange for alternative means of actively warning motorists of approaching trains. Paragraphs (c)(1) and (c)(2) provide for the alternative means of warning motorists. Paragraph (c)(1) provides that if an appropriately equipped flagger or law enforcement officer is stationed at the crossing providing warning for each direction of highway traffic, trains may proceed through the crossing at normal speed. Paragraph (c)(2) provides that if there is not an appropriately equipped flagger or law enforcement officer stationed at the crossing providing warning for each direction of highway traffic, trains may proceed with caution through the crossing at a speed not exceeding 10 miles per hour. Normal speed may be resumed after the locomotive has passed through the crossing. Paragraph (c)(3) of this section provides the railroad an option of temporarily taking the warning system out of service until repairs are completed. However, the warning system may only be taken out of service if the railroad complies with the protection requirements for activation failures. From a highway traffic control and warning system credibility perspective, it would be preferable for a railroad with few trains traversing the crossing to take a falsely activated warning system out of service. The railroad would then comply with the activation failure provisions of § 234.105 rather than § 234.107. We recognize that the proposed rule contains a disincentive for a railroad to do this since under § 234.107 the railroad can operate through the crossing at 10 mph rather than stopping at the crossing as would be required under § 234.105. FRA requests suggestions on ways to counter this disincentive while simultaneously insuring both safe highway traffic and safe, efficient rail operations. FRA recognizes that if gates are activated for an extended period of time, some highway users may attempt to go around the gates at the risk of a collision with an oncoming train. Highway users who obey the warning signal will be diverted to another route, resulting in inefficiencies for those travelers. The proposed rule both requires repair of the device "without undue delay" and prohibits a train from proceeding through an unflagged crossing at a speed in excess of 10 mph. Today, there are no limitations placed on the railroads in such situations. Thus, the proposal, while not ideal in terms of the impacts on the highway user, should improve the situation at crossings with malfunctioning warning devices. FRA recognizes that this proposal impacts highway users and therefore requests that commenters address possible alternatives to mitigate the negative effects on the highway user of permitting gates or flashing lights to remain activated for an extended period of time.

Although not a regulatory proposal, FRA recognizes that a railroad may, of course, request the authority having jurisdiction over the roadway to close the roadway and detour highway traffic to another nearby crossing. Paragraph (d) provides that a locomotive's audible warning device shall be activated in accordance with railroad rules regarding the approach to a grade crossing, regardless of any State laws or ordinances to the contrary.

FRA's original proposal stated that within two hours of receipt of a credible report of false activation, the railroad would have to provide or arrange for alternative means of protection at the crossing. During the period in which there were no alternative means of highway traffic control in place, trains would have been required to enter the crossing at a speed of not more than 10 miles per hour. FRA noted in the original NPRM that "we are specifically requesting comments on the proposed time period to find out any circumstances under which this requirement may be difficult to fulfill." 57 FR 28822. The vast majority of submissions and testimony addressing the two hour response time of this rule have expressed the opinion that this proposal would be too burdensome on the industry, with no measurable increase in safety provided at the grade crossings.

Labor/management's comments recommend that FRA eliminate the "two-hour" provision from the original proposed rule. They recommend, in the absence of flagging, that the restriction on train speeds remain in effect pending repair of the warning system or appropriate alternative action. They state that the combined effect of the warning system being activated, the train proceeding at no more than restricted speed, and the use of the locomotive's audible warning device will provide sufficient warning for highway users. After re-examining the original proposed rule, FRA has eliminated the two-hour provision. In our view, highway users will be adequately warned of approaching trains that are proceeding at a speed no greater than 10 miles per hour. Additionally, the period during which the warning system may remain malfunctioning is limited by proposed § 234.207 which requires that malfunctioning components of a warning system be repaired, replaced or adjusted without undue delay. Compliance with that section will ensure that temporary warnings provided under § 234.107 will be held to a minimum period of time.

Section 234.109 Recordkeeping

Paragraph (a) of this section requires each railroad to keep records pertaining to compliance with this subpart. Each railroad would be required to keep the following information for each report of warning system malfunction: Location of crossing (by highway name and DOT/AAR Crossing Inventory Number); time

and date of receipt by railroad of report of malfunction; actions taken by railroad prior to repair and reactivation of repaired system; and time and date of repair.

Paragraph (b) requires that each railroad retain for at least one year all records referred to in paragraph (a) of this section. Records required to be kept shall be made available to FRA as provided by § 208 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 437).

Section 234.201 Location of Plans

The proposed rule requires that plans and other information required for the proper maintenance and testing of highway-rail grade crossing warning systems, be available for use at each warning system location. Plans would be required to be legible and correct to protect against errors in circuitry connections. The current industry practice is for plans to be kept at each grade crossing location and used for the installation and maintenance of warning systems. The proposed rule is consistent with labor/management's recommendation.

Section 234.203 Design of Control Circuits on Closed Circuit Principle

The proposed rule requires that all control circuits that affect the safe operation of a highway-rail grade crossing warning system shall be designed on the closed circuit principle. This design requirement ensures that failure of any part or component of the circuit will cause the warning system to activate (fail-safe principle). The MUTCD requires the fail-safe principle be adopted in the design of warning systems. The proposed rule corresponds with current industry practice.

Section 234.205 Operating Characteristics of Warning System Apparatus

The proposed rule requires that operating characteristics of electromagnetic, electronic, or electrical apparatus of each crossing warning system be maintained in accordance with the limits within which it is designed to operate. In order to comply with this section, each carrier should have available specifications setting forth the pick-up values, release values, working values, and condemning limits of these values for all electromagnetic, electronic, or electrical devices used in highway-rail grade crossing warning systems. The proposed rule corresponds with current industry practice. The proposed rule is consistent with labor/management's recommendation.

Section 234.207 Adjustment, Repair, or Replacement of Component

The proposed rule is similar to the requirement in the present FRA signal rules at 49 CFR part 236. The proposed rule requires that when any essential component of a highway-rail grade crossing warning system fails to perform its intended function, the cause shall be determined and the faulty component shall be repaired or replaced "without undue delay." The proposed rule also requires that a railroad take appropriate action under § 234.105 or § 234.107, as appropriate.

It is of paramount importance that remedial action begin as soon as possible after a credible report of a malfunction is received by a railroad. In general, adjustment, repair, or replacement without undue delay would require that remedial action be taken in as timely a manner as possible. Successful, practical application of these general principles may be the objective of this regulatory proceeding that is most crucial to the safety of the motoring public; and the safety of employees and rail operations is also implicated.

The term "undue delay" has a long and reasonably well understood history within the railroad signalling community, as applied to signal and train control systems. In discussing this term when issuing the NPRM to the present part 236, FRA referred to "[t]he interpretation of the phrase "undue delay" by the ICC. "At page 723 of 329 I.C.C., the ICC said: 'We find that the record does not support a rule which would require that repairs be made before the next movement in all situations. Such a rule would be unduly restrictive since adequate temporary safety measures can be taken until necessary repairs are made. We further find that the phrase 'without undue delay' is a reasonable provision considering the infinite variety of factual situations in which Rule 11 [predecessor rule to § 236.11] is applicable." 48 FR 11882, March 21, 1983. However, the same understanding that applies to the concept of "undue delay" with respect to railroad signal systems is not applicable in many cases of automated warning device malfunction. The differences are of a practical nature, including the fact that the device in question is a highway traffic control device.

Where railroad signal systems are at issue, train movements in any given time period may be infrequent. Thus, although prompt diagnosis of the situation is normally required, completion of repairs can sometimes be completed over a matter of hours with no degradation of safety. Grade crossing warning devices present challenges that are similar in some respects, but different in others.

Activation Failure

Where the device fails to operate in the presence of a train (whether partially or totally), immediate action by the railroad is crucial to protecting train and vehicular traffic. However, even though flagging trains through the crossing is a temporary expedient that greatly reduces risks to the motorist, this approach is not satisfactory as a continuing measure at most crossings where automated warning devices are installed. Temporary measures required under § 234.105 involve additional hazards to train crews from mounting and dismounting locomotives in areas where employees are not normally on the ground. Whether flagging is provided by the train crew or other employees, additional risk is posed to those persons by motorists who may be insufficiently attentive as they approach a crossing normally equipped with functioning automated devices. In addition, where flagging is conducted by the train crew an increased risk of side-collision accidents exists because the crewmember providing flagging service must, as a practical matter, reboard the locomotive before the remainder of the train clears the crossing. (Approximately 34% of nighttime crossing accidents involve motor vehicles striking the side of the train.) In this instance, a rapid response to the malfunction is indicated, both for the safety of the motorist and the employees involved. An exception to the need for rapid repair of the device would be a case in which no train movement is planned for the interval of several hours between the initial report and the time the maintainer responds and completes the repairs.

In cases of activation failures, then, the frequency of train movements powerfully influences any evaluation of what might be considered an "undue delay."

False Activation

In the case of a false activation, the railroad may elect to provide warning by slowing the train (and sounding the whistle) under proposed § 234.107 until necessary repairs were made. In this case, motorists approaching the crossing with devices still functioning, but with no train in sight, are exposed to slightly greater risk of a traffic mishap due to the need to stop. Motorists will often be tempted to attempt to negotiate around

gate arms rather than executing a "U" turn and using another crossing.

More significantly, if the malfunction continues for an extended time period, or if malfunctions are frequent, it is possible that motorists may be conditioned to disbelieve the indication provided by the warning device, leading to a later accident at the same crossing, or a different crossing equipped with automated warning devices. That is, the credibility of the warning system may be compromised. Again, a rapid response by the signal maintainer is required. In this case, the first stage of the response may be to deactivate the warning system, ensuring that the procedures for an activation failure are followed.[1] If, on the other hand, the response is to provide flagging services, that would be required under the text of the proposed rule only during those times when a train is present. During those periods, some risk would be presented to the persons providing that service, since the motorist will expect to look for the indication of the automated device, rather than presence of a flagger. At other times, the credibility issue will arise; and early action to deactivate the warning system will be indicated, with full repair before the next train movement insofar as possible.

In comments responding to the notice of proposed rulemaking for timely response to malfunctions, the Association of American Railroads submitted data analysis indicating that the occurrence of false activations does not lead to loss of credibility of warning devices.

AAR's comments and testimony at the September 15, 1992 public hearing indicated that there was no relationship between false activations and subsequent accidents at the grade crossings at which the malfunction occurred. Analyzing accidents occurring during a six-month period, the AAR concluded that only 15 accidents occurred in the week following the malfunction, and only two in the 24 hours following the malfunction. There was none in the period between report of the malfunction and its repair.

When the FRA attempted to duplicate AAR's results using FRA's grade crossing accident/incident database, we found different results. FRA's data showed that fewer accidents occurred in the same time period as analyzed by the AAR. Also, fewer accidents occurred at all grade crossings which had experienced prior malfunctions. Despite the lower number of accidents, FRA's analysis of the same six-month period indicates a greater number of accidents both in the week following the malfunction (34) and in the twenty-four hour period following the malfunction (11). It is statistically unlikely that the higher accident rate following malfunctions is due to random causes.

In other words, FRA has found a significant concentration of accidents in the time period shortly after malfunctions, which leads to the opposite conclusion from that which would be drawn using AAR's figures. It appears that the differences between AAR's and FRA's figures are due solely to differences in the raw data used for analysis rather than methodological differences.

Recognizing the value of the AAR methodology, FRA has attempted to replicate and extend the analysis utilizing the more extensive data sets now available as a result of malfunction reports under 49 CFR 234.9. FRA analyzed accident patterns associated with false activations over the 15-month period for which data is now available. The data shows that there were 94 accidents in the week following a false activation, and 16 in the twenty-four hour period following a false activation. FRA's analysis for this period indicates (as it does for the earlier six-month period) that there is overrepresentation of accidents in the week after a false activation malfunction. FRA's data also shows that one to two percent of fatalities at crossings are associated with those additional accidents. A more detailed discussion of this research is contained in the Economic Impact Assessment and Regulatory Flexibility Analysis on file in Docket RSGC–5.

In light of these data, FRA is concerned that the inter-relationships between this section and sections 234.105 and 234.107 have not yet been fully developed, despite the efforts of the industry parties and FRA to resolve this issue in a practical manner that avoids unnecessary expenditures. FRA does not believe that the answer to the issue lies in repeated incantation of a comfortable phrase, such as "without undue delay." FRA urgently requests commenters to examine once again the structure of this proposal and the realities of the highway-rail issues presented herein for the purpose of developing the most effective, reasonable, objective, and enforceable approach to this difficult problem. FRA reserves the right to issue a final rule consistent either with the text contained in this NPRM or with the text of the prior NPRM on timely response.

There is no current industry standard that corresponds with this rule. However, the industry has previously testified that it currently has provisions to repair defective warning device components in a timely manner. The proposed rule is consistent with labor/management's recommendation.

Section 234.209 Interference With Normal Functioning of System

The proposed rule requires that the normal functioning of any system shall not be interfered with in testing or otherwise without first taking measures to provide for the safety of highway traffic. The intent of the proposed rule is to ensure that railroads provide alternative methods of maintaining safety while testing or performing work on the warning systems or on track and other railroad systems or structures which may affect the integrity of the warning system. Most railroads have established procedures regarding precautions to be taken when performing such work.

In some circumstances, nearby track work could activate a crossing warning system. FRA does not believe that "taking measures to provide for the safety of highway traffic" in this context includes chaining a gate in the "up" position while allowing warning lights to continue flashing. Even when the track is temporarily out of service the mixed message sent to the motorist diminishes the warning system's credibililty, and must therefore be avoided. FRA solicits suggestions as to how to accommodate both the railroad's and the motorist's needs in such situations.

FRA also requests interested parties to discuss the safety effect on the warning system caused by railroad equipment standing or being switched within the system's approach circuit where the warning system is not designed to accommodate those activities. There have been instances of such cars and locomotives activating the warning system for an extended length of time when there is no danger in crossing the tracks, raising the issue of credibility at that crossing. If there are multiple tracks at the crossing, a warning system activated for a period of time due to standing equipment may effectively entice a motorist to cross the tracks, when in fact a train may be approaching on the other track. This situation may be exacerbated by reduced visibility of the approaching train due to the standing equipment. FRA solicits comments on this matter. Should this situation be considered interference with the normal

[1] This is not self-evident, but is posited for discussion. Should the response to a false activation be flexible, taking into account the frequency of both highway and rail traffic over the crossing? What is the break point (if any) at which deactivation of the warning device should be preferred?

functioning of a warning system? FRA solicits comments on this problem and, if appropriate, possible regulatory and non-regulatory solutions.

Section 234.211 Locking of Warning System Apparatus

The proposed rule permits the carrier to have managerial discretion in the specific manner that warning system housings are secured. The proposed rule requires that all external housings of warning system apparatus be kept locked, sealed, or secured. This includes warning system houses, flashing light signals, gate mechanisms, and bell or stationary audible warning system housings. The purpose of the proposed rule is to prevent vital components of the warning system from being vandalized or tampered with, possibly causing a malfunction of the warning system. The proposed rule corresponds with current industry practice. The proposed rule is consistent with labor/management's recommendation.

Section 234.213 Grounds

The proposed rule requires that each circuit which affects the proper functioning of a highway-rail grade crossing warning system be kept free of any ground or combination of grounds which will permit a flow of current equal to or in excess of 75 percent of the release value of any relay or electromagnetic device in the circuit. The only exceptions would be circuits that include any track rail, alternating current power distribution circuits that are grounded in the interest of safety, and any common return wires of grounded common return single break circuits. The basis of the proposed rule is the same as is required in 49 CFR part 236.2. The proposed rule corresponds with current industry practice. The proposed rule is consistent with labor/management's recommendation.

Section 234.215 Standby Battery and Indicator or Alarm

In drafting this proposed section, FRA is addressing the most common type of installation in the nation—a battery-operated system in which the batteries are constantly being recharged by alternating current from a commercial or private source. In these systems, if the supply of alternating current is interrupted, the batteries continue to operate the system until they are discharged. The theory is that in most situations alternating power will be restored before the batteries run down.

The proposed rule requires a standby battery source of power to ensure the highway-rail grade crossing warning system continues to function as intended if there is an interruption in primary alternating current power. Another portion of the rule requires that an indicator or alarm be used to indicate when the alternating current power is off. The purpose is to alert the carrier about the loss of primary power so remedial action can be taken before the standby battery source of power is exhausted. Additionally, the proposed rule requires that battery capacity be designed and maintained to provide a sufficient amount of time for the operation of a highway-rail grade crossing warning system when primary battery charging current is removed.

An analysis of a random sample of 1,943 grade crossing signal failure reports showed that 12.2 percent (243) involved the loss of alternating current power as the primary cause for a malfunction of the system.

The railroad industry and suppliers currently use standby battery power as a standard for warning system installations that are dependent on alternating current for their primary source of power. The Association of American Railroads' "Signal Manual of Recommended Practice" advises that standby battery power be used. Without a standby source of power, a warning system is ineffective when alternating current power is lost.

This topic was discussed at the December 11, 1992 open meeting, and the consensus was that there is a need for warning systems to be capable of operating with standby power for a sufficient period of time. The proposed rule would not require batteries to be discharged to determine their capacity, because it would be impractical to do so. Warning system installations would be required to be designed to provide the proper amount of battery capacity. Proper battery voltage and specific gravity of the battery would be required to be maintained.

Labor/management's recommendation does not specifically state the requirements for a standby battery source of power. However, their recommendation does assume standby batteries are used, because they recommend testing battery voltage at warning system installations.

FRA recognizes that systems other than the typical system addressed in this section are in operation or may be in the development stage. We do not want these rules to hinder development of possible alternative equipment and systems. The proposed rule essentially provides a performance standard that back-up systems should respond automatically to loss of power and provide at least 48 hours of normal warning system operation. We invite comment on both this approach and the appropriate performance standard to be adopted.

Section 234.217 Flashing Light Units

The proposed rule requires that each flashing light unit be positioned and aligned in accordance with installation plans. This is obviously important because of motorists' reliance on the flashing light units to warn of approaching trains. It is not practical to require a specific distance for the alignment of each flashing light unit because of varying conditions (i.e., road curvature, fixed obstructions, intersections, etc.) at each highway-rail grade crossing.

The proposed rule also requires that each flashing light unit be maintained to prevent dust and moisture from entering the interior of the unit. Additionally, light units would be required to flash alternately at a rate of 35 to 55 times per minute. This is consistent with the requirements of the MUTCD. The proposed rule corresponds with current industry practice. The proposed rule is consistent with labor/management's submission.

FRA invites specific comment on those maintenance standards that also relate to design specifications derived from compliance with the MUTCD. For example, § 234.217(c) would require that the number of flashes per minute for each light unit be 35 minimum and 55 maximum. This is consistent with Paragraph 8C–7 of the MUTCD, although that paragraph provides greater detail than is contained in § 234.217(c). FRA invites comments regarding the consequences and advisability of (1) incorporating by reference MUTCD requirements into these regulations, (2) adopting the present MUTCD requirements, (3) adopting the present MUTCD requirements with changes where necessary, or (4) requiring that railroads maintain grade crossing warning systems to the specifications established at installation (or later, if conditions change) and set forth on the installation plans. For example, rather than requiring 35 to 55 flashes per minute, the rule could require that light units flash as designed. Similarly, rather than requiring specific time periods in which a gate arm should move, as is presently proposed in § 234.223, the rule might read as follows: "Each gate arm shall extend across each lane of approaching highway traffic and shall be maintained in a condition sufficient to be clearly viewed by approaching motorists. Each gate arm shall start its downward motion and shall reach its horizontal position in accordance with time periods designed for that specific

installation." In addition to other areas of concern regarding use or non-use of MUTCD standards, FRA requests that commenters address the situation in which MUTCD standards might change. If the MUTCD design standards were to be changed, should FRA's maintenance standards also automatically be changed? If the MUTCD standards are different than FRA's standards, will that result in a warning system being designed to one set of standards, and after installation being maintained to a different set of standards?

Section 234.219 Gate Arm Lights and Light Cable

The proposed rule requires that each gate arm light be visible to approaching highway users and that lights and light wire be secured to the gate arm. The proposed rule assists in alerting motorists, particularly at night, that the gate arm is in the horizontal position. It is important that the lights and light wire are secured to the gate arm to help prevent the lights and light wire from being damaged. The MUTCD requires three red lights on the gate arm. Labor/management's recommendation does not specify a standard for gate arm lights or light cable; however, the proposed rule corresponds with current industry practice.

Section 234.221 Lamp Voltage

The proposed rule requires that lamp voltage be maintained at no less than 85 percent of its prescribed rating. The National Transportation Safety Board has recommended that FRA establish a standard for minimum lamp voltage at highway-rail grade crossing warning systems. In the December 11, 1992 open meeting, there was a consensus that it is impossible to maintain lamp voltage at the full rating of the lamp, at all warning system installations. The proposed rule will ensure that the lamp voltage is sufficient to provide suitable illumination of the lamp, while increasing the endurance and dependability of the lamp. The proposed rule corresponds with current industry practice. The proposed rule is consistent with labor/management's recommendation.

Section 224.223 Gate Arm

The proposed rule requires that each gate arm, when in the downward position, extend across each lane of approaching highway traffic and be maintained in a condition sufficient to be clearly viewed by approaching motorists. The rule would also require that each gate arm start its downward motion not less than three seconds after flashing lights begin to operate and assume the horizontal position in a minimum of five seconds before the arrival of any train at the crossing. The proposal would assist in assuring that motorists are warned about trains approaching the crossing. Labor/management recommends that the gates assume the horizontal position before the arrival of any train at the crossing.

FRA also requests comments regarding MUTCD design standards. See further discussion in section by section analysis of § 234.217.

Section 234.225 Activation of Warning System

The proposed rule requires a minimum of 20 seconds warning time prior to the grade crossing being occupied by rail traffic. This is consistent with the requirements of the MUTCD and current industry practices. Labor/management provides no specific recommendation concerning a standard for warning time, however, it does recommend that warning systems be designed to comply with provisions of the MUTCD. In the December 11, 1992 open meeting, there was agreement among all parties that a 20-second minimum warning time is desirable.

FRA also requests comments regarding MUTCD design standards. See further discussion in section-by-section analysis of § 234.217.

Section 234.227 Train Detection Apparatus

The proposed rule requires the detection of a train or car when any part of a train detection circuit is occupied. The train detection circuit would be required to extend through the entire approach sections of the grade crossing to prevent any "dead sections." The proposed rule requires that when a highway/rail grade crossing equipped with a warning system is fouled by a train or car, the warning system shall continue to operate until such train or car clears the roadway. The warning system would be required to discontinue operation after the train or car passes the point of fouling the crossing, if there are no other movements within the limits of the warning circuit. Where the presence of sand, rust, dirt, grease, or other foreign matter is known to prevent effective shunting, appropriate action under § 234.105, "Activation failure," must be taken.

The proposed rule corresponds with current industry practice. Warning system installations are designed to work in this manner. The proposed rule is consistent with labor/management's recommendation.

Section 234.229 Shunting Sensitivity

The proposed rule requires that each train detection circuit that controls a highway-rail grade crossing warning system will detect the presence of a shunt of 0.06 ohm resistance when the shunt is connected across the track rails of the circuit, including fouling sections of turnouts. The standard of using a shunt of 0.06 ohm resistance has been effective in signal systems (49 CFR 236.56), since its implementation in 1950.

There was discussion about this issue at the December 11, 1992 open meeting. Some commenters stated it would be difficult to ensure that certain types of constant warning time systems would react with a shunt of 0.06 ohm resistance applied in the train detection circuit. However, the commenters were not able to provide an alternative standard. The majority of warning systems can be tested for shunting sensitivity with the 0.06 ohm shunt. It is possible for the remaining warning systems, equipped with constant time warning systems, to be tested with more than one 0.06 ohm shunt applied in different areas of the train detection circuit, simulating the movement of a train. There is no current standard industry practice corresponding to the proposed rule. Labor/management did not address this area.

Section 234.231 Fouling Wires

The proposed rule requires that each set of fouling wires located in a highway-rail grade crossing warning system train detection circuit consist of at least two discret conductors, and requires that each conductor be of sufficient conductivity and maintained in such a condition that the train detection apparatus will be in its most restrictive state when the circuit is shunted. This rule would help assure the detection of a train operating through turnouts located within the limits of train detection circuits. If one wire or rail plug were broken, a dangerous condition would be prevented if the other wire or rail plug continued to be effective. Labor/management made no recommendations pertaining to the proposed rule. The proposed rule corresponds with current industry practice.

Section 234.233 Rail Joints

The proposed rule requires that each rail joint located within the limits of a highway-rail grade crossing train detection circuit be bonded to ensure electrical conductivity by a means other than joint bars. It is important that all rail joints are bonded to ensure

continuity of the train detection circuit. This aids in preventing false activations of a warning system. Labor/management's submission did not address this issue. The proposed rule corresponds with current industry practice.

Section 234.235 Insulated Rail Joints

The proposed rule requires that each insulated rail joint used to separate train detection circuits within the limits of a highway-rail grade crossing be maintained in a condition to prevent current from flowing between rails separated by the insulation in an amount sufficient to cause a failure of any train detection circuit. This proposal would apply primarily to conventional train-detection apparatus, where a failure of the insulated rail joint could result in either a false activation or a failure to activate. The proposed rule corresponds with current industry practice and is consistent with labor/management's recommendation.

Section 234.237 Switch Equipped With Circuit Controller

The proposed rule requires that when a switch equipped with a switch circuit controller connected to the point is interconnected with highway-rail grade crossing warning system circuitry, such switch shall be maintained so that the warning system can be cut out only when the point is within one-half inch of the full reverse position. The purpose of the proposed rule is to prevent inadequate warning time for a motorist.

Some railroads use switch circuit controllers to cut out (or override) the activation of a warning system when a switch is located within the train-detection limits of the warning system. The primary purpose of this arrangement is to avoid the unnecessary operation of the warning system when trains are making switching movements within the train detection circuit, but not occupying the grade crossing. This is a safe practice as long as the circuit controller is properly adjusted to cut out the warning system with the switch in the reverse position. This ensures the warning system cannot be cut out with the switch in the normal position and train movements operating at normal speed through the train detection circuit.

The proposed rule corresponds with current industry practice. Labor/management's submission did not address this requirement. However, it did recommend that where cut-out circuits are used, tests be made to determine they function properly.

Section 234.239 Tagging of Wires and Interference of Wires or Tags With Signal Apparatus

The proposed rule requires that each wire be tagged or otherwise so marked that it can be identified at each terminal. All tag or wire identification should correspond with the circuit plan. Tags and other marks of identification would be required to be made of insulating material and so arranged that tags and wires do not interfere with moving parts of apparatus. The requirements of the proposed rule are the same as those in 49 CFR 236.76. The proposed rule is consistent with both current industry practice and labor/management's recommendation.

Section 234.241 Protection of Insulated Wire; Splice in Underground Wire

The proposed rule requires that insulated wire be protected from mechanical injury. The insulation would be prohibited from being punctured for test purposes, and a splice in underground wire would be required to have insulation resistance at least equal to the wire spliced. The requirements of the proposed rule are the same as those in 49 CFR 236.74. The requirements would ensure the integrity of conductors carrying vital warning system circuitry. The proposed rule corresponds with current industry practice. The proposed rule is consistent with labor/management's recommendation.

Section 234.243 Wire on Pole Line and Aerial Cable

The proposed rule requires that wire on a pole line be securely tied in on an insulator and properly fastened to a crossarm or bracket supported by a pole or other support. The rule would require that the wire not interfere with, or be interfered with, by other wires on the pole line. Aerial cable would be required to be supported by messenger wire. Open-wire transmission line operating at 750 volts or more would not be placed less than 4 feet above the nearest crossarm carrying active warning system circuits. The requirements of the proposed rule are the same as those in 49 CFR 236.71. The portion of the proposed rule addressing wire on pole line would apply only to warning system installations that utilize pole line as part of the warning system circuitry. The proposed rule corresponds with current industry practice. The proposed rule is consistent with labor/management's recommendation.

Section 234.245 Signs

The proposed rule requires that each sign mounted on a highway-rail grade crossing signal post be maintained in good condition and visible to the motorist. Signs mounted on the mast could include crossbucks, "number of tracks," etc. The proposed rule is consistent with current industry practice and labor/management's recommendation.

Inspections and Tests

Section 234.247 Purpose of Inspections and Tests; Removal From Service of Relay or Device Failing To Meet Test Requirements

The proposed rule requires that certain FRA-required tests be made to determine whether apparatus and equipment are maintained in a condition to perform their intended function. An electronic device, relay, or other electromagnetic device that fails to meet the requirements of specified tests would be required to be removed from service and not restored to service until its operating characteristics were in accordance with the limits within which such device or relay is designed to operate.

The purpose of the inspections and tests is to determine whether operating characteristics of electronic devices, relays, or other electromagnetic devices are within specified values and if highway-rail grade crossing warning system apparatus and equipment is being maintained in a condition to assure the safety of motorists and train operations. The proposed rule is consistent with labor/management's recommendation.

Section 234.249 Ground Tests

The proposed rule requires a test for grounds on each energy bus furnishing power to circuits that affect the safety of highway-rail grade crossing warning system operation. The proposal requires that the test be made when an energy bus is placed in service, and at least once each month thereafter. This requirement would assist in maintaining the integrity and safety of the warning system. The proposed rule is consistent with labor/management's recommendation.

Section 234.251 Battery Voltage

The proposed rule requires that battery voltage be checked at the battery, with battery-charging current removed, at least once each month to determine battery capability for instances of battery-charging current loss. The proposed rule is consistent with both

current industry practice and labor/management's proposal.

Section 234.253 Flashing Light Units and Lamp Voltage

The proposed rule requires that each flashing light unit be tested when installed and at least once every twelve months, with battery-charging current removed and with battery charging current restored, to determine that lamp voltage. Each flashing light unit would be required to be inspected at installation and once every twelve months for alignment, focus, and frequency of flashes in accordance with installation specifications. The exterior of each flashing light unit would be required to be inspected for dust and damage to roundels to ensure visibility of the light unit, at least once each month. Labor/management recommended that at least once each month the visibility of warning lights be checked with battery charging current removed, and with battery charging current restored, and and observations be made to determine that all lights are burning with normal brilliancy. The proposal is generally consistent with that of labor/management; however, FRA welcomes any comments on alternative methods of testing and ensuring normal brilliancy of lights.

Section 234.255 Gate Arm and Gate Mechanism

The proposed rule requires that each gate arm and gate mechanism be inspected, and gate arm movement be observed for proper operation, at least once each month. Tests of hold-clear devices would be required at least once every 12 months. The hold-clear device is what keeps the gate arms in the vertical position when the warning system is not activated. The proposed rule is consistent with labor/management's recommendation.

Section 234.257 Warning System Operation

The proposed rule requires that a highway/rail grade crossing warning system be tested for proper operation when the warning system is placed in service and thereafter when modified or disarranged, and at least once each month. The term "disarranged" would be defined as: "When a relay, circuit board, or other electronic device is replaced with another; two or more conductors in a cable are severed; a cable or conductor in a train detection system is replaced with another; or wires are removed at the same time from more than one terminal of a relay, electronic device, terminal board, or other vital component of a train detection system." The extent of testing the warning system for proper operation would be dependent on the degree of modification or disarrangement.

Currently, the majority of the industry tests the operation of warning systems on a monthly interval. Industry instructions vary regarding the testing of a warning system subsequent to modification or disarrangement of the system. The labor/management submission recommends that operation of warning systems be checked at least once each month. The recommendation does not address the testing of a warning system subsequent to a modification or disarrangement of such system.

The proposed rule also requires that when a warning bell or other stationary audible warning device is used, it be checked for proper operation when installed and at least once each month thereafter. The proposed rule is consistent with labor/management's recommendation.

Section 234.259 Warning Time

The proposed rule requires that a highway/rail grade crossing warning system be tested for prescribed warning time at least once every three months. This can be accomplished by observation of a train movement, if practical, or by calculation and simulation of a train movement. The proposed rule corresponds with current industry practice. The proposed rule is consistent with labor/management's recommendation.

Section 234.261 Highway Traffic Signal Pre-emption

The proposed rule requires that highway traffic signal pre-emption interconnections, for which a railroad has maintenance responsibility, be tested at least once each month. The pre-emption of a highway traffic signal requires an electrical circuit between the control relay of the highway/rail grade crossing warning system and the controller assembly of the highway traffic signal. The railroad would only be responsible for the maintenance and testing of its interconnections. The proposed rule is consistent with both current industry practice and labor/management's recommendation.

Section 234.263 Relays

Paragraph (a) of this section requires that (except for certain relays listed in paragraph (b)) each relay that affects the proper functioning of a crossing warning system shall be tested at least once every four years.

Paragraph (b)(2) requires that alternating current vane type relays, direct current polar type relays, and relays with soft iron magnetic structure shall be tested at least once every two years. Paragraph (b)(2) requires that alternating current centrifigal type relays shall be tested at least once every 12 months.

The requirements in the proposed rule are similar to those in 49 CFR 236.106 due to utilization of the same type relays. The proposed rule is consistent with current industry practice and labor/management's recommendation.

Section 234.265 Timing Relays and Timing Devices

The proposed rule requires that each timing relay and timing device be tested at least once every twelve months. The timing would be required to be maintained at not less than 90 percent nor more than 110 percent of the predetermined time interval, which shall be shown on the plans or marked on the timing relay or timing device.

Time-out circuits are primarily used for train switching movements at warning system installations. The time-out circuits enable an activation of a highway/rail grade crossing warning system to be overridden for a predetermined amount of time, after a train movement has occupied the detection circuit in approach to the grade crossing. The proposed rule is consistent with current industry practice and labor/management's recommendation.

Section 234.267 Insulation Resistance Tests, Wires in Trunking and Cables

Paragraph (a) requires that insulation resistance tests be made when wires or cables are installed and at least once every ten years thereafter.

Paragraph (b) requires that insulation resistance tests be made between all conductors and ground, between conductors in each multiple conductor cable, and between conductors in trunking. Such tests must be performed when wires, cables, and insulation are dry.

Paragraph (c) provides that when insulation resistance of wire or cable is found to be less than 500,000 ohms, prompt action would be required to be taken to repair or replace the defective wire or cable. Until such defective wire or cable is replaced, insulation resistance tests must be made annually. Paragraph (d) provides that a circuit with a conductor having an insulation resistance of less than 200,000 ohms shall not be used.

The requirements in the proposed rule are the same as those in 49 CFR 236.108, because of the utilization of the

same type wires and cable. The proposed rule is consistent with current industry practice and labor/management's recommendation.

Section 234.269 Cut-Out Circuits

The proposed rule requires that each cut-out circuit be tested at least once every three months to determine that the circuit functions as intended. The proposed rule would ensure that cut-out circuits operate correctly and that they do not permit an activation failure of the warning system. The proposed rule is consistent with labor/management's recommendation.

Section 234.271 Insulated Rail Joints, Bond Wires, and Track Connections

The proposed rule requires that each insulated rail joint, bond wire, and track connection located within the limits of a highway-rail grade crossing train detection circuit be inspected at least once every three months. Insulated rail joints are used to prevent current from flowing between rails. Bondwires and track connections ensure continuity of a train detection circuit. The proposed rule is consistent with current industry practice and labor/management's recommendation.

Section 234.273 Results of Tests

This section requires that results of tests made in compliance with this part be recorded on preprinted or computerized forms provided by the railroad, or by electronic means, approved by the Associate Administrator for Safety. Such records would be required to show the name of the railroad having maintenance responsibility for the warning system, AAR/DOT inventory number, place and date, equipment tested, results of tests, repairs, replacements, adjustments made, and condition in which the apparatus was left. Each record would be required to be signed or electronically coded by the employee making the test and be filed in the office of a supervisory official having jurisdiction. Each record would be required to be retained until the next record for that test is filed but in no case less than one year. If a railroad elects to use an electronic means for recording and signing results of tests, such means must be approved by FRA prior to use.

Regulatory Impact

E.O. 12866 and DOT Regulatory Policies and Procedures

This proposed rule has been evaluated in accordance with existing policies and procedures, and is considered to be significant under DOT policies and procedures (44 FR 11034, February 26, 1979) because it initiates a new regulatory program. This regulatory document was subject to review under E.O. 12866. FRA has prepared and placed in the rulemaking docket a regulatory evaluation addressing the economic impact of this rule. A copy of the regulatory evaluation may be inspected and copied in room 8201, 400 Seventh Street, SW., Washington, DC, 20590.

In its regulatory analysis FRA posited that the benefits of this rule would arise for several reasons. First, grade crossing signal malfunctions would become rarer after application of subpart D ("Maintenance, Inspection, and Testing"). Second, grade crossings would be made safe during the period of their signals' malfunctioning under provisions of subpart C ("Response to Reports of Warning System Malfunction"), specifically §§ 234.105 and 234.107. Third, the costs of §§ 234.105 and 234.107 would be reduced because the railroads would fix the signals more rapidly under § 234.103 of subpart C. Some of the other sections in the rule are needed to implement §§ 234.103, 234.105, and 234.107.

It appears that malfunctions in the form of activation failures now cost about $4.25 million per year in accidents. In these accidents the highway user does not know a train is coming, enters the crossing, and is struck by a train. This rule should reduce that annual cost to about $400,000.

It also appears that malfunctions in the form of false activations cause about $17.6 million a year in accident costs. In these accidents the highway user thinks the signal is "crying wolf," ignores a valid warning, and is struck by a train. This rule should reduce the annual cost to about $3.5 million. This rule will prevent malfunctions, reduce their duration, and make crossings safer during a malfunction. The total cost of this rule, discounted over twenty years, will be about $140 million, and the total benefit will be about $230 million. Benefits will be about 1.6 times costs.

Regulatory Flexibility Act

FRA certifies that this proposed rule will not have a significant impact on a substantial number of small entities. There are no substantial economic impacts for small units of government, businesses, or other organizations. FRA specifically requests comments on the impact of this rule on small entities.

Paperwork Reduction Act

The proposed rule contains information collection requirements. FRA is submitting these information collection requirements to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The proposed section that contains information collection requirements is § 234.273. The estimated time to fulfill the requirement of that section is five minutes for each record. FRA solicits comments on the accuracy of the FRA estimate; the practical utility of the information; and the alternative methods that might be less burdensome to obtain this information. Persons desiring to comment on this topic should submit their views in writing to FRA (Ms. Gloria Swanson, RRS–21, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590) and to the Office of Management and Budget (Desk Officer, Regulatory Policy Branch (OMB No. 2130–AA45), Office and Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Washington, DC 20530. Copies of any such comments should also be submitted to the Docket Clerk, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590.

Environmental Impact

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

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, "Federalism," and it has been determined that the proposed rule has sufficient federalism implications to warrant the preparation of a Federalism Assessment. FRA recognizes that currently a small number of states have statutes mandating to some extent maintenance, inspection and testing procedures for railroads operating within those states. In an effort to maintain state expertise and involvement in this critical safety area, FRA has proposed to include grade crossing warning system inspection functions within its State Participation Program. FRA has also proposed in §§ 234.105 and 234.107 that in instances of grade crossing warning system malfunctions, "a locomotive's audible warning device shall be activated in accordance with railroad rules." This

provision would preempt local "whistle ban" ordinances. This minimal intrusion into an area in which a handful of State and local governments have become involved is necessary to protect the travelling public and train crews from possible injury or death at grade crossings with malfunctioning warning systems. A copy of the Federalism Assessment has been placed in the public docket located in room 8201, 400 Seventh Street, SW., Washington, DC 20590.

List of Subjects

49 CFR Part 212

Intergovernmental relations, Investigations, Railroad safety.

49 CFR Part 234

Railroad safety, Highway-rail grade crossings.

The Proposed Rule

In consideration of the foregoing, FRA proposes to amend chapter II of title 49, Code of Federal Regulations as follows:

PART 212—[AMENDED]

1. The authority citation for part 212 continues to read as follows:

Authority: Secs. 202, 205, 206, and 207, of the Federal Railroad Safety Act of 1970, as amended (45 U.S.C. 431, 434, 435, and 436); and 49 CFR 1.49

2. Section 212.231, "Inapplicable qualification requirements," is redesignated § 212.235, and new §§ 212.231 and 212.233 are added to read as follows:

§ 212.231 Highway-rail grade crossing inspector.

(a) The highway-rail grade crossing inspector is required, at a minimum, to be able to conduct independent inspections of all types of highway-rail grade crossing warning systems for the purpose of determining compliance with Grade Crossing Signal System Safety Rules (49 CFR part 234), to make reports of those inspections, and to recommend institution of enforcement actions when appropriate to promote compliance.

(b) The highway-rail grade crossing inspector is required, at a minimum, to have at least four years of recent experience in highway-rail grade crossing construction or maintenance. A bachelor's degree in engineering or a related technical specialization may be substituted for two of the four years of this experience requirement. Successful completion of an apprentice training program under § 212.233 may be substituted for the four years of this experience requirement.

(c) The highway-rail grade crossing inspector shall demonstrate the following specific qualifications:

(1) A comprehensive knowledge of highway-rail grade crossing nomenclature, inspection techniques, maintenance requirements, and methods;

(2) The ability to understand and detect deviations from: (i) grade crossing signal system maintenance, inspection and testing standards accepted in the industry; and

(ii) the Grade Crossing Signal System Safety Rules (49 CFR part 234);

(3) Knowledge of operating practices and highway-rail grade crossing systems sufficient to understand the safety significance of deviations and combinations of deviations;

(4) Specialized knowledge of the requirements of the Grade Crossing Signal System Safety Rules, including the remedial action required to bring highway-rail grade crossing signal systems into compliance with those Rules;

(5) Specialized knowledge of highway-rail grade crossing standards contained in the Manual on Uniform Traffic Control Devices; and

(6) Knowledge of railroad signal systems sufficient to ensure that highway-rail grade crossing warning systems and inspections of those systems do not adversely affect the safety of railroad signal systems.

(d) A State signal and train control inspector qualified under this part is deemed to meet all requirements of this section and is qualified to conduct independent inspections of all types of highway-rail grade crossing warning systems for the purpose of determining compliance with Grade Crossing Signal System Safety Rules (49 CFR part 234), to make reports of those inspections, and to recommend institution of enforcement actions when appropriate to promote compliance.

§ 212.233 Apprentice highway-rail grade crossing inspector.

(a) The apprentice highway-rail grade crossing inspector must be enrolled in a program of training prescribed by the Associate Administrator for Safety leading to qualification as a highway-rail grade crossing inspector. The apprentice inspector may not participate in investigative and surveillance activities, except as an assistant to a qualified State or FRA inspector while accompanying that qualified inspector.

(b) Prior to being enrolled in the program the apprentice inspector shall demonstrate:

(1) Working knowledge of basic electricity and the ability to use electrical test equipment in direct current and alternating current circuits; and

(2) A basic knowledge of highway-rail grade crossing inspection and maintenance methods and procedures.

PART 234—[AMENDED]

3. The authority citation for part 234 is revised to read as follows:

Authority: Secs. 202, 208, and 209 of the Federal Railroad Safety Act of 1970, as amended (45 U.S.C. 431, 437, and 438, as amended); Accident Reports Act (45 U.S.C. 38 and 42); and 49 CFR 1.49 (f), (g), and (m).

4. Section 234.1 is revised to read as follows:

§ 234.1 Scope.

This part prescribes standards for the reporting of failures of highway-rail grade crossing warning systems. This part also prescribes actions railroads must take when such warning systems malfunction and imposes minimum maintenance, inspection, and testing standards for such systems. When any person performs any function required by this part, that person is required to perform that function in accordance with this part.

5. Section 234.4 is added to read as follows:

§ 234.4 Preemptive effect.

Under section 205 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 434), issuance of these regulations preempts any State law, rule, regulation, order, or standard covering the same subject matter, except a provision directed at an essentially local safety hazard that is consistent with this part and that does not impose an undue burden on interstate commerce.

6. Amend § 234.5 by deleting paragraph designations, listing definitions in alphabetical order, and adding the following definitions to read as follows:

§ 234.5 Definitions.

* * * * *

Appropriately equipped flagger means a person other than a train crewmember who is equipped with an orange vest, shirt, or jacket for daytime flagging. For nighttime flagging, similar outside garments shall be retroreflective. The retroreflective material shall be either orange, white (including silver-colored coatings or elements that retroreflect white light), yellow, fluorescent red-orange, or fluorescent yellow-orange and shall be designed to be visible at a minimum distance of 1,000 feet. The design configuration of the retroreflective material shall provide recognition of the wearer as a human

being and shall be visible through the full range of body motions. Acceptable hand signalling devices for daytime flagging include "STOP/SLOW" paddles and red flags. For nighttime flagging, a flashlight, lantern, or other lighted signal shall be used.

Credible report of system malfunction means specific information regarding a malfunction at an identified highway-rail crossing, supplied by a railroad employee, law enforcement officer, highway traffic official, or other employee of a public agency acting in an official capacity.

* * * * *

Warning system malfunction means an activation failure or a false activation of a highway-rail grade crossing warning system.

§ 234.6 [Redesignated from §§ 234.15 and 234.17]

7. Redesignate the heading and text of § 234.15, and the heading and text of § 234.17, as the heading and text of paragraph (a) of a new § 234.6 and the heading and text of paragraph (b) of § 234.6, respectively; add a new section heading for newly designated § 234.6; and revise the newly designated paragraph (a) of § 234.6 to read as follows:

§ 234.6 Penalties.

(a) *Civil penalty.* Any person (including but not limited to a railroad; any manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any employee of such owner, manufacturer, lessor, lessee, or independent contractor) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $500, but not more than $10,000 per violation, except that: penalties may be assessed against individuals only for willful violations, and where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death of injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. Appendix A to this part contains a schedule of civil penalty amounts used in connection with this rule.

* * * * *

8. Designate §§ 234.1 through 234.6 as "Subpart A—General" and designate §§ 234.7 through 234.13 as "Subpart B—Reports."

9. Add new "Subpart C—Response to Reports of Warning System Malfunction," and new "Subpart D—Maintenance, Inspection, and Testing," to read as follows:

Subpart C—Response to Reports of Warning System Malfunction

Subpart D—Maintenance, Inspection, and Testing

Maintenance Standards

Inspections and Tests

§ 234.101 Employee notification rules.

Each railroad shall issue rules requiring its employees to report to a designated railroad official, by the quickest means available, any warning system malfunction.

§ 234.103 Timely response to report of malfunction.

(a) Upon receipt of a credible report of a warning system malfunction, a railroad having maintenance responsibility for the warning system shall immediately investigate the report and determine the nature of the malfunction. The railroad shall take appropriate action as required by § 234.207.

(b) Until repair or correction of the warning system is completed, the railroad shall provide alternative means of warning highway traffic and railroad employees in accordance with this subpart.

(c) Nothing in this subpart requires repair of a warning system, if, acting in accordance with applicable State law, the railroad proceeds to discontinue or dismantle the warning system. However, until repair, correction, discontinuance, or dismantling of the warning system is completed, the railroad shall comply with this subpart to ensure the safety of the travelling public and railroad employees.

§ 234.105 Activation Failure.

Upon receipt of a credible report of warning system malfunction involving an activation failure, a railroad having maintenance responsibility for the warning system shall immediately initiate efforts to warn motorists and railroad employees at the subject crossing by taking, at a minimum, the following actions:

(a) Prior to a train's arrival at the crossing, notify the train crew of the report of activation failure and notify any other railroads operating over the crossing;

(b) Notify the highway traffic control authority having jurisdiction over the crossing; and

(c) Provide or arrange for alternative means of actively warning motorists of approaching trains, consistent with the following requirements:

(1) Until an appropriately equipped flagger or law enforcement officer is stationed at the crossing to warn highway traffic of approaching trains, each train must stop before entering the crossing and permit a crewmember to dismount to flag highway traffic to a stop. The locomotive may then proceed through the crossing, permitting the flagging crewmember to reboard the locomotive before the remainder of the train proceeds through the crossing.

(2) If an appropriately equipped flagger or law enforcement officer provides warning for each direction of

highway traffic, trains may proceed through the crossing at normal speed.

(3) If an appropriately equipped flagger or law enforcement officer provides warning for highway traffic, but there is not at least one flagger or law enforcement officer providing warning for each direction of highway traffic, trains may proceed with caution through the crossing at a speed not exceeding 10 miles per hour. Normal speed may be resumed after the locomotive has passed through the crossing.

(4) A locomotive's audible warning device shall be activated in accordance with railroad rules regarding the approach to a grade crossing.

§ 234.107 False activation.

Upon receipt of a credible report of a false activation, a railroad having maintenance responsibility for the highway-rail grade crossing warning system shall immediately initiate efforts to warn highway users and railroad employees at the crossing by taking, at a minimum, the following actions:

(a) Prior to a train's arrival at the crossing, notify the train crew of the report of false activation and notify any other railroads operating over the crossing;

(b) Notify the highway traffic control authority having jurisdiction over the crossing; and

(c) Provide or arrange for alternative means of actively warning motorists of approaching trains, consistent with the following requirements:

(1) If an appropriately equipped flagger or law enforcement officer is providing warning for each direction of highway traffic, trains may proceed through the crossing at normal speed;

(2) If there is not an appropriately equipped flagger or law enforcement officer providing warning for each direction of highway traffic, trains may proceed with caution through the crossing at a speed not exceeding 10 miles per hour. Normal speed may be resumed after the locomotive has passed through the crossing; or

(3) In lieu of complying with paragraphs (c)(1) or (2) of this section, a railroad may temporarily take the warning system out of service if the railroad complies with all requirements of § 234.105, "Activation failure"; and

(d) A locomotive's audible warning device shall be activated in accordance with railroad rules regarding the approach to a grade crossing.

§ 234.109 Recordkeeping.

(a) Each railroad shall keep records pertaining to compliance with this subpart. Each railroad shall keep the following information for each report of warning system malfunction:

(1) Location of crossing (by highway name and DOT/AAR Crossing Inventory Number);

(2) Time and date of receipt by railroad of report of malfunction;

(3) Actions taken by railroad prior to repair and reactivation of repaired system; and

(4) Time and date of repair.

(b) Each railroad shall retain for at least one year all records referred to in paragraph (a) of this section. Records required to be kept shall be made available to FRA as provided by section 208 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 437).

Subpart D—Maintenance, Inspection, and Testing

Maintenance Standards

§ 234.201 Location of plans.

Plans and other information required for proper maintenance and testing shall be kept at each highway-rail grade crossing warning system location. Plans shall be legible and correct.

§ 234.203 Design of control circuits on closed circuit principle.

All control circuits that affect the safe operation of a highway-rail grade crossing warning system shall be designed on the closed circuit principle.

§ 234.205 Operating characteristics of warning system apparatus.

Operating characteristics of electromagnetic, electronic, or electrical apparatus of each crossing warning system shall be maintained in accordance with the limits within which the system is designed to operate.

§ 234.207 Adjustment, repair, or replacement of component.

(a) When any essential component of a highway-rail grade crossing warning system fails to perform its intended function, the cause shall be determined and the faulty component adjusted, repaired, or replaced without undue delay.

(b) Until repair of an essential component is completed, a railroad shall take appropriate action under § 234.105, "Activation failure," or § 234.107, "False activation," of this part.

§ 234.209 Interference with normal functioning of system.

The normal functioning of any system shall not be interfered with in testing or otherwise without first taking measures to provide for safety of highway traffic that depends on normal functioning of such system.

§ 234.211 Locking of warning system apparatus.

Highway-rail grade crossing warning system apparatus shall be secured against unauthorized entry.

§ 234.213 Grounds.

Each circuit that affects the proper functioning of a highway-rail grade crossing warning system shall be kept free of any ground or combination of grounds that will permit a current flow of 75 percent or more of the release value of any relay or electromagnetic device in the circuit. This requirement does not apply to: circuits that include track rail; alternating current power distribution circuits that are grounded in the interest of safety; and common return wires of grounded common return single break circuits.

§ 234.215 Standby battery and indicator or alarm.

(a) If alternating current power is used as the primary source of power, a standby battery source of power shall be provided. Each battery shall be maintained in accordance with specifications of the manufacturer. An indicator, visible from the cab of the locomotive of a passing train, or an alarm, transmitted to a designated location, shall be used to indicate that alternating current power is off.

(b) Battery capacity shall be designed and maintained to provide at least 48 hours of normal operations of the crossing warning device when primary battery-charging current is removed.

§ 234.217 Flashing light units.

(a) Each flashing light unit shall be positioned and aligned in accordance with installation plans.

(b) Each flashing light unit shall be maintained to prevent dust and moisture from entering the interior of the unit. Roundels shall be clean and in good condition.

(c) All light units shall flash alternately. The number of flashes per minute for each light unit shall be 35 minimum and 55 maximum.

§ 234.219 Gate arm lights and light cable.

Each gate arm light shall be visible to approaching highway users. Lights and light wire shall be secured to the gate arm.

§ 234.221 Lamp voltage.

The voltage at each lamp shall be maintained at not less than 85 percent of the prescribed rating for the lamp.

§ 234.223 Gate arm.

Each gate arm, when in the downward position, shall extend across each lane of approaching highway traffic and shall

be maintained in a condition sufficient to be clearly viewed by approaching motorists. Each gate arm shall start its downward motion not less than three seconds after flashing lights begin to operate and shall assume the horizontal position at least five seconds before the arrival of any train at the crossing.

§ 234.225 Activation of warning system.

A highway-rail grade crossing warning system shall activate to provide a minimum of 20 seconds warning time before the grade crossing is occupied by rail traffic.

§ 234.227 Train detection apparatus.

(a) Train detection apparatus shall detect the presence of a train or railcar when any part of a train detection circuit is occupied. The train detection circuit shall extend through the entire approach sections of the grade crossing and include the fouling section of a turnout.

(b) When an active highway-rail grade crossing is occupied by a train or railcar, the warning system shall continue to operate until such train or railcar clears the roadway.

(c) If there are no other movements within the limits of the warning circuit, the warning system shall discontinue operation after the train or railcar passes the point of fouling the crossing.

(d) If the presence of sand, rust, dirt, grease, or other foreign matter is known to prevent effective shunting, a railroad shall take appropriate action under § 234.105, "Activation failure," to safeguard motor vehicle operation.

§ 234.229 Shunting sensitivity.

Each highway-rail grade crossing train detection circuit shall detect the presence of a shunt of 0.06 ohm resistance when the shunt is connected across the track rails of the circuit, including fouling sections of turnouts.

§ 234.231 Fouling wires.

Each set of fouling wires in a highway-rail grade crossing train detection circuit shall consist of at least two discrete conductors. Each conductor shall be of sufficient conductivity and shall be maintained in such condition that the train detection apparatus will be in its most restrictive state when the train detection circuit is shunted.

§ 234.233 Rail joints.

Each rail joint located within the limits of a highway-rail grade crossing train detection circuit shall be bonded by means other than joint bars to ensure electrical conductivity.

§ 234.235 Insulated rail joints.

Each insulated rail joint used to separate train detection circuits of a highway-rail grade crossing shall prevent current from flowing between rails separated by the insulation in an amount sufficient to cause a failure of the train detection circuit.

§ 234.237 Switch equipped with circuit controller.

A switch, when equipped with a switch circuit controller connected to the point and interconnected with warning system circuitry, shall be maintained so that the warning system can only be cut out when the switch point is within one-half inch of full reverse position.

§ 234.239 Tagging of wires and interference of wires or tags with signal apparatus.

Each wire shall be tagged or otherwise so marked that it can be identified at each terminal. Tags and other marks of identification shall be made of insulating material and so arranged that tags and wires do not interfere with moving parts of the apparatus.

§ 234.241 Protection of insulated wire; splice in underground wire.

Insulated wire shall be protected from mechanical injury. The insulation shall not be punctured for test purposes. A splice in underground wire shall have insulation resistance at least equal to that of the wire spliced.

§ 234.243 Wire on pole line and aerial cable.

Wire on a pole line shall be securely attached to an insulator that is properly fastened to a crossarm or bracket supported by a pole or other support. Wire shall not interfere with, or be interfered with by, other wires on the pole line. Aerial cable shall be supported by messenger wire. An open-wire transmission line operating at voltage of 750 volts or more shall be placed not less than 4 feet above the nearest crossarm carrying active warning system circuits.

§ 234.245 Signs.

Each sign mounted on a highway-rail grade crossing signal post shall be maintained in good condition and be visible to the motorist. Standards for such signs are found in Part VIII ("Traffic Control Systems for Railroad-Highway Grade Crossings") of the MUTCD.

Inspections and Tests

§ 234.247 Purpose of inspections and tests; removal from service of relay or device failing to meet test requirements.

The following inspections and tests shall be made to determine if the apparatus and equipment is maintained in a condition to perform its intended function. Any electronic device, relay, or other electromagnetic device that fails to meet the requirements of tests required by this part shall be removed from service and shall not be restored to service until its operating characteristics are in accordance with the limits within which such device or relay is designed to operate.

§ 234.249 Ground tests.

A test for grounds on each energy bus furnishing power to circuits that affect the safety of warning system operation shall be made when such energy bus is placed in service and at least once each month thereafter.

§ 234.251 Battery voltage.

Battery voltage shall be checked at the battery, with battery-charging current removed, at least once each month.

§ 234.253 Flashing light units and lamp voltage.

(a) Each flashing light unit shall be inspected when installed and at least once every twelve months for alignment, focus, and frequency of flashes in accordance with installation specifications shown on the plans.

(b) Lamp voltage shall be tested when installed and at least once every 12 months thereafter.

(c) Each flashing light unit shall be inspected for dirt and damage to roundels at least once each month.

§ 234.255 Gate arm and gate mechanism.

(a) Each gate arm and gate mechanism shall be inspected at least once each month.

(b) Gate arm movement shall be observed for proper operation at least once each month.

(c) Hold-clear devices shall be tested for proper operation at least once every 12 months.

§ 234.257 Warning system operation.

(a) Each highway-rail crossing warning system shall be tested to determine that it functions as intended when it is placed in service. Thereafter, it shall be tested at least once each month and whenever modified or disarranged.

(b) Warning bells or other stationary audible warning devices shall be tested when installed to determine that they function as intended. Thereafter, they

shall be tested at least once each month and whenever modified or disarranged.

§ 234.259 Warning time.

Each crossing warning system shall be tested for the prescribed warning time at least once every three months.

§ 234.261 Highway traffic signal pre-emption.

Highway traffic signal pre-emption interconnections, for which a railroad has maintenance responsibility, shall be tested at least once each month.

§ 234.263 Relays.

(a) Except as stated in paragraph (b) of this section, each relay that affects the proper functioning of a crossing warning system shall be tested at least once every four years.

(b)(1) Alternating current vane type relays, direct current polar type relays, and relays with soft iron magnetic structure shall be tested at least once every two years.

(2) Alternating current centrifigal type relays shall be tested at least once every 12 months.

§ 234.265 Timing relays and timing devices.

Each timing relay and timing device shall be tested at least once every twelve months. The timing shall be maintained at not less than 90 percent nor more than 110 percent of the predetermined time interval. The predetermined time interval shall be shown on the plans or marked on the timing relay or timing device.

§ 234.267 Insulation resistance tests.

(a) Insulation resistance tests shall be made when wires or cables are installed and at least once every ten years thereafter.

(b) Insulation resistance tests shall be made between all conductors and ground, between conductors in each multiple conductor cable, and between conductors in trunking. Insulation resistance tests shall be performed when wires, cables, and insulation are dry.

(c) Subject to paragraph (d) of this section, when insulation resistance of wire or cable is found to be less than 500,000 ohms, prompt action shall be taken to repair or replace the defective wire or cable. Until such defective wire or cable is replaced, insulation resistance tests shall be made annually.

(d) A circuit with a conductor having an insulation resistance of less than 200,000 ohms shall not be used.

§ 234.269 Cut-out circuits.

Each cut-out circuit shall be tested at least once every three months to determine that the circuit functions as intended.

§ 234.271 Insulated rail joints, bond wires, and track connections.

Insulated rail joints, bond wires, and track connections shall be inspected at least once every three months.

§ 234.273 Results of tests.

(a) Results of tests made in compliance with this part shall be recorded on forms provided by the railroad, or by electronic means, subject to approval by the Associate Administrator for Safety. Each record shall show the name of the railroad, AAR/DOT inventory number, place and date, equipment tested, results of tests, repairs, replacements, adjustments made, and condition in which the apparatus was left.

(b) Each record shall be signed or electronically coded by the employee making the test and shall be filed in the office of a supervisory official having jurisdiction.

(c) Each record shall be retained until the next record for that test is filed but in no case for less than one year.

(d) If a railroad elects to use an electronic means for recording and signing results of tests, such means must be approved by the Associate Administrator for Safety prior to use.

Issued in Washington D.C. on January 11, 1994.

Jolene M. Molitoris,

Administrator.

[FR Doc. 94–1257 Filed 1–19–94; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition To List the Anadromous Atlantic Salmon (Salmo salar) Populations in the United States as Endangered or Threatened

AGENCY: Fish and Wildlife Service, Interior; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of petition finding and request for information.

SUMMARY: The U.S. Fish and Wildlife Service and the National Marine Fisheries Service (collectively, the "Services") announce a 90-day finding for a petition to add the anadromous Atlantic salmon (*Salmo salar*) populations occurring in the conterminous United States to the list of threatened and endangered wildlife and to designate critical habitat. The Services find that the petition presents substantial information indicating that the requested action may be warranted. The Services are initiating a status review to determine if the petitioned action is warranted. To assure the review is comprehensive, the Services are soliciting information and data on this species from any interested party.

DATES: The finding announced in this document was made on January 10, 1994. Comments and materials related to this petition finding may be submitted to the Chief, Division of Endangered Species, at the ADDRESS below until April 20, 1994.

ADDRESSES: Information, comments, or questions concerning the Atlantic salmon petition should be submitted to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035. The petition, finding, supporting data, and comments are available for public inspection, by appointment, Monday through Friday at the above address between 8 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Paul R. Nickerson (413–253–8615) at the above address or Douglas W. Beach (508–281–9254) of the National Marine Fisheries Service.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) (16 U.S.C. 1531–1544) requires that the Services make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the Services find that a petition presents substantial information indicating that the requested action may be warranted, section 4(b)(3)(B) of the Act requires the Services to make a finding as to whether or not the petitioned action is warranted within one year of the receipt of the petition.

On October 1, 1993, the Fish and Wildlife Service received a petition from RESTORE: The North Woods, the

Biodiversity Legal Foundation, and Jeffrey Elliot to list anadromous Atlantic salmon throughout its known historic range in the conterminous United States, and to designate critical habitat. An identical petition was received by the National Marine Fisheries Service on November 9, 1993. In response to the petition, the Services are conducting a joint status review. The petitioners presented current and historical information on salmon populations; identified possible threats, including commercial and sport fishing, pollution, barriers, land use practices, and genetic disruption; and cited numerous scientific articles to support the petition.

The anadromous Atlantic salmon populations in New England consist primarily of river runs restored or enhanced by fish of hatchery origin. Adult fish are captured upon returning, spawned in hatcheries, and their offspring are used to maintain the runs. In addition, juvenile offspring of sea-run stock are reared in captivity to sexual maturity, and their offspring are then released into the wild as fry. Major river populations, notably the Penobscot, Connecticut, and Merrimack Rivers, have been partially restored during the past 10 to 25 years after virtually, if not completely, disappearing. To the best of the Services' knowledge, the only remaining populations that are believed to consist, at least in part, of native fish in U.S. rivers occur in seven Downeast Maine rivers: the Dennys, Machias, East Machias, Narraguagus, Pleasant, Ducktrap, and Sheepscot Rivers. In the November 21, 1991, Animal Notice of Review (56 FR 58804), those populations in all but the Ducktrap and Sheepscot Rivers were designated as category 2 candidate species.

If it is determined that listing the species is warranted, then the Services will examine the need to designate critical habitat for anadromous Atlantic salmon. At that time, the Services would consider those physical and biological features that are essential to the conservation of the species and that may require special management or protection.

The Services find that the petitioner has presented substantial information indicating that the requested action may be warranted. This finding is based on the scientific and commercial information contained in the petition, referenced in the petition, and otherwise available at this time.

Listing Factors and Basis for Determination

Under section 4(a)(1) of the Act, a species can be determined to be endangered or threatened for any of the following reasons: (1) Present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. Listing determinations are made solely on the best scientific and commercial data available after taking into account any efforts made by any state or foreign nation to protect the species.

Information Solicited

To ensure that the review is complete and based on the best available scientific and commercial data, the Services are soliciting information concerning the following: (1) Whether any anadromous Atlantic salmon populations constitute distinct population segments, (2) abundance and distribution of anadromous Atlantic salmon, and (3) whether or not any population is endangered or threatened based upon the above listing criteria. Specifically, the Services are soliciting detailed information in the following areas: influence of historical and present hatchery fish releases on naturally occurring stocks of Atlantic salmon, separation of hatchery and natural Atlantic salmon stocks, alteration of Atlantic salmon freshwater and marine habitats, age structure of Atlantic salmon populations, and migration timing and behavior of juvenile and adult Atlantic salmon. The Services request that data, information and comments be accompanied by (1) supporting documentation such as maps, bibliographic reference, or reprints of pertinent publications; and (2) the person's name, address, and any association, institution, or business that the person represents. Such information may be submitted to the above address.

List of Subjects

50 CFR Part 17

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

50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Authority: 16 U.S.C. 1531–1544.

Dated: January 10, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 94–1373 Filed 1–19–94; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Parts 222 and 227

[Docket No. 930779–3179; I.D. 062993A]

Endangered and Threatened Species; Screening of Water Diversions To Protect Sacramento River Winter-Run Chinook Salmon

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: NMFS is extending for 90 days the public comment period on an advance notice of proposed rulemaking concerning screening requirements for water diversions from the Sacramento River and Delta to protect winter-run chinook salmon. The first comment period ended December 27, 1993.

DATES: Comments will be accepted until March 28, 1994.

ADDRESSES: Comments should be sent to Gary Matlock, Acting Regional Director, NMFS, Southwest Region, 501 West Ocean Blvd., suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: James H. Lecky, Protected Species Division, Southwest Region, NMFS, (310) 980–4015 or Margaret C. Lorenz, Office of Protected Resources, NMFS, (301) 713–2322.

SUPPLEMENTARY INFORMATION: On October 18, 1993, NMFS announced in an advanced notice of proposed rulemaking (58 FR 53703) that it was considering proposing regulations under the Endangered Species Act that would establish screening requirements for water diversions from the Sacramento River and Delta to protect the Federally listed winter-run chinook salmon. In the announcement, NMFS requested the following specific information from Federal and state agencies and private individuals and organizations: (1) The numbers, types, and sizes of existing unscreened and screened diversions; (2) the magnitude of entrainment losses of winter-run chinook salmon and other species caused by unscreened or poorly screened diversions; (3) the feasibility of installing positive-barrier screens or

other fish-deterrent devices to reduce these losses; (4) the estimated costs of screen design, installation, maintenance and evaluation; (5) the available funding mechanisms for these activities; and (6) the availability and feasibility of alternative management options for reducing entrainment losses.

Dated: January 5, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources.

[FR Doc. 94–1113 Filed 1–19–94; 8:45 am]

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Notices

Federal Register
Vol. 59, No. 13
Thursday, January 20, 1994

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

DEPARTMENT OF AGRICULTURE

Forest Service

Establishment of Kinkaid Lake Purchase Unit

AGENCY: Forest Service, USDA.

ACTION: Notice of establishment of Kinkaid Lake Purchase Unit.

SUMMARY: On November 30, 1993, the Assistant Secretary, Natural Resources and Environment, created the Kinkaid Lake Purchase Unit. This purchase unit comprises approximately 1,374 acres within Jackson County, Illinois. A copy of the establishment document, which includes the legal description of the lands within the purchase unit, appears at the end of this notice.

EFFECTIVE DATE: Creation of this purchase unit was effective November 30, 1993.

ADDRESSES: A copy of the map showing the purchase unit is on file and available for public inspection in the Office of the Director of Lands, Forest Service, Auditor's Building, 201 14th Street, SW., Washington, DC 20090–6090.

FOR FURTHER INFORMATION CONTACT: Ralph Bauman, Lands Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090; telephone: (202) 205–1248.

Dated: January 11, 1994

James C. Overbay,

Deputy Chief.

Establishment of the Kinkaid Lake Purchase Unit, Jackson County, Illinois

Pursuant to the Secretary of Agriculture's authority under section 17, Public Law 94–588 (90 Stat. 2949) the Kinkaid Lake Purchase Unit is being established as described in Exhibit A attached hereto. This purchase unit comprises 1373.82 acres more or less and is adjacent to the Shawnee National Forest.

These lands are well suited for watershed protection and meet the requirements of the Act of March 1, 1911 as amended.

Dated: November 30, 1993.

James R. Lyons,

Assistant Secretary for Natural Resources and Environment.

Exhibit A

DESCRIPTIONS AND ACRES OF LAND WITHIN THE PROPOSED KINKAID LAKE PURCHASE UNIT:

Jackson County, Illinois—Township Seven (7) South, Range Four (4) West, Third Principal Meridian

Second Thirty-Four (34)

The Southwest Quarter EXCEPT the North 350 feet of the East Half of the Southeast Quarter—154.70 acres.

The West Half of the Southwest Quarter of the Southeast Quarter EXCEPT the North 350 feet—14.70 acres.

The East Half of the Southwest Quarter of the Southeast Quarter EXCEPT the North 600 feet—10.91 acres.

Part of the Southeast Quarter of the Southeast Quarter described as follows: Beginning at the Southeast corner of said SE¼SE¼, thence North along the East line thereof a distance of 800 feet; thence in a Southwesterly direction to a point on the West line of said SE¼SE¼ 600 feet North of the Southwest corner of SE¼SE¼; thence 600 feet South to the Southwest corner of the SE¼SE¼ to the point of beginning—21.21 acres.

Section Thirty-Five (35)

The South Half of the Southwest Quarter—80.00 acres.

Township Eight (8) South, Range Three (4) West, Third Principal Meridian

Section Two (2)

The West Half, EXCEPT 0.58 acres in the NE¼NW¼ and more particularly described as follows: beginning at the southeast corner of the NE¼NW¼, thence west 46 feet; thence north 552 feet; thence east 46 feet; thence south 552 feet to the point of beginning—319.42 acres.

The West Half of the Southeast Quarter lying North and West of Route #151—124.27 acres.

Township Eight (8) South, Range Three (4) West, Third Principal Meridian

Section Two (2)

The Southwest Quarter of the Southeast Quarter, lying East of Route #151 EXCEPT Beginning at the Southeast corner of said Southwest Quarter of the Southeast quarter; thence West along the South line of said Southwest Quarter of the Southwest Quarter a distance of 700 feet; thence with a deflection of 90° to the right a distance of 450 feet; thence with a deflection of 90° to the right a distance of 390 feet; thence with a deflection of 90° to the left a distance of 500 feet; thence with a deflection of 90° to the left a distance of 390 feet; thence with a deflection of 90° to the right, to the East right of way line of Route #151; thence in a Northeasterly direction along said right of way to the North line of said Southwest Quarter of the Southeast Quarter; thence East along said North line of Southwest Quarter of the Southeast Quarter, to the Northeast corner of Southwest Quarter of the Southeast Quarter; thence South to the point of beginning—11.55 acres.

Part of the Northwest Quarter of the Southeast Quarter described as follows: Beginning at a point on the East line of the Northwest Quarter of the Southeast Quarter, situated 553.5 feet North of the Southeast corner of said quarter section; thence West at a right angle, a distance of 47.7 feet to a point in the East right-of-way line of Route #151; thence Northeasterly along said right-of-way line, a distance of 114.4 feet to a point on the East line of the said Northwest Quarter of the Southeast quarter; thence South a distance of 103.95 feet to the point of beginning, containing—0.06 acres.

Section Three (3)

All of Section 3 EXCEPT 3 acres in the Southwest corner of the Southwest Quarter of the Southwest Quarter described as follows: Commencing at the Southwest corner of said Section; thence East 24 rods; thence North 20 rods; thence West 24 rods; thence South 20 rods to the point of beginning, containing—637.00 acres.

Total Acres Within Purchase Unit: 1373.82.

[FR Doc. 94–1333 Filed 1–19–94; 8:45 am]
BILLING CODE 3410–11–M

ARMED FORCES RETIREMENT HOME

Privacy Act of 1974; Computer Matching Program Between the Armed Forces Retirement Home and the Social Security Administration

AGENCY: Armed Forces Retirement Home (AFRH).

ACTION: Publication of notice of computer matching to comply with Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988.

SUMMARY: AFRH is publishing notice of its computer matching program with the Social Security Administration (SSA) to meet the reporting and publication requirements of Public Law 100–503. The purpose of this match is for SSA to

provide and verify benefit payment information of the AFRH's residents.

DATES: This proposed action will become effective February 22, 1994. The computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget, or Congress, objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Administrative Officer, Administration Division, Resource Management Directorate, U.S. Soldiers' and Airmen's Home, Washington, DC 20317–0002.

FOR FURTHER INFORMATION CONTACT: Doris D. Montgomery, at (202) 722–3230.

SUPPLEMENTARY INFORMATION: AFRH and SSA have concluded an agreement to conduct a computer matching program. The purpose of this agreement is to establish the conditions under which the SSA agrees to the disclosure of benefit payment information on the residents of the AFRH, which includes the United States Soldiers' and Airmen's Home (USSAH) and United States Naval Home (USNH). The AFRH Resident Fee Maintenance System will be used in a matching program with the SSA Master Beneficiary Records and Supplemental Security Income Records. Residents of the AFRH are required by 24 U.S.C. 414 to pay a percentage of their Federal payments, including Social Security; thus, the AFRH will use the SSA data to verify the benefit earnings information currently provided by the residents, and identify any unreported recipients of benefit payments. A computer matching is the most efficient and effective manner to accomplish this task with the least amount of intrusion of personal privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice of accomplishing this requirement.

The matching agreement and an advance copy of this notice were submitted on January 6, 1994, to the Committee on Government Operations of the United States House of Representatives, the Committee on Governmental Affairs of the United States Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget. The matching program is subject to review by Congress and OMB and shall not become effective until that review period has elapsed.

Dennis W. Jahnigen,

Armed Forces Retirement Home Board Chair.

Computer Matching Program between the Armed Forces Retirement Home and the Social Security Administration

A. *Participating agencies:* AFRH and SSA.

B. *Purpose of the matching program:* The purpose of this computer matching program is to identify and verify the gross Social Security benefit earnings of each resident of the AFRH. This is necessary to properly assess correct resident fee amounts, which is required by 24 U.S.C. 414 to be a fixed percentage of residents' Federal payments, including Social Security payments.

C. *Authority for conducting the matching program:* The Armed Forces Retirement Home Act of 1991, 24 U.S.C. 401–441, requires the Directors of the USSAH and USNH, which are incorporated under the Armed Forces Retirement Home, to collect from each resident a monthly resident fee. The fee is a fixed percentage of residents' Federal payments, including Social Security payments.

D. *Records to be matched:* The SSA records involved in the match are the Supplemental Security Income Record, HHS/SSA/OSR, 09–60–0103, and the Master Beneficiary Record, HHS/SSA/OSR, 09–60–0090 (both last published at 58 FR 35025 (June 30, 1993)). The AFRH will provide a magnetic finder file established from the AFRH Resident Fee Maintenance System.

E. *Inclusive dates of the matching program:* This computer matching program is subject to review by the Office of Management and Budget and Congress. If no objections are raised by either within 40 days, and the 30 day public notice period for comment has expired for this **Federal Register** notice with no significant adverse public comments, this computer matching program becomes effective and the respective agencies may begin the exchange of data at a mutually agreeable time and will be repeated on a semiannual basis. Under no circumstances shall the matching program be implemented before the 30 day public notice period for comment has elapsed as this time period cannot be waived. By agreement between SSA and AFRH, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

F. *Address for receipt of public comments or inquiries:* Administrative Officer, Administration Division, Resource Management Directorate, U.S Soldiers' and Airmen's Home, Washington, DC 20317–0002, (202) 722–3230.

[FR Doc. 94–1298 Filed 1–19–94; 8:45 am]

BILLING CODE 8250–01–M

COMMISSION ON CIVIL RIGHTS

Agenda and Public Meeting of the Iowa Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that the Iowa Advisory Committee to the Commission will meet on Friday, February 18, 1994, from 10 a.m. until 2 p.m. at the Hotel Fort Des Moines, 1000 Walnut Street, Des Moines, Iowa 50309. The purpose of the meeting is orientation of new members and planning future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 816–426–5253 (TTY 816–426–5009). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 12, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–1285 Filed 1–19–94; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Public Meeting of the Louisiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that the Louisiana Advisory Committee to the Commission will meet on Thursday, February 3, 1994, from 6 p.m. until 8 p.m. at the Doubletree Hotel, Shadows Room, 300 Canal Street, New Orleans, Louisiana 70130. The purpose of the meeting is to discuss and plan for future SAC activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 816–426–5253

(TTY 816–426–5009). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 11, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–1286 Filed 1–19–94; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Public Meeting of the Missouri Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that the Missouri Advisory Committee to the Commission will meet on Thursday, February 10, 1994, from 6 p.m. until 8 p.m. at the Marriott Pavilion Downtown Hotel, 1 Broadway, St. Louis, Missouri 63102. The purpose of the meeting is to plan for future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 816–426–5253 (TTY 816–426–5009). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 12, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–1287 Filed 1–19–94; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Public Meeting of the Nevada Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Nevada Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 12 noon, on Friday, February 11, 1994, at the Corporate Offices, Southwest Gas Company, 5241 Spring Mountain Road, Las Vegas, Nevada 70130. The purpose of the meeting is review current civil rights developments in the State and plan future program activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Margo Piscevich or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 11, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–1288 Filed 1–19–94; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Femtosecond Systems, Inc.; Prospective Grant of Exclusive Patent License

AGENCY: National Institute of Standards and Technology, DOC.

ACTION: Notice of prospective grant of exclusive patent license.

SUMMARY: This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institute of Standards and Technology ("NIST"), U.S. Department of Commerce, is contemplating the grant of a field of use co-exclusive license in the United States to practice the invention embodied in U.S. Patent 5,172,064, titled, "Calibration System for Determining the Accuracy of Phase Modulation and Amplitude Modulation Noise Measurement Apparatus" to Femtosecond Systems, Inc., having a place of business in Columbia, Maryland. The patent rights in this invention have been assigned to the United States of America.

FOR FURTHER INFORMATION CONTACT: Bruce E. Mattson, National Institute of Standards and Technology, Technology Development and Small Business Program, Building 221, room B–256, Gaithersburg, MD 20852.

SUPPLEMENTARY INFORMATION: The prospective co-exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective co-exclusive license may be granted unless, within sixty days from the date of this published Notice, NIST receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

U.S. Patent 5,172,064 relates to an apparatus and method for determining the error due to inherent PM and AM noise in a noise measurement device.

The availability of the invention for licensing was published in the **Federal Register**, Vol. 57, No. 158 (August 14, 1992). A copy of the patent application may be obtained from NIST at the foregoing address.

Dated: January 12, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94–1388 Filed 1–19–94; 8:45 am]

BILLING CODE 3510–13–M

Radcal Corp., Prospective Grant of Exclusive Patent License

AGENCY: National Institute of Standards and Technology, DOC.

ACTION: Notice of prospective grant of exclusive patent license.

SUMMARY: This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institute of Standards and Technology ("NIST"), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent Application 08/021,232, titled "Method and Apparatus for Precisely Measuring Voltages Applied to X-Ray Sources" to Radcal Corporation, having a place of Business in Monrovia, California.

FOR FURTHER INFORMATION CONTACT: Bruce E. Mattson, National Institute of Standards and Technology, Technology Development and Small Business Program, Building 221, room B–256, Gaithersburg, MD 20899.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NIST receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

U.S. Patent Application Serial No. 08/021,232 provides a method of precisely measuring the accelerating voltage applied to an x-ray tube using a simple

apparatus with a direct reading taken from a spectrographic image of the radiation produced by the x-ray tube.

The availability of the invention for licensing was published in the **Federal Register**, Vol. 58, No. 93 (May 17, 1993). A copy of the patent application may be obtained from NIST at the foregoing address.

Dated: January 12, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94–1389 Filed 1–19–94; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Endangered Species; Permits

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

ACTION: Notice of receipt of five applications for modifications to scientific research and enhancement permits (P211E, P503E, P503F, P503G, and P503H).

Notice is hereby given that the Oregon Department of Fish and Wildlife (ODFW) has applied in due form for a modification to Permit 847 (P211E), and the Idaho Department of Fish and Game (IDFG) has applied in due form for modifications to Permits 862 (P503E), 863 (P503F), 864 (P503G), and 865 (P503H) to take listed Snake River sockeye salmon (*Oncorhynchus nerka*) and Snake River spring/summer and fall chinook salmon (*O. tshawytscha*) as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR Parts 217–227).

Permit 847, issued on May 28, 1993 (58 FR 32913), authorizes ODFW to take listed Snake River spring/summer chinook salmon for broodstock for a period of five years at ODFW's Imnaha River Facility. The modification request is for the release of spring/summer chinook salmon in 1994 only.

Permits 862, 863, 864, and 865, issued on July 14, 1993 (58 FR 40114) authorize IDFG to take listed Snake River spring/summer chinook salmon for broodstock for a period of one year. The modification requests are for the release of: (1) Pahsimeroi River summer chinook salmon from the Pahsimeroi Fish Hatchery (862); (2) South Fork Salmon River summer chinook salmon from the McCall Fish Hatchery (863); (3) East Fork Salmon River spring chinook salmon from the Sawtooth Fish Hatchery (864); and (4) Upper Salmon River spring chinook salmon from Sawtooth Fish Hatchery (865). The modification requests are for the release of spring/summer chinook salmon in 1994 only.

Written data or views, or requests for a public hearing on these applications should be submitted to the Director, Office of Protected Resources, National Marine Fisheries Services, 1335 East-West Hwy., Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on the particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in these application summaries are those of the applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

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

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, MD 20910 (301–713–2322); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, OR 97232 (503–230–5400).

Dated: January 10, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources.

[FR Doc. 94–1289 Filed 1–19–94; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denial of Participation in the Special Access and Special Regime Programs

January 12, 1994.

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

ACTION: Issuing a directive to the Commissioner of Customs denying the right to participate in the Special Access and Special Regime Programs.

EFFECTIVE DATE: January 4, 1994.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

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

The Committee for the Implementation of Textile Agreements (CITA) has determined that Mikoh Apparel and Zeeman Manufacturing are in violation of the requirements set forth for participation in the Special Access and Special Regime Programs.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs, effective on January 4, 1994, to deny Mikoh Apparel and Zeeman Manufacturing the right to participate in the Special Access and Special Regime Programs, for a period of one year, from January 4, 1994 through January 3, 1995.

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; and 54 FR 50425, published on December 6, 1989.

Requirements for participation in the Special Regime Program are available in **Federal Register** notices 53 FR 15724, published on May 3, 1988; 53 FR 32421, published on August 25, 1988; 53 FR 49346, published on December 7, 1988; and 54 FR 50425, published on December 6, 1989.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 12, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: The purpose of this directive is to notify you that the Committee for the Implementation of Textile Agreements has determined that Mikoh Apparel and Zeeman Manufacturing are in violation of the requirements for participation in the Special Access and Special Regime Programs.

Effective on January 4, 1994, you are directed to prohibit Mikoh Apparel and Zeeman Manufacturing from further participation in the Special Access and Special Regime Programs, for a period of one year, from January 4, 1994 through January 3, 1995. Goods accompanied by Form ITA–370P which are presented to U.S. Customs for entry under the Special Access and Special Regime Programs will no longer be accepted. In addition, for the period January 4, 1994 through January 3, 1995, you are directed not to sign ITA–370P forms for export of U.S.-formed and cut fabric for Mikoh Apparel and Zeeman Manufacturing.

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–1403 Filed 1–19–94; 8:45 am]

BILLING CODE 3510–DR–F

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Privacy Act; Systems of Records

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Annual Notice of Systems of Records.

SUMMARY: Each Federal agency is required by the Privacy Act of 1974, 5 U.S.C. 552a, to publish annually a description of the systems of records it maintains containing personal information. In this notice the Board provides the required information on four previously-noticed systems of records, and announces a new system of records, DNFSB-5, containing radiation exposure records for Board employees, consultants, and contractors.

FOR FURTHER INFORMATION CONTACT: Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004-2901, (201) 208-6387.

SUPPLEMENTARY INFORMATION: The Board currently maintains five systems of records under the Privacy Act. Each system is described below.

DNFSB-1

SYSTEM NAME:

Personnel Security Files.

SECURITY CLASSIFICATION:

Unclassified materials.

SYSTEM LOCATION:

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Washington, DC 20004-2901.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and applicants for employment with DNFSB and DNFSB contractors; consultants; other individuals requiring access to classified materials and facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel security folders and requests for security clearances, Forms SF 86, 86A, 87, 312, and DOE Forms 5631.18, 5631.29, 5631.20, and 5631.21. In addition, records containing the following information:

(1) Security clearance request information;

(2) Records of security education and foreign travel lectures;

(3) Records of any security infractions;

(4) Names of individuals visiting DNFSB;

(5) Employee identification files (including photographs) maintained for access purposes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Defense Authorization Act, Fiscal Year 1989 (amended the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) by adding new Chapter 21—Defense Nuclear Facilities Safety Board).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

DNFSB—to determine which individuals should have access to classified material and to be able to transfer clearances to other facilities for visitor control purposes.

DOE—to determine eligibility for security clearances.

Other Federal and State agencies—to determine eligibility for security clearances.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, magnetic disk, and computer printouts.

RETRIEVABILITY:

By name, social security number, and numeric code.

SAFEGUARDS:

Access is limited to employees having a need to know. Records are stored in locked file cabinets in a controlled access area.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the "General Records Schedules" published by National Archives and Records Administration, Washington, DC. Records within DNFSB are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER AND ADDRESS:

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004-2901. Attention: Security Management Officer.

NOTIFICATION PROCEDURE:

Requests by an individual to determine if DNFSB-1 contains information about him/her should be directed to the Privacy Act Officer, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004-2901. Required identifying information: Complete name, social security number, and date of birth.

RECORD ACCESS PROCEDURE:

Same as Notification procedure above, except individual must show official photo identification, such as driver's license, passport, or government identification before viewing records.

CONTESTING RECORD PROCEDURE:

Same as Record Access procedure.

RECORD SOURCE CATEGORIES:

Subject individuals, Questionnaire for Sensitive Positions (SF-86), agency files, official visitor logs, contractors, and DOE Personnel Security Branch.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DNFSB-2

SYSTEM NAME:

Administrative and Travel Files.

SYSTEM CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Defense Nuclear Facilities Safety Board, 625 Indiana Ave., NW., Washington, DC 20004-2901.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and applicants for employment with DNFSB, including DNFSB contractors and consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records containing the following information:

(1) Time and attendance;

(2) Payroll actions and deduction information requests;

(3) Authorizations for overtime and night differential;

(4) Credit cards and telephone calling cards issued to individuals;

(5) Destination, itinerary, mode and purpose of travel;

(6) Date(s) of travel and all expenses;

(7) Passport number;

(8) Request for advance of funds, and voucher with receipts;

(9) Travel authorizations;

(10) Name, address, social security number and birth date;

(11) Employee parking permits;

(12) Employee public transit subsidy applications and vouchers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Defense Authorization Act, Fiscal Year 1989 (amended the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) by adding new Chapter 21—Defense Nuclear Facilities Safety Board].

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Treasury Department—To collect withheld taxes, print payroll checks, and issue savings bonds.

Internal Revenue Service—To process Federal income tax.

State and Local Governments—To process state and local income tax.

Office of Personnel Management—Retirement records and benefits.

Social Security Administration—Social Security records and benefits.

Department of Labor—To process Workmen's Compensation claims.

Department of Defense—Military Retired Pay Offices—To adjust Military retirement.

Savings Institutions—To credit accounts for savings made through payroll deductions.

Health Insurance Carriers—To process insurance claims.

General Accounting Office—Audit—To verify accuracy and legality of disbursement.

Veterans Administration—To evaluate veteran's benefits to which the individual may be entitled.

States' Departments of Employment Security—To determine entitlement to unemployment compensation or other state benefits.

Travel Agencies—To process travel itineraries.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, magnetic disk, and computer printouts.

RETRIEVABILITY:

By name, social security number, travel dates, and alphanumeric code.

SAFEGUARDS:

Access is limited to employees having a need to know. Records are stored in locked file cabinets in a controlled access area in accordance with Board directives and Federal guidelines.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the "General Records Schedules" published by National Archives and Records Administration, Washington, DC. Records within DNFSB are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER AND ADDRESS:

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004–2901, Attention: Chief Administrative Officer.

NOTIFICATION PROCEDURE:

Requests by an individual to determine if DNFSB–2 contains information about him/her should be directed to the Privacy Act Officer, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004–2901. Required identifying information: Complete name, social security number, and date of birth.

RECORDS ACCESS PROCEDURE:

Same as Notification procedures above, except individual must show official photo identification, such as driver's license, passport, or government identification before viewing records.

CONTESTING RECORD PROCEDURE:

Same as Record Access procedure.

RECORD SOURCE CATEGORIES:

Subject individuals, timekeepers, official personnel records, GSA for accounting and payroll, OPM for official personnel records, IRS and State officials for withholding and tax information, and travel agency contract.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DNFSB–3

SYSTEM NAME:

Drug Testing Program Records—DNFSB.

SYSTEM CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Primary System: Division of Personnel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Washington, DC 20004–2901. Duplicate Systems: Duplicate systems may exist, in whole or in part, at contractor testing laboratories and collection/evaluation facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DNFSB employees and applicants for employment with the DNFSB.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records contain information regarding results of the drug testing program; requests for and results of initial, confirmatory and follow-up testing, if appropriate; additional information supplied by DNFSB employees or employment applicants in challenge to positive test results; information supplied by individuals concerning alleged drug abuse by Board employees or contractors; and written statements or medical evaluations of attending physicians and/or information regarding prescription or nonprescription drugs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) Executive Order 12564; September 15, 1986.

(2) Section 503 of the Supplemental Appropriations Act of 1987, Pub. L. 100–71, 101 Stat. 391, 468–471, codified at 5 U.S.C. section 7301 note (1987).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information in these records may be used by the DNFSB management:

(1) To identify substance abusers within the agency;

(2) To initiate counseling and rehabilitation programs;

(3) To take personnel actions;

(4) To take personnel security actions; and

(5) For statistical purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper in file folders. Additionally, records used for initiating a random drug test are maintained on the Random Employee Selection Automation System. This is a stand-alone system resident on an IBM PS/2 computer and is password-protected.

RETRIEVABILITY:

Records maintained in file folders are indexed and accessed by name and social security number. Records maintained for random drug testing are accessed by using a computer data base which contains employees' names, social security numbers, and job titles. Employees are then selected from the available pool by the computer, and a list is given to the Drug Program Coordinator of employees and alternates selected for drug testing.

SAFEGUARDS:

Access to and use of these records is limited to those persons whose official duties require such access, with records maintained and used with the highest regard for personal privacy. Records in the Division of Personnel are stored in an approved security container under the immediate control of the Director, Division of Personnel, or designee. Records in laboratory/collection/evaluation facilities will be stored under appropriate security measures so that access is limited and controlled.

RETENTION AND DISPOSAL:

(1) Test results, whether negative or positive, and other drug screening records filed in the Division of Personnel will be retained and retrieved as indicated under the Retrievability

category. When an individual terminates employment with the DNFSB, negative test results will be destroyed by shredding, or by other approved disposal methods. Positive test results will be maintained through the conclusion of any administrative or judicial proceedings, at which time they will be destroyed by shredding, or by other approved disposal methods.

(2) Test results, whether negative or positive, on file in contractor testing laboratories, ordinarily will be maintained for a minimum of two years in the laboratories. Upon instructions provided by the Division of Personnel, the results will be transferred to the Division of Personnel when the contract is terminated or whenever an individual, previously subjected to urinalysis by the laboratory, terminates employment with the DNFSB. Records received from the laboratories by the Division of Personnel will be incorporated into other records in the system, or if the individual has terminated, those records reflecting negative test results will be destroyed by shredding, or by other approved disposal methods. Positive test results will be maintained through the conclusion of any administrative or judicial proceedings, at which time they will be destroyed by shredding, or by other approved disposal methods.

(3) Negative specimens will be destroyed according to laboratory/contractor procedures.

(4) Positive specimens will be maintained through the conclusion of administrative or judicial proceedings.

SYSTEM MANAGER AND ADDRESS:

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004–2901, Attention: Director of Personnel.

NOTIFICATION PROCEDURE:

Requests by an individual to determine if DNFSB–3 contains information about him/her should be directed to Director of Personnel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004–2901. Required identifying information: Complete name, social security number.

RECORD ACCESS PROCEDURE:

Same as Notification procedures above, except individual must show official photo identification, such as driver license or government identification before viewing records.

CONTESTING RECORD PROCEDURE:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

DNFSB employees and employment applicants who have been identified for drug testing, who have been tested, or who have admitted abusing drugs prior to being tested; physicians making statements regarding medical evaluations and/or authorized prescriptions for drugs; individuals providing information concerning alleged drug abuse by Board employees or contractors; DNFSB contractors for proceeding, including but not limited to, specimen collection, laboratories for analysis, and medical evaluations; and DNFSB staff administering the drug testing program to ensure the achievement of a drug-free workplace.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(5), the Board has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(C), (H), and (J), and (f). The exemption is invoked for information in the system of records which would disclose the identity of a person who has supplied information on drug abuse by a Board employee or contractor.

DNFSB–4

SYSTEM NAME:

Personnel Files.

SYSTEM CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Defense Nuclear Facilities Safety Board, 625 Indiana Ave., NW., Washington, DC 20004–2901.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and applicants for employment with the DNFSB, including DNFSB contractors and consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records concerning the following information:

(1) Name, social security number, sex, date of birth, home address, grade level, and occupational code

(2) Official Personnel Folders (SF–66), Service Record Cards (SF–7), and SF–171

(3) Records on suggestions, awards, and bonuses

(4) Training requests, authorization data, and training course evaluations

(5) Employee appraisals, appeals, grievances, and complaints

(6) Employee disciplinary actions

(7) Employee retirement records

(8) Records on employment transfer

(9) Applications for employment with the DNFSB

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Defense Authorization Act, Fiscal Year 1989 (amended the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) by adding new Chapter 21—Defense Nuclear Facilities Safety Board).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

GSA—Maintians official personnel records for DNFSB.

Office of Personnel Management—Transfer and retirement records and benefits, and collection of anonymous statistical reports.

Social Security Administration—Social Security records and benefits.

Federal, State, or Local government agencies—For the purpose of investigating individuals in connection with, security clearances, and administrative or judicial proceedings.

Private Organizations—For the purpose of verifying employees' employment status with the DNFSB.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, magnetic disk, and computer printouts.

RETRIEVABILITY:

By name and social security number.

SAFEGUARDS:

Access is limited to employees having a need-to-know. Records are stored in locked file cabinets in a controlled access area in accordance with Board directives and Federal guidelines.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the "General Records Schedules" published by National Archives and Records Administration, Washington, DC. Records within DNFSB are destroyed by shredding or burning, as appropriate.

SYSTEM MANAGER AND ADDRESS:

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004–2901, Attention: Director of Personnel.

NOTIFICATION PROCEDURE:

Requests by an individual to determine if DNFSB–4 contains information about him/her should be directed to Director of Personnel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004–2901. Required identifying information: Complete name, social security number, and date of birth.

RECORD ACCESS PROCEDURE:

Same as Notification procedures above, except individual must show official photo identification, such as driver license or government identification before viewing records.

CONTESTING RECORD PROCEDURE:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

Subject individuals, official personnel records, GSA, OPM for official personnel records, State employment agencies, educational institutions, and supervisors.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DNFSB–5

SYSTEM NAME:

Personnel Radiation Exposure Files.

SECURITY CLASSIFICATION:

Unclassified materials.

SYSTEM LOCATION:

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Washington, DC 20004–2901.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DNFSB employees, contractors, and consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel folders containing radiation exposure and whole body count, including any records of mandatory training associated with site work or visits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Defense Authorization Act, Fiscal Year 1989 (amended by Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) by adding new Chapter 21—Defense Nuclear Facilities Safety Board).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

DNFSB—to monitor radiation exposure of its employees and contractors.

DOE—to monitor radiation exposure of visitors to the various DOE facilities in the United States.

Other Federal and State Health Institutions—To monitor radiation exposure of DNFSB personnel.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, magnetic disk, and computer printouts.

RETRIEVABILITY:

By name, social security number, and numeric code.

SAFEGUARDS:

Access is limited to employees having a need to know. Records are stored in locked file cabinets in a controlled access area.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the "General Records Schedules" published by National Archives and Records Administration, Washington, DC. Records within DNFSB are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER AND ADDRESS:

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004–2901. Attention: Security Management Officer.

NOTIFICATION PROCEDURE:

Requests by an individual to determine if DNFSB–5 contains information about him/her should be directed to the Privacy Act Officer, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004–2901. Required identifying information: Complete name, social security number, and date of birth.

[RECORD ACCESS PROCEDURE:

Same as Notification procedure above, except individual must show official photo identification, such as driver's license, passport, or government identification before viewing records.

CONTESTING RECORD PROCEDURE:

Same as Record Access procedure.

RECORD SOURCE CATEGORIES:

Subject individuals, previous employee records, DOE contractors' film badges, whole body counts, bioassays and dosimetry badges.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Dated: January 14, 1994.

John T. Conway,

Chairman.

[FR Doc. 94–1376 Filed 1–19–94; 8:45 am]

BILLING CODE 6820–KD–M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, January 26, 1994. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 1 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

An informal conference among the Commissioners and staff will be open for public observation at 10:30 a.m. at the same location and will include discussions concerning the Commission's Special Protection Waters proposed non-point source regulations and funding and Pennsylvania municipalities' compliance with Commission water conservation plumbing fixture requirements.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact

1. *Merrill Creek Owners Group (MCOG) D–77–110 CP (Amendment 4).* A Resolution to include an additional designated unit (Metropolitan Edison Company's Portland Unit 5, an oil/gas fueled combustion turbine electric generating unit) to the list of designated units which is incorporated in the MCOG docket. Table A (Revision 4), attached to the Resolution, replaces Table A (Revision 3).

2. *Citgo Asphalt Refining Company D–91–34.* A surface water withdrawal project for provision of up to 0.183 million gallons per day (mgd) of water for steam generation and other uses at the applicant's asphalt refining facility. The applicant proposes to withdraw water from Mantua Creek adjacent to the refinery located near the confluence of Mantua Creek with the Delaware River, in West Deptford Township, Gloucester County, New Jersey.

3. *Borough of Richland D–92–1 CP.* An application for approval of a ground water withdrawal project to supply up to 1.3 million gallons (mg)/30 days of water to the applicant's distribution system from existing Well No. 5, and to retain the existing withdrawal limit from all wells of 5.2 mg/30 days. The project is located in Millcreek Township, Lebanon County, Pennsylvania.

4. *Audubon Water Company D–92–47 CP.* An application to consolidate all wells presently owned and operated by the Audubon Water Company (AWC) into one comprehensive docket. Well Nos. VFCC 1–4 were previously approved under the ownership of the Valley Forge Industrial Park Water Company by Docket Nos. D–65–136 CP and D–72–155 CP. The remaining wells were approved under AWC ownership, Well Nos. AWC–5 and AWC–6 by Docket No. D–71–205 CP, Well Nos. AWC–7–10 by Docket No. D–73–194 CP, and Well Nos. AWC–11 and AWC–13 by Docket Nos. D–78–77 CP and D–80–73 CP, respectively. The proposed total withdrawal limit of 31.5 mg/30 days is a decrease in existing total allocation of ground water. The project is located in Lower Providence Township, Montgomery County, in the Southeastern Pennsylvania Ground Water Protected Area.

5. *Narrowsburg Water District D–92–81 CP.* An application for approval of a ground water withdrawal project to supply up to 4.11 mg/30 days of water to the Narrowsburg Water District distribution system from new Well No. 3, and to limit the withdrawal from all wells to 4.11 mg/30 days. The project is located in the Town of Tusten, Sullivan County, New York.

6. *Perkiomen Township Municipal Authority D–93–11 CP.* An application for approval of a ground water withdrawal project to supply up to 3.36 mg/30 days of water to the applicant's southern distribution system from existing Well Nos. PW–1 and PW–2, and to limit the withdrawal from the northern system wells (Well Nos. 2, 3 and 4) to 7.15 mg/30 days. The project is located in Perkiomen Township, Montgomery County, in the Southeastern Pennsylvania Ground Water Protected Area.

7. *Purex Industries D–93–34(G) & D–93–34(D).* An application for approval of a ground water withdrawal and treatment project of up to 11.23 mg/30 days of water from the applicant's ground water remediation system from new Well Nos. RW–1 through RW–13, and to limit the withdrawal from all wells to 11.23 mg/30 days. Ground water will be withdrawn by the 13 remediation wells at an average and maximum combined rate of 130 and 200 gpm, respectively, as described in Docket No. D–93–34(G). The water withdrawn will be treated by filtration, ultra-violet peroxidation and air-stripping prior to return to the ground water via large diameter recharge wells, as described in Docket D–93–34(D). The project is located in the City of Millville, Cumberland County, New Jersey.

8. *Ashland Chemical Inc. D–93–48.* An application to replace the withdrawal of water from Well No. 3 in the applicant's water supply system which has become an unreliable source of supply. The applicant requests that the withdrawal from replacement Well No. 4 be limited to 3.4 mg/30 days, and that the total withdrawal from all wells remain limited to 8.7 mg/30 days. The project is located in Glendon Borough, Northampton County, Pennsylvania.

9. *MacAndrews & Forbes Company D–93–58.* An application to upgrade and modify the applicant's existing 0.36 mgd industrial wastewater treatment plant (IWTP) by providing a filtration unit for reducing suspended solids in the treated effluent. The IWTP serves only the applicant's licorice extract manufacturing operations at the plant site located on Jefferson Avenue between 3rd Street and the Delaware River in the City of Camden, Camden County, New Jersey. The treated effluent will continue to discharge to the Delaware River via the existing outfall in Water Quality Zone 3.

10. *Lake Adventure Community Association D–93–62.* A project to upgrade and expand the applicant's existing 0.065 mgd secondary sewage treatment plant (STP) and provide a 0.16 mgd capacity STP with tertiary filtration. An existing malfunctioning seepage bed discharge system will be discontinued. The existing spray irrigation system will continue in use but with the addition of a seasonal alternate surface water discharge (primarily for winter discharge) to an unnamed tributary in the Birchy Creek Watershed in Dingman Township, Pike County, Pennsylvania. The proposed STP will continue to serve the applicant's residential development in Dingman Township situated approximately one-half mile south of Interstate Route 84 and near the western boundary of Dingman Township.

11. *Sun Pipe Line Company D–93–64.* A project to construct a petroleum products pipeline which will cross the Delaware River between Paulsboro Borough, Gloucester County, New Jersey and Tinicum Township, Delaware County, Pennsylvania. There will also be a crossing of the Schuylkill River in Philadelphia, Pennsylvania, just north of Interstate Route 95 and a crossing of Raccoon Creek in Logan Township, Gloucester County, New Jersey. All crossings will be done via directional drilling with no excavation in the river beds. The proposed crossings will provide interconnections for a 21-mile length of petroleum product pipeline serving Sun Oil Company's Marcus Hook and Philadelphia refineries.

APPLICATIONS FOR APPROVAL FOR EXTENSION OF THE EXPIRATION DATES OF THE FOLLOWING GROUND WATER DOCKETS AND PROTECTED AREA PERMITS

Docket numbers	Docket name	Municipality	County	State	Current expiration	Proposed expiration
D–79–54 CP Renewal 2	Middletown Twp Water & Sewer Dept.	Middletown Twp	Bucks	PA	02/28/95	02/28/2000
D–80–51 CP Renewal 2	Warminster Municipal Authority.	Warminster Twp	Bucks	PA	02/20/96	02/20/2001
D–84–60 CP Renewal	Citizens Utilities Water Co of PA.	Spring Twp	Berks	PA	06/27/95	06/27/2000
D–85–08 CP Renewal	Borough of Roosevelt	Roosevelt Boro/	Monmouth	NJ	08/02/96	08/02/1999
D–85–26 CP Renewal	Borough of Ambler	Lower Gwynedd Twp				
		Upper Dublin Twp	Montgomery	PA	02/28/95	02/28/2000
D–86–07 CP	Telford Borough Authority	Hilltown Twp	Bucks	PA	09/28/93	09/28/1998
D–86–59 CP Renewal	Citizens Utilities Home Water Company.	East Pikeland Twp	Chester	PA	12/11/96	12/11/2001
D–87–96 CP	C.S. Water & Sewer Company.	Lackawaxen Twp	Pike	PA	04/26/94	04/26/1999
D–89–03 CP	Borough of Collingswood	Collingswood Boro	Camden	NJ	06/28/94	06/28/1999
D–89–10 CP	Northeast Land Company	Kidder Twp	Carbon	PA	04/26/94	04/26/1999

APPLICATIONS FOR APPROVAL FOR EXTENSION OF THE EXPIRATION DATES OF THE FOLLOWING GROUND WATER DOCKETS AND PROTECTED AREA PERMITS—Continued

Docket numbers	Docket name	Municipality	County	State	Current expiration	Proposed expiration
D-90-05 CP	Evansburg Water Company.	Lower Providence Twp/ Perkiomen Twp.	Montgomery	PA	12/12/95	12/12/2000
D-90-111 CP	Town of Newton	Town of Newton	Sussex	NJ	05/20/97	05/20/2002
D-90-12 CP	Collegeville-Trappe Joint Water System.	Collegeville Boro/Trappe Boro.	Montgomery	PA	09/26/95	09/26/2000
D-90-68 CP	Kiamesha Artesian Spring Water Co..	Town of Thompson	Sullivan	NY	12/12/95	12/12/2000
D-90-87 CP	Walnutport Authority	Walnutport Boro/Lehigh Twp.	Northampton	PA	01/16/96	01/16/2001
D-92-63 CP	Grand View Hospital	West Rockhill Twp	Bucks	PA	01/20/98	01/20/2003
D-84-03 CP Renewal	Summit Hill Water Authority.	Summit Hill Boro	Carbon	PA	12/14/93	12/14/1988

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Dated: January 10, 1994.

Susan M. Weisman,

Secretary.

[FR Doc. 94-1291 Filed 1-19-94; 8:45 am]

BILLING CODE 6360-01-P

DEPARTMENT OF EDUCATION

National Education Goals Panel; Meeting

AGENCY: National Education Goals Panel: Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date and location of a forthcoming meeting of the National Education Goals Panel. This notice also describes the functions of the Panel. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND TIMES: February 1, 1994 from 1 p.m. to 2:30 p.m.

ADDRESSES: J.W. Marriott Hotel, 1331 Pennsylvania Avenue, NW., Washington, DC, 20004 in the Grand Ballroom, Salon 1. The E Street (E and 14th) entrance to the Hotel is accessible for the disabled.

FOR FURTHER INFORMATION CONTACT: The National Education Goals Panel, 1850 M Street, NW.; suite 270; Washington, DC, 20001. Telephone (202) 632-0952.

SUPPLEMENTARY INFORMATION: The National Education Goals Panel was created to monitor and report annually to the President, Governors and Congress on the progress of the Nation toward meeting the six National Education Goals adopted by the President and Governors in 1989.

The meeting of the Panel is open to the public. The proposed agenda includes discussions of strategic plans the Panel might pursue in implementing legislatively mandated responsibilities.

Records are kept of all Panel proceedings, and are available for public inspection at the Goals Panel office at 1850 M Street, NW., suite 270, Washington, DC 20036, from the hours of 10 a.m. to 5 p.m.

Dated: January 13, 1994.

Henry Smith,

Assistant Secretary (Acting), Office of Intergovernmental and Interagency Affairs, U.S. Department of Education.

[FR Doc. 94-1402 Filed 1-19-94; 8:45 am]

BILLING CODE 4000-01-M

Office of Special Education and Rehabilitative Services

Special Studies Program; Final Priorities for Fiscal Years 1994-1995

AGENCY: Education.

ACTION: Notice of final priorities for Fiscal Years 1994-1995.

SUMMARY: The Secretary announces final priorities for the Special Studies program to ensure effective use of program funds and to direct funds to areas of identified need during fiscal years 1994 and 1995.

EFFECTIVE DATE: These priorities take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Linda Glidewell, U.S. Department of Education, 400 Maryland Avenue, SW., room 3524 Switzer Building, Washington, DC 20202-2641. Telephone: (202) 205-9099. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Special Studies Program, authorized by section 618 of Part B of the Individuals with Disabilities Education Act (IDEA), as amended, supports studies to evaluate the impact of the IDEA, including efforts to provide a free appropriate public education and early intervention services to infants, toddlers, children, and youth with disabilities. The results of these studies must be included in the annual report submitted to the Congress by the Department. Section 618 also authorizes the Secretary to provide technical assistance to participating State agencies in the implementation of the study design, analysis, and reporting procedures.

On June 8, 1993, the Secretary published a notice of proposed priority for this program (Technical Assistance to State Agencies Participating in the State Agency-Federal Evaluation Studies Program) in the **Federal Register** (58 FR 32207). Also, on July 7, 1993, the Secretary published a notice of proposed priorities for the Research in Education of Individuals with Disabilities Program in the **Federal Register** (58 FR 36576). In response to comments received on the latter announcement, one priority under the Research in Education of Individuals with Disabilities Program is being published as a final priority under the Special Studies Program.

These priorities support the National Education Goals by improving our understanding of how to enable

children and youth with disabilities to reach the high levels of academic achievement called for by the Goals.

Note: This notice of final priorities does not solicit applications.

Analysis of Comments and Changes

In the notice of proposed priority, the Secretary invited comments on the proposed priority under the Special Studies Program. The Secretary did not receive any comments on the Special Studies priority, and except for minor technical revisions, the Secretary has made no changes since publication of the proposed priority.

However, in response to the Secretary's invitation in the notice of proposed priorities for the Research in Education of Individuals with Disabilities Program, four parties submitted comments on the priority "State and local Education Efforts to Implement the Transition Requirements in the Individuals with Disabilities Education Act." An analysis of those comments and of the changes in the proposed priority follows. Technical and other minor changes—as well as suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Comments on: State and Local Education Efforts To Implement the Transition Requirements in the Individuals With Disabilities Education Act

Comment: This priority was originally published in proposed form on July 7, 1993 (58 FR 36576) as part of a package of fiscal years 1994 and 1995 priorities proposed under the Research in Education of Individuals with Disabilities Program (Part E of IDEA). Three commenters questioned whether Part E authorized studies of State and local efforts to implement the transition requirements added to IDEA by the 1990 Amendments. These commenters stated their opinion that these studies were more appropriately funded under section 618 of Part B.

Discussion: While the Secretary believes that Part E is broad enough in scope to support a wide variety of research and related activities, including transition studies, the Secretary agrees with the commenters that specific and explicit authority exists in section 618 to fund studies that assess progress in implementing IDEA as well as evaluate efforts by State and local governments to provide a free appropriate public education and early intervention services. See section 618(a).

Moreover, funding this priority under section 618 is consistent with the previous practice of the Department. Examples of this would be recent projects under which (1) the State Educational Agency (SEA) in South Dakota is examining the extent to which integration of special education has been achieved, and (2) the Colorado SEA is examining the effectiveness of the State's "Standards-Based Education" with respect to students with disabilities. An analysis of the Department's rationale for dropping the transition studies priority from the Research package is also set forth in the Department's responses to public comments in the final Research package that was published on November 18, 1993 (58 FR 60928).

Finally, the Secretary notes that the Notice of Proposed Priority for the Special Studies program, published on June 8, 1993 (58 FR 32206–2208), to which there were no public comments, stated the Secretary might fund additional priorities, subject to meeting rulemaking requirements.

Changes: This priority has been removed from the Research in Education of Individuals with Disabilities Program, and is funded instead as a final priority under the Special Studies program.

Comment: One commenter requested that the term "student outcomes" be further defined to specify domains of concern (such as educational, vocational, social, etc.) and that there be emphasis placed on "learning" as an outcome to be included in the research.

Discussion: The Secretary agrees that educational outcomes should be an essential part of transition planning and programs. The Secretary believes that the priority as written places emphasis on educational opportunities, instruction, and learning.

Changes: None.

Comment: One commenter identified several existing resources for information from existing transition projects of national scope that should be coordinated in order to avoid duplication of effort by the study. This commenter also recommended that the priority should include mention of the services available through the Department of Labor and the Social Security Administration.

Discussion: The Secretary agrees with the recommendations.

Changes: The priority is changed to allow the project to compile extant information in order to avoid duplication of effort, and language has been added referencing the agencies mentioned by the commenter.

Comment: Two commenters urged the Secretary to consider whether there should be multiple, rather than single, awards supported under this priority. The reasons expressed were that multiple awards permit inquiry that targets conditions close to the practice level, permitting examination of the complex interaction of features of policy, procedure, practice, resources, history, etc., thus potentially advancing greater understanding and giving greater external validity to overall findings. The commenters felt that the recognized difficulties of multiple awards could be overcome by a requirement to coordinate the information so that it becomes optimally useful from the Federal perspective.

Discussion: Given the current availability of funds and the need for a national perspective, the Secretary believes that a single award is the most appropriate choice at this time.

Changes: None.

Priorities:

Under 34 CFR 75.105(c)(3)) the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary will fund under these competitions only applications that meet these absolute priorities:

Absolute Priority 1—Technical Assistance to State Agencies Participating in the State Agency-Federal Evaluation Studies Program

Background:

Section 618(d)(1) of the Individuals with Disabilities Education Act (IDEA) authorizes cooperative agreements between State agencies and the U.S. Department of Education to evaluate the impact and effectiveness of programs provided for under the Act. These cooperative agreements are awarded on a competitive basis to State educational agencies or other State agencies that have been designated by the Governor in each State for the purpose of administering an early intervention program under part H of IDEA. The projects funded under the section 618(d)(1) authority are referred to as the State Agency-Federal Evaluation Studies projects.

To assist State agencies, section 618(d)(3) of IDEA authorizes the provision of technical assistance to State agencies in the implementation of the study design, analysis, and reporting procedures of studies funded by the State Agency-Federal Evaluation Studies projects.

The purpose of this priority is to establish a center for the provision of technical assistance to State agencies in

carrying out evaluation studies funded by the State Agency-Federal Evaluation Studies projects competition (SAFES). The intent is to build an evaluation capacity within State agencies for the purpose of generating information that is usable for improving programs and services for children and youth with disabilities. The Secretary intends to make an award with a project period of up to 36 months. The Secretary may make continuation awards for two additional years, subject to the requirements of 34 CFR 75.253(a), and, under 34 CFR 75.234(a)(4), the Secretary will assess in particular the continued need for the center awarded under this priority.

Priority: The specific goal of the center is to support the development of State agencies' technical capacity to carry out evaluation studies funded under the State Agency-Federal Evaluation Studies.

The center must—

(a) Develop a diverse, overall portfolio of technical assistance services and products;

(b) Develop with each State agency an individual plan for technical assistance that—

(1) Specifies the technical assistance services and products to be provided and the method that will be used to deliver the technical assistance services and products. The methods of technical assistance must be based upon the needs identified in the individual technical assistance plans, and include, but not be limited to, identification and use of external, specialized consultants to serve the project throughout the project period, and networking among projects to encourage peer support and problem solving; and

(2) Considers the varying needs over the life of the project, from preliminary stakeholder involvement and State support for the study to dissemination and utilization of study results;

(c) Include services and products based on—

(1) An analysis of technical assistance needs of each State evaluation project;

(2) Relevant State evaluation project information such as project proposals and negotiation materials;

(3) An analysis and syntheses of cross-project needs; and

(4) An analysis of the Department's need for information relevant to policy making;

(d) Arrange for the delivery of the technical assistance;

(e) Develop and disseminate technical assistance products;

(f) Disseminate cross-project dissemination products;

(g) Facilitate networking among projects and technical assistance providers;

(h) Conduct large and small group meetings to deliver technical assistance;

(i) Develop a technical assistance philosophy that is based upon consideration of—

(1) The environment in which State agencies are operating and the challenges in conducting evaluation studies in those environments; and

(2) The need of the Department for valid and supportable study results in order to provide Congress with information for policy making; and

(j) Develop and implement an evaluation plan that addresses the effects of the center's activities related to its impact on audiences having direct contact with Center products, information, and activities, as well as its impact on the capacity of State agencies to evaluate the impact of special education programs and services.

Absolute Priority 2—State and Local Education Efforts to Implement the Transition Requirements in the Individuals With Disabilities Education Act

Background:

Despite the progress and accomplishments related to implementation of the Individuals with Disabilities Education Act (IDEA) over the last several years, much remains to be done to improve the outcomes of youth with disabilities. Expanded transition services, now mandated by IDEA, highlight the importance of individualized planning and implementation of specific activities targeted to adolescents, to focus educators' attention on outcomes and the preparedness of youth to assume productive adult lives.

IDEA provides for a number of specific activities that are defined as transition services. These services are to be made available to all students age 16 and older, and may be extended to students age 14 or younger, if appropriate. Transition services are defined in IDEA as a coordinated set of activities for a student, designed within an outcome-oriented process, that promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities must be based on the individual student's needs, taking into account the student's preferences and interests, and must include instruction, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation (20 U.S.C. 1401(a)(19)).

There is considerable State and local variation with respect to the implementation of these expanded requirements. Very little information exists on the nature and extent of State and local implementation, including policies, procedures, and practices. Moreover, policymakers, administrators, and educators at the Federal, State, and local levels lack information regarding the nature of student participation and the impact these services have on student outcomes; the extent other agencies are involved in the transition process; and the degree transition services access and use information and services available from a variety of Federal programs.

This priority would support one cooperative agreement to study the progress being made to implement the transition services mandated by IDEA. The specific goals of the research are to describe Federal, State, and local implementation, including policies, procedures, and practices associated with transition services; to identify barriers to effective implementation; and to evaluate the impact of transition services on student outcomes.

Priority:

(a) The project must include substudies (or compile extant information that obviates the need for a study) in the following areas:

(1) The range and variation in State and local policies related to the definitional components of transition services;

(2) Student participation in transition planning, and student outcomes associated with implementation of transition services;

(3) State and local policies, practices and procedures related to the implementation of the transition services, with information obtained from local service providers (the substudy may include visits to illustrative sites);

(4) Interagency involvement in transition planning and services, including a description of the impediments associated with interagency involvement in transition planning and provision of services; and

(5) Federal program services (including those of the Department of Labor and the Social Security Administration) and relevant policies

related to meeting the transition requirements, including special education, vocational education, rehabilitation services, adult education, postsecondary education, the Job Training Partnership Act, and the Americans with Disabilities Act.

(b) In planning and implementing the substudies, the project must include appropriate policymakers, administrators, and service providers involved in the design and delivery of transition services to youth with disabilities.

(c) The project must submit for approval—(1) A plan for conducting the substudies and disseminating reports within 60 days of the start of the project;

(2) A report for substudy (1) by the end of year one;

(3) Reports for substudies (2), (3), and (4) by the end of year two;

(4) A report for substudy (5) by the middle of year 3; and

(5) A final report at the end of year three. The final report must include the following: An executive summary, introduction, project objectives, methodology, findings organized by substudy, summary, and conclusions regarding the progress being made by State and local agencies to implement the IDEA transition requirements.

The project must budget for two trips, annually, to Washington, DC, for (1) a two-day Research Project Directors' meeting; and (2) another two-day meeting to meet with the project officer of the Office of Special Education Programs (OSEP) and with other OSEP work groups, as appropriate, to plan and review project activities and progress.

APPLICABLE PROGRAM REGULATIONS: 34 CFR part 327. See in particular § 327.2(a) for eligible applicants under § 327.10(a) and the technical assistance program described in § 327.10(d).

Program Authority: 20 U.S.C. 1418.

(Catalog of Federal Domestic Assistance Number 84.159, Special Studies Program)

Dated: January 13, 1994.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 94–1397 Filed 1–19–94; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Conduct of Employees; Notice of Waiver

Section 602(a) of the Department of Energy ("DOE") Organization Act (Pub. L. No. 95–91, hereinafter referred to as the "Act") prohibits a "supervisory employee" (defined in section 601(a) of the Act) of the Department from knowingly receiving compensation from, holding any official relation with, or having any pecuniary interest in any "energy concern" (defined in section 601(b) of the Act).

Section 602(c) of the Act authorizes the Secretary of Energy to waive the requirements of section 602(a) in cases where the interest is a pension, insurance, or other similarly vested interest.

Dr. Martha A. Krebs has been appointed as Director, Office of Energy Research. As a result of her previous employment with the University of California, Dr. Krebs has a vested pension interest, within the meaning of section 602(c) of the Act, in the University of California Retirement System. I have granted Dr. Krebs a waiver of the divestiture requirement of section 602(a) of the Act with respect to this vested pension interest for the duration of her employment with the Department as a supervisory employee.

Dated: January 10, 1994.

Hazel R. O'Leary,

Secretary of Energy.

[FR Doc. 94–1379 Filed 1–19–94; 8:45 am]

BILLING CODE 6450–01–P–M

Federal Energy Regulatory Commission

[Docket No. ER94–113–000, et al.]

Northern States Power Co., et al.; Electric Rates and Corporate Regulation Filings

January 12, 1994.

Take notice that the following filings have been made with the Commission:

1. Northern States Power Co. (Minnesota) and Northern States Power Co. (Wisconsin)

[Docket No. ER94–113–000]

Take notice that on December 16, 1993, Northern States Power Company tendered for filing an amendment in its November 2, 1993 filing in this docket.

Comment date: January 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Sierra Pacific Power Co.

[Docket No. ER94–119–000]

Take notice that on December 29, 1993, Sierra Pacific Power Company tendered for filing an amendment to its original filing tendered in the above-referenced docket on November 3, 1993.

Comment date: January 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. San Joaquin Valley Energy Partners IV, L.P., and BioConversion Partners, L.P.

[Dockets No. QF87–336–002 & QF87–336–003]

On December 29, 1993, San Joaquin Valley Energy Partners IV, L.P. (San Joaquin), and BioConversion Partners, L.P. (BioConversion), (collectively, Applicants) of 24772 Road 16, Chowchilla, California 93610 submitted for filing an application for recertification of a facility as a qualifying small power production facility (Docket No. QF87–336–002) and another application for certification of the above facility as a qualifying cogeneration facility (Docket No. QF87–336–003), pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitute complete filings.

In Docket No. QF87–336–000, Chowchilla Biomass Power Plant Associates Limited Partnership was granted certification for an 8.8 MW biomass-fueled small power production facility [39 FERC ¶ 62,269 (1987)]. The electricity produced is sold to Pacific Gas and Electric Company. On July 31, 1992, in Docket No. QF87–336–001, San Joaquin filed a notice of self-recertification pursuant to § 292.207(a) of the Commission's Regulations reporting a change in ownership of the facility.

According to the Applicants, the facility will now be owned by San Joaquin and BioConversion. Northern States Power Company, an electric utility, will have an ownership interest in the facility. The Chowchilla I facility will now be modified to include the char production facility owned by BioConversion, and the power generation facility owned by San Joaquin. The maximum net electric power production capacity of the facility will be 9.9 MW. The Applicants request recertification as a small power production facility to reflect the new ownership, and certification as a bottoming cycle cogeneration facility to reflect facility modifications.

Comment date: February 22, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR

385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-1313 Filed 1-19-94; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. CP94-148-000, et al.]

CNG Transmission Corp., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. CNG Transmission Corp., et al.

[Docket No. CP94-148-000]

January 11, 1994.

Take notice that on December 20, 1993, CNG Transmission Corporation (CNGT), 445 West Main Street, Clarksburg, West Virginia 26301; CNG Producing Company (CNG Producing), 1450 Poydras Street, New Orleans, Louisiana 70112-6000; and Otis Petroleum Corporation (Otis Petroleum), 720 North Post Oak Road, Suite 150, Houston, Texas 77024-3818, filed in Docket No. CP94-148-000 an application pursuant to Section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon by sale various offshore Louisiana facilities and for an order declaring that CNG Producing and Otis Petroleum may own and operate certain facilities as non-jurisdictional gathering facilities, all as more fully set forth in the application which is open to the public for inspection.

CNGT proposes to abandon by sale (1) Line LA-1 in Acadia Parish, Louisiana, to Columbia Gulf Transmission Corporation (Columbia Gulf); (2) Line LA-25 in Vermilion Blocks 321, 324, 325, 326, and 340, offshore Louisiana, to Natural Gas Pipeline Company of America (NGPL); (3) Line LA-9 in East Cameron 118A, offshore Louisiana, to Otis Petroleum Corporation (Otis Petroleum); and (4) CNGT's share of 20 Southern States pipelines[1] in the Vermilion, East Cameron, West Cameron, Eugene Island, South Timbalier, Ship Shoal, and South Marsh Island areas, offshore Louisiana, and in Jefferson Davis Parish, Louisiana, to CNG Producing.

CNGT, CNG Producing, and Otis Petroleum state that Columbia Gulf and NGPL would operate their acquired interests in the facilities in accordance with the obligations of CNGT's certificates governing those facilities.

CNGT, CNG Producing, and Otis Petroleum also request that the Commission issue an order declaring that CNG Producing and Otis Petroleum may own and operate the facilities they acquire in this proposal as non-jurisdictional gathering facilities.

Comment date: February 1, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. NGC Energy Resources Limited Partnership

[Docket No. CP94-157-000]

January 12, 1994.

Take notice that on December 22, 1993, NGC Energy Resources, Limited Partnership, (NER), located at 13430 Northwest Freeway, Suite 1200, Houston, TX 77040, filed in Docket No. CP94-157-000 an application pursuant to section 3 of the Natural Gas Act and §§ 153.10-153.12 of the Commission's Regulations for section 3 authorization and a Presidential Permit to operate facilities at the International Border for the exportation of natural gas to Canada, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that NER seeks authorization to operate existing facilities at the United States-Canada Border near Willow Creek, Saskatchewan in order to provide border transportation services for gas exported by its shippers. No construction will be needed to effectuate the export transactions and it will be the responsibility of individual shippers to secure the appropriate export authority for use of the Willow Creek facilities.

Comment date: February 28, 1994, in accordance with Standard Paragraph G at the end of this notice.

3. Arkla Energy Resources Co.

[Docket No. CP94-173-000]

January 12, 1994

Take notice that on January 7, 1994, Arkla Energy Resources Company (AER), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP94-173-000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate certain facilities in Oklahoma, under AER's blanket certificate issued in Docket No. CP82-384-000, et al., pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

AER proposes to construct and operate one 2-inch tap and 2-inch L-shape meter in Greer County, Oklahoma, for the transportation of 750 Mcf per day of gas to Mangum Brick Company, Inc. (Mangum Brick) under AER's Rate Schedule FT. It is stated that Mangum Brick is currently being served by a local distribution company, Arkansas Louisiana Gas Company.

It is stated that AER will install the tap at an estimated cost of $20,923 and that Mangum Brick has agreed to reimburse AER for the cost of constructing the new delivery tap.

Comment date: February 28, 1994, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to

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[1] Lines LA-3, LA-4, LA-5, LA-6, LA-7, LA-8, LA-11, LA-12, LA-13, LA-14, LA-15, LA-18, LA-19, LA-20, LA-24, LA-29, LA-30, LA-37, LA-44, and LA-45, as listed in Schedule 1 of Exhibit Z of the application.

intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–1314 Filed 1–19–94; 8:45 am]

BILLING CODE 6717–01–P

[Project Nos. 2406–000, et al.]

Duke Power Company, et al.; Authorizations for Continued Project Operation

On the date listed in the appendix, the licensee for the project named in the appendix, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The location of each project is also listed in the appendix.

The license for each named project was issued for a period ending December 31, 1993. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for each of the projects listed in the appendix is issued to the licensee for a period effective January 1, 1994, through December 31, 1994, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before December 31, 1994, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that the licensee is authorized to continue operation of the project until such time as the Commission acts on its application for subsequent license.

Dated: January 13, 1994. Washington, DC.

Lois D. Cashell,

Secretary.

Appendix

I. Notices of Authorizations were issued January 7, 1994, to the following licensees. The list provides name of the licensee, the project name and number, the date of the application for new or subsequent license, and the location of the project.

1. Duke Power Company; Saluda Project No. 2406–000; December 20, 1991; Saluda River in Greenville and Pickens Counties, South Carolina.

2. West Penn Power Company; Lake Lynn Project No. 2459–000; December 20, 1991; Cheat River in Monongalia County, West Virginia and Fayette County, Pennsylvania.

3. Duke Power Company; Gaston Shoals Water Project No. 2332–000; December 19, 1991; Broad River in Cherokee County, South Carolina and Cleveland County, North Carolina.

4. PacifiCorp; Condit Project No. 2342–000; December 23, 1991; White Salmon River in Skamania and Klickitat Counties, Washington.

5. Southern California Edison Company; Kern River No. 3 Project No. 2290–000; December 27, 1991; Kern River and Salmon and Corral Creeks in Kern and Tulare Counties, California.

6. Duke Power Company; Hollidays Bridge Project No. 2465–000; December 20, 1991; Saluda River in Greenville and Anderson Counties, South Carolina.

7. Public Service Company of New Hampshire; J. Brodie Smith Project No. 2287–000; December 26, 1991; Androscoggin River in Coos County, New Hampshire.

8. Wisconsin Public Service Corporation; Potato Rapids Project No. 2560–000; December 19, 1991; Peshtigo River in Marinette County, Wisconsin.

9. Decorative Specialties International; West Springfield Project No. 2608–000; December 23, 1991; Westfield River in Hampden County, Massachusetts.

10. Northern States Power Company; Thornapple Project No. 2475–000; December 18, 1991; Flambeau River in Rusk County, Wisconsin.

11. James River-New Hampshire Electric, Inc.; Cascade Project No. 2327–000; February 1, 1989; Androscoggin River in Coos County, New Hampshire.

12. James River-New Hampshire Electric, Inc.; Gorham Project No. 2311–000; December 23, 1991; Androscoggin River in Coos County, New Hampshire.

13. Potlatch Corporation; Cloquet Project No. 2363–000; December 24, 1991; St. Louis River in Carlton County, Minnesota.

14. Sho-Me Power Corporation; Niangua Project No. 2561–000; December 27, 1991; Niangua River in Camden County, Missouri.

15. Appalachian Power Company; Reusens Project No. 2376–000; December 13, 1991; James River in Amherst, Bedford, and Campbell Counties, Virginia.

16. Appalachian Power Company; Niagara Project No. 2466–000; December 13, 1991; Roanoke River in Roanoke County, Virginia.

17. City of Tacoma Washington; Nisqually Project No. 1862–000; December 26, 1991; Nisqually River in Pierce, Thurston, and Lewis Counties, Washington.

18. Duke Power Company; Ninety-nine Islands Project No. 2331–000; December 19, 1991; Broad River in Cherokee County, South Carolina.

19. Flambeau Paper Company; Lower Hydro-Electric Project No. 2421–000; December 31, 1991; North Fork of the Flambeau River in Price County, Wisconsin.

20. PacifiCorp; Cutler Project No. 2420–000; December 23, 1991; Bear River in Cache and Box Elder Counties, Utah.

II. Notices of Authorizations were issued January 13, 1994, to the following licensees. The list provides the date of the application for new or subsequent license, name of the licensee, the project name and number, and the location of the project.

1. December 26, 1991; Public Service Company of New Hampshire; licensee for the Gorham Project No. 2288–000; Androscoggin River in Coos County, New Hampshire.

2. December 19, 1991; Wisconsin Public Service Corporation, licensee for the Jersey Hydroelectric Station Project No. 2476–000; Tomahawk River in Lincoln County, Wisconsin.

3. December 4, 1991; Central Maine Power Company, licensee for the Automatic Project No. 2555–000; Messalonskee Stream in Kennebec County, Maine.

4. December 4, 1991; Central Maine Power Company, licensee for the Union Gas Project No. 2556–000; Messalonskee Stream in Kennebec County, Maine.

5. December 23, 1991; Western Massachusetts Electric Company, licensee for the Gardners Falls Project No. 2334–000; Deerfield River in Franklin County, Massachusetts.

6. December 19, 1991; Wisconsin Public Service Corporation, licensee for the Peshtigo Project No. 2581–000; Peshtigo River in Marinette County, Wisconsin.

7. December 18, 1991; Wisconsin Public Service Corporation, licensee for the High Falls Project No. 2595–000; Peshtigo River in Marinette County, Wisconsin.

8. December 19, 1991; Consumers Power Company, licensee for the Five Channels Project No. 2453–000; Au Sable River in Iosco County, Michigan.

9. December 19, 1991; Wisconsin Public Service Corporation, licensee for the Sandstone Rapids Project No. 2546–000; Peshtigo River in Marinette County, Wisconsin.

10. December 19, 1991; Consumers Power Company, licensee for the Hodenpyl Project No. 2599–000; Manistee River in Manistee and Wexford Counties, Michigan.

11. December 31, 1991; Flambeau Paper Company, licensee for the Crowley Project No. 2473–000; North Fork of the Flambeau River in Price County, Wisconsin.

12. December 31, 1991; Flambeau Paper Company, licensee for the Pixley Project No. 2395–000; North Fork of the Flambeau River in Price County, Wisconsin.

13. December 19, 1991; Consumers Power Company, licensee for the Rogers Project No. 2451–000; Muskegon River in Mecosta County, Michigan.

14. December 19, 1991; Consumers Power Company, licensee for the Alcona Project No. 2447–000; Au Sable River in Alcona County, Michigan.

15. December 19, 1991; Consumers Power Company, licensee for the Foote Project No. 2436–000; Au Sable River in Iosco County, Michigan.

16. December 4, 1991; Central Maine Power Company, licensee for the Oakland Project No. 2559–000; Messalonskee Stream in Kennebec County, Maine.

17. December 16, 1991; Georgia Power Company, licensee for the North Georgia Project No. 2354–000; Tallulah and Tugalo Rivers in Rabun, Habersham and Stephens Counties, Georgia, and Tallulah, Tugalo and Oconee Counties, South Carolina.

18. December 20, 1991; South Carolina Electric and Gas Company, licensee for the Neal Shoals Project No. 2315–000; Broad River in Union and Chester Counties, South Carolina.

19. December 30, 1991; Public Service Company of Colorado, licensee for the Salida Project No. 2275–000; South Fork Arkansas River in Chaffee County, Colorado.

20. December 30, 1991; Public Service Company of Colorado, licensee for the Georgetown Project No. 2187–000; South Fork of Clear Creek in Clear Creek County, Colorado.

[FR Doc. 94–1312 Filed 1–19–94; 8:45 am]

BILLING CODE 6717–01–P

Office of Hearings and Appeals

Cases Filed; Week of December 17 Through December 24, 1993

During the Week of December 17 through December 24, 1993, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: January 13, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of December 17 through December 24, 1993]

Date	Name and location of applicant	Case No.	Type of submission
12/17/93	Texaco/Horton's Texaco Service Station Waycross, GA.	RR321–142	Request for Modification/Rescission in the Texaco Refund Proceeding. If granted: The December 9, 1993 Dismissal Letter (Case No. RF321–8500) issued to Horton's Texaco Service Station would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
12/20/93	Deborah L. Abrahamson DeSoto, TX	LFA–0344	Appeal of an Information Request Denial. If granted: The November 17, 1993 Freedom of Information Request Denial issued by the Office of The Director of Personnel would be rescinded, and Deborah L. Abrahamson would receive access to a reply to a January 15, 1993 Memo from the SSC Project Office's Chief of Staff to Mr. Dirks entitled, "Competitive Appointment of Schedule C Employee."
12/20/93	Gulf/New York Telephone Company Cordova, TN.	RR300–256	Request for Modification/Rescission in the Gulf Refund Proceeding. If Granted: The November 9, 1993 Decision and Order (Case No. RR300–252) issued to New York Telephone Company would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
12/20/93	Wells Cargo, Inc. Washington, DC	RR272–124	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If Granted: The August 16, 1993 Decision and Order (Case No. RC272–207) issued to Wells Cargo, Inc. would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.

REFUND APPLICATIONS RECEIVED

[Week December 17 to December 24, 1993]

Date received	Name of refund proceeding/Name of refund applicant	Case No.
12/01/93	Jamison Oil Company.	RF315–10282
12/20/93	Nam's Arco	RF304–15440
12/20/93	Rager's Arco	RF304–15441
12/14/93	Land O'Lakes, Inc	RF304–15436
12/14/93	Jamison Oil, Inc	RF315–10283
12/23/93	Ramsdell F&M Limited.	RF304–15442
12/17/93 thru 12/24/93.	Crude Oil Refund applications received.	RF272–95087 thru RF272–95092
12/17/93 thru 12/24/93.	Texaco Oil Refund applications received.	RF321–20001 thru RF321–20007

[FR Doc. 94–1380 Filed 1–19–94; 8:45 am]

BILLING CODE 6450–01–P

Issuance of Decisions and Orders; Week of October 11 Through October 15, 1993

During the week of October 11 through October 15, 1993, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Deborah L. Abrahamson, 10/12/93, LFA–0321

On September 13, 1993, Deborah L. Abrahamson filed an Appeal from a determination issued to her by the DOE's Office of Personnel in response to a request submitted by Ms. Abrahamson under the Freedom of Information Act (FOIA). In that determination, the Office of Personnel released some documents and withheld others pertaining to the position of Management Analyst at the Superconducting Super Collider Project Office (SSCPO), a position for which Ms. Abrahamson had been a candidate. In considering the Appeal, the DOE found that the Office of Personnel did not adequately justify its determination to withhold documents on the basis of Exemption 5 of the FOIA. Accordingly, the DOE held that the determination should be remanded to the Office of Personnel for a further determination. In addition, Ms. Abrahamson questioned the adequacy of the Office of Personnel's search for information claiming that additional information should exist. The DOE determined that the Office of Personnel's search was reasonably calculated to locate any information requested by Ms. Abrahamson. Therefore, the Appeal was granted in part.

National Security Archive, 10/13/93, LFA–0223

The National Security Archive appealed a denial by the Director of the Office of Classification of a request for information that it filed pursuant to the Freedom of Information Act. The Director had determined that portions of a document pertaining to espionage activities during the 1960's by Lt. Col. W.H. Whaelen should be withheld pursuant to Exemptions 1 and 3 because the information was classified. After reviewing the document on appeal, the DOE determined that the withheld information remained classified. Accordingly, the Appeal was denied.

Native Americans for Clean Environment, 10/13/93, LFA–0319

Native Americans for a Clean Environment (NACE) filed an Appeal from a determination issued to it by the Acting Director of the Savannah River Program Division of the DOE's Office of Environmental Restoration. The determination denied, in part, a Request for Information which NACE submitted under the Freedom of Information Act (FOIA). NACE requested all records regarding proposals made to the DOE for the processing of depleted uranium hexafluoride. The Director released two responsive documents and withheld another in its entirety. In its Appeal, NACE argued that a complete search had not been made to uncover all responsive documents. In considering the Appeal, the DOE found that NACE's request had not been transmitted to or processed by the DOE Headquarters FOIA Officer at the Freedom of Information and Privacy Branch of the Office of Administrative Services as mandated by the DOE's FOIA regulations. In light of this fact, the DOE determined that it was possible that a complete search had not been performed for responsive documents. Consequently, the DOE remanded the matter to the Freedom of Information and Privacy Branch of the Office of Administrative Services to issue a new determination regarding NACE's FOIA request.

Ronald A. Sorri L&M Technologies, Inc., Ronald A. Sorri, 10/15/93, LWD–0008 LWD–0009 LWX–0011

Ronald A. Sorri (Sorri) and L&M Technologies, Inc. (L&M) filed requests for discovery with the DOE's Office of Hearings and Appeals (OHA) on September 24 and 27, 1993, respectively. These motions concerned the hearing requested by Sorri under the DOE's Contractor Employee Protection Program. In considering the two motions, the OHA found that both discovery requests were reasonable and that they were designed to yield evidence that was relevant and material to the alleged retaliatory discharge issue in this case. The OHA further found that it was not unduly burdensome on either L&M or Sandia National Laboratories to produce the requested documents. Accordingly, the Motions for Discovery were granted. In addition to ruling on the discovery motions, and in a Supplemental Order, the OHA established procedures for the submission of exhibits before the hearing, and set the order of witnesses.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Gus Budin *ET AL*	RF304–12624	10/12/93
Bonitz Insulation Co. of SC *et al*	RF272–86051	10/13/93
Brocket Oil Cooperative Farmers Union Oil Co. Berthold/Carpio	RF272–87004 RF272–87990	10/12/93
Grayslake High Schl. Dist. *et al*	RF272–81809	10/15/93
Gulf Oil Corporation/Circle Syracuse Taxi	RF300–20847	10/13/93
Circle Syracuse Taxi	RF300–21755	.....
Gulf Oil Corporation/East China School Dist. *et al*	RF300–19669	10/13/93
Gulf Oil Corporation/Schmidt Baking Company, Inc.	RF300–20093	10/12/93
Northwood Local Schools *et al*	RF272–87137	10/15/93

Texaco Inc./Columbia Gas Transmission	RF321–15562	10/15/93
Haley Bros. Inc.	RF321–17543	
Texaco Inc./Limewood Corp. *et al*	RF321–2360	10/12/93
Town of Great Barrington Massachusetts *et al*	RF272–88424	10/13/93

Dismissals

The following submissions were dismissed:

Name	Case No.
Amador County Unified	RF272–81938
Denver Oil Co.	RF321–19908
Don's Texaco	RF321–19542
Elliott Petroleum Company	RF340–97
Gain Oil Co.	RF321–19909
Gray Butane Wholesalers, Inc..	RF340–75
Intsel Corporation	RF340–87
M.M. Fowler Co.	RF300–21491
New Baltimore Fuel & Supply, Inc..	RF321–19907
Sherman Central School	RF272–83002
Wall Shell Service, Inc.	RF315–9143

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: January 13, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94–1381 Filed 1–19–94; 8:45 am]

BILLING CODE 6450–01–P

Issuance of Decisions and Orders; Week of October 25 Through October 29, 1993

During the week of October 25 through October 29, 1993, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Dr. Armen Victorian, 10/27/93, LFA–0323

Dr. Armen Victorian filed an Appeal from a partial denial by the Albuquerque Operations Office of a Request for Information which Dr. Victorian had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that one document which was initially withheld under Exemption 5 contained only one deliberative paragraph, and the rest of the document should be released to the public. An important issue that was considered in the Decision and Order was the application of the new Department of Justice policy which recommends discretionary disclosures when possible, and limits the defense of FOIA appeals to cases where the agency can reasonably foresee harm from the public disclosure of requested information. Because the DOE found no foreseeable harm from the release to the public of the non-deliberative material, the Appeal was granted.

Natural Resources Defense Council, 10/26/93 KFA–0043

Natural Resources Defense Council (NRDC) filed an Appeal from a denial by the Albuquerque Operations Office of a request for information that it filed under the Freedom of Information Act (FOIA). In considering the information that was withheld, pursuant to a review by the DOE's Office of Classification, as classified material under Exemption 3 of the FOIA, the DOE determined that a small portion of previously withheld material could now be released as the result of more precise deletions. The remaining withheld material continues to be properly classified under Exemption 3, and under Exemption 1 as well, and therefore may not be released. Accordingly, the Appeal was granted in part and denied in part.

Refund Applications

Atlantic Richfield Company/Peckham Materials Corporation, 10/29/93, RF304–13720

The DOE issued a Decision and Order granting an Application for Refund filed on behalf of the Peckham Materials Corporation (Peckham) in the Atlantic Richfield Company Subpart V special refund proceeding (Case No. RF304–13720). The Peckham Application for Refund was based upon purchases of 12,000,000 gallons of liquid asphalt for end-use. However, cost escalation contract provisions covered approximately 26.5 percent of Peckham's purchases of asphalt in 1974. Because Peckham was not injured in those instances in which cost adjustment clauses were in effect, they are ineligible to receive refunds for the purchases covered by such clauses. Therefore, the purchases that formed the basis for the refund request, i.e., 12,000,000 gallons, were reduced by 26.5 percent (3,180,000 gallons) for which Peckham received compensation under price adjustment clauses. Based upon purchases of 8,820,000 gallons of liquid asphalt, Peckham was granted a refund of $10,911, representing $6,483 in principal and $4,428 in interest.

M & M Transportation Co., 10/28/93, RF272–90211

LK, Inc. filed an Application for Refund in the crude oil refund proceeding with respect to purchases made by M & M Transportation Company (M&M), a bankrupt firm. In support of its claim, LK submitted an Assignment by which M&M transferred its rights to crude oil refunds to LK. In considering the application, the DOE found that granting the refund would be consistent with the restitutionary purposes of the crude oil refund proceeding. Accordingly, the application was approved and LK was granted a refund of $10,676.

Texaco Inc./ Cook & Cooley, Inc., 10/28/93, RF321–19434

The DOE issued a Decision and Order granting an Application for Refund filed by Triton Fuel Group, Inc. (Triton) in the Texaco Inc. special refund proceeding based on the purchases of Cook & Cooley, Inc. (C&C), a reseller of Texaco products. On June 28, 1991, Triton purchased the assets of C&C, and assumed all of the corporation's business operations. The DOE found Triton was entitled to a refund based on C&C's purchases because the agreement regarding the sale specifically transferred the right to potential refunds in the Texaco proceeding. Triton requested a refund equal to C&C's full allocable share for its motor gasoline purchases. In support of its claim of injury above the medium-range presumption level, the firm submitted information both to demonstrate that C&C had accumulated positive cost banks by April 1980, the end of the regulatory banking period for motor gasoline, and to show that it was competitively disadvantaged by its Texaco purchases. Based on the competitive disadvantage data, the DOE concluded that Triton was entitled to a refund based on its above-market price volumetric share for C&C's purchases of

regular gasoline, and a refund equal to C&C's pro rated allocable share for its purchases of premium and unleaded motor gasoline. The total refund amount granted was $607,098 ($442,749 principal and $164,349 interest).

Texaco Inc./ M & M Transportation Co., 10/28/93, RF321-17431

LK, Inc. filed an Application for Refund in the Texaco refund proceeding with respect to purchases made by M & M Transportation Company (M&M), a bankrupt firm. In support of its claim, LK submitted an Assignment by which M&M transferred its rights to crude oil refunds to LK. In considering the application, the DOE found that, since the Assignment unambiguously referred to crude oil refunds, it did not convey to LK the right to apply for a product refund in the Texaco proceeding. The DOE also determined that LK's payment of $5,000 for potential refunds totalling more than $28,000 was unconscionably low. Accordingly, LK's refund application was denied.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/A.V. Rivest Oil Co.	RF304-14336	10/29/93
Atlantic Richfield Company/Bud's Arco *et al*	RF304-14415	10/26/93
Atlantic Richfield Company/McLaughlin & Lester *et al*	RF304-14146	10/28/93
Beacon Oil Company/Dick Huizenga Trucking	RF238-81	10/28/93
Santa Fe Rock & Sand	RF238-82	
FMC Corporation	RF238-83	
Mont La Salle Vineyards	RF238-84	
Contel Corp. *et al*	RF272-65489	10/29/93
Elkhart Community Schools	RF272-87659	10/28/93
Gulf Oil Corporation/Carr Oil Company	RR300-102	10/28/93
Carr Oil Company	RR300-103	
Carr Oil Company	RR300-104	
Gulf Oil Corporation/Gaines Gulf Service Station *et al*	RF300-15198	10/26/93
Gulf Oil Corporation/Netzley Oil Co., Inc.	RF300-20065	10/28/93
Gulf Oil Corporation/Paramus Gulf, Inc. *et al*	RF300-19517	10/29/93
Murphy Oil Corp./U.S.S. Agri-Chemicals	RF309-990	10/28/93
Murphy Oil Corp./Wisconsin Industrial Fuel Oil, Inc.	RF309-1427	10/29/93
Nixa School District R-II *et al*	RF272-80203	10/26/93
Q-Mart Food Stores	RF272-91391	10/28/93
Randolph Central School Corp. *et al*	RF272-81818	10/26/93
Texaco Inc./Neon Inc.	RF321-19938	10/26/93
Town of Shrewsbury	RF272-76197	10/28/93
Waco Independent School District	RF272-87987	10/26/93

Dismissals

The following submissions were dismissed:

Name	Case No.
Brooks County	RF272-89279
Canton School Dist. 41-1	RF272-82350
Cornell CC School District 426.	RF272-78954
Ed's Arco	RF304-14300
Jimco, Incorporated	RF321-15636
North Olmsted City School District.	RF272-89272
Orrison Distribution	RF321-17472
Pleasant Valley Sch. Dist. 62.	RF272-82209
Quick Shop, Inc.	RF300-21685
The Flintkote Company	RF321-15597
Truman School District	RF272-78831
Village of Hennepin	RF272-74123
Weicker Transfer & Storage	RF321-15680
Western Consumers Industries.	RF321-15605

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: January 13, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94-1382 Filed 1-19-94; 8:45 am]

BILLING CODE 6450-01-P

Issuance of Decisions and Orders During the Week of November 15 Through November 19, 1993

During the week of November 15 through November 19, 1993, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

James L. Schwab, 11/19/93, LFA-0327

James L. Schwab filed an Appeal from a denial by the Albuquerque Operations Office of a Request for Information which he had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that Albuquerque had conducted a reasonable search of the paper and computer files likely to contain the requested material. Important issues that were considered in the Decision and Order were (i) the adequacy of a "string search" of computer records under the FOIA and (ii) the existence of any responsive material.

Professional Services Unified, Inc., 11/19/93, LFA-0328

Professional Services Unified, Inc. (PSU) filed an Appeal from a determination issued to it on October 14, 1993 by the Freedom of Information Officer (Officer) of the Idaho Field Office of the Department of Energy (DOE). In that determination, the Officer denied part of a request for information filed by PSU pursuant to Exemption 4 of the Freedom of Information Act. Specifically, the Officer denied PSU's request for copies of unit price information from unsuccessful bidders in a DOE contract solicitation for janitorial supplies and services. In considering the Appeal, the DOE determined that more information must be obtained before a proper

determination could be made. Accordingly, the DOE remanded the case to the Officer to solicit opinions from the unsuccessful bidders and then issue a new determination regarding the releasability of the unit price information.

Refund Applications

Texaco Inc./Energy Sales, Inc., Southern Missouri Oil Company, 11/18/93, RF321-15874, RF321-19951

On March 4, 1991, the DOE issued a Decision and Order in the Texaco Inc. refund proceeding concerning an Application for Refund filed by Southern Missouri Oil Company (SMOC), a Texaco jobber. The amount of that refund was based in part upon SMOC's claim that it owned another firm, Energy Sales, Inc. (ESI), and the volume of ESI's purchases. Subsequently, another applicant, David Montgomery, filed an application in which he claims to own 75 percent of ESI's corporate stock.

The DOE found that SMOC never owned an interest in ESI and that the owner of SMOC had sold his shares of ESI to Mr. Montgomery. The DOE also found that ESI has been dissolved. The DOE noted that generally where the Texaco purchases were made by a corporation, the right to the refund remains with the corporation even though the shares of the corporation might be transferred to another party. Where the corporation has been dissolved, the owners at the time of dissolution are usually entitled to the refund.

Accordingly, the DOE found that SMOC should repay, with interest, that portion of its refund attributable to purchases made by ESI. The DOE also found that Mr. Montgomery should be granted 75 percent of ESI's refund.

Texaco Inc./Texaco Star Inn, Star Inn Truck Stop, 11/18/93, RF321-14936, RF321-19679

The DOE issued a Decision and Order concerning two Applications for Refund filed in the Texaco Inc. Subpart V special refund proceeding on behalf of Texaco Star Inn (Star Inn), a truckstop located in Victor, Iowa and operated by Bell-Watcher, Inc. (Bell-Watcher). One application (RF321-14936) was filed by Fritz Milner, the president and a current stockholder of Bell-Watcher. The other application (RF321-19679) was filed by Gerald Devine, a former stockholder of Bell-Watcher. Devine based his claim to a refund upon his allegation that Milner owes him a substantial amount for the purchase of Bell-Watcher's shares. We found that Devine's dispute with Milner over payment of the purchase price is between Devine and Milner personally, not between Devine and Bell-Watcher, and the dispute does not affect Bell-Watcher's right to the refund. Although Milner requested that the Bell-Watcher refund be sent to its creditor, Poweshiek County Savings Bank (Poweshiek). The DOE determined that the refund should be paid to Bell-Watcher. Accordingly, the DOE denied the application filed by Devine and granted the application filed by Milner on behalf of Bell-Watcher.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Enron Corp./Stone's Propane and Applicances Inc.	RF340-53	11/19/93
Blass L.P Gas, Inc.	RF340-80	
Gulf Oil Corporation/Abernathy Oil Company	RF300-20092	11/18/93
Gulf Oil Corporation/Cogan's Gulf Service	RF300-16325	11/19/93
Linn Coop Oil Company et al	RF272-90503	11/18/93
Riverside Linen Supply	RC272-216	11/18/93
Shell Oil Company/Bob's Shell	RF315-10097	11/15/93
Shell Oil Company/Gerald Day	RF315-6226	11/16/93
Wyckoff Company	RF315-10000	
Haysland Shell Service Station	RF315-10093	
Shell Oil Company/Hector M. Andujar Narvaez	RF315-9334	11/16/93
Antonio Rodriguez Rivera	RF315-9346	
Texaco Inc./Billy's Texaco	RR321-136	11/18/93
Texaco Inc./Little Rock Texaco Truck Center et al	RF321-17067	11/18/93
Texaco Inc./Mike Geeding et al	RF321-4440	11/15/93
Town of Somers, Connecticut et al	RF272-88568	11/18/93
Vassar Public Schools et al	RF272-81935	11/15/93

Dismissals

The following submissions were dismissed:

Name	Case No.
8 and Hoyt Service	RF321-14194
Abbe's Texaco	RF321-18373
Bob Moore Texaco	RF321-10318
Darigold, Inc.	RF321-14809
Delmar Haynes Pontiac-GMC, Inc.	RF321-13820
Dewitt's Texaco	RF321-17972
Eugene Farmers Creamery	RF321-15735
Fletcher's Texaco	RF321-14736
Gene's South End Texaco	RF321-14721
Gene's Texaco	RF321-13868
Hooker's Texaco Service	RF321-12085
Ken's Texaco	RF321-13788
Lawson Company	RF315-677
McCormick's Shell	RF315-343
Nanuet Texaco	RF321-11686
Northgate Shell	RF315-7867
Pons Gulf	RF300-18306
Reames Petroleum	RF321-14825
Reher's Service	RF315-953
Renton Hills Texaco	RF321-18360
Scott's Texaco	RF321-13895
Scott's Texaco	RF321-13894
Sunset Texaco	RF321-13863
Valders School District	RF272-82085

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: January 13, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94-1383 Filed 1-19-94; 8:45 am]

BILLING CODE 6450-01-P

Issuance of Decisions and Orders During the Week of November 29 Through December 3, 1993

During the week of November 29 through December 3, 1993, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Concord Oil Company, 12/01/93, LFA-0331

Concord Oil Company (Concord) filed a Freedom of Information Act (FOIA) Appeal from a determination issued by the Albuquerque Field Office (AFO). The AFO released certain information to Concord following a prior Decision. *Concord Oil Company*, 22 DOE ¶ 80,147 (1992). Concord appealed the adequacy of the AFO's search. In its Appeal, Concord maintained it never received a portion of that information, requested a certain AFO employee be removed from additional FOIA requests, and claimed the information received was an inadequate response to its request. In considering the Appeal, the DOE contacted the AFO which agreed to release another copy of the information Concord claimed it never received. In addition, the DOE found that Concord's request to remove a DOE employee from processing a pending FOIA request was not an appealable issue pursuant to 10 C.F.R. § 1004.8(a). Finally, the DOE found that the information the AFO had released to Concord was an adequate response to the request. The Appeal was, therefore, denied.

Kenneth H. Besecker, 12/1/93 LFA-0326

Kenneth H. Besecker filed an Appeal from a partial denial by the Savannah River Operations Office (Savannah) of two Requests for Information which he had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that some of the information that had initially been withheld under Exemption 5 was factual in nature and therefore should be released to the public. Accordingly, the appeal was granted.

Marlene Flor, 12/1/93, LFA-0334

Marlene Flor filed an Appeal from a determination issued by the Office of Civil Rights (OCR) in which the OCR informed Ms. Flor that there were no documents responsive to her Freedom of Information Act request. In considering the Appeal, the DOE found that the OCR's original search was adequate under the FOIA and reasonably calculated to uncover responsive documents. The Appeal was therefore denied.

OXY USA, Inc., 12/1/93, LFA-0332

OXY USA, Inc. (OXY) filed an Appeal from a determination issued by the DOE's Economic Regulatory Administration (ERA) in response to a request from OXY under the Freedom of Information Act (FOIA). OXY sought an ERA audit file as well as appointment books and telephone records of certain ERA employees. In considering the Appeal, the DOE found that ERA properly withheld the appointment books and telephone records since they were not agency records subject to the FOIA. Further, the DOE found that the ERA properly withheld portions of the audit file under the deliberative process privilege but found that ERA did not consider the memorandum of the Attorney General, Janet Reno. Moreover, the DOE found that ERA properly searched its files for responsive records. Accordingly, the Appeal was granted in part and remanded, and denied in all other respects.

Refund Applications

Gulf Oil Corporation Van Doren Oil Co., 12/1/93, RF300-16187

The DOE issued a Decision and Order concerning an Application for Refund filed in the Gulf Oil Corporation special refund proceeding by Resource Refunds, Inc. (RRI), on behalf of Van Doren Oil Co. (Van Doren). Van Doren had previously filed a refund application under Case No. RF300-5013, claiming purchases of 13,907,176 gallons. Based on the discovery of more accurate Gulf records, the purchase volume was amended during processing of the application to 30,966,780 gallons. The amended application was granted on February 16, 1989. In the subsequent application filed by RRI, Case No. RF300-16187, RRI claimed that Van Doren was entitled to a refund for 17,259,604 gallons which RRI believed had not been included in the first refund. Since those gallons had been included in the earlier application when it was amended, the application filed by RRI was dismissed.

Shell Oil Company/Johnson LPG Sales Co., Highway Pipeline Company, HI-JO Hydrocarbons, Inc., 11/30/93, RF315-9506, RF315-9879, RF315-10218

The DOE issued a Decision and Order granting Applications for Refund filed in the Shell Oil Company special refund proceeding by HJHC, Inc. on behalf of Johnson LPG Sales Co. (Johnson), Highway Pipeline Company (Highway) and Hi-Jo Hydrocarbons (Hi-Jo). A single Texas partnership owned both Highway and Johnson until they were dissolved and re-incorporated in Hi-Jo. The stockholders of that partnership owned Hi-Jo in the same proportions until the corporation was dissolved and its assets (not including potential refunds) were sold. The stockholders that owned Highway, Johnson, and Hi-Jo now own the present claimant HJHC, Inc. in the same proportions. The DOE determined that since the stockholders of the purchasing firms and their proportions of ownership remained unchanged through the dissolutions and re-incorporations described above, and since those stockholders now own HJHC, Inc., in the same proportions, it was most appropriate and efficient that any refunds be granted to HJHC, Inc. Accordingly, the Johnson, Highway and Hi-Jo refunds were granted to HJHC, Inc.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Bradford Exempted Village SD et al	RF272-80230	12/01/93
Cains Coffee Company et al	RF272-74514	12/03/93
Cota & Cota, Inc	RF272-90880	12/01/93
Donco Carriers, Inc	RF272-78471	11/30/93
Effingham County Board of Education	RF272-76182	12/03/93
Exxon Corporation/Jeffrey B. McCulloch	RF307-10217	12/01/93
Gulf Oil Corporation/Eddins-Walcher Co	RF300-20538	11/30/93
Troy C. Ison, Inc	RF300-20711	
Gulf Oil Corporation/Gulf Oil Service Station	RF300-14376	12/03/93

Gulf Oil Corporation/Heard & Gilmer et al	RF300–19527	12/03/93
Gulf Oil Corporation/Holiday Gulf et al	RF300–14265	11/30/93
Gulf Oil Corporation/Koonce Service Station et al	RF300–20003	11/30/93
Gulf Oil Corporation/McMurray Gulf	RF300–19756	12/03/93
McMurray & Greenwell	RF300–20094	
Gulf Oil Corporation/Trexler Oil Co., Inc	RF300–15763	11/30/93
Gulf Oil Corporation/Venturi Gulf et al	RF300–18762	11/30/93
Gulf Oil Corporation/Wometco Vending et al	RF300–20075	12/01/93
Shell Oil Company/Salter Oil Company	RF315–6748	11/30/93
Scott's Shell Service	RF315–8677	
Shell Oil Company/Travelers Rest Shell	RF315–983	12/03/93
Texaco Inc./C.B. Stone, Inc. et al	RF321–7200	12/03/93
Texaco Inc./Dunes Center Service, Inc	RR321–138	12/01/93
Texaco Inc./Garfield Texaco et al	RF321–10340	12/01/93
Texaco Inc./Pecan Shoppe of Sallisaw, Inc. et al	RF321–16383	11/30/93
Texaco Inc./Walter Butler Oil Co. et al	RF321–16616	11/30/93
Wackenhut Corp. et al	RF272–90506	12/02/93

Dismissals

The following submissions were dismissed:

Name	Case No.
A/R Packaging Corp.	RF272–92351
Airport Limousine Service, Inc.	RF300–19709
Beacon Oil Co	RF321–16037
Globe Texaco Station	RF321–11197
Petroleum Marketers, Inc	RF315–9954
Robo Carwash	RF321–11335
Round Mountain Gold Corp	RF272–57071
Shay's Service, Inc	RF300–20781
Vinson's Grocery	RF300–16239
Woodway Gulf Service Center.	RF300–14811

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: January 13, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94–1384 Filed 1–19–94; 8:45 am]

BILLING CODE 6450–01–P

Issuance of Decisions and Orders During The Week of December 20 Through December 24, 1993

During the week of December 20 through December 24, 1993, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Angela M. Hagwood, 12/21/93, LFA–0333

Angela M. Hagwood filed an Appeal from a determination issued by the Manager of the Oak Ridge Operations Office (Oak Ridge Operations) of the Department of Energy (DOE) in response to a Request for Information submitted under the Freedom of Information Act (FOIA). Mrs. Hagwood had sought information concerning an employment discrimination claim she had filed with Martin Marietta Energy Systems, Inc. (Martin Marietta), a DOE contractor. In considering the Appeal, the DOE found that Oak Ridge Operations had correctly determined that the requested information did not constitute agency records subject to the FOIA. In particular the DOE determined that Oak Ridge Operations had made an adequate search of its records and that it did not possess the information requested. DOE also found that by the terms of the contract between Martin Marietta and the DOE, Martin Marietta owned the requested documents. The DOE, therefore, did not control the records. Because the DOE neither possessed nor controlled the items requested, they are not agency documents under the FOIA. Accordingly, the Appeal was denied.

David DeKok, 12/21/93, LFA–0339

David DeKok filed an Appeal from a denial by the Idaho Operations Office of a Request for Information which he had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that although the agency was obligated to release the material in a reasonably accessible format, the appellant was not entitled to specify the format in which the information should be disclosed. Important issues that were considered in the Decision and Order were (i) whether release of the information in a format that could cause some expense to the appellant was a constructive denial of his fee waiver and (ii) whether DOE was obligated to assist the appellant in finding a convenient site to access the records.

Virginia Johnson, 12/21/93, LFA–0329

Virginia Johnson filed an Appeal from a determination issued to her by the Office of Civil Rights of the Office of Economic Impact and Diversity (OCR) of the Department of Energy (DOE) in response to a Request for Information submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that OCR had correctly withheld under Exemption 6 of the FOIA the identities and personal identifiers (such as home addresses, phone numbers, and social security numbers) of witnesses from the report and investigatory record of a employment discrimination complaint on the grounds that their release would be a clearly unwarranted invasion of personal privacy without any offsetting public interest. The DOE found, however, that a large amount of withheld material did not fall under the protection of witness identities and identifiers which was the only OCR justification for withholding information. The DOE determined that OCR should either release the requested information or issue a new determination specifically explaining any withheld information. Accordingly, the Appeal was granted in part, denied in part, and remanded to OCR for a new determination in accordance with the guidance set forth in the Decision and Order.

Request for Exception

Norm Poole Oil, Inc., 12/23/93, LEE-0052

Norm Poole Oil, Inc. (Poole), filed an Application for Exception from the requirement that it file Form EIA-782B, the "Reseller/Retailer's Monthly Petroleum Product Sales Report." In considering Poole's request, the DOE found that the firm was neither suffering serious hardship nor adversely affected by the reporting requirement in a way that was significantly different from the burden borne by similar reporting firms. Accordingly, the DOE denied Poole's Application for Exception.

Interlocutory Order

Universities Research Association, Inc., 12/22/93, LWZ-0023

Universities Research Association, Inc. (URA), the management and operating contractor at the DOE's Superconducting Super Collider Laboratory in Waxahachie, Texas, submitted a Motion to Dismiss a complaint brought against it by a former employee under the Contractor Employee Protection Program, 10 CFR 708 (Part 708). In the Motion, URA argued that the provisions of Part 708 were not applicable because URA had not modified its contract with the DOE to incorporate a compliance clause until after the alleged acts of reprisal occurred. The DOE denied the Motion, finding that the provisions of Part 708 were applicable to URA as of the effective date of the regulations.

Implementation of Special Refund Procedures

Ted True, Inc. and Ted W. True, 12/20/93, LEF-0115

The Office of Hearings and Appeals issued final procedures for the disbursement of $200,000, plus accrued interest, obtained by the DOE from the consolidated bankruptcy estate of Ted True, Inc. and Ted W. True. The funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986).

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Anderson County School District No. 03 et al	RF272-82405	12/21/93
Atlantic Richfield Company/Major Oils	RR304-66	12/20/93
Beacon Oil Company/Ben W. Nachtigall Distributor, Inc	RR238-4	12/22/93
Beacon Oil Company/Foothills Oil Co., Inc	RF238-74	12/21/93
Gulf Oil Corporation/Gorman Gulf Service	RF300-21218	12/20/93
Gulf Oil Corporation/Roger Mertens Dist., Inc. et al	RF300-19506	12/21/93
Santa Barbara High School et al	RF272-81811	12/22/93
Shell Oil Company/Jamison Oil Company, Inc	RF315-10282	12/21/93
Jamison Oil Company, Inc	RF315-10283	.....
Texaco Inc./Bridgeway Texaco Service	RF321-888	12/22/93
Caster's Texaco Truck Stop	RF321-954	.....
J & H Texaco	RF321-8558	.....
Texaco Inc./Orr's Texaco Service Station #2	RF321-20005	12/23/93
Val Verde County, Texas et al	RF272-85156	12/21/93

Dismissals

The following submissions were dismissed:

Name	Case No.
Barnegat Township School District.	RF272-82628
Coleman Tire Sales	RF321-11151
Golden State Foods	RF304-14319
Joe's Shell	RF315-9421
King Arthur Car Wash	RF304-13961
Moore Fuels, Inc	RF300-13104
Setser's Holiday Gulf	RF300-13202
Starkville School District	RF272-82497
Sturm and Jensen, Inc	RF300-13201

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: January 13, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94-1385 Filed 1-19-94; 8:45 am]

BILLING CODE 6450-01-P

Issuance of Proposed Decisions and Orders During the Week of December 20 Through December 24, 1993

During the week of December 20 through December 24, 1993, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR part 205, subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays.

Dated: January 13, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

Bollmann Oil Inc., Mankato, Minnesota, LEE-0061, Reporting Requirements

Bollmann Oil Inc. (Bollmann) filed an Application for Exception from the requirement that the firm file Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." The Exception request, if granted, would permit Bollmann to be exempted from filing Form EIA-782B. On December 20, 1993, the Department of Energy issued a Proposed Decision and Order which tentatively determined that the Exception request be denied.

Radio Oil Company, Inc., Worcester, Massachusetts, LEE-0062, Reporting Requirements

Radio Oil Company, Inc. filed an Application for Exception requesting exception relief from the requirement that the firm file the Energy Information Administration (EIA) Form EIA-782B, the "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering the Application for Exception, the DOE tentatively found that the firm was not adversely affected by the reporting requirement in a way that was significantly different than the burden borne by similar reporting firms. Accordingly, on December 22, 1993, DOE issued a Proposed Decision and Order determining that the exception request should be denied.

Van Dyke Gas Company, Center Line, Michigan, LEE-0058, Reporting Requirements

Van Dyke Gas Company (Van Dyke) filed an Application for Exception from the requirement that the firm file Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." The Exception request, if granted would permit Van Dyke to be exempted from filing Form EIA-782B. On December 22, 1993, the Department of Energy issued a Proposed Decision and Order which tentatively determined that the Exception request be denied.

Walker Sims Oil Company, Inc., Seminole, Texas, LEE-0057, Reporting Requirements

Walker Sims Oil Company, Inc., (Walker Sims) filed an Application for Exception from the requirement that the firm file Form EIA-782B, entitled "Reseller/Retailer's Monthly Petroleum Product Sales Report." The exception request, if granted, would permit Walker Sims to be exempted from filing Form EIA-782B. On December 21, 1993, the Department of Energy issued a Proposed Decision and Order which tentatively determined that the exception request be denied.

[FR Doc. 94-1386 Filed 1-19-94; 8:45 am]

BILLING CODE 6450-01-P

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $5,784.33, plus accrued interest, in alleged refined petroleum product violation amounts obtained by the DOE pursuant to settlements with Buchanan Shell, Inc. (Case No. LEF-0081), Jim Campbell Shell (Case No. LEF-0082), Miles Union Service (Case No. LEF-0083), and Elwood Chevron Service (Case No. LEF-0085) (the consenting firms) reached on August 25, 1982, August 2, 1982, April 11, 1982, and March 25, 1992, respectively. The OHA has determined that the funds obtained from the consenting firms, plus accrued interest, will be distributed to customers who purchased gasoline from them during the following periods: August 1, 1979, through November 13, 1979, in the Buchanan Shell, Inc., Jim Campbell Shell, and Miles Union Service proceedings; and August 2, 1979, through April 23, 1980, in the Elwood Chevron Service proceeding.

DATES: Applications should display a reference to the appropriate case number and be postmarked on or before June 30, 1994.

ADDRESSES: Applications for Refund must be filed in duplicate, addressed to "Buchanan Shell, Inc./Jim Campbell Shell/Miles Union Service/OR Elwood Chevron Service Special Refund Proceeding" and sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director Roger Klurfeld, Assistant Director Office of Hearings and Appeals 1000 Independence Avenue, SW. Washington, DC 20585 (202) 586-2094 (Mann); 586-2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute to eligible claimants $5,784.33 plus accrued interest, obtained by the DOE pursuant to agreements reached on April 11, 1982, August 2, 1982, August 25, 1982, and March 25, 1992. In the agreements, the DOE settled allegations that, during the periods beginning August 1, 1982, Buchanan Shell, Inc., Jim Campbell Shell, Miles Union Service, and Elwood Chevron Service, Inc. had sold motor gasoline at prices in excess of the maximum lawful selling price, in violation of Federal petroleum price regulations.

The OHA has determined to distribute the funds obtained from the consenting firms in two stages. In the first stage, we will accept claims from identifiable purchasers of gasoline from the consenting firms who may have been injured by alleged overcharges. The specific requirements which an applicant must meet to receive a refund are set out in Section III of the Decision. Claimants who meet these requirements will be eligible to receive refunds based on the number of gallons of gasoline which they purchased from the consenting firms.

If any funds remain after valid claims are paid in the first stage, they may be used for indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501-07.

Applications for Refund must be postmarked on or before June 30, 1994. Instructions for the completion of refund applications are set forth in the Decision that immediately follows this notice. Applications should be sent to the address listed at the beginning of this notice.

Unless labelled as "confidential," all submissions must be made available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: January 13, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

January 13, 1994.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Names of Firms:
Buchanan Shell, Inc.
Jim Campbell Shell
Miles Union Service
Elwood Chevron Service

Date of Filing: July 20, 1993

Case Numbers:

LEF–0081
LEF–0082
LEF–0083
LEF–0085

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) of the DOE may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to make refunds in order to remedy the effects of alleged violations of DOE regulations. See 10 C.F.R. Part 205, Subpart V. The ERA filed such a petition on July 20, 1993, requesting that the OHA implement special refund proceedings to distribute funds received pursuant to Consent Orders or Judgments entered into by the DOE and the following gasoline retailers: Buchanan Shell, Inc., Jim Campbell Shell, Miles Union Service, and Elwood Chevron Service (hereinafter collectively referred to as the consenting firms).[1]

I. Background

Each of the consenting firms is a reseller-retailer of refined petroleum products as those terms were defined in 10 CFR 212.31. ERA audits of the consenting firms revealed possible pricing violations of the Mandatory Petroleum Price Regulations. Subsequently, each of these firms entered into a separate Consent Order or Judgment with the DOE in order to settle its disputes concerning certain sales of gasoline. Pursuant to these Consent Orders and Judgment, the firms agreed to pay to the DOE specified amounts in settlement of their potential liability with respect to sales to their customers during the settlement periods. The firms' payments are currently being held in separate interest-bearing escrow accounts pending distribution by the DOE. The names and locations of the firms, the settlement amounts, the products covered by the settlement agreements, the volumes, in gallons, sold by the firms during the settlement periods, and the dates of the settlement periods are set forth in the Appendix to this Decision.

II. Jurisdiction and Authority

The subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan for the distribution of funds received as a result of an enforcement proceeding. The DOE policy is to use the subpart V process to distribute such funds. For a more detailed discussion of subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Petroleum Overcharge Distribution and Restitution Act of 1986*, 15 U.S.C. 4501–4507; *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

We have considered the ERA's petition that we implement subpart V proceedings with respect to the four settlement funds and have determined that such proceedings are appropriate. This Decision and Order sets forth the OHA's plan to distribute these funds.

III. Proposed Refund Procedures

On November 24, 1993, the OHA issued a Proposed Decision and Order (PD&O) establishing tentative procedures to distribute the settlement funds. That PD&O was published in the **Federal Register**, and a 30-day period was provided for the submission of comments regarding our proposed refund plan. See 58 FR 63937 (December 3, 1993). More than 30 days have elapsed and the OHA has received no substantive comments concerning the proposed procedures for the distribution of the settlement funds. Consequently, the procedures will be adopted as proposed.

The OHA will implement a two-stage refund procedure for distribution of the settlement funds by which purchasers of gasoline from the consenting firms during the periods covered by the settlements may submit Applications for Refund in the initial stage. From our experience with subpart V proceedings, we expect that potential applicants generally will be limited to ultimate consumers ("end-users"). Therefore, we do not anticipate that it will be necessary to employ the injury presumptions that we have used in past proceedings in evaluating applications submitted by refiners, resellers, and retailers.[2]

A. First Stage Refund Procedures

In order to receive a refund, each claimant will be required to submit a schedule of its monthly purchases of gasoline from each of the consenting firms during each of their respective settlement periods. Our experience indicates that the use of certain presumptions permits claimants to participate in the refund process without incurring inordinate expense and ensures that refund claims are evaluated in the most efficient manner possible. See, *e.g.*, *Marathon Petroleum Co.*, 14 DOE ¶ 85,269 (1986) (*Marathon*).

Presumptions in refund cases are specifically authorized by the applicable subpart V regulations at 10 CFR 205.282(e). Accordingly, we propose to adopt the presumptions set forth below.

1. Calculation of Refunds

First, we will adopt a presumption that for each consenting firm the overcharges were dispersed equally in all of its sales of gasoline during the period covered by its settlement. In accordance with this presumption, refunds are made on a pro-rata or volumetric basis.[3] In the absence of better information, a volumetric refund is appropriate because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

Under the volumetric approach, a claimant's "allocable share" of a settlement fund is equal to the number of gallons purchased from the consenting firms during the periods covered by the settlements, times the per gallon refund amount. In the present cases, the per gallon refund amounts are as follows:

LEF–0081 Buchanan Shell, Inc. $0.0060
LEF–0082 Jim Campbell Shell $0.0011
LEF–0083 Miles Union Service $0.0113
LEF–0085 Elwood Chevron Service $0.0095

We derived these figures by dividing the dollar amount of each settlement fund by the volume of gasoline which the corresponding consenting firm sold during the period covered by its settlement. See Appendix. A claimant that establishes its eligibility for a refund will receive all or a portion of its allocable share plus a pro-rata share of the accrued interest.[4]

2. End-Users

In accordance with prior Subpart V proceedings, we also propose to adopt the presumption that an end-user or ultimate consumer of gasoline purchased from the consenting firms whose business is unrelated to the petroleum industry was injured by the overcharges resolved by the settlement agreements. See, *e.g.*, *Texas Oil and Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984). Members of this group generally were not subject to price controls during the periods covered by the settlement agreements, and were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of the refund proceeding. *Id.* Accordingly, end-users of gasoline purchased from the consenting firms need only document their purchase volumes from the consenting firms during the periods covered by the settlement agreements to make a sufficient showing that they were injured by the alleged overcharges.

[1] The DOE entered into Consent Orders with Buchanan Shell, Inc., Jim Campbell Shell, and Miles Union Service. The DOE entered into a Consent Judgment with Elwood Chevron Service filed in the United States District Court, Central District of California.

[2] If a refiner, reseller, or retailer should file an application in any of these refund proceedings, however, we will utilize the standards and appropriate presumptions established in previous proceedings. See, *e.g.*, *Starks Shell Service*, 23 DOE ¶ 85,017 (1993); *Shell Oil Co.*, 18 DOE ¶ 85,492 (1989).

[3] If an individual claimant believes that it was injured by more than its volumetric share, it may elect to forego this presumption and file a refund application based upon a claim that it suffered a disproportionate share of the consenting firms' overcharges. See, *e.g.*, *Mobil Oil Corp./Atchison, Topeka and Santa Fe Railroad Co.*, 20 DOE ¶ 85,788 (1990); *Mobil Oil Corp./Marine Corps Exchange Service*, 17 DOE ¶ 85,714 (1988). Such a claim will only be granted if the claimant makes a persuasive showing that it was "overcharged" by a specific amount, and that it absorbed those overcharges. See *Panhandle Eastern Pipeline Co./Western Petroleum Co.*, 19 DOE ¶ 85,705 (1989). To the degree that a claimant makes this showing, it will receive an above-volumetric refund.

[4] As in previous cases, we propose to establish minimum refund amounts of $15. In these proceedings, any potential claimant purchasing less than a total of 2,416 gallons of gasoline from Buchanan Shell, Inc., less than 13,177 gallons from Jim Campbell Shell, less than 1,283 gallons from Miles Union Service, or less than 1,526 gallons from Elwood Chevron Service would have an allocable share of less than $15. We have found that the cost of processing claims in which refunds for amounts less than $15 are sought outweighs the benefits of restitution in those instances. See *Exxon Corp.*, 17 DOE ¶ 85,590, at 89,150 (1988) (*Exxon*).

B. Refund Application Requirements

To apply for a refund from any of the settlement funds, a claimant should submit an Application for Refund containing all of the following information:

(1) Identifying information including the claimant's name, current business address, business address during the refund period, taxpayer identification number, a statement indicating whether the claimant is an individual, corporation, partnership, sole proprietorship, or other business entity, the name, title, and telephone number of a person to contact for additional information, and the name and address of the person who should receive any refund check.[5] If the applicant operated under more than one name or under a different name during the price control period, the applicant should specify these names;

(2) A monthly purchase schedule covering the relevant settlement period. See Appendix. The applicant should specify the source of this gallonage information. In calculating its purchase volumes, an applicant should use actual records from the settlement period, if available. If these records are not available, the applicant may submit estimates of its gasoline purchases, but the estimation methodology must be reasonable and must be explained.

(3) A statement whether the applicant or a related firm has filed, or has authorized any individual to file on its behalf, any other application in that refund proceeding. If so, an explanation of the circumstances of the other filing or authorization should be submitted;

(4) If the applicant is or was in any way affiliated with the consenting firms, it should explain this affiliation, including the time period in which it was affiliated;[6]

(5) The statement listed below signed by the individual applicant or a responsible official of the firm filing the refund application:

I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room.

All applications should be either typed or printed and should clearly refer to the appropriate proceeding name and case number. See Appendix. Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish for this information to be publicly disclosed, it must submit an original application, clearly designated "confidential," containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications should be postmarked no later than March 15, 1994 and be sent to: Buchanan Shell, Inc./Jim Campbell Shell/Miles Union Service/OR, Elwood Chevron Service Special Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

C. Refund Applications Filed by Representatives

In addition, we propose to adopt the standard OHA procedures relating to refund applications filed on behalf of applicants by "representatives," including refund filing services, consulting firms, accountants, and attorneys. See, *e.g., Shell Oil Co.*, 18 DOE ¶ 85,492 (1989); *Texaco Inc.*, 20 DOE ¶ 85,147 (1990); *Starks Shell Service*, 23 DOE ¶ 85,017 (1993). We will also require strict compliance with the filing requirements as specified in 10 CFR 205.283, particularly the requirement that applications and the accompanying certification statement be signed by the applicant.

The OHA reiterates its policy to closely scrutinize applications filed by filing services. Applications submitted by a filing service should contain all of the information indicated in this final Decision and Order.

Finally, the OHA reserves the authority to require additional information before granting any refund in these proceedings. Applications lacking the required information may be dismissed or denied.

D. Distribution of Funds Remaining After First Stage

Any funds that remain after all first stage claims have been decided be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. The Secretary has delegated these responsibilities to the OHA, and any funds in the consenting firms settlement funds that the OHA determines will not be needed to effect direct restitution to injured customers will be distributed in accordance with the provisions of PODRA.

It Is Therefore Ordered That:

(1) Applications for Refund from the funds remitted by Buchanan Shell, Inc., Jim Campbell Shell, Miles Union Service, and Elwood Chevron Service, pursuant to the settlements reached on August 25, 1982, August 2, 1982, April 11, 1982, and March 25, 1992, respectively, may now be filed.

(2) Applications for Refund must be postmarked on or before June 30, 1994.

Dated: January 13, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

APPENDIX

Case No.	Firm	Address	Settlement period	Product	Volume sold	Settlement amount	Consent No.
LEF–0081	Buchanan Shell, Inc.	1315 Buchanan Rd., Pittsburg, CA 94565.	8/1/79–11/13/79	Gasoline .	250,480	$1,500.87	90OZO3255
LEF–0082	Jim Campbell Shell .	3201 Lakeshore Ave., Oakland, CA 94610.	8/1/79–11/13/79	Gasoline .	297,953	$323.13	90OZO3255

[5] Under the Privacy Act of 1974, the submission of a social security number by an individual applicant is voluntary. An applicant that does not wish to submit a social security number must submit an employer identification number if one exists. This information will be used in processing refund applications, and is requested pursuant to our authority under the Petroleum Overcharge Distribution and Restitution Act of 1986 and the regulations codified at 10 CFR Part 205, Subpart V. The information may be shared with other Federal agencies for statistical, auditing or archiving purposes, and with law enforcement agencies when they are investigation a potential violation of civil or criminal law. Unless an applicant claims confidentiality, this information will be available to the public in the Public Reference Room of the Office of Hearings and Appeals.

[6] As in other refund proceedings involving alleged refined product violations, the DOE will presume that affiliates of the consenting firms were not injured by the firms' overcharges. See, *e.g., Marathon Petroleum Co./EMRO Propane Co.*, 15 DOE ¶ 85,288 (1987). This is so because a consenting firm presumably would not have sold petroleum products to an affiliate if such a sale would have placed the purchaser at a competitive disadvantage. See *Marathon Petroleum Co./Pilot Oil Corp., 16 DOE ¶ 85,611 (1987), amended claim denied*, 17 DOE ¶ 85,291 (1988), *reconsideration denied*, 20 DOE ¶ 85,236 (1990). Additionally, if an affiliate of one of the consenting firms was granted a refund, the consenting firm would be indirectly compensated from a fund remitted to settle its own alleged violations.

APPENDIX

Case No.	Firm	Address	Settlement period	Product	Volume sold	Settlement amount	Consent No.
LEF–0083	Miles Union Service	500 Bancroft Ave., San Leandro, CA 94577.	8/1/79–11/13/79	Gasoline .	107,566	$1,210.33	90OZO3258
LEF–0085	Elwood Chevron Service.	7952 Hollister Ave., Goleta, CA 93117.	8/2/79–4/23/80	Gasoline .	290,124	$2,750.00	999K90097

[FR Doc. 94–1387 Filed 1–19–94; 8:45 am]

BILLING CODE 6450–01–P

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $10,089.18, plus accrued interest, in refined petroleum product violation amounts obtained by the DOE pursuant to a March 8, 1982 Remedial Order issued to A–1 Exxon and Redhill Mobil & Towing, Case Nos. LEF–0086 and LEF–0088 and a March 29, 1982 Remedial Order issued to Half Moon Bay Exxon, Case No. LEF–0087 (the remedial order firms). The OHA has determined that the funds obtained from the remedial order firms, plus accrued interest, will be distributed to customers who purchased gasoline from them during the following periods: August 1, 1979, through November 20, 1979, in the A–1 Exxon proceeding; August 1, 1979, through October 23, 1979 in the Half Moon Bay Exxon proceeding; and August 1, 1979 through November 13, 1979 in the Redhill Mobil and Towing proceeding.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2094 (Mann); 586–2383 (Klurfeld).

ADDRESSES: Applications for Refund must be filed in duplicate, addressed to "A–1 Exxon; Half-Moon Bay Exxon/OR Redhill Mobil and Towing Special Refund Proceeding" and sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

DATES: Applications should display a prominent reference to the appropriate case number and be postmarked on or before June 30, 1994.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute to eligible claimants $10,089.18, plus accrued interest, obtained by the DOE pursuant to March 8, 1982 and March 29, 1982. In the Remedial Orders, the DOE found that, during the relevant periods beginning August 1, 1979, the firms each had sold motor gasoline at prices in excess of the maximum lawful selling price, in violation of Federal petroleum price regulations.

The OHA has determined to distribute the funds obtained from the consenting firms in two stages. In the first stage, we will accept claims from identifiable purchasers of gasoline from the consenting firms who may have been injured by alleged overcharges. The specific requirements which an applicant must meet in order to receive a refund are set out in Section III of the Decision. Claimants who meet these specific requirements will be eligible to receive refunds based on the number of gallons of gasoline which they purchased from the consenting firms.

If any funds remain after valid claims are paid in the first stage, they may be used for indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07.

Applications for Refund must be postmarked on or before June 30, 1994. Instructions for the completion of refund applications are set forth in the Decision that immediately follows this notice. Applications should be sent to the address listed at the beginning of this notice.

Unless labelled as "confidential," all submissions must be made available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: January 13, 1994.

George B. Breznay,

Director, Office of Hearings and Appeal.

January 13, 1994.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Names of Firms:
A–1 Exxon
Half Moon Bay Exxon
Redhill Mobil & Towing

Date of Filing: July 20, 1993

Case Numbers:
LEF–0086
LEF–0087
LEF–0088

On July 20, 1993, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA), to distribute the funds received pursuant to Remedial Orders issued by the DOE to the following parties: A–1 Exxon of Capitola, California, Half Moon Bay Exxon of Half Moon Bay, California, and Redhill Mobil & Towing of San Anselmo, California (hereinafter collectively referred to as the remedial order firms). In accordance with the provisions of the procedural regulations at 10 CFR part 205, Subpart V (Subpart V), the ERA requests in its Petition that the OHA establish special procedures to make refunds in order to remedy the effects of regulatory violations set forth in the Remedial Order. This Decision and Order sets forth the OHA's plan to distribute these funds.

I. Background

Each of the remedial order firms was a retailer of motor gasoline during the periods relevant to this proceeding. The ERA issued Proposed Remedial Orders (PROs) to each of the firms.[1] The PROs alleged that, during separate periods beginning on August 1, 1979, the remedial order firms had: charged more than the maximum lawful selling price for one or more grades of gasoline in violation of 10 CFR 212.93; failed to post and maintain the maximum lawful selling price or a proper certification in violation of 10 CFR 212.129; failed to keep and maintain books and records to support the lawfulness

[1] A–1 Exxon was issued a PRO on January 22, 1981; Half Moon Bay Exxon was issued a PRO on May 7, 1981, and Redhill Mobil & Towing was issued a PRO on February 25, 1981.

of the price for gasoline on the audit date in violation of 10 CFR 210.92 and 212.93; and/or engaged in unlawful or discriminatory business practices in violation of 10 CFR 210.62.

After considering and dismissing the firms' objections to the PROs, the DOE issued final Remedial Orders. *A–1 Exxon, et al.*, 9 DOE ¶ 83,020 (1982); *Chip's Chevron Service, et al.*, 9 DOE ¶ 83,046 (1982).[2] Each of the retailers, represented by the same counsel, appealed the remedial orders to the Federal Energy Regulatory Commission (FERC). On September 19, 1982, FERC affirmed each of the contested remedial orders in every respect. *A–1 Exxon, et al.*, 20 FERC ¶ 61,387 (1982). Each of the firms has since remitted a specified amount in compliance with the Remedial Orders, to which interest has since accrued. These funds are being held in an interest-bearing escrow account maintained at the Department of the Treasury pending a determination regarding their proper distribution.

II. Jurisdiction and Authority

The Subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution of funds received as a result of an enforcement proceeding. The DOE policy is to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, see Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C. 4501 et seq., *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

We have considered the ERA's petition that we implement a Subpart V proceeding with respect to the above remedial order funds and have determined that such proceedings are appropriate. This Proposed Decision and Order sets forth the OHA's tentative plan to distribute these funds. Before taking the actions proposed in this Decision, we intend to publicize our proposal and solicit comments from interested parties. Comments regarding the tentative distribution processes set forth in this Proposed Decision and Order should be filed with the OHA within 30 days of its publication in the **Federal Register**.

III. Proposed Refund Procedures

On December 2, 1993, the OHA issued a Proposed Decision and Order (PD&O) establishing tentative procedures to distribute the Remedial Order funds. That PD&O was published in the **Federal Register**, and a 30-day period was provided for the submission of comments regarding our proposed refund plan. See 58 Fed. Reg. 64758 (December 9, 1993). More than 30 days have elapsed and the OHA has received no comments concerning the proposed procedures for the distribution of the Remedial Order funds. Consequently, the procedures will be adopted as proposed. We will implement a two-stage refund procedure for distribution of the remedial order funds by which purchasers of gasoline from the remedial order firms during the period covered by the Remedial Orders may submit Applications for Refund in the initial stage. From our experience with Subpart V proceedings, we expect that potential applicants generally will be limited to ultimate consumers ("end-users"). Therefore, we do not anticipate that it will be necessary to employ the injury presumptions that we have used in past proceedings in evaluating applications submitted by refiners, resellers, and retailers.[3]

A. First Stage Refund Procedures

In order to receive a refund, each claimant will be required to submit a schedule of its monthly purchases of gasoline from the remedial order firm during the period covered by the Remedial Order. Our experience indicates that the use of certain presumptions permits claimants to participate in the refund process without incurring inordinate expense and ensures that refund claims are evaluated in the most efficient manner possible. See *Marathon Petroleum Co.*, 14 DOE ¶ 85,269 (1986) (*Marathon*). Presumptions in refund cases are specifically authorized by the applicable Subpart V regulations at 10 CFR 205.282(e). Accordingly, we will adopt the presumptions set forth below.

1. Calculation of Refunds

First, we will adopt a presumption that the overcharges were dispersed equally in all of the remedial order firms' sales of gasoline during the period covered by the Remedial Orders. In accordance with this presumption, refunds are to be made on a pro-rata or volumetric basis.[4] In the absence of better information, a volumetric refund is appropriate because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

Under the volumetric approach, a claimant's "allocable share" of a Remedial Order fund is equal to the number of gallons purchased from the remedial order firm during the period covered by that Remedial Order times the per gallon refund amount.[5] We derived the per gallon refund figures by dividing the amount of each Remedial Order fund by the total volume of gasoline which each remedial order firm sold during the period specified in that Remedial Order. An applicant that establishes its eligibility for a refund will receive all or a portion of its allocable share plus a pro-rata share of the accrued interest.[6]

In addition to the volumetric presumption, we will also adopt a presumption regarding injury for end-users.

2. End-Users

In accordance with prior Subpart V proceedings, we will adopt the presumption that an end-user or ultimate consumer of gasoline purchased from one of the remedial order firms whose business is unrelated to the petroleum industry was injured by the overcharges resolved by the Remedial Order. See, *e.g.*, *Texas Oil and Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984) (*TOGCO*). Members of this group generally were not subject to price controls during the period covered by the Remedial Order, and were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of the refund proceeding. *Id.* End-users of gasoline purchased from the remedial order firms need only document their purchase volumes from the firm during the period covered by the Remedial Order to make a sufficient showing that they were injured by the overcharges.

B. Refund Application Requirements

To apply for a refund from any of the Remedial Order funds, a claimant should submit an Application for Refund containing all of the following information:

(1) Identifying information including the claimant's name, current business address, business address during the refund period, taxpayer identification number, a statement indicating whether the claimant is an individual, corporation, partnership, sole proprietorship, or other business entity, the name, title, and telephone number of a person to contact for additional information, and the name and address of the person who should receive any refund check.[7] If the

[2] A Remedial Order was issued to A–1 Exxon and Redhill Mobil & Towing on March 8, 1982. A Remedial Order was issued to Half Moon Bay Exxon on March 29, 1982.

[3] If a refiner, reseller, or retailer should file an application in any of the refund proceedings, however, we will utilize the standards and appropriate presumptions established in previous proceedings. See, *e.g.*, *Starks Shell Service*, 23 DOE ¶ 85,017 (1993); *Shell Oil Co.*, 18 DOE ¶ 85,492 (1989).

[4] If an individual claimant believes that it was injured by more than its volumetric share, it may elect to forego this presumption and file a refund application based upon a claim that it suffered a disproportionate share of the remedial firm's overcharges. See, *e.g.*, *Mobil Oil Corp./Atchison, Topeka and Santa Fe Railroad Co.*, 20 DOE ¶ 85,788 (1990); *Mobil Oil Corp./Marine Corps Exchange Service*, 17 DOE ¶ 85,714 (1988). Such a claim will only be granted if the claimant makes a persuasive showing that it was "overcharged" by a specific amount, and that it absorbed those overcharges. See *Panhandle Eastern Pipeline Co./Western Petroleum Co.*, 19 DOE ¶ 85,705 (1989). To the degree that a claimant makes this showing, it will receive an above-volumetric refund.

[5] The per gallon refund amount is $.0465 for claimants applying in the A–1 Exxon proceeding ($3,000 remitted/64,456.4 gallons sold), $.0173 in the Half-Moon Bay Exxon proceeding ($2,500 remitted/144,331 gallons sold), and $.0314 in the Redhill Mobil & Towing proceeding ($4,589.18 remitted/146,145.7 gallons sold).

[6] As in previous cases, we will establish a minimum refund amount of $15. We have found through our experience that the cost of processing claims in which refunds for amounts less than $15 are sought outweighs the benefits of restitution in those instances. See *Exxon Corp.*, 17 DOE ¶ 85,590, at 89,150 (1988) (*Exxon*).

[7] Under the Privacy Act of 1974, the submission of a social security number by an individual applicant is voluntary. An applicant that does not wish to submit a social security number must submit an employer identification number if one exists. This information will be used in processing refund applications, and is requested pursuant to our authority under the Petroleum Overcharge Distribution and Restitution Act of 1986 and the regulations codified at 10 C.F.R. Part 205, Subpart V. The information may be shared with other

Continued

applicant operated under more than one name or under a different name during the price control period, the applicant should specify these names;

(2) A monthly purchase schedule covering the relevant Remedial Order period.[8] The applicant should specify the source of this gallonage information. In calculating its purchase volumes, an applicant should use actual records from the refund period, if available. If these records are not available, the applicant may submit estimates of its gasoline purchases, but the estimation methodology must be reasonable and must be explained.

(3) A statement whether the applicant or a related firm has filed, or has authorized any individual to file on its behalf, any other application in that refund proceeding. If so, an explanation of the circumstances of the other filing or authorization should by submitted;

(4) If the applicant is or was in any way affiliated with the remedial order firm, it should explain this affiliation, including the time period in which it was affiliated;[9]

(5) The statement listed below signed by the individual applicant or a responsible official of the firm filing the refund application:

I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room.

All applications should be either typed or printed and clearly labeled A-1 Exxon (Case No. LEF-0086)/Half Moon Bay Exxon (Case No. LEF-0087)/OR Redhill Mobil and Towing (Case No. LEF-0088) Special Refund Proceeding." Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish for this information to be publicly disclosed, it must submit an original application, clearly designated "confidential," containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications should be postmarked on or before June 30, 1994 and sent to: A-1 Exxon/Half Moon Bay Exxon/OR Redhill Mobil & Towing Special Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

C. Refund Applications Filed by Representatives

In addition, we will adopt the standard OHA procedures relating to refund applications filed on behalf of applicants by "representatives," including refund filing services, consulting firms, accountants, and attorneys. See, *e.g.*, *Starks Shell Service*, 23 DOE ¶ 85,017 (1993); *Texaco Inc.*, 20 DOE ¶ 85,147 (1990); *Shell Oil Co.*, 18 DOE ¶ 85,492 (1989). We will also require strict compliance with the filing requirements as specified in 10 CFR 205.283, particularly the requirement that applications and the accompanying certification statement be signed by the applicant.

The OHA reiterates its policy to closely scrutinize applications filed by filing services. Applications submitted by a filing service should contain all of the information indicated in the final Decision and Order in this proceeding.

Finally, the OHA reserves the authority to require additional information before granting any refund in these proceedings. Applications lacking the required information may be dismissed or denied.

D. Distribution of Funds Remaining After First Stage

Any funds that remain after all first stage claims have been decided will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501-07. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. The Secretary has delegated these responsibilities to the OHA, and any funds in the Remedial Order funds that the OHA determines will not be needed to effect direct restitution to injured customers will be distributed in accordance with the provisions of PODRA.

It Is Therefore Ordered That:

(1) Applications for Refund from the funds remitted by A-1 Exxon, Half Moon Bay Exxon, and Redhill Mobil & Towing pursuant to the Remedial Orders dated March 8, 1982 and March 29, 1982 may now be filed.

(2) Applications for Refund must be postmarked on or before June 30, 1994.

Dated: January 13, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94-1395 Filed 1-19-94; 8:45 am]

BILLING CODE 6450-01-P

Federal agencies for statistical, auditing or archiving purposes, and with law enforcement agencies when they are investigating a potential violation of civil or criminal law. Unless an applicant claims confidentiality, this information will be available to the public in the Public Reference Room of the Office of Hearings and Appeals.

[8] The Remedial Orders cover the following periods: August 1, 1979 through November 20, 1979 in the A-1 Exxon proceeding; August 1, 1979 through October 23, 1979 in the Half-Moon Bay Exxon proceeding; and August 1, 1979 through November 13, 1979 in the Redhill Mobil and Towing proceeding.

[9] As in other refund proceedings involving alleged refined product violations, the DOE will presume that affiliates of the remedial order firm were not injured by the firm's overcharges. See, *e.g.*, *Marathon Petroleum Co./EMRO Propane Co.*, 15 DOE ¶ 85,288 (1987). This is so because the remedial order firm presumably would not have sold petroleum products to an affiliate if such a sale would have placed the purchaser at a competitive disadvantage. See *Marathon Petroleum Co./Pilot Oil Corp.*, 16 DOE ¶ 85,611 (1987), *amended claim denied*, 17 DOE ¶ 85,291 (1988), *reconsideration denied*, 20 DOE ¶ 85,236 (1990). Additionally, if an affiliate of the remedial order firm was granted a refund, the remedial order firm would be indirectly compensated from a Remedial Order fund remitted to settle its own alleged violations.

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Approved by the Office of Management and Budget

January 12, 1994.

The following information collection requirements have been approved by the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, (44 U.S.C. 3507). For further information, contact Judy Boley, Federal Communications Commission, (202) 632-0276.

OMB No.: 3060-0003.

Title: Application Form 610 for Amateur Operator/Primary Station License.

Form No.: FCC 610.

A revised application form FCC 610 has been approved for use through 8/31/96. The current edition of the form is dated November 1993 and was implemented December 1993.

OMB No.: 3060-0053.

Title: Application for consent to Transfer Control of Corporation Holding Station License.

Form No.: FCC 703.

A revised application form FCC 703 has been approved for use through 10/31/96. The February 1991 edition with the previous OMB expiration date of 11/30/93 will remain in use until revised forms are available.

OMB No.: 3060-0055.

Title: Application for Cable Television Relay Service Station Authorization.

Form No.: FCC 327.

A revised application form FCC 327 has been approved for use through 9/30/96. The August 1987 edition with the previous OMB expiration date of 4/30/90 will remain in use until revised forms are available.

OMB No.: 3060-0069.

Title: Application for Commercial Radio Operator License.

Form No.: FCC 756.

A revised application form FCC 756 has been approved for use through 9/30/96. The current edition is October 1993 and was implemented October 1993.

OMB No.: 3060-0076.

Title: Annual Employment Report for Common Carriers.

Form No.: FCC 395.

A revised annual report FCC 395 has been approved for use through 12/31/96. The December 1990 edition with the

previous OMB expiration date of 12/31/93 will remain in use until revised forms are available.

OMB No.: 3060–0079.

Title: Application foran Amateur Club, RACES, or Military Recreation Station License.

Form No.: FCC 610–B.

A revised application form FCC 610–B has been approved for use through 10/31/96. The March 1992 edition with the previous OMB expiration date of 8/31/94 will remain in use until revised forms are available.

OMB No.: 3060–0090.

Title: Part I—Registration of Canadian Radio Station Licensee and Application for Permit to Operate, Part II—Certificate of Registration of Canadian Radio Station Licensee and Permit for Operation in the United States.

Form No.: FCC 410.

The approval on FCC 410 has been extended through 11/30/96. The October 1990 edition with the previous OMB expiration date of 10/31/93 will remain in use until updated forms are available.

OMB No.: 3060–0095.

Title: Annual Employment Report—Cable Television.

Form No.: FCC 395–A and 395–AS.

A revised annual report form FCC 395–A/395–AS has been approved for use through 7/31/96. The 1993 edition with the previous OMB expiration date of 3/31/95 will remain in use until revised forms are available.

OMB No.: 3060–0113.

Title: Broadcast Equal Employment Opportunity Program Report.

Form No.: FCC 396.

The approval on FCC 396 has been extended through 12/31/96. The November 1990 edition with the previous OMB expiration date of 9/30/93 will remain in use until updated forms are available.

OMB No.: 3060–0120.

Title: Broadcast Equal Employment Opportunity Model Program Report.

Form No.: FCC 396–A.

The approval on FCC 396–A has been extended through 11/30/96. The September 1991 edition with the previous OMB expiration of 9/30/93 will remain in use until updated forms are available.

OMB No.: 3060–0390.

Title: Broadcast Station Annual Employment Report.

Form No.: FCC 395–B.

The approval on FCC 395–B has been extended through 11/30/96. The March 1993 edition with the previous OMB expiration of 9/30/93 will remain in use until update forms are available.

OMB No.: 3060–0574.

Title: Annual Employment Report—MVPD (Multiple Video Program Distributors).

Form No.: FCC 395–M.

A new report form FCC 395–M has been approved for use through 7/31/96. No forms have been printed at this time.

OMB No.: 3060–0576.

Title: Application for Renewal of Amateur Radio Station License.

Form No.: FCC 610–R.

A new application form FCC 610–R has been approved for use through 10/31/96. This form will be computer generated and mailed to licensees near the end of their ten year license term.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–1332 Filed 1–19–94; 8:45 am]

BILLING CODE 6712–01–M

[DA 93–1574]

Private Land Mobile Radio Services; Electronics Filing of Applications

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Chief, Private Radio Bureau released this Order establishing procedural requirements for application signatures in all private radio services. The Private Radio Bureau will issue Public Notices to inform applicants as electronic filing becomes available in each service.

EFFECTIVE DATE: January 20, 1994.

FOR FURTHER INFORMATION CONTACT: Consumer Assistance, Private Radio Bureau, Licensing Division, Gettysburg, PA (717) 337–1212.

SUPPLEMENTARY INFORMATION:

Order

Adopted: December 27, 1993; Released: January 6, 1994.

By the Chief, Private Radio Bureau:

1. On April 1, 1993, the Commission adopted an order amending its rules to allow electronic filing of applications in the Private Radio Services. Order, 8 FCC Rcd 2662 (1993).[1] At that time the Commission continued the requirement that a handwritten signature accompany all applications until the Private Radio Bureau establishes procedures for the electronic filing of applications by "Public Notice in the **Federal Register**, modified application forms, and other published procedures." 8 FCC Rcd at 2662, para. 7.

2. The Private Radio Bureau is developing procedural requirements for the electronic filing of applications in the Private Radio Services. Certain procedures are already in place, and approximately 7,000 applications have been filed electronically. This order establishes procedural requirements for application signatures in all private radio services pursuant to the authority delegated to the Private Radio Bureau in 47 CFR 1.913(e). See also, 47 CFR 90.125, 94.29 and 95.87. We will publish Public Notices to inform applicants as electronic filing becomes available in each service.

3. If the applicant is an individual, the signature on an electronically filed application will consist of the electronic equivalent of the typed name of the individual. If the applicant is a partnership, the signature will consist of the electronic equivalent of the typed name of a partner. If the applicant is a corporation, the signature will consist of the electronic equivalent of the typed name of an officer, a director, or a duly authorized employee of the corporation. If the applicant is an unincorporated association, the signature will consist of the electronic equivalent of a member who is an officer. The signature of an applicant who is an eligible governmental entity, such as states and territories of the United States, political subdivisions thereof, the District of Columbia, and units of local governments, including unincorporated municipalities, will be the electronic equivalent of the typed signature of such duly elected or appointed officials as may be competent to bind the governmental entity under the laws of the applicable jurisdiction.

4. This requirement follows from the requirements of § 1.913 of our rules, 47 CFR 1.913. Commission precedent and policy regarding individuals satisfying the requirements contained in § 1.913 regarding who may sign for various applicants are fully applicable (e.g., who may sign for limited partnerships, trusts, hybrid entities).

5. The procedure adopted today will eliminate the requirement that a paper application be filed in addition to the electronically filed application for these applications that can be filed electronically. An electronic signature submitted according to these procedures will designate the individual, authorized to bind the applicant, who is certifying to the accuracy of the information contained in the

[1] The Commission was authorized to so amend its rules by an act of Congress amending the Communications Act of 1934. Telecommunications Authorization Act of 1992, Public Law 102–538, 106 Stat. 3533 (1992), Section 204.

application[2] and who is certifying that no party to the application has been denied benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. 862. (For the definition of "party" see 47 CFR 1.2002(b).) By signing in this fashion, applicants accept and agree to comply with the limits and conditions associated with licenses contained in the Communications Act of 1934, as amended, and the Commission's rules.[3] Applicants also agree to be bound in the same manner as if they had submitted a handwritten signature on a printed application form.

Conclusion

6. Because the changes adopted today relate solely to procedure, they are exempt from the notice and comment requirements of the Administrative Procedures Act, 5 U.S.C. 553(b). We are expanding the filing options available to applicants in the private radio services without creating additional burdens.[4] The procedures established today are effective immediately upon publication in the **Federal Register**. 5 U.S.C. 553(d)(3); 47 CFR 1.427(b).

7. For further information regarding this order, contact the Consumer Assistance Branch, Federal Communications Commission, 1270 Fairfield Road, Gettysburg, PA at (717) 337–1212.

8. So ordered.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 94–1330 Filed 1–19–94; 8:45 am]

BILLING CODE 6712–01–M

[FCC 93–536; File No. ISP–93–010]

Permissible Services of U.S.-Licensed International Communications Satellite Systems Separate From the International Telecommunications Satellite Organization (INTELSAT)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission has further modified its separate satellite systems policy by permitting the interconnection to the public switched network of up to 1,250 64-kbps equivalent circuits per satellite provided over international separate satellite systems for the provision of public switched service.

EFFECTIVE DATE: January 20, 1994.

FOR FURTHER INFORMATION CONTACT: John M. Coles, Attorney, Common Carrier Bureau, (202) 632–7265.

SUPPLEMENTARY INFORMATION:

In the Matter of Permissible Services of U.S.-Licensed International Communications Satellite Systems Separate from the International Telecommunications Satellite Organization (INTELSAT).

Order

Adopted: December 6, 1993; Released: January 6, 1994.

By the Commission: Chairman Hundt not participating.

1. The Commission is hereby implementing additional changes in the scope of permissible operations of international separate satellite systems. Our action herein is in response to actions taken by INTELSAT and the Executive Branch in further expanding the scope of operation of international separate satellite systems.

2. At is meeting held November 3–6, 1992, the INTELSAT Assembly of Parties determined that the provision of switched services upon to the level of 1,250 64-kbps equivalent circuits per satellite over separate international satellite systems would not cause significant economic harm to the INTELSAT system. Consistent with INTELSAT's actions, the Executive Branch has further modified the separate satellite systems policy. In a letter dated January 8, 1993, the Executive Branch notified the Commission that it had modified some of the criteria articulated in the November 27, 1991 letter which set forth the scope of permissible services that could then be provided over separate systems (including 100 64-kbps equivalent circuits per satellite system) and further modified the Separate Systems policy to permit the provision of private line circuits interconnected to the public switched network (PSN).[1] The Executive Branch has now determined that interconnection of international separate satellite systems to the PSN at a level up to 1,250 64-kbps equivalent circuits per satellite for the provision of public switched services is consistent with U.S. telecommunications and foreign policy interests.[2] In light of these circumstances, we find that permitting U.S. separate satellite systems to provide up to 1,250 64-kbps equivalent circuits per satellite interconnected with the PSN for the provision of public switched services will serve the public interest.

3. Accordingly, It is ordered That, effective upon publication in the **Federal Register**,[3] U.S. separate satellite systems may now provide up to 1,250 64–kbps equivalent circuits per satellite for the provision of public switched services.[4]

4. *It is further ordered* That authority is delegated to the Chief, Common Carrier Bureau to implement the change to 1,250 64-kbps equivalent circuits per satellite, as well as future changes in the number circuits that may be interconnected with the PSN, subject to satisfaction of U.S. obligations under the INTELSAT Agreement.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–1331 Filed 1–19–94; 8:45 am]

BILLING CODE 6712–01–M

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[2] Willful false statements made in an application are punishable by fine and/or imprisonment. 18 U.S.C. 1001.

[3] Applicants and licensees are reminded that licenses confer the right to use channels of radio transmission, but do not confer ownership thereof, even for limited periods of time; and that licenses do not create any right, beyond the terms, conditions, and periods of the license. See, 47 U.S.C. 301.

[4] Initially, electronic filing is intended only for non-sensitive, public information. Material filed with requests for confidentiality, see 47 CFR 0.457, must be submitted on paper.

[1] Letter dated January 8, 1993 from Bradley P. Holmes, United States Coordinator for International Communications and Information Policy, Department of State and Gregory L. Chapados, Assistant Secretary for Communications and Information, Department of Commerce to FCC Chairman Alfred C. Sikes which references the November 27, 1991 letter from James Baker, Secretary of State and Robert Mosbacher, Secretary of Commerce to FCC Chairman Alfred Sikes. See Permissible Services of U.S. Licensed International Communications Satellite Systems Separate from the International Telecommunications Satellite Organization (INTELSAT), 7 FCC Rcd 2313 (1992), recon dismissed, 8 FCC Rcd 5122 (1993) (Separate Systems Modification order), which implemented the criteria set forth in the Executive Branch's November 27, 1991 letter.

[2] Prior to this modification, international separate satellite systems could provide up to 100 64-kbps equivalent circuits per system. See letter dated December 14, 1990 from Thomas J. Murrin, Deputy Secretary of Commerce and Lawrence S. Eagleburger, Deputy Secretary of State to FCC Chairman Alfred C. Sikes.

[3] *See* 5 U.S.C. 553 (a)(1) (exempting foreign affairs matters) and 5 U.S.C. 553 (d)(1) (a rule relieving a restriction not subject to 30-day effective date requirement).

[4] In light of the foreign policy objectives underlying the establishment of international separate satellite systems, as reflected in the January 8 letter, modification of the level of switched circuits that can be provided via a separate satellite system from the current 100 64-kbps equivalent circuits per system to 1,250 64-kbps equivalent circuits per satellite can be effected without notice and comment. See 5 U.S.C. 553 (a)(1).

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1006-DR]

Missouri; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri, (FEMA-1006-DR), dated December 1, 1993, and related determinations.

EFFECTIVE DATE: January 13, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Missouri dated December 1, 1993, is hereby amended to include Public Assistance for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 1, 1993:

Ste. Genevieve County for Individual Assistance and Public Assistance.

Carter, Dent, Howell, Iron, Madison, Oregon, Perry, Reynolds, St. Francois, Shannon, Texas, Washington and Wayne Counties for Public Assistance. (Already designated for Individual Assistance.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94-1358 Filed 1-19-94; 8:45 am]

BILLING CODE 6718-02-M

Crisis Counseling Assistance and Training

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: FEMA gives notice that the extension period for the Hawaii regular crisis counseling program for disaster survivors of Hurricane Andrew is extended from 90 days to 150 days. The severity of the emotional trauma resulting from Hurricane Andrew warrants an extension of an additional 60 days.

EFFECTIVE DATE: December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Diana Paschke, Human Services Division, Response and Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-4026.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) is charged with coordinating Federal disaster assistance under the provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Act) when the President has declared a major disaster. FEMA provided funding for a regular crisis counseling program to help those suffering the trauma resulting from the September 1992 Hurricane Iniki disaster.

FEMA received a request from the State of Hawaii to extend the otherwise applicable time limitations authorized by section 416 of the Act, so that the State can provide additional mental health services that are critically needed for citizens during the recovery operation. The extent of the damages wrought by the hurricane were of such magnitude that the residents of Hawaii suffered significant emotional trauma that warrants continuation of disaster mental health counseling beyond the normal crisis counseling time periods.

The Director, Center for Mental Health Services (CMHS), as the delegate to FEMA for the Secretary, Department of Health and Human Services, helps FEMA implement crisis counseling training and assistance. FEMA believes there was a well-established need for continuation of the regular crisis counseling program beyond a 90-day extension. Based upon the sound CMHS recommendation, FEMA has approved a 150-day extension to the time period for the Hawaii regular crisis counseling program.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director.

[FR Doc. 94-1359 Filed 1-19-94; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

[Petition No. P4-94]

Petition for Temporary Exemption From Electronic Tariff Filing Requirements; Matson Navigation Co., Inc. and Matson Terminals, Inc.

Notice is hereby given of the filing of a petition by Matson Navigation Company, Inc. and Matson Terminals, Inc. pursuant to 46 CFR 514.8(a), for temporary exemption from the electronic service contract tariff filing requirements of the Commission's ATFI System.

To facilitate thorough consideration of the petition, interested persons are requested to reply to the petition no later than January 19, 1994. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573-0001, shall consist of an original and 15 copies, and shall be served on petitioner, Jerry A. Yarbrough, Matson Navigation Company, 333 Market Street, San Francisco, California 94120.

Copies of the petition are available for examination at the Washington, DC office of the Secretary of the Commission, 800 N. Capitol Street, NW., room 1046.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 94-1269 Filed 1-19-94; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms under Review

Background

Notice is hereby given of the submission of proposed information collection to the Office of Management and Budget (OMB) for its review and approval under the Paperwork Reduction Act (Title 44 U.S.C. Chapter 35) and under OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR part 1320). A copy of the proposed information collection and supporting documents is available from the agency clearance officer listed in the notice. Any comments on the proposal should be sent to the agency clearance officer and to the OMB desk officer listed in the notice.

DATES: Comments should be submitted on or before February 19, 1993.

FOR FURTHER INFORMATION CONTACT: Mary M. McLaughlin, Federal Reserve Board Clearance Officer (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551; Gary Waxman, OMB Desk Officer (202-395-3740), Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202-452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Request for OMB approval to revise the following report:

1. *Report title:* Reports of Condition and Income

Agency form number: FFIEC 031-034
OMB Docket number: 7100-0036
Frequency: Quarterly
Reporters: State member banks
Annual reporting hours: 166,042
Estimated average hours per response: 42.1
Number of respondents: 986
Small businesses are affected.

General description of report:

This information collection is mandatory (12 U.S.C. 324) and is given partial confidential treatment.

SUMMARY:

On a quarterly basis, state member banks are required to file detailed schedules of assets, liabilities, and capital in the form of a condition report and summary statement; detailed schedule of operating income and expense, sources and disposition of income, and changes in equity capital in the form of an income statement; and a variety of supporting schedules. Data are used for supervisory and monetary policy purposes. The proposed changes affect several existing Call Report schedules. Unless otherwise indicated, the proposed changes would apply to all four sets of reporting forms (FFIEC 031, FFIEC 032, FFIEC 033, and FFIEC 034); the proposed changes are as follows:

(1) Revisions to the reporting of securities in the following Call Report schedules to reflect the effect of Financial Accounting Standards Board Statement No. 115, "Accounting for Certain Investments in Debt and Equity Securities" (FASB 115), which banks must adopt for Call Report purposes for fiscal years beginning after December 15, 1993:

(a) In the body of Schedule RC-B, "Securities," the amortized cost and fair value for each type of held-to-maturity securities would be reported separately from the amortized cost and fair value for each type of available-for-sale securities. On the FFIEC 031 report forms, the breakdown of securities (not held in trading accounts) in domestic offices by type of security would be moved from the body of Schedule RC-B to Schedule RC-H, "Selected Balance Sheet Items for Domestic Offices."

(b) In the Memoranda section of Schedule RC-B, Memorandum items 3, "Taxable securities issued by states and political subdivisions in the U.S.," and 5, "Debt securities for sale," would be deleted. A new Memorandum item would be added for the amortized cost of held-to-maturity securities sold or transferred during the calendar year-to-date.

(c) On Schedule RC, "Balance Sheet," item 2, "Securities," would be split into separate items for "Available-for-sale securities" and "Held-to-maturity securities," while item 26.b would be recaptioned as "Net unrealized holding gains (losses) on available-for-sale securities."

(d) On Schedule RI, "Income Statement," item 6, "Gains (Losses) on securities not held in trading accounts," would be split into separate items for gains (losses) on available-for-sale securities and held-to-maturity securities.

(e) On Schedule RI-A, "Changes in Equity Capital," item 11 would be recaptioned as "Change in net unrealized holding gains (losses) on available-for-sale securities."

(2) On Schedule RC-M, "Memoranda," new items would be added for the amount of mutual funds (segregated into four categories) and annuities sold during the quarter by the reporting bank and by third parties with whom the bank has a contractual sales arrangement. In Schedule RI, "Income Statement," a Memorandum item would be added for fee income from the sale and servicing of mutual funds and annuities.

(3) On Schedule RC, "Balance Sheet," item 16 for "Other borrowed money" would be split into separate subitems for amounts with an original maturity of one year or less and for amounts with an original maturity of more than one year. In addition, a new category of liabilities, "Trading liabilities," would begin to be reported on Schedule RC.

(4) On Schedule RC-O, "Other Data for Deposit Insurance Assessments," a new item would be added for "Benefit-responsive Depository Institution Investment Contracts."

(5) On the FFIEC 031 and 032 report forms:

(a) Schedule RC-D would be revised to cover both trading assets and liabilities, including new items for three categories of mortgage-backed securities, trading assets in foreign offices (on the FFIEC 031 report forms), revaluation gains (broken down between domestic offices and foreign offices on the FFIEC 031) and revaluation losses on interest rate, foreign exchange rate, and other commodity and equity contracts, and liability for short positions. In addition to the banks with $1 billion or more in total assets that are currently required to complete Schedule RC-D, those banks with $2 billion or more in par-notional amount of interest rate, foreign exchange rate, and other commodity and equity contracts (and less than $1 billion in total assets) will be required to complete the schedule.

(b) Schedule RC-N, which collects past due and nonaccrual data, would see the addition of new items for interest rate, foreign exchange rate, and other commodity and equity contracts that are past due 30 through 89 days or past due 90 days or more. Banks would report the book value of amounts carried as assets on the balance sheet for such past due contracts as well as the replacement cost of those past due contracts with a positive replacement cost. Consistent with the existing treatment of Schedule RC-N data, individual bank information on contracts past due 30 through 89 days would be treated as confidential.

(6) On Schedule RC-C, part I, "Loans and Leases," a single total would be reported for "Obligations (other than securities and leases) of states and political subdivisions in the U.S." and the separate items for taxable and tax-exempt obligations would be eliminated.

(7) Memorandum items 1 and 2 on Schedule RC-L, "Off-Balance Sheet Items," which collect data on certain loan sales and purchases during the quarter would be deleted.

In addition, the general Call Report instruction precluding assets and liabilities from being offset or otherwise netted unless specifically required by the instructions would be modified to allow on-balance sheet amounts associated with conditional and exchange contracts (e.g., forwards, interest rate swaps, and options) to be offset in accordance with Financial Accounting Standards Board Interpretation No. 39. This would be an interim treatment pending clarification of an interpretive issue under Interpretation No. 39. Consistent with existing Call Report instructions, the netting of assets and liabilities other than those arising from conditional and exchange contracts will not be permitted unless specifically required by the instructions.

The effective date for these proposed changes, if approved, would be the March 31, 1994, report date.

Board of Governors of the Federal Reserve System, January 13, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-1316 Filed 1-19-94; 8:45 am]

BILLING CODE 6210-01-F

Agency Forms under Review

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork

Reduction Act of 1980, as per 5 CFR 1320.9, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9. Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATES: Comments must be submitted on or before February 3, 1994.

ADDRESSES: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments received may be inspected in room B-1122 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Mary M. McLaughlin, Federal Reserve Board Clearance Officer (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202-452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension, without revision, of the following report(s):

1. *Report title:* HMDA/Loan Application Register
Agency form number: HMDA/LAR
OMB Docket number: 7100-0247
Frequency: Annual
Reporters: Depository institutions and other lenders covered by the Federal Reserve Board's Regulation C
Annual reporting hours: 114,840
Estimated average hours per response: 200 for state member banks; 160 for mortgage banking subsidiaries
Number of respondents: 507 state member banks; 84 mortgage banking subsidiaries
Small businesses are not affected.
General description of report: This information collection is mandatory (12 U.S.C. 280-2810; 12 CFR part 203) and is not given confidential treatment.
SUMMARY: The Federal Reserve Board's Regulation C implements HMDA; it requires depository institutions and other covered lenders to report information each year that shows a geographic breakdown of their residential mortgage applications, and loans made and purchased.

2. *Report title:* The Quarterly Gasoline Company Report
Agency form number: FR 2580
OMB Docket number: 7100-0009
Frequency: Quarterly
Reporters: Gasoline Companies
Annual reporting hours: 6
Estimated average hours per response: 0.15
Number of respondents: 10
Small businesses are not affected.
General description of report: This information collection is voluntary (12 U.S.C. 263, 461, and 353 et seq.) and is given confidential treatment under the Freedom of Information Act (5 U.S.C. 552 (b)(4)).
SUMMARY: This report is used to collect information on outstanding balances on retail credit card accounts at gasoline companies.

Proposal to approve under OMB delegated authority the extension, with revision, of the following report(s):

1. *Report title:* The Monthly Commercial Bank Report on Consumer Credit
Agency form number: FR 2571
OMB Docket number: 7100-0080
Frequency: Monthly
Reporters: Commercial banks
Annual reporting hours: 2,880
Estimated average hours per response: 0.6
Number of respondents: 400
Small businesses are not affected.
General description of report: This information collection is voluntary (12 U.S.C. 255(a) and 248(a)(2)) and is given confidential treatment under the Freedom of Information Act (5 U.S.C. 552(b)(4)).
SUMMARY: This report is used to collect information on consumer loans outstanding at the domestic offices of a sample of 400 commercial banks.

2. *Report title:* The Quarterly Report of Interest Rates on Selected Direct Consumer Installment Loans
Agency form number: FR 2835
OMB Docket number: 7100-0085
Frequency: Quarterly
Reporters: Commercial Banks
Annual reporting hours: 105
Estimated average hours per response: 0.15
Number of respondents: 175
Small businesses are not affected.
General description of report: This information collection is voluntary (12 U.S.C. 248(a)(2)) and is not given confidential treatment.
SUMMARY: This report collects the "most common" rate charged at a sample of 175 commercial banks on two types of consumer loans: auto loans and closed-end personal loans.

Proposal to approve under OMB delegated authority the implementation of the following report:

1. *Report title:* The Quarterly Report of Credit Card Interest Rates
Agency form number: FR 2835a
OMB Docket number: 7100-0085
Frequency: Quarterly
Reporters: Commercial banks
Annual reporting hours: 300
Estimated average hours per response: .50
Number of respondents: 150
Small businesses are not affected.
General description of report: This information collection is voluntary (12 U.S.C. 248(a)(2)) and is given confidential treatment under the Freedom of Information Act (5 U.S.C. 552(b)(4)).
SUMMARY: This new report would collect information on two measures of credit card interest rates from a sample of 150 commercial banks. The data would be viewed as representative of interest rates at all banks by including all large issuers and an appropriate sampling of other issuers.

Board of Governors of the Federal Reserve System, Janaury 13, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-1316 Filed 1-19-94; 8:45 am]

BILLING CODE 6210-01-F

[Docket No. R-0806]

Modifications to the Payments System Risk Reduction Program; Self-Assessment Procedures, Caps for U.S. Branches and Agencies of Foreign Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Policy statement.

SUMMARY: As part of its payments system risk reduction program, the Board is adopting modifications to its Policy Statement on Payments System Risk. Specifically, the Board is modifying in two ways the procedures that depository institutions must use if they choose to complete a self-assessment to establish a daylight overdraft net debit cap. First, effective for self-assessments performed on or after January 1, 1995, depository institutions must evaluate their operating controls and contingency procedures in addition to the three existing components of the self-assessment (creditworthiness, intraday funds management and control, and customer credit policies and controls). Second, depository institutions will use a "Creditworthiness Matrix" to determine their overall creditworthiness rating, except in certain limited circumstances. In addition to these two changes to the self-assessment procedures, the Board is eliminating the requirement that branches and agencies of foreign banks provide information on U.S. funding capability and discount window eligible collateral for use in determining their daylight overdraft net debit caps.

DATES: Effective April 14, 1994.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Marquardt, Assistant Director (202/452-2360), Paul Bettge, Manager (202/452-3174), Division of Reserve Bank Operations and Payment Systems; for the hearing impaired only: Telecommunications Device for the Deaf, Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION:

Background

The Board's Payments System Risk policy requires that institutions incurring daylight overdrafts in their Federal Reserve accounts establish a maximum limit, or net debit cap, on overdrafts incurred in those accounts. In August 1993, the Board requested comment on three proposals to modify the procedures for establishing net debit caps. The Board received 16 public comments on the proposals.

Self-Assessment Procedures

Under the Board's policy, an institution's net debit cap (for a single day and on average over a two-week reserve maintenance period) is based on its cap category. The cap categories that permit relatively higher use of intraday credit are the Average, Above Average, and High cap categories. An institution that wishes to establish a cap in one of these categories must complete an assessment of its creditworthiness, intraday funds management and control, and customer credit policies and controls.

Operating Controls and Contingency Procedures

The Board requested comment on the addition of a fourth component to the self-assessment procedures to cover operating controls and contingency procedures, with a proposed effective date of January 1, 1995. Nine commenters viewed favorably the Board's proposal to require the assessment of operating controls and contingency procedures. These commenters did not indicate that the proposal would substantially increase regulatory burden. Two of these commenters suggested a later implementation date for the additional assessment component, however. One other commenter opposed the additional component as being duplicative of other bank regulatory requirements, while two commenters felt that the additional component would be burdensome for smaller institutions.

In the Board's view, it is important that any institution that wishes to use a relatively higher amount of Federal Reserve intraday credit perform an assessment of its operating controls and contingency procedures relating to its payments activity. Furthermore, the assessment itself consists of eight straightforward questions about the institution's operations and should pose a burden to complete. Institutions whose operating controls and contingency procedures are not currently adequate to meet the criteria in the self-assessment procedures should not incur overdrafts greater than those permitted by a de minimis cap, which permits a lower amount of overdrafts without the requirement of a self-assessment, until they upgrade their procedures to meet such criteria.

The Board is therefore adopting the fourth component to the self-assessment procedures as proposed to cover operating controls and contingency procedures for assessments performed on or after January 1, 1995. Depository institutions may elect to include the additional component in assessments performed prior to that date, however.

Creditworthiness Matrix

In an attempt to reduce the burden on institutions electing to undertake an assessment, the Board proposed a simplified approach to assessing creditworthiness. Under the new methodology, an institution's prompt corrective action capital category and its supervisory rating are combined into a single rating for the creditworthiness component of the self-assessment using a Creditworthiness Matrix, which is shown below.

The Board believes that it is appropriate, in nearly all circumstances, for depository institutions to use the Matrix to determine their creditworthiness rating. In certain limited circumstances, however, institutions will be permitted to perform a full assessment of creditworthiness. (Procedures for completing the full assessment of creditworthiness are included in the Guide to the Federal Reserve's Payments System Risk Policy, which is available from any Reserve Bank.) For example, an institution whose condition has changed significantly since its last examination, or that possesses additional substantive information regarding its financial condition, may be permitted to justify a different rating based on a full creditworthiness assessment. In all cases, the Reserve Banks retain the responsibility for reviewing caps and determining appropriate cap levels.

CREDITWORTHINESS MATRIX

Capital level	Supervisory composite rating		
	Strong	Satisfactory	Fair
Well Capitalized.	Excellent	Very Good.	Adequate
Adequately Capitalized.*	Very Good	Very Good.	Adequate
Undercapitalized.	(***)	(***)	Below Standard.

*** Institutions that fall into this category should perform a full assessment of creditworthiness.

Note: Institutions that fall into categories not shown in the Matrix would receive a Below Standard rating.

U.S. branches and agencies of foreign banks located in countries that adhere to the Basle Capital Accord are treated in the same manner as U.S.-based banks, with supervisory ratings of the U.S. branches or agencies used in conjunction with the capital category of the parent bank. The resulting creditworthiness rating for the U.S. branch or agency is conditioned on the overall creditworthiness of the entire foreign banking organization, however. In addition, foreign banks from countries that have not subscribed to the Basle Capital Accord must perform a full assessment of creditworthiness in order to determine their net debit cap.

In August 1993, the Board requested public comment on the use of the Creditworthiness Matrix. Eleven commenters specifically addressed the changes in the methodology for the assessment of creditworthiness. Nine commenters expressed support for the Board's proposal to streamline the self-assessment process through the use of the new Creditworthiness Matrix and indicated that the new procedures would reduce regulatory burden. Of these, however, five commenters felt that depository institutions should be permitted the option of completing the full assessment of creditworthiness.

Two commenters did not support the Creditworthiness Matrix method, but suggested that its use be optional. The Institute of International Bankers, an association representing foreign banks, opposed any mandatory use of the Matrix as it would result in lower caps for many branches and agencies of foreign banks.

In the Board's view, the benefits of the Creditworthiness Matrix approach, namely a streamlined self-assessment process and increased objectivity of the creditworthiness ratings across institutions, mitigates objections to standardized usage of the Matrix. As institutions adopting caps in the Average, Above Average, and High categories may be permitted to incur overdrafts greater than their capital, it is particularly important that these caps be appropriate given institutions' financial strength as measured by objective regulatory criteria. While some institutions, including a number of foreign banks, will likely adopt lower caps as a result of using the Creditworthiness Matrix, analysis of these institutions' recent daylight overdraft activity indicates that these caps should not be unduly constraining.

The Board is, therefore, adopting the modifications as proposed to the creditworthiness component of the self-assessment procedures, effective April 14, 1994. For self-assessments performed on or after that date, including those performed as part of the annual cap renewal process, depository institutions will be required to use the Creditworthiness Matrix in all but certain limited circumstances. If appropriate, depository institutions may, at their option, use the Creditworthiness Matrix in completing self-assessments prior to that date.

Net Debit Caps for Branches and Agencies of Foreign Banks

The determination of net debit caps for foreign banks is based on essentially the same procedures as those for U.S. institutions. However, for foreign banks, the Federal Reserve has also required evidence of an institution's U.S. funding capability and discount window eligible collateral. The dollar amount of an institution's net debit cap could be reduced (below its cap multiple times its capital) based on these amounts.

Experience with U.S. funding capability and collateral data has shown that, in order to collect these data with sufficient precision and frequency, a significant regulatory burden is imposed. In addition, it is unlikely that these data accurately measure a foreign bank's ability to raise funds at times when rapid access to money markets may be necessary. As a result, the Board proposed to discontinue reporting of information on U.S. funding capability and discount window eligible collateral by branches and agencies of foreign banks for use in determining daylight overdraft net debit caps.

Only two commenters mentioned the proposal to discontinue reporting of this information by foreign banks. The Institute of International Bankers supported the proposal. One U.S. commercial bank opposed the proposal, based on the rationale that supervisory ratings used in determining net debit caps for foreign banks are not comparable to those for U.S. institutions. In the Board's view, the proposed requirement that creditworthiness ratings of branches and agencies of foreign banks be conditioned on the overall creditworthiness of the entire foreign banking organization should help alleviate such concerns. The Board is therefore adopting the proposed modification to the method for establishing caps for branches and agencies of foreign banks, effective April 14, 1994.

Guide to the Federal Reserve's Payments System Risk Policy

In order to facilitate public comment on the August 1993 proposals, the Board provided depository institutions with a draft version of the Guide to the Federal Reserve's Payments System Risk Policy. This document is intended to provide a thorough description of the procedures to be used in conducting a self-assessment. Once issued in final form, the Guide to the Federal Reserve's Payments System Risk Policy will supersede previously issued versions of the Users' Guide to the Payments System Risk Policy. The Federal Reserve has also issued a new summary document, entitled Overview of the Federal Reserve's Payments System Risk Policy, which describes the requirements of the policy for institutions that incur minimal daylight overdrafts. The Board is also modifying the text of the Policy Statement on Payment System Risk to include appropriate references to these two new documents.

Federal Reserve System Policy Statement on Payments System Risk

The Board is amending its "Federal Reserve System Policy Statement on Payments System Risk" under the heading "I. Federal Reserve Policy" by replacing the last three sentences of the Introduction, part (C)(2) under the headings "C. Capital" and "2. U.S. Agencies and Branches of Foreign Banks," and the first paragraph of part (D)(1) under the headings "D. Net Debit Caps" and "1. Cap Set Through Self-Assessment" as set forth below:

Introduction

* * * * *

To assist depository institutions in implementing the Board's policies, the Federal Reserve has prepared two documents, the Overview of the Federal Reserve's Payments System Risk Policy and the Guide to the Federal Reserve's Payments System Risk Policy, which are available from any Reserve Bank. The Overview of the Federal Reserve's Payments System Risk Policy provides a summary of the Board's policy on payments system risk, including daylight overdraft net debit caps and fees. The Overview is intended for use by institutions that incur only small and infrequent daylight overdrafts. The Guide to the Federal Reserve's Payments System Risk Policy explains in detail how the policies apply to various types of institutions and includes procedures for completing a self-assessment and filing a cap resolution, as well as

information on other aspects of the payments system risk policy.

* * * * *

I.C. Capital

2. U.S. Agencies and Branches of Foreign Banks

For U.S. agencies and branches of foreign banks, net debit caps on daylight overdrafts in Federal Reserve accounts are calculated by applying the cap multiples for each cap category to consolidated "U.S. capital equivalency."[4]

For a foreign bank whose home-country supervisor adheres to the Basle Capital Accord, U.S. capital equivalency is equal to the greater of 10 percent of worldwide capital or 5 percent of the total liabilities of each agency or branch, including acceptances, but excluding accrued expenses and amounts due and other liabilities to offices, branches, and subsidiaries of the foreign bank. In the absence of contrary information, the Reserve Banks presume that all banks chartered in G–10 countries meet the acceptable prudential capital and supervisory standards and will consider any bank chartered in any other nation that adopts the Basle Capital Accord (or requires capital at least as great and in the same form as called for by the Accord) eligible for the Reserve Banks' review for meeting acceptable prudential capital and supervisory standards.

For all other foreign banks, U.S. capital equivalency is measured as the greater of (1) the sum of the amount of capital (but not surplus) that would be required of a national bank being organized at each agency or branch location, or (2) the sum of 5 percent of the total liabilities of each agency or branch, including acceptances, but excluding accrued expenses and amounts due and other liabilities to offices, branches, and subsidiaries of the foreign bank.

In addition, any foreign bank may incur daylight overdrafts above its net debit cap up to a maximum amount equal to its cap multiple times 10 percent of its worldwide capital, provided that any overdrafts above its net debit cap are collateralized. This policy offers all foreign banks, under terms that reasonably limit Reserve Bank risk, a level of overdrafts based on the same proportion of worldwide capital. Consequently, banks chartered in countries that follow the Basle Accord and whose net debit cap is based on 10 percent of worldwide capital are not permitted to incur overdrafts above their net debit cap. All other foreign banks may incur overdrafts to the same extent as banks from Basle Accord countries, that is, up to their cap multiple times 10 percent of their worldwide capital, provided that sufficient collateral is posted for any overdrafts in excess of their net debit cap. In addition, foreign banks may elect to collateralize all or a portion of their overdrafts related to book-entry securities activity.

* * * * *

I.D. Net Debit Caps

1. Cap Set Through Self-Assessment

In order to establish a net debit cap category of Average, Above Average, or High, an institution must perform a self-assessment of its own creditworthiness, intraday funds management and control, customer credit policies and controls, and, effective January 1, 1995, operating controls and contingency procedures.[5] The assessment of creditworthiness should be based on the institution's supervisory rating and Prompt Corrective Action capital category. An institution may be permitted to perform a full assessment of its creditworthiness in certain limited circumstances, for example, if its condition has changed significantly since its last examination, or if it possesses additional substantive information regarding its financial condition. Additionally, U.S. branches and agencies of foreign banks based in countries that do not adhere to the Basle Capital Accord are required to perform a full assessment of creditworthiness to determine their ratings for the creditworthiness component. An institution performing a self-assessment must also evaluate its intraday funds management procedures and its procedures for evaluating the financial condition of and establishing intraday credit limits for its customers. Finally, the institution must evaluate its operating controls and contingency procedures to determine if they are sufficient to prevent losses due to fraud or system failures. The Guide to the Federal Reserve's Payments System Risk Policy, available from any Reserve Bank, includes a detailed explanation of the steps that should be taken by a depository institution in performing a self-assessment to establish a net debit cap.

* * * * *

By order of the Board of Governors of the Federal Reserve System, January 13, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–1315 Filed 1–19–94; 8:45 am]

BILLING CODE 6210–01–P

[4] The term "U.S. capital equivalency" is used in this context to refer to the particular capital measure used to calculate daylight overdraft net debit caps, and does not necessarily represent an appropriate capital measure for supervisory or other purposes.

[5] This assessment should be done on an individual institution basis, treating as separate entities each commercial bank, each Edge corporation (and its branches), each thrift institution, etc. An exception is made in the case of U.S. agencies and branches of foreign banks. Because these entities have no existence separate from the foreign bank, all the U.S. offices of foreign banks (excluding U.S. chartered bank subsidiaries and U.S. chartered Edge subsidiaries) should be treated as a consolidated family relying on the foreign bank's capital.

Federal Open Market Committee; Domestic Policy Directive of November 16, 1993

In accordance with § 271.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on November 16, 1993.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests some strengthening in the expansion of economic activity in recent months. Total nonfarm payroll employment rose appreciably in September and October, while the civilian unemployment rate edged up to 6.8 percent in October. Industrial production increased sharply in October, partly reflecting a continuing rebound in the output of motor vehicles. Retail sales were up substantially in October after changing little in September. Housing activity picked up further in the third quarter. The expansion of business capital spending has slowed from a robust pace earlier in the year. The nominal U.S. merchandise trade deficit in July-August was about unchanged from its average rate in the second quarter. Consumer prices have increased moderately on balance in recent months and producer prices have fallen.

Most interest rates have increased somewhat since the Committee meeting on September 21. In foreign exchange markets, the trade-weighted value of the dollar in terms of the other G-10 currencies appreciated over the intermeeting period.

Growth of M2 picked up slightly on balance in September and October, while M3 strengthened to a somewhat greater extent over the two months. For the year through October, M2 and M3 are estimated to have grown at rates a little above the lower end of the Committee's ranges for the year. Total domestic nonfinancial debt has expanded at a moderate rate in recent months, and for the year through August it is estimated to have

[1] Copies of the Minutes of the Federal Open Market Committee meeting of November 16, 1993, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

increased at a rate in the lower half of the Committee's monitoring range.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee at its meeting in July lowered the ranges it had established in February for growth of M2 and M3 to ranges of 1 to 5 percent and 0 to 4 percent respectively, measured from the fourth quarter of 1992 to the fourth quarter of 1993. The Committee anticipated that developments contributing to unusual velocity increases would persist over the balance of the year and that money growth within these lower ranges would be consistent with its broad policy objectives. The monitoring range for growth of total domestic nonfinancial debt also was lowered to 4 to 8 percent for the year. For 1994, the Committee agreed on tentative ranges for monetary growth, measured from the fourth quarter of 1993 to the fourth quarter of 1994, of 1 to 5 percent for M2 and 0 to 4 percent for M3. The Committee provisionally set the monitoring range for growth of total domestic nonfinancial debt at 4 to 8 percent for 1994. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure on reserve positions. In the context of the Committee's long-run objectives for price stability and sustainable economic growth, and giving careful consideration to economic, financial, and monetary developments, slightly greater reserve restraint or slightly lesser reserve restraint might be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with modest growth in M2 and M3 over coming months.

By order of the Federal Open Market Committee, January 13, 1994.

Normand Bernard,

Deputy Secretary, Federal Open Market Committee.

[FR Doc. 94-1318 Filed 1-19-94; 8:45 am]

BILLING CODE 6210-01-F

Abington Mutual Holding Company, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 11, 1994.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Abington Mutual Holding Company, Jenkintown, Pennsylvania; to become a bank holding company by acquiring 52.4 percent of the voting shares of Abington Savings Bank, Jenkintown, Pennsylvania.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Banc One Corporation, Columbus, Ohio, and Banc One Arizona Corporation, Phoenix, Arizona; to acquire 100 percent of the voting shares of Capital Bancorp, Salt Lake City, Utah, and thereby indirectly acquire Capital City Bank, Salt Lake City, Utah.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Antioch Bancshares, Inc. Employee Savings and Stock Ownership Plan, Antioch, Illinois; to become a bank holding company by acquiring 63.4 percent of the voting shares of Antioch Bancshares, Inc., Antioch, Illinois, and thereby indirectly acquire The First National Bank of Antioch, Antioch, Illinois.

2. Hoosier Hills Financial Corporation ESOP, Osgood, Indiana; to become a bank holding company by acquiring between 30 and 40 percent of the voting shares of Hoosier Hills Financial Corporation, Osgood, Indiana, and thereby indirectly acquire Ripley County Bank, Osgood, Indiana.

Board of Governors of the Federal Reserve System, January 13, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-1320 Filed 1-19-94; 8:45 am]

BILLING CODE 6210-01-F

Allied Irish Banks, p.l.c., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 8, 1994.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Allied Irish Banks, p.l.c., Dublin, Ireland; to engage *de novo* through its subsidiary, Allied Irish Capital Management Ltd., Dublin, Ireland, in

providing investment advice as a commodity trading advisor with respect to the purchase and sale of financial futures contracts and options on financial futures contracts pursuant to § 225.25(b)(17); and providing foreign exchange advisory and transactional services pursuant to § 225.25(b)(19) of the Board's Regulation Y.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. United Bank Corporation, Barnesville, Georgia; to engage *de novo* in real estate and personal property appraising pursuant to § 225.25(b)(13) of the Board's Regulation Y.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Woodforest Bancshares, Inc., Houston, Texas; to engage *de novo* in tax planning and preparation services pursuant to § 225.25(b)(21) of the Board's Regulation Y. These activities will be conducted in the East suburban area of Houston.

Board of Governors of the Federal Reserve System, January 13, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-1319 Filed 1-19-94; 8:45 am]

BILLING CODE 6210-01-F

Douglas J. Atkins, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 8, 1994.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Douglas J. Atkins, Bonita A. Atkins, Douglas D. Atkins, and Daina A. Atkins, all of Hardin, Montana; to each acquire an additional 5.7 percent of the voting shares of Antler Land Company, Hardin, Montana, for individual totals of 17.76 percent, and thereby indirectly acquire Little Horn State Bank, Hardin, Montana.

2. Richard A. Glynn, Sisseton, South Dakota; Duane W. Steege, Wilmot, South Dakota; and Lester E. Timm, Corson, South Dakota; to each acquire an additional 6.10 percent of the voting shares of Northeast Bancorp, Inc., Brandon, South Dakota, for individual totals of 28.05 percent, and thereby indirectly acquire Peoples State Bank, Summit, South Dakota, and Wilmot State Bank, Wilmot, South Dakota.

Board of Governors of the Federal Reserve System, January 13, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-1322 Filed 1-19-94; 8:45 am]

BILLING CODE 6210-01-F

Firstbank of Illinois Co.; Acquisition of Company Engaged in Permissible Nonbanking Activities

This notice corrects a notice (FR Doc. 93-30799) published on page 66000 of the issue for Friday, December 17, 1993.

Under the Federal Reserve Bank of Chicago heading, the entry for Firstbank of Illinois Co. is revised to read as follows:

1. Firstbank of Illinois Co., Springfield, Illinois; to acquire Rowe, Henry & Deal, Inc., Jacksonville, Illinois, and thereby engage in securities brokerage activities pursuant to § 225.25(b)(15); and underwriting and dealing in government obligations and money market instruments pursuant to § 225.25(b)(16) of the Board's Regulation Y

Comments on this application must be received by February 3, 1994.

Board of Governors of the Federal Reserve System, January 13, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-1321 Filed 1-19-94; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 12-27-93 AND 01-07-94

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN No.	Date terminated
Bayernwerk AG, Owens-Illinois, Inc., OI Kimble FTS Inc	94-0342	12/27/93
Chipcom Corporation, Artel Communications Corporation, Artel Communications Corporation	94-0407	12/27/93
Kidd Kamm Equity Partners, L.P., Mr. Harry Scharling, Action International, Inc., The Rug Barn, Inc	94-0436	12/27/93
Charles F. Dolan, Monmouth Cablevision Associates Limited Partnership, Monmouth Cablevision Associates Limited Partnership	94-0465	12/27/93
Charles F. Dolan, Framingham Cablevision Associates Limited Partnership, Framingham Cablevision Associates Limited Partnership	94-0466	12/27/93
Charles F. Dolan, Riverview Cablevision Associates, L. P., Riverview Cablevision Associates, L.P	94-0467	12/27/93
Fruit of the Loom, Inc., Jostens, Inc., Artex Manufacturing Co., Inc	94-0473	12/27/93
Corange Limited, CellPro, Incorporated, CellPro, Incorporated	94-0480	12/27/93
Knight-Ridder, Inc., James R. Uffelman, Technimetrics, Inc	94-0484	12/27/93

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 12-27-93 AND 01-07-94—Continued

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN No.	Date terminated
Resort Associates, L.P., C.A.H. Spa of Florida Corp., C.A.H. Spa of Florida Corp	94-0485	12/27/93
Resort Associates, L.P., Carol Management Corporation, Doral Resort and Country Club	94-0486	12/27/93
The Lubrizol Corporation, Mycogen Corporation, Mycogen Corporation	94-0488	12/27/93
Carton Communications plc, Central Independent Television plc, Central Independent Television plc	94-0489	12/27/93
Tyler Corporation, Institutional Financing Services, Inc., Institutional Financing Services, Inc	94-0493	12/27/93
Horizon Cellular Telephone Company, L.P., Anthony F. DiCroce, DICOMM Cellular, L.P	94-0494	12/27/93
Horizon Cellular Telephone Company, L.P., Charles A. DiCroce, DICOMM Cellular, L.P	94-0495	12/27/93
K N Energy, Inc., Public Service Company of Colorado, Fuel Resources Development	94-0503	12/27/93
Culbro Corporation, Morgan Stanley Leveraged Equity Fund II, L.P., NCC L.P	94-0504	12/27/93
Danka Business Systems PLC, John L. Leinweber, American Office Equipment Company Inc	94-0506	12/27/93
Danka Business Systems PLC, Carl R. Davis, American Office Equipment Company, Inc	94-0507	12/27/93
American Management Systems, Inc., NYNEX Corporation, Vista Concepts, Inc	94-0510	12/27/93
Thorchem International, Inc., PCR Group, Inc., PCR Group, Inc	94-0511	12/27/93
The Southern Company, Eastern Airlines Variable Benefit Plan for Pilots, Bensenville Associates Limited	94-0513	12/27/93
Mitsubishi Corporation, Mitsubishi Corporation, Atwood Resources, Inc	94-0517	12/27/93
Cygne Designs, Inc., The Ronald McAulay Trust, Fenn, Wright and Manson, Incorporated	94-0528	12/27/93
The Ronald McAulay Trust, Cygne Designs, Inc., Cygne Designs, Inc	94-0529	12/27/93
VIAG AG, Owens-Illinois, Inc., OI Kimble FTS Inc	94-0392	12/28/93
Inspec Group Limited, Lenzing Aktiengesellschaft, Allco Chemical Corporation	94-0444	12/28/93
OrNda HealthCorp, American Healthcare Management, Inc., American Healthcare Management, Inc	94-0474	12/28/93
Tom E. DuPree, Jr., Applebee's International, Inc., Applebee's International, Inc	94-0518	12/29/93
Evangelical Health Systems Corporation, Ravenswood Health Care Corporation, Ravenswood Health Care Corporation	94-0409	12/30/93
Akzo N.V., Securum AB, Nobel Industries AB	94-0453	12/30/93
Ralph J. Roberts, Craig O. McCaw, LIN Cellular Communications Corporation	94-0476	12/30/93
Questar Corporation, Garvey Industries, Inc., Petroleum, Inc	94-0515	12/30/93
Kansas City Southern Industries, Inc., The Continuum Company, The Continuum Company, Inc	94-0523	12/30/93
Ray C. Anderson, Robert D. Weiner, Prince Street Technologies, Ltd	94-0525	12/30/93
Parker & Parsley Development Corp., Mobil Corporation, Mobil Corporation	94-0554	12/30/93
Corporacion Venezolana de Cementos S.A.C.A., National Portland Cement Company, National Portland Cement Company	94-0471	01/03/94
American Medical Response, Inc., Austin Leibowitz, Hunter Ambulette-Ambulance Inc. & Hunter Ambulance Inc	94-0509	01/03/94
Austin Leibowitz, American Medical Response, Inc., American Medical Response, Inc	94-0512	01/03/94
Southwestern Bell Corporation, Noel Group, Inc., United Cellular Network, Inc	94-0531	01/03/94
Southwestern Bell Corporation, Kenneth A. Horowitz, Utica Telephone Company	94-0533	01/03/94
Southwestern Bell Corporation, Sytel-1, L.P., Syracuse Telephone Company	94-0534	01/03/94
Sage Technologies, Inc., Peter B. Zacharkiw and Alison C. Zacharkiw, Bohdan Associates, Inc	94-0535	01/03/94
Samuel Toscano, Jr., Franz Haniel & Cie. GmbH, OCP International, Inc	94-0558	01/03/94
Merrill Lynch & Co., Inc., WEI Holdings, Inc., WEI Holdings, Inc	94-0579	01/03/94
Merrill Lynch Capital Appreciation Ptnship No. B-XXI, LP, WEI Holdings, Inc., WEI Holdings, Inc	94-0580	01/03/94
First Reserve Fund VI, Limited Partnership, PetroCorp, Incorporated, PetroCorp, Incorporated	94-0526	01/04/94
Chemical Banking Corporation, Herman Meinders, American Floral Services, Inc	94-0540	01/04/94
James M. Moran, ADT Limited, ADT Automotive, Inc. and AA Holdings, Inc	94-0446	01/05/94
Dennis E. Hecker, ADT Limited, ADT Automotive, Inc. and AA Holdings, Inc	94-0447	01/05/94
G.C. Investments, a Limited Liability Company, Prime South Diversified, Inc., Prime South Diversified, Inc	94-0501	01/05/94
Toshiba Corporation, United Technologies Corporation, ONSI Corporation	94-0516	01/05/94
Merrill Lynch Capital Appreciation Company Limited II, U.S.A. Foods Inc. (Joint Venture), U.S.A. Foods Inc. (Joint Venture)	94-0557	01/05/94
Amarillo National Bancorp, Inc., Cargill, Incorporated, Cargill Agricultural Credit Corporation	94-0562	01/05/94
Corporate Express, Inc., Hanson PLC, Bayless Stationers, Inc	94-0564	01/05/94
C-MAC Industries Inc., Teleglobe Inc., ISI Systems, Inc. and Teleglobe Communications Inc	94-0571	01/05/94
Doris Holdings, L.P., John J. Rigas, Adelphia Communications Corporation	94-0585	01/05/94
Societe Cooperative Agricole Limagrain, BioTechnica International, Inc., BioTechnica International, Inc	94-0491	01/06/94
George Soros, Rotary Investment Group, Inc., FALRIG Offshore, Inc	94-0522	01/06/94
George Soros, PAC Finance Ltd. (A Liberian Company), FALRIG Offshore, Inc	94-0524	01/06/94
Chesapeake Corporation, Lawless Holding Corporation, Lawless Holding Corporation	94-0527	01/06/94
Highland Holdings, John J. Rigas, Adelphia Communications Corporation	94-0586	01/06/94
Citherm B.V., General Dynamics Corporation, Marblehead Lime Company	94-0519	01/07/94
Overseas Partners Ltd, United Parcel Service of America, Inc., Marriott Urban Boston Venture	94-0541	01/07/94
General Motors Corporation, Lake Creek Investors, Ltd., Lake Creek Investors, Ltd	94-0576	01/07/94
General Motors Corporation, Westlake Retail 87, Ltd., Bee Cave Hills, Ltd	94-0578	01/07/94
E.I. DuPont de Nemours and Company, DNA Plant Technology Corporation, DNA Plant Technology Corporation	94-0588	01/07/94
DNA Plant Technology Corporation, E.I. DuPont de Nemours & Company, FreshWorld, L.P. and FreshWorld, Inc	94-0589	01/07/94
ITT Corporation, The Prudential Insurance Company of America, Embassy Suites Chicago-O'Hare	94-0591	01/07/94
Banta Corporation, Melissa Previdi, Danbury Printing & Litho, Inc	94-0604	01/07/94
LADD Furniture, Inc., The Clayton & Dubilier Private Equity Fund L.P., Pilliod Holding Company	94-0626	01/07/94
Host Marriott Corporation, Ft. Lauderdale Hotel & Marina Limited Partnership, Ft. Lauderdale Hotel & Marina Limited Partnership	94-0636	01/07/94

FOR FURTHER INFORMATION CONTACT:

Sandra M. Peay or Renee A. Horton, Contact Representatives.

Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94-1370 Filed 1-19-94; 8:45 am]

BILLING CODE 6750-01-M

[File No. 912 3374]

Mace Security International, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the marketers of self-defense products to disclose that their MACE product may not be effective against armed assailants or against enraged, drugged, or intoxicated people. The order also would require the company to substantiate any future claims it makes about any attribute of any self-protection product, and to send a notice of the settlement to distributors and consumers.

DATES: Comments must be received on or before March 21, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW, Washington, DC. 20580.

FOR FURTHER INFORMATION CONTACT: Michael Bloom or Alice Au, FTC/New York Regional Office, 150 William St., 13th Floor, New York, N.Y. 10038. (212) 264-8290.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

[File No. 9123374]

Agreement Containing Consent Order To Cease and Desist

In the Matter of MACE Security International, Inc., a corporation, Personal Security, Inc., a corporation, Jon E. Goodrich, individually and as an officer and director of MACE Security International, Inc., and Personal Security, Inc., Robert P. Gould, individually and as an officer and director of MACE Security International, Inc., and Personal Security, Inc., and James Kardas, individually and as an officer and director of Personal Security, Inc.

The Federal Trade Commission having initiated an investigation of certain acts and practices of MACE Security International, Inc., a corporation; Personal Security, Inc., a corporation; Jon E. Goodrich, individually and as an officer and director of MACE Security International, Inc. and Personal Security, Inc.; Robert P. Gould, individually and as an officer and director of MACE Security International, Inc. and Personal Security, Inc.; and James Kardas, individually and as an officer and director of Personal Security, Inc.; and it now appearing that MACE Security International, Inc., a corporation; Personal Security, Inc., a corporation; Jon E. Goodrich, individually and as an officer and director of MACE Security International, Inc. and Personal Security, Inc.; Robert P. Gould, individually and as an officer and director of MACE Security International, Inc. and Personal Security, Inc.; and James Kardas, individually and as an officer and director of Personal Security, Inc.; hereinafter sometimes referred to as proposed respondents or respondents, are willing to enter into an agreement containing an Order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between MACE Security International, Inc., by its duly authorized officer; Personal Security, Inc., by its duly authorized officer; Jon E. Goodrich, individually and as an officer and director of MACE Security International Inc. and Personal Security, Inc.; Robert P. Gould, individually and as an officer and director of MACE Security International, Inc. and Personal Security, Inc.; and James Kardas, individually and as an officer and director of Personal Security, Inc.; and their attorney, and counsel for the Federal Trade Commission that:

1. Respondent MACE Security International, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its corporate office located at 160 Benmont Avenue, Bennington, Vermont 05201. Respondent was formerly doing business as Mark Sport, Inc.

Respondent Personal Security, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Vermont, with its corporate office located at 160 Benmont Avenue, Bennington, Vermont 05201.

Proposed respondents Jon E. Goodrich and Robert P. Gould are officers and directors of MACE Security International, Inc. and Personal Security, Inc. Mr. Goodrich and Mr. Gould formulate, direct, and control the policies, acts, and practices of said corporations and their addresses are the same as that of said corporations. Proposed respondent James Kardas is an officer and director of Personal Security, Inc. Mr. Kardas formulates, directs, and controls the policies, acts, and practices of said corporation, and his address is the same as that of said corporation.

2. Proposed respondents admit all the jurisdictional facts set forth in the attached draft complaint.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act, 5 U.S.C. 504.

4. This agreement shall not become part of the public reccord of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the attached draft complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdraw by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents: (1) Issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following Order to cease and desist in disposition of the proceeding; and (2) make information public in respect thereto. When so entered, the Order to cease and shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the agreement may be used to vary or contradict the terms of the Order.

7. Proposed respondents have read the attached draft complaint and the following Order. Proposed respondents understand that once the Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

Definitions

A. For purposes of this Order, "competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

B. For purposes of this Order, "MACE" shall mean any chemical self-protection product marketed for civilian use that contains as its active ingredient approximately 1% phenylchloromethylketone (a.k.a. chloroacetophenone or CN).

C. For purposes of this Order, "chemical self-protection product" shall mean any chemical self-protection product marketed for civilian use, including but not necessarily limited to products containing phenylchloromethylketone (a.k.a. chloroacetophenone or CN), orthochlorobenzalnalononitrile (CS) or oleoresin capsicum (OC).

D. For purposes of this Order, "distributor" shall mean any person or entity that, since January 1, 1991, has made at least one purchase from respondents of 12 or more units of MACE or of fewer units of MACE for which total purchase price exceeded $100.00.

I

It is ordered That respondents MACE Security International, Inc., a corporation, its successors and assigns, and its officers and directors; Personal Security, Inc., a corporation, its successors and assigns, and its officers and directors; Jon E. Goodrich, individually and as an officer and director of MACE Security International, Inc. and Personal Security, Inc.; Robert P. Gould, individually and as an officer and director of MACE Security International, Inc. and Personal Security, Inc.; and James Kardas, individually and as an officer and director of Personal Security, Inc.; and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of MACE or any chemical self-protection product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

A. One or more sprays of such product will stop an assailant;

B. Any contact with the upper torso by a spray of such product will stop an assailant; or

C. Use of such product will instantly stop an assailant;

unless such representation is true and, at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation.

II

It is further ordered, That respondents MACE Security International, Inc., a corporation, its successors and assigns, and its officers and directors; Personal Security, Inc., a corporation, its successors and assigns, and its officers and directors; Jon E. Goodrich, individually and as an officer and director of MACE Security International, Inc. and Personal Security, Inc.; Robert P. Gould, individually and as an officer and director of MACE Security International, Inc. and Personal Security, Inc.; and James Kardas, individually and as an officer and director of Personal Security, Inc.; and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of MACE or any chemical self-protection product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

A. One or more sprays of such product will keep an assailant incapacitated for up to or about 20 minutes or any other period of time;

B. The effectiveness of such product for civilian self-protection has been proven in use by police forces;

C. Four out of five or any other number of police officers in the United States carry such product; or

D. Over 4000 police departments or any other number of police departments in the United States use such product for protection against assault;

unless at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation.

III

It is further ordered, That respondents MACE Security International, Inc., a corporation, its successors and assigns, and its officers and directors; Personal Security, Inc., a corporation, its successors and assigns, and its officers and directors; Jon E. Goodrich, individually and as an officer and director of MACE Security International, Inc. and Personal Security, Inc.; Robert P. Gould, individually and as an officer and director of MACE Security International, Inc. and Personal Security, Inc.; and James Kardas, individually and as an officer and director of Personal Security, Inc.; and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the

manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of MACE or any chemical self-protection product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, the relative or absolute efficacy, benefits, usage, performance, or attributes of MACE or any chemical self-protection product, unless at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation.

IV

It is further ordered, That respondents MACE Security International, Inc., a corporation, its successors and assigns, and its officers and directors; Personal Security, Inc., a corporation, its successors and assigns, and its officers and directors; Jon E. Goodrich, individually and as an officer and director of MACE Security International, Inc. and Personal Security, Inc.; Robert P. Gould, individually and as an officer and director of MACE Security International, Inc. and Personal Security, Inc.; and James Kardas, individually and as an officer and director of Personal Security, Inc.; and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of MACE or any substantially similar product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, the effectiveness of MACE or any substantially similar product unless respondents disclose in each advertisement in which the representation is made, clearly and prominently, the following statement:

A. In a print advertisement:

CAUTION: MACE MAY NOT BE EFFECTIVE AGAINST ARMED ASSAILANTS. MACE may take several seconds to work and may not work on enraged, drugged, or intoxicated people.

B. In a television, cablecast, videotape, or radio advertisement:

CAUTION: MACE MAY NOT BE EFFECTIVE AGAINST ARMED ASSAILANTS AND ENRAGED, DRUGGED, OR INTOXICATED PEOPLE.

Nothing contrary to, inconsistent with, or in mitigation of the above disclosures shall be used in any advertisement in any medium.

For purposes of this Order, "clearly and prominently" as used herein shall mean as follows:

(a) In a television, cablecast, and videotape release, the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. The audio disclosure shall be delivered in a volume and cadence and for a duration sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration sufficient for an ordinary consumer to read and comprehend it.

(b) In a print advertisement, the above disclosure shall be printed in a typeface and color that are clear and prominent and in close proximity to the representation that triggers the disclosure.

(c) In a radio advertisement, the disclosure shall be delivered in a volume and cadence and for a duration sufficient for an ordinary consumer to hear and comprehend it.

V

It is further ordered, That respondents MACE Security International, Inc., a corporation, its successors and assigns, and its officers and directors; Personal Security, Inc., a corporation its successors and assigns, and its officers and directors; Jon E. Goodrich, individually and as an officer and director of MACE Security International, Inc. and Personal Security, Inc.; Robert P. Gould, individually and as an officer and director of MACE Security International, Inc. and Personal Security, Inc.; and James Kardas, individually and as an officer and director of Personal Security, Inc.; and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of MACE or any substantially similar product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall disclose the following statement on a product insert enclosed in each product package:

Caution: MACE MAY NOT BE EFFECTIVE AGAINST ARMED ASSAILANTS. MACE may take several seconds to work and may not work on enraged, drugged, or intoxicated people.

On the product insert, the disclosure shall be printed in a typeface and color that are clear and prominent and shall appear before all written text, other than the name of the product or product slogans.

It is provided, however, It will not be considered a violation of this Order Provision V for respondents to use, until May 8, 1994, the product insert identified as Exhibit 1 of this Order (the "in-print inset") in satisfaction of the product insert disclosure obligation specified in this Order Provision V, provided that:

(1) The in-print inserts were printed prior to November 8, 1993;

(2) The text, "You have purchased a MACE unit which contains the same formulation that has been proven in over twenty years of use by police departments. In fact, it has been chosen by more police departments than all other tear gas aerosols combined," shall be blacked out or otherwise rendered completely illegible; and

(3) The text, "Do not use your MACE unit on an assailant who appears to be armed. Even though it may take only a few seconds for the MACE formulation to take effect, an armed assailant might use his weapon during those few seconds," shall be highlighted in yellow to increase its prominence.

VI

It is further ordered, That respondents MACE Security International, Inc., a corporation, its successors and assigns, and its officers and directors; Personal Security, Inc., a corporation, its successors and assigns, and its officers and directors; Jon E. Goodrich, individually and as an officer and director of MACE Security International, Inc. and Personal Security Inc.; Robert P. Gould, individually and as an officer and director of MACE Security International, Inc. and Personal Security, Inc.; and James Kardas, individually and as an officer and director of Personal Security, Inc., shall, within thirty (30) days after the date of service of this Order:

(1) Send, by first class certified mail, return receipt requested, to each distributor of MACE with which they have done business since January 1, 1991, a copy of appendix A of this Order; and

(2) Send, by first class mail, to each non-distributor who purchased MACE from respondents since January 1, 1991, a copy of Appendix B of this Order.

VII

It is further ordered, That for five (5) years after the last date of dissemination of any representation covered by this Order, respondents MACE Security International, Inc. and Personal

Security, Inc., or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation;

B. All tests, reports, studies, surveys, demonstrations or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers; and

C. All return receipts required by Order Provision VI.

VIII

It is further ordered, That respondents MACE Security International, Inc. and Personal Security, Inc. shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, the filing of a bankruptcy petition, or any other change in the corporation(s) that may affect compliance obligations arising out of this Order.

IX

It is further ordered, That respondents Jon E. Goodrich, Robert P. Gould, and James Kardas shall, for a period of ten (10) years from the date of issuance of this Order, notify the Commission within thirty (30) days of the discontinuance of his present business or employment and of his affiliation with any new business or employment in the self-protection industry. Each notice of affiliation with any new business or employment shall include respondent's new business address and telephone number, current home address, and a statement describing the nature of the business or employment and his duties and responsibilities.

X

It is further ordered, That respondents MACE Security International, Inc., Personal Security, Inc., Jon E. Goodrich, Robert P. Gould, and James Kardas shall:

A. Within thirty (30) days after service of this Order, provide a copy of this Order to each of respondents' current principals, officers, directors and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this Order.

B. For a period of ten (10) years from the date of issuance of this Order, provide a copy of this Order to each of respondents' principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this Order who are associated with respondents or any subsidiary, successor, or assign, within three (3) days after the person assumes his or her position.

XI

It is further ordered, That respondents shall, within sixty (60) days after the date of service of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Appendix A

[To Be Printed On MACE Security International, Inc. Letterhead]

Dear [name of distributor]: MACE Security International, Inc. ("MSI") and Personal Security, Inc. ("PSI") have entered into a consent agreement with the Federal Trade Commission ("FTC") to stop making certain representations about the effectiveness of MACE with 1% CN and other chemical self-protection products unless the representations are true and adequately substantiated. The FTC alleged that the advertising for MACE made the following false and unsubstantiated representations:

(1) That one spray of MACE will stop an assailant;

(2) That any contact with the upper torso by a spray of MACE will stop an assailant; and

(3) That use of MACE will instantly stop an assailant.

The FTC also alleged that MSI and PSI, while making effectiveness claims, failed to disclose adequately that (a) it may take several seconds for the effects of MACE to begin, and (b) MACE may not be effective on many assailants including those who are armed, enraged, drugged, intoxicated, or otherwise desensitized.

Finally, the FTC alleged that MSI and PSI did not possess adequate substantiating evidence for the following representations:

(1) That MACE will keep an assailant incapacitated for up to or about 20 minutes;

(2) That the effectiveness of MACE for civilian self-protection has been proven in use by police forces;

(3) That four out of five police officers in the United States carry MACE; and

(4) That over 4000 police departments in the United States use MACE for protection against assault.

The products covered by this consent agreement include MACE and other chemical self-protection products. You were previously supplied with promotional materials or advertising copy that make the above representations. You should stop using or relying on these materials as the basis for your own advertising unless and until we provide you with adequate substantiation for the representations or provide new materials or advertising copy that comply with the consent agreement.

Sincerely,

Jon E. Goodrich,

President, MACE Security International, Inc. and Personal Security, Inc.

Appendix B

[To Be Printed On MACE Security International, Inc. Letterhead]

Dear Consumer: Our records indicate that you purchased MACE chemical self-protection spray from our company. This is to advise you that MACE Security International, Inc. ("MSI") and Personal Security, Inc. ("PSI") have entered into a consent agreement with the Federal Trade Commission ("FTC") to stop making certain representations about the effectiveness of MACE with 1% CN and other chemical self-protection products unless the representations are true and adequately substantiated. The FTC alleged that the advertising for MACE made the following false and unsubstantiated representations:

(1) That one spray of MACE will stop an assailant;

(2) That any contact with the upper torso by a spray of MACE will stop an assailant; and

(3) That use of MACE will instantly stop an assailant.

The FTC also alleged that MSI and PSI, while making effectiveness claims, failed to disclose adequately that 1) it may take several seconds for the effects of MACE to begin, and 2) MACE may not be effective on many assailants including those who are armed, enraged, drugged, intoxicated, or otherwise desensitized.

Finally, the FTC alleged that MSI and PSI did not possess adequate substantiating evidence for the following representations:

(1) That MACE will keep an assailant incapacitated for up to or about 20 minutes;

(2) That the effectiveness of MACE for civilian self-protection has been proven in use by police forces;

(3) That four out of five police officers in the United States carry MACE; and

(4) That over 4000 police departments in the United States use MACE for protection against assault.

The products covered by this consent agreement include MACE and other

chemical self-protection products. We advise that you limit your use of MACE in accordance with these restrictions:

(1) MACE may not be effective against armed assailants.

(2) MACE may take several seconds to work.

(3) MACE may not work on enraged, drugged, or intoxicated assailants.

Sincerely,

Jon E. Goodrich,

President, MACE Security International, Inc. and Personal Security, Inc.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from MACE Security International, Inc. ("MSI"), Personal Security, Inc. ("PSI"), Jon E. Goodrich, Robert P. Gould, and James Kardas. Proposed respondents are marketers of self-defense products, and their MACE brand self-protection spray that contains 1% phenylchloromethylketone (CN) was the subject of this investigation.

The proposed consent order has been placed on the public record for sixty (60) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement or make final the agreement's proposed order.

The Commission's complaint charges that the proposed respondents made the following false and unsubstantiated representations about MACE with 1% CN:

(1) That one spray of MACE will stop an assailant;

(2) That any contact with the upper torso by a spray of MACE will stop an assailant; and

(3) That use of MACE will instantly stop an assailant.

The proposed consent order prohibits proposed respondents from making such efficacy claims unless the claims are true and respondents possess and rely upon competent and reliable evidence. (Part I).

The Commission also alleged that proposed respondents did not possess adequate substantiating evidence for the following representations at the time they made the representations:

(1) That MACE will keep an assailant incapacitated for up to or about 20 minutes;

(2) That the effectiveness of MACE for civilian self-protection has been proven in use by police forces;

(3) That four out of five police officers in the United States carry MACE; and

(4) That over 4000 police departments in the United States use MACE for protection against assault.

The proposed consent order prohibits proposed respondents from making such claims unless they possess and rely upon competent and reliable evidence. (Part II). Similarly, the proposed consent order prohibits claims about the relative or absolute efficacy, benefits, usage, performance, or other attributes of MACE or any chemical self-protection product, unless proposed respondents possess and rely upon competent and reliable evidence. (Part III).

Further, the Commission alleged that proposed respondents, while making effectiveness claims, failed to disclose adequately that (1) it may take several seconds for the effects of MACE to begin, and (2) MACE may not be effective on many assailants including those who are armed, enraged, drugged, intoxicated, or otherwise desensitized.

The proposed consent order seeks to address the alleged failure to adequately disclose these limitations in three ways. First, the proposed order prohibits proposed respondents from making claims about the effectiveness of MACE or any substantially similar product unless the following statement is disclosed clearly and prominently in print advertisements:

CAUTION: MACE MAY NOT BE EFFECTIVE AGAINST ARMED ASSAILANTS. MACE may take several seconds to work and may not work on enraged, drugged, or intoxicated people.

A similar but shorter disclosure is required for television, cablecast, videotape, or radio advertisements. (Part IV).

Second, the proposed order requires that a product insert provide the same cautionary language. Proposed respondents will be permitted to continue to use for a limited time certain previously printed product materials. (Part V).

Third, the proposed order requires that proposed respondents send certain past purchasers written notice of the terms of the proposed order. (Part VI).

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 94-1371 Filed 1-19-94; 8:45 am]

BILLING CODE 6750-01-M

[File No. 911 0121]

McLean County Chiropractic Association; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, an association of Illinois chiropractors from agreeing to set fees for patients, or terms for third-party payor contracts, and would require the association to give members copies of the settlement.

DATES: Comments must be received on or before March 21, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Mark Horoschak, FTC/S-3115, Washington, DC 20580. (202) 326-2756.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on this public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the matter of McLean County Chiropractic Association, an unincorporated association.

The Federal Trade Commission having initiated an investigation of certain acts and practices of proposed respondent named in the caption hereof, and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between proposed respondent and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent is an unincorporated association, with its principal offices and places of business in McLean County, Illinois. For purposes of this agreement and order, its address is as follows: McLean County Chiropractic Association, c/o George R. Flynn, Esq., P.O. Box 3574, Bloomington, IL 61702–3574.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and with the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's addresses as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after the order becomes final.

Order

I

It is ordered, That for purposes of this order, the following definitions shall apply:

A. "Respondent MCCA" means McLean County Chiropractic Association and its Board of Directors, committees, officers, representatives, agents, employees, successors, and assigns.

B. "Payor" means any person that purchases, reimburses for, or otherwise pays for health care services for themselves or for any other person—including, but not limited to, health insurance companies; preferred provider organizations; prepaid hospital, medical, or other health service plans; health maintenance organizations; government health benefits programs; employers or other persons providing or administering self-insured health benefits programs; and patients who purchase health care for themselves.

C. "Integrated joint venture" means a joint arrangement to provide health care services in which all chiropractors participating in the venture who would otherwise be competitors (1) pool their capital to finance the venture, by themselves or together with others, and (2) share a substantial risk of loss from their participation in the venture.

D. "Case fee" means the aggregate total of all fees charged to a patient for the full course of treatment for a medical condition or combination of medical conditions. "Case fee" does not mean a fee charged for a particular product or service.

II

It is further ordered, That respondent MCCA directly or indirectly, or through any device, in connection with activities in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

A. Entering into, attempting to enter into, organizing, continuing, or acting in furtherance of any agreement or combination, express or implied, with any chiropractors or among any chiropractors, to discuss or collectively determine the fees which chiropractors charge to payors; and

B. Entering into, attempting to enter into, organizing, continuing, or acting in furtherance of any agreement or combination, express or implied, with any chiropractors or among any chiropractors, to deal with payors on collectively determined terms.

Provided, That, nothing in this order shall prevent chiropractors who practice together as partners or employees in the same professional corporation or partnership from collectively determining the fees to be charged for services provided by that professional corporation or partnership or from collectively determining other terms on which that professional corporation or partnership deals with payors.

Further provided, That, nothing in this order shall prevent chiropractors who participate in the same integrated joint venture from collectively determining the fees to be charged for services provided by that integrated joint venture or from collectively determining other terms on which that integrated joint venture deals with payors.

Further provided, That, nothing in this order shall prevent respondent MCCA from collecting historical data concerning case fees for the purpose of providing such data to payors.

III

It is further ordered, That respondent MCCA:

A. File a written report with the Commission within ninety (90) days after the date when the order becomes final, and annually for three (3) years on the anniversary of the date when the order becomes final, and at such other times as the Commission may by written notice to respondent MCCA require, setting forth in detail the manner and form in which it has complied and is complying with the order.

B. For a period of five (5) years after the date when the order becomes final,

maintain and make available to Commission staff, for inspection and copying upon reasonable notice, records adequate to describe in detail any action taken in connection with the activities covered by Parts II and III of this order, including, but not limited to, all documents generated by respondent MCCA or that come into its possession, custody, or control, regardless of source, that discuss, refer, or relate to any fee, term, or condition of any agreement, actual or proposed, with any payor.

C. Distribute by first-class mail a copy of this order to each of its members within thirty (30) days after the date when the order becomes final.

D. For a period of five (5) years after the date when the order becomes final, provide each new MCCA member with a copy of this order at the time the member is accepted into membership.

E. Notify the Commission, at least thirty (30) days prior to any proposed change to respondent MCCA which may affect compliance with this order—including, but not limited to, dissolution or the emergence of a successor.

McLean County Chiropractic Association Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, the agreement to a proposed consent order from McLean County Chiropractic Association ("MCCA"). The agreement settles charges by the Federal Trade Commission that MCCA restrained competition by, among other things, combining or conspiring both (1) To fix the maximum fees charged by MCCA members and (2) to negotiate the terms and conditions of agreements between MCCA members and third-party payors.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The purpose of this analysis is to facilitate public comment on the agreement. The analysis is not intended to constitute an official interpretation of either the proposed complaint or the proposed consent order or to modify their terms in any way.

The Complaint

Under the terms of the agreement, a proposed complaint would be issued by the Commission along with the proposed consent order. The proposed complaint alleges that MCCA has thirteen members, of whom all are chiropractors with offices in McLean County, Illinois. MCCA's members compete among themselves and with other chiropractors to offer chiropractic services in and around McLean County.

The complaint further alleges that MCCA acted as a combination of its members, conspired with at least some of its members, and acted to implement an agreement among its members to restrain competition among chiropractors in McLean County, Illinois, and its vicinity. Such actions included facilitating, entering into, and implementing an agreement under which

A. MCCA would set the maximum fees to be charged by MCCA members; and

B. MCCA would negotiate agreements between its members and third-party payors, including the fees to be paid to MCCA members under such agreements.

In furtherance of this combination or conspiracy, MCCA periodically voted to raise such limits on maximum fees, and attempted to negotiate such agreements between its members and third-party payors.

The complaint alleges that the above actions of MCCA had, or had the tendency and capacity to have, the following effects:

A. Restraining competition among chiropractors in McLean County, Illinois, and its vicinity;

B. Fixing or affecting the fees that chiropractors in McLean County, Illinois, and its vicinity charge for their services; and

C. Depriving consumers of chiropractic services and third-party payors of the benefits of competition among chiropractors in McLean County, Illinois, and its vicinity.

Finally, the complaint alleges that the above actions of MCCA constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

The Proposed Consent Order

The proposed consent order would prohibit MCCA from entering into, organizing, or acting in furtherance of, any agreement or combination with or among chiropractors.

A. To discuss or set the fees to be charged by chiropractors, or

B. To deal on collectively determined terms with anyone who pays for health services,

The order specifically provides that it does not prevent the following:

1. Chiropractors who practice together as partners or employees in the same professional corporation or partnership collectively determining the fees to be charged by that professional corporation or partnership.

2. Chiropractors who participate in the same integrated joint venture collectively determining the fees to be charged by that integrated joint venture. (For purposes of the consent order, "integrated joint venture" means a joint arrangement to provide health care services in which all chiropractors participating in the venture would otherwise be competitors (1) pool their capital to finance the venture, by themselves or together with others, and (2) share a substantial risk of loss from their participation in the venture.)

3. The collection of historical data concerning case fees for the purpose of providing such data to those who pay for health services. (For purposes of the consent order, "case fee" means the aggregate total of all fees charged to a patient for the full course of treatment for a medical condition or combination of medical conditions, and does not mean a fee charged for a particular product or service.)

The order would require MCCA to distribute copies of the order to its members and, for five years, to its new members when they join MCCA.

The order also requires MCCA to (1) file compliance reports with the Commission, (2) maintain certain files relating to MCCA's compliance with the order, and (3) notify the Commission of any proposed change in MCCA that may affect MCCA's compliance with the order.

MCCA agreed to the order for settlement purposes only, and MCCA's agreement to the order does not constitute an admission by MCCA that the law has been violated as alleged in the complaint.

Donald S. Clark,

Secretary.

[FR Doc. 94–1372 Filed 1–19–94; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Business Advisory Board

Meeting Notice: Notice is hereby given that the General Services Administration (GSA) Business Advisory Board will meet January 31, 1994, from 10 a.m. to 3 p.m. at the General Services Administration Building at 18th and F Streets, room 6137, Washington, DC. 20405. Notice is required by the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the implementing regulation, 41 CFR 101–6.

The purpose of the meeting is to provide a forum to discuss the development of asset management principles that will guide the management of GSA's real property portfolio. The agenda for this meeting will include discussions on and recommendations of asset management principles to guide GSA's ownership enterprise.

The meeting will be open to the public.

Less than 15 days' notice of this meeting is being given to allow timely implementation of the National Performance Review recommendations.

For further information, contact Deborah Schilling (202) 501–9192 of the Public Buildings Service, Real Estate Reinvention Task Force, GSA, Washington, DC 20405.

Dated: January 13, 1994.

David L. Bibb,

Deputy Commissioner, Public Buildings Service, General Services Administration.

[FR Doc. 94–1301 Filed 1–19–94; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Antibody to Human T–Lymphotropic Virus Type I (HTLV–I) Reference Panel 3; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a new FDA reference panel for tests intended to detect antibodies to Human T–Lymphotropic Virus Type I (HTLV–I Reference Panel 3). HTLV–I Reference Panel 3 is a regulatory test panel intended for lot release testing of enzyme-linked immunosorbent assay (ELISA) HTLV–I antibody test kits. The HTLV–I Reference Panel 3 is intended to replace HTLV–I Reference Panel 2F. FDA recommends that manufacturers of currently licensed HTLV–I test kits supplement their approved product license applications by amending their lot release protocols to use the HTLV–I Reference Panel 3.

DATES: FDA recommends that manufacturers supplement their product licenses and amend their lot release protocols by February 22, 1994, to incorporate HTLV–I Reference Panel 3. Additionally, FDA recommends that as of June 20, 1994, manufacturers supplement their product licences by incorporating a lot release testing protocol that enables lots of licensed HTLV–I antibody test kits to detect five panel members of HTLV–I Reference Panel 3, with expected reactivity of ±, as repeatedly reactive.

ADDRESSES: The HTLV–I Reference Panel 3 is available for distribution from the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Charles O. Roberts, Center for Biologics Evaluation and Research (HFM–323), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–6721.

SUPPLEMENTARY INFORMATION: The HTLV–I Reference Panel 3 is intended for the evaluation of in vitro tests to detect antibodies to HTLV–I in human serum or plasma. HTLV–I Reference Panel 3 contains samples that were derived by diluting known reactive sera in a pool of normal human sera, negative for antibodies to HTLV–I. Five of the diluted samples have borderline ELISA reactivity. FDA recommends that currently produced kit lots detect antibodies in these diluted samples to be suitable for release. The Center for Biologics Evaluation and Research will limit the distribution of HTLV–I Reference Panel 3 to conserve these reagents when necessary. These reagents should not be used for experimental or other reference purposes.

Any significant changes in kit manufacturing needed as a result of the new reference panel should be approved through a product amendment filed with the Food and Drug Administration, Center for Biologics Evaluation and Research, 1401 Rockville Pike, Rockville, MD 20852–1448.

Dated: January 13, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–1334 Filed 1–19–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 91P–0176]

Citizen Petition Requesting Federal Preemption of Certain State and Local Standards Affecting Blood, Blood Components, and Blood Derivatives; Request for Information; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening the comment period for the citizen petition filed on behalf of the American Blood Resources Association, American National Red Cross, American Association of Blood Banks, and Council of Community Blood Centers. The petition requests Federal preemption of State and local regulations on donor suitability, testing, and labeling of blood, blood components, and blood derivatives. FDA is taking this action in response to requests to allow additional time for public comment.

DATES: Submit written comments on the petition by March 21, 1994.

ADDRESSES: Submit 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: Tracey H. Forfa, Center for Biologics Evaluation and Research (HFM–635), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–3074.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 27, 1993 (58 FR 45341), FDA published a notice requesting public comment from interested parties, including the States, on a citizen petition requesting that the Commissioner of Food and Drugs issue a regulation or order, or take other appropriate action, to preempt State and local laws and regulations pertaining to: (1) The determination of donor suitability; (2) the testing of blood, blood components, and blood derivatives; and (3) the labeling of blood, blood components, and blood derivatives. Interested persons were given until November 26, 1993, to submit written comments on the petition.

The agency has received requests for an extension of the comment period from the Association of Minority Health Professions Schools, several members of the hemophilia community and the general public, the Northwest Ohio Hemophilia Foundation, the National Hemophilia Foundation, the National Hemophilia Foundation/Northern Ohio Chapter, and several State health organizations. Many of those who asked for an extension stated that the hemophilia community as a whole was informed about the request for comments shortly before the comment period ended. In addition, responding groups and individuals cited the need for more time to determine the impact such preemptive regulations would have on the blood product supply and the pending litigation arising from human immunodeficiency virus and hepatitis contamination of the blood product supply in the early 1980's. A

number of the individuals seeking an extension requested at least 30 additional days for comment.

After careful consideration, the agency has concluded that it is in the public interest to allow additional time for interested persons to submit comments on the citizen petition. Accordingly, the comment period is reopened until March 21, 1994.

Interested persons may, on or before March 21, 1994, submit to the Dockets Management Branch (address above) written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The citizen petition and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 13, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–1335 Filed 1–19–94; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Eye Institute; Meeting of the Vision Research Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Vision Research Review Committee, National Eye Institute, January 24, 1994, in the Pennsylvania Room at the Holiday Inn, Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

This meeting will be open to the public on January 24 from 8:30 to 9 a.m. for opening remarks and discussion of program guidelines. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public from 9 a.m. on January 24 until adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Lois DeNinno, Committee Management Officer, National Eye Institute, EPS, suite 350, National Institutes of Health, Bethesda, Maryland 20892, 301/496–5301, will provide a summary of the meeting, roster of committee members, and substantive program information upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. DeNinno in advance of the meeting.

This notice is being published later than fifteen days prior to the meeting due to difficulty of coordinating the members' schedules.

(Catalog of Federal Domestic Assistance Program No. 93.867, Vision Research; National Institutes of Health)

Dated: January 13, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–1405 Filed 1–19–94; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N–94–3690; FR–3628–N–02]

Funding Availability for Fiscal Year 1994 for Innovative Project Funding Under the Innovative Homeless Initiatives Demonstration Program

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of waiver.

SUMMARY: This Notice announces a waiver, granted by the Secretary, of the minimum 30-day application period required under section 102(a) of the HUD Reform Act for the Innovative Homeless Initiatives Demonstration, which was announced in the **Federal Register** notice on December 21, 1993 (58 FR 67616).

DATES: January 20, 1994.

FOR FURTHER INFORMATION CONTACT: Myra L. Ransick, Assistant General Counsel for Regulations, room 10276, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–3055; TDD (202) 708–3259. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Section 102(a) of the HUD Reform Act (42 U.S.C. 3545(a)) sets out requirements for notice to the public regarding assistance available from HUD. Section 102(a)(3) requires **Federal Register** publication of selection criteria not less than 30 days before the deadline for applications or requests for assistance. On December 21, 1993, the Department announced the availability of $25 million in funds under the Innovative Homeless Initiatives Demonstration Program, which was authorized by the HUD Demonstration Act of 1993 (Pub.L. 103–120, approved October 27, 1993). (The funds were appropriated by the HUD appropriations act for fiscal year 1994 (Pub.L. 103–124, approved October 28, 1993).) The notice announced that the Department would begin receiving applications during or prior to a three working day period beginning on January 10, 1994. The time period was less than the 30-day minimum application requirement under section 102(a)(3).

Section 102(a)(5) of the Reform Act permits the Secretary to waive the minimum 30-day application period "if the Secretary determines that the waiver is required for appropriate response to an emergency." The Secretary is also required to publish, in the **Federal Register**, his reasons for granting such a waiver.

The continuing tragedy of homelessness in our country has reached epidemic proportions. The deaths of Yetta Adams and two other homeless persons in the Washington area in December 1993 provided fresh evidence of how dire the consequences of homelessness can be. Homelessness is too destructive a force to be treated routinely. There is a desperate need for innovative solutions.

The availability of new monies for homeless assistance under the HUD Demonstration Act of 1993 provided additional resources that could be used to assist homeless persons if HUD was able to act quickly in awarding those funds. Additionally, the extraordinarily high number of applications submitted in response to the most recent Supportive Housing NOFA provided further evidence of how desperately additional funding resources are needed. That only 43 applications out of 1340 submitted could be funded is evidence that HUD should expedite the release of additional monies intended to help homeless persons.

The Secretary determined that the continuing tragedy of homelessness, the desperate need for innovative solutions, the availability of new monies, the unprecedented demand for assistance from HUD to fight homelessness, and the harsh weather conditions, when considered in combination, demonstrated that an emergency exists that justifies the granting of a waiver of the 30-day application period required under section 102 of the HUD Reform Act.

Dated: January 4, 1994.

Henry G. Cisneros,

Secretary.

[FR Doc. 94–1259 Filed 1–19–94; 8:45 am]

BILLING CODE 4210–32–P

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N-94-3695; FR-3525-N-02]

Multifamily Property Disposition; State Housing Finance Agency Demonstration Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of demonstration program.

SUMMARY: This notice announces the effective date of a demonstration program for the purpose of developing innovative methods for disposing of HUD-owned multifamily projects in a manner that furthers the Department's mission to provide decent and affordable housing, and to do so in a cost effective manner. The notice also responds to the public comments received on a previous notice announcing the program, which was published for comment on September 16, 1993 (58 FR 48528). Under the demonstration, HUD will enter into agreements with State housing finance agencies (SHFAs) to undertake the responsibility for the management and disposition of a limited number of HUD-owned projects. The results of the demonstration are expected to show innovative and cost effective solutions to the problem of the growing inventory of distressed multifamily housing, and will help the Department determine whether to utilize SHFAs, on a permanent basis, in its property disposition program.

EFFECTIVE DATE: January 20, 1994.

FOR FURTHER INFORMATION CONTACT: Audrey Hinton, Deputy Director, Office of Multifamily Housing Preservation and Property Disposition, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-3555; TDD (202) 708-4594. (These are not toll free numbers.)

SUPPLEMENTARY INFORMATION:

I. Background and Response to Public Comments

On September 16, 1993, HUD published a notice announcing a demonstration for the development of innovative methods for disposing of HUD-owned multifamily projects through agreements with State housing finance agencies (SHFAs) for the management and disposition of the projects. Readers are invited to refer to the September 16, 1993 notice for the full requirements of the program.

Under the provisions of section 470(a) of the Housing and Urban-Rural Recovery Act of 1983, the Department was required to invite public comments on the demonstration before making it effective. During the public comment period, which expired on October 18, 1993, HUD received five comments, from a citizens organization in Massachusetts, the National Council of State Housing Agencies, the Massachusetts Housing Finance Agency, the Washington State Department of Community Development, and an individual.

The citizens organization stated a concern about the lack of a requirement for citizen participation in any transfer process, as well as a lack of adequate assurance that properties sold under the demonstration would remain affordable subsequent to the transfer.

Citizen, or community, participation has never been a statutory or regulatory requirement in connection with the sale of multifamily properties by HUD. HUD regulations at 24 CFR part 290, which govern the disposition of multifamily properties, do require notice to the residents of the properties and an opportunity for their participation in the decisionmaking process regarding the sale of the property in which they reside. (24 CFR 290.100 and 290.102.) These regulations will apply to the disposition of properties under this demonstration. SHFA resident and community relations is one of the basic criteria upon which decisions of participation in the demonstration program are to be made.

With respect to the organization's concerns regarding continued affordability, participants in the demonstration program must comply with all relevant statutory requirements. With respect to statutory requirements for the disposition of HUD-owned multifamily properties, section 203 of the Housing and Community Development Amendments of 1978, as amended, requires that continued affordability by low- and moderate-income families be a condition of the sale of any subsidized HUD-owned multifamily property, and in general, of any unsubsidized project for units occupied by income eligible tenants. Under this demonstration program, the assurances of continued affordability to low- and moderate-income families, for the same period of time, are the same as if HUD were conducting the dispositions. Since the result is the same, regardless of the disposing party, the Department does not believe any changes to the demonstration requirements are necessary.

The comment from the National Council of State Housing Agencies stated that FHA insurance and project-based Section 8 assistance are necessary to the success of the program. The Department notes that the demonstration program does not preclude the use of FHA insurance and project-based Section 8 assistance. Further, it is HUD's position that the opportunity to explore and utilize other options for assistance is also not precluded.

The Council also suggested that HFAs may be able to assist HUD by helping restructure troubled projects in HUD's portfolio before foreclosure or sale by HUD, and suggested that HUD consider the possibility of HFAs acquiring mortgages, at a discount, to facilitate workouts or refundings.

Section 203(h)(3) of the Housing and Community Development Amendments of 1978, as amended, provides that the Secretary may carry out negotiated sales of subsidized or formerly subsidized mortgages held by the Secretary, without the competitive selection of purchasers or intermediaries, to agencies of State or local governments, or groups of investors that include at least one such agency, if the negotiations are conducted with such agencies. Sometime in the near future, HUD intends to ascertain State and local government interest in purchasing HUD-held mortgages and will consider offering mortgages for sale to interested governments on a negotiated basis.

The Council also recommended that HUD consider giving participating HFAs exclusive prior notice of the availability of potential properties before making this information available to other entities. Section 203(e) of the Housing and Community Development Amendments of 1978, as amended, and HUD regulations at 24 CFR 290.109 provide for a right of first refusal to units of local government and SHFAs for HUD-owned rental housing projects, except in the case of a negotiated sale to a State or local government.

The Washington Department of Community Development expressed concern about limiting participation to State HFAs, and recommended that any housing agency sponsored or funded by a state government be allowed to propose creative solutions that build on experiences, expertise, and willingness to help preserve this source of housing stock.

The Department appreciates the comment, but believes that the demonstration should be limited to SHFAs principally because their common experience includes housing development, management, and

financing. While there might be other agencies and entities with the same expertise, HUD prefers at this time not to have to promulgate broad participant requirements and spend staff resources on judging capabilities of disparate entities.

The individual commenter suggested that all agreements between HUD and SHFAs participating in the demonstration program should include a requirement that a significant number of job training and/or apprenticeship opportunities be provided first for interested residents and then community members, and that there be some mechanism for monitoring by HUD.

HUD supports SHFAs that have goals for participation by minority business enterprises (MBEs), and believes they are sufficient for providing opportunities to both community members and residents. A large number of specialized skills will be needed to manage these properties and to make them, and their communities, better places to live. The Department is concerned that including MBE participation as a condition would result in so few SHFAs participating that the goals of the demonstration would not be realized.

The comment from the Massachusetts HFA was not directed to the demonstration, but rather to the concerns raised in the comment from the citizens organization. Consequently, the comment does not require a response.

II. Invitation for Proposals

The demonstration requirements are unchanged from the September 16 notice. Upon publication of this notice, the Department will enter into discussions with or accept proposals from SHFAs that desire to participate in the demonstration, in accordance with the requirements in the September 16 notice.

III. Other Matters

Any information collections that may be required under this demonstration program will not add any additional burden than that already approved for the multifamily property disposition program by the Office of Management and Budget under the Paperwork Reduction Act.

A Finding of No Significant Impact with respect to the environment was made, in accordance with HUD regulations at 24 CFR part 50 implementing section 102(2)(C) of the National Environmental Policy Act of 1969, prior to publication of the September 16 notice. 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 12612, Federalism, finds that this demonstration program will not have a substantial, direct effect on the States or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government. Any terms and conditions imposed by HUD on States that may acquire projects under the demonstration will be statutory requirements under section 203 of the Housing and Community Development Amendments of 1978. Such requirements will be clearly the intent of Congress, and therefore no further review is necessary or appropriate.

HUD has determined that this demonstration will not have a significant impact on family formation, maintenance, and general well-being within the meaning of Executive Order 12606, The Family, because it does not affect the eligibility of families for admission into multifamily housing projects that may be disposed of under the demonstration.

Dated: January 6, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 94–1310 Filed 1–19–94; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–4950–10–4600: ES–046633, Group 13, Virginia]

Filing of Plat of Dependent Resurvey

The plat, in one sheet, of a portion of the George Washington Memorial Parkway, Fairfax County, Virginia, has been officially filed in Eastern States, Springfield, Virginia, at 7:30 a.m., on January 6, 1994.

The survey was made upon request submitted by the National Park Service.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Dated: January 11, 1994.

Carson W. Culp, Jr.,

State Director.

[FR Doc. 94–1293 Filed 1–19–94; 8:45 am]

BILLING CODE 4310–GJ–M

[CO–930–4214–10; COC–55542]

Proposed Withdrawal; Scheduled Public Meeting; Colorado

January 10, 1994.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 7,657.75 acres of public lands and 244.04 acres of public mineral estate for 20 years for protection of scenic and recreational values in the Ruby Canyon of the Colorado River. This notice closes these lands to surface entry and mining for up to 2 years. This notice also establishes the time and place of a public meeting which has been scheduled as required by regulation to allow public involvement in this proposed action. The lands have been and remain open to mineral leasing.

DATES: Comments on this proposed action must be received on or before April 20, 1994.

The public meeting will be held on March 2, 1994, at 7 p.m. All requests to be heard should be received by close of business on February 16, 1994, at the Colorado State Office.

ADDRESSES: Comments and/or requests to be heard should be submitted to the State Director, Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

The public meeting will be held at the public meeting room at 1815 H. Road, Grand Junction, Colorado, 81506.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, (303) 239–3706, in Denver, or Carlos Sauvage, (303) 244–3000, in Grand Junction.

SUPPLEMENTARY INFORMATION: On January 4, 1994, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public lands from operation of the public land laws, including the mining laws, subject to valid existing rights:

Ute Principal Meridian

T. 1 N., R. 3 W.,
Sec. 6, lots 6 and 8;
Sec. 7, lots 1, 2, to include any lands in section 7 lying between the actual right, or northeasterly bank of the Colorado River and the 1920 meander line of the

said right bank of the river, as depicted on the plat of resurvey approved March 20, 1920; lost 6 to 9, inclusive;
Sec. 8, lot 3 and S½NE¼SW¼;
Sec. 9, lot 4;
Sec. 17, lot 4, S½NE¼, and SE¼NW¼;
Sec. 18, lot 1, N½NE¼, and NE¼NW¼.

Sixth Principal Meridian

T. 10 S., R. 103 W.,
Sec. 5, S½SW¼ and W½SW¼SE¼;
Sec. 6, SE¼SW¼ and S½SE¼;
Sec. 7, lots 1 to 4, inclusive, 7, and 8, SE¼NE¼, W½NW¼, W½SE¼, and E½E½SE¼;
Sec. 8, lots 2, 3, 6, and 7, and W½W½E½;
Sec. 15, lots 2 to 9, inclusive, S½N½NW¼, and E½SE¼SW¼;
Sec. 16, lots 1 to 4, inclusive, 6 to 8, inclusive, W½NE¼NE¼, SE¼NE¼NE¼, NW¼NE¼, N½NW¼, and N½SW¼SW¼;
Sec. 17 lots 2, 3, 5 to 7, inclusive, W½NW¼NE¼, S½NE¼, N½SW¼SW¼, and SE¼SE¼;
Sec. 18, lots 2, 8 to 11, inclusive, W½E½, E½E½NE¼, E½NE¼SE¼, and NE¼SE¼SE¼;
Sec. 19, lots 1, 3, and 4, NW¼NE¼, N½SW¼NE¼, SE¼NW¼, NW¼SW¼, and N½NE¼SW¼;
Sec. 22, lots 5 to 8, inclusive, NE¼NW¼, E½SE¼NW¼ and E½NE¼SW¼;
Sec. 27, lot 1.
T. 10 S., R. 104 W.,
Sec. 12, E½E½E½;
Sec. 13, E½E½E½;
Sec. 23, lots 1 to 4, inclusive, E½SW¼NE¼, and E½W½SE¼;
Sec. 24, lots 1 to 9, inclusive, NW¼NE¼, N½NW¼, E½SW¼, and N½SE¼;
Sec. 25, lots 1 to 4, inclusive, E½W½, and SW¼SW¼;
Sec. 26, lots 1 to 7, inclusive, E½NW¼NE¼, SW¼NE¼, and S½NW¼;
Sec. 27, lots 1 to 9, inclusive, S½NE¼, and SE¼NW¼;
Sec. 28, lots 1 to 3, inclusive, S½SE¼NE¼, and W½SE¼;
Sec. 32, lots 1 to 7, inclusive, NE¼SW¼, SE¼NW¼SW¼, and N½SE¼;
Sec. 33, lots 1 to 12, inclusive, NW¼NE¼, and E½SE¼NW¼;
Sec. 34, N½N½NE¼, N½NE¼NW¼, W½NW¼, and NW¼SW¼;
Sec. 35, N½NW¼NE¼, and N½N½NW¼.
T. 11 S., R. 104 W.,
Sec. 3, lots 3 and 4;
Sec. 4, lots 1 to 4, inclusive, S½NW¼ and SW¼;
Sec. 5, lot 1, SE¼NE¼, E½SE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 7, lots 1 to 4, inclusive;
Sec. 8, E½NE¼, N½NW¼, SW¼NW¼ and S½;
Sec. 9, NW¼NW¼, W½SW¼NW¼, and W½W½SW¼.

The reserved mineral interests in the following identified privately owned lands:

Ute Principal Meridian

T. 1 N., R. 3 W.,

In sec. 7, lots 3, 4, and 5, and in sec. 8, lots 2, 4, 5, and 6, as reserved to the United States in Patent No. 1104506, to include any area lying between the actual right, or northerly, bank of the Colorado River and the 1920 meander line of said right bank of the river in sections 7 and 8, as depicted on March 20, 1920.

Sixth Principal Meridian

T. 11 S., R. 104 W.,
Sec. 5, E½SW¼NE¼.

The area described aggregates approximately 7,657.75 acres of public lands and 244.04 acres of private land in Mesa County. The following described private lands located within the exterior boundary of the proposed withdrawal, would become subject to the withdrawal if they should pass to Federal ownership:

Ute Principal Meridian

T. 1 N., R. 3 W.
Sec. 16, lot 1;
Sec. 17, lots 1 to 3, inclusive;

Sixth Principal Meridian

T. 10 S., R. 103 W.
Sec. 7, lots 5, 6, and 9;
Sec. 8, lots 1, 4, 5, and 8;
Sec. 16, lot 5;
Sec. 17, lots 1, 4, 8, 9, and SW¼SE¼;
Sec. 18, lots 1, 4, 5, and a portion of mineral patent 18783;
Sec. 19, a portion of mineral patent 18783;
T. 10 S., R. 104 W.
Sec. 24, a portion of mineral patent 18783;
Sec. 26, N½S½;
Sec. 27, SW¼NW¼;
T. 11 S., R. 104 W.
Sec. 5, SW¼SE¼;
Sec. 8, W½NE¼, SE¼NW¼;

The purpose of this withdrawal is to protect important scenic and recreation values within the Ruby Canyon of the Colorado River.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with this proposal may present their views in writing to the undersigned officer of the Bureau of Land Management. However, those persons desiring to be heard at the public meeting must submit their requests by February 16, 1994. A list of scheduled speakers will be established. Unscheduled speakers will be heard if time allows. This application will be processed in accordance with the regulations set forth in 43 CFR part 2310.

For a period of 2 years from the date of publication of this notice in the **Federal Register** the land will be segregated from the mining laws as specified above unless the application is denied or cancelled, or the withdrawal is approved prior to that date.

Robert S. Schmidt,
Chief, Branch of Realty Programs.

[FR Doc. 94–1294 Filed 1–19–94; 8:45 am]

BILLING CODE 4310–JB–M

[OR–943–4210–08; GP4–061]

State Office Move; Oregon and Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice announces the relocation of part of the Bureau of Land Management (BLM) Oregon State Office, the temporary closure of the Public Room during that relocation, staff functions being relocated, and information on mail delivery.

FOR FURTHER INFORMATION CONTACT: Catherine Crawford, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208–2965; 503–280–7172.

SUPPLEMENTARY INFORMATION: Effective at the close of business on February 15, 1994, the Public Room of the BLM Oregon State Office will close for the purpose of relocating to 1515 SW. 5th Ave, Portland, Oregon 97201. The Public Room provides access to and inspection of the official Public Land Tenure Records and Cadastral Survey Records of the federal government, and the serialized case files of active land and mineral transactions for Oregon and Washington. The Public Room will reopen, at the new address, at 8:30 a.m. on Monday, February 28, 1994. The Public Room telephone number (503) 280–7001 remains unchanged.

Other office staff which will relocate at the same time include the following, by title and internal mail stop designation: the Division of Operations (OR–940), the Branch of Engineering (OR–941), the Branch of Cadastral Survey & Mapping Sciences (OR–942), the Branch of Lands & Minerals Operations (OR–943), the Branch of Fire & Aviation Management (OR–944), and the Branch of Access, Transportation, Rights-of-Way and Appraisal (OR–948).

The BLM Oregon State Office mailing address for delivery by the U.S. Post Office will remain P.O. Box 2965, Portland, Oregon 97208–2965. For other commercial delivery services that require a street address, the BLM Oregon State Office will remain at 1300 NE 44th Ave, Portland, Oregon 97213. Commercial delivery service to the 1515 S.W. 5th Avenue address is limited strictly to those relocating office staff identified in the preceeding paragraph.

Current plans are to relocate the remaining BLM Oregon State Office staff at 1300 NE 44th Avenue to the 1515 SW 5th Avenue address late in 1994. A second Notice will be published, when dates for the completed relocation are made final.

Dated: January 12, 1994

Robert D. Rheimer, Jr.,

Acting State Director.

[FR Doc. 94-1396 Filed 1-19-94; 8:45 am]

BILLING CODE 4310-33-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-652 (Final)]

Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide From the Netherlands

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-652 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the Netherlands of aramid fiber formed of poly para-phenylene terephthalamide (PPD-T aramid fiber),[1] provided for in subheadings 5402.10.30, 5402.32.30, 5503.10.00, 5601.30.00, and 5902.10.00 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult 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).

EFFECTIVE DATE: December 14, 1993.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202-205-3193), 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:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of PPD-T aramid fiber from the Netherlands are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on July 2, 1993, by counsel on behalf of E. I. Du Pont de Nemours & Co., Wilmington, DE.

Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on April 22, 1994, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on May 5, 1994, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before April 26, 1994. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on April 28, 1994, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony *in camera*.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is May 2, 1994. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is May 13, 1994; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before May 13, 1994. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of § 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is 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: January 12, 1994.

[1] The items covered by Commerce's investigation are all forms of PPD-T aramid fiber from the Netherlands. This includes PPD-T aramid fiber in the form of filament yarn (including single and corded), staple fiber, pulp (wet or dry), tire cord fabric, nonwovens, chopped fiber, and floc.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–1365 Filed 1–19–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. TA–406–13]

Honey From China

Determination

On the basis of the information developed in the subject investigation, the Commission determines [1] that market disruption exists with respect to imports of honey [2] from China—that is, imports of honey from China are increasing rapidly so as to be a significant cause of threat of material injury to a domestic industry.[3]

Findings and Recommendations

Chairman Newquist, Commissioner Rohr and Commissioner Nuzum find and recommend that in order to remedy the market disruption found with respect to imports of honey from China, it is necessary to impose a tariff-rate quota on such honey for a 3-year period, to be administered on a quarterly basis, with imports entered within a quarterly quota of 12.5 million pounds of honey from China to be dutiable at a rate of 25 percent ad valorem, and over-quota imports entered during any calendar quarter to be dutiable at a rate of 50 percent ad valorem, with such duties imposed in lieu of the existing rate of duty. The Commissioners also recommend review after 3 years, or earlier, depending on the status of the federal honey loan support program.

Vice Chairman Watson finds and recommends that in order to remedy the market disruption found with respect to imports of honey from China, it is necessary to impose a tariff-rate quota on such honey for a 2½ year period, with a rate of 15 percent ad valorem on the first 60 million pounds of honey imported from China annually, and a rate of 25 percent ad valorem on such honey that exceeds 60 million pounds. Such duties should be in addition to current duties on such honey. Vice Chairman Watson also recommends review not later than 2 years after imposition of relief, with interested parties given the right to petition the ITC for a review of the remedy proposed at any time after 1 year following any relief granted by the President.

Commissioner Brunsdale, although finding in the negative with respect to market disruption and honey from China, recommends that if the President imposes a remedy, it be a tariff-rate quota for a 3-year period on such honey, with no additional duty imposed on the first 60 million pounds of honey from China entered annually, but with an additional duty of 10 percent ad valorem imposed on imports that exceed 60 million pounds.

Commissioner Crawford finds and recommends that in order to remedy the market disruption found with respect to imports of honey from China, it is necessary to impose a duty of 10 percent ad valorem, in lieu of the existing rate of duty, on all honey imported from China for a period of three years. Commissioner Crawford also recommends review after 3 years.

Background

This report is being furnished to the President pursuant to section 406(a)(3) of the Trade Act of 1974 (19 U.S.C. 2436(a)(3)) and is based on an investigation conducted under section 406(a)(1) of the Trade Act. The Commission instituted this investigation effective October 6, 1993, following receipt of a request from the United States Trade Representative.

Notice of the institution of the Commission's investigation and of a public hearing 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 October 20, 1993 (58 FR 54169). The hearing on injury and relief was held in Washington, DC, on December 2, 1993, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination, findings and recommendations in this investigation to the President on January 7, 1994. The views of the Commission are contained in USITC Publication 2715 (January 1994), entitled "Honey from China: Investigation No. TA–406–13."

Issued: January 11, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–1364 Filed 1–19–94; 8:45 am]

BILLING CODE 7020–02–P00

[Investigation No. 337–TA–352]

In the matter of certain personal computers with memory management information stored in external memory and related materials.

Designation of Additional Commission Investigative Attorney

Notice is hereby given that, as of this date, Mary Jane Boswell, Esq. and Thomas S. Fusco, Esq. of the Office of Unfair Import Investigations are designated as the Commission investigative attorneys in the above-cited investigation instead of Mary Jane Boswell, Esq.

The Secretary is requested to publish this Notice in the **Federal Register**.

Dated: January 10, 1994.

Lynn I. Levine,

Director, Office of Unfair Import Investigations, 500 E Street, SW., Washington, DC 20436.

[FR Doc. 94–1363 Filed 1–19–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–315]

Certain Plastic Encapsulated Integrated Circuits; Enforcement Proceeding

Complaint (Public Version)

This complaint, which is filed by the Office of Unfair Import Investigations of the United States International Trade Commission under sections 333 and 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1333, 1337, and Commission Interim Rule 211.56(c), 19 CFR § 211.56(c), alleges violations of a Commission cease and desist order issued on February 18, 1992, in Certain Plastic Encapsulated Integrated Circuits, Investigation No. 337–TA–315, and of a modified cease and desist order issued July 2, 1993. The cease and desist orders were issued against Analog Devices, Inc. ("Analog") of Norwood, Massachusetts. This complaint seeks institution of an enforcement proceeding as to Analog to establish violations of the cease and desist orders and appropriate sanctions for such violations, which may include civil penalties pursuant to 19 U.S.C. 1337(f)(2).

The following is alleged:

I. Jurisdiction

1. Jurisdiction over the subject matter of this complaint and over the proposed

[1] Commissioner Brunsdale dissenting.

[2] The honey products included in this investigation are imports of natural honey, artificial honey mixed with natural honey, and preparations of natural honey, provided for in heading 0409 and subheadings 1702.90 and 2106.90 of the Harmonized Tariff Schedule of the United States (HTS).

[3] Section 406(e)(2) of the Trade Act of 1974 defines market disruption as existing whenever "imports of an article, like or directly competitive with an article produced by such domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat thereof, to such domestic industry."

parties is derived from sections 337 and 333 of the Tariff Act of 1930 as amended, 19 U.S.C. 1337, 1333.

II. The Parties To Be Named

2. Analog Devices, Inc., One Technology Way, Norwood, Massachusetts 02062, is the enforcement proceeding respondent. Analog, a respondent in the underlying Commission investigation, Investigation No. 337–TA–315, designs, manufactures, imports, and sells plastic encapsulated integrated circuits ("encapsulated circuits").

3. Texas Instruments Incorporated ("TI"), 13510 North Central Expressway, Dallas, Texas 75243, is also named a party to the enforcement proceeding. TI was the complainant in the underlying investigation.

4. The Office of Unfair Import Investigations (OUII), U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, will appoint one or more Commission investigative attorneys as a party to the enforcement proceeding.

III. The Underlying Commission Investigation

5. Pursuant to its Notice of Investigation, 55 FR 33388 (August 15, 1990), the Commission instituted Investigation No. 337–TA–315 under section 337. The investigation was based upon a complaint filed by TI on July 19, 1990, alleging that Analog and four other Respondents [1] had imported and sold within the United States plastic encapsulated integrated circuits manufactured abroad by processes covered by certain claims of U.S. Letters Patent 4,043,027 (the " '027 patent").

6. Following a hearing on the merits before a Commission Administrative Law Judge ("Judge"), in which Analog participated, the Judge issued an Initial Determination ("ID") on October 15, 1991, finding that there was a violation of section 337 in connection with Analog's importation and sale in the United States of encapsulated circuits made by a process covered by claims 12 and 14 of the '027 patent.

7. The Commission reviewed certain issues addressed in the ID and ultimately concluded that there was a violation of section 337 in Analog's importation and sale in the United States of encapsulated circuits made by a process covered by claims 12, 14, and 17 of the '027 patent. The Commission also determined that Analog held a limited license from TI under the '027 patent by virtue of Analog's acquisition of Precision Monolithics, Inc., a licensee of TI (the "TI–PMI license").

8. On February 18, 1992, the Commission issued a limited exclusion order barring from entry into the United States encapsulated circuits manufactured abroad by or for Analog according to a process covered by claims 12, 14, or 17 of the '027 patent for the remaining term of the patent, except under license from the patent owner.

9. In addition, on February 18, 1992, the Commission issued a cease and desist order against Analog prohibiting Analog from importing, selling for importation, assembling, testing, marketing, distributing, offering for sale, selling, or otherwise transferring in the United States encapsulated circuits manufactured abroad according to a process covered by claims 12, 14, or 17 of the '027 patent, for the remaining term of the patent, "except to the extent that it is licensed to do so".

10. On March 10, 1993, the U.S. Court of Appeals for the Federal Circuit affirmed the Commission's determination in all respects.

11. The February 18, 1992 cease and desist order against Analog contained a requirement that Analog submit quarterly reports within 21 days of the close of each quarter as to Analog's importation in units of encapsulated circuits during that quarter.

12. On July 2, 1993, the Commission entered a modified cease and desist order against Analog. The Commission modified the order's reporting requirement, but did not modify the prohibitory language of the order referred to in paragraph 9 above.

13. The modified cease and desist order contains a requirement that Analog submit quarterly reports within 21 days of the close of each quarter. The order also required that Analog submit, within 60 days of the entry of the order, an amended report for the quarterly periods beginning on February 18, 1992, consistent with the modified reporting requirements. Specifically, the modified cease and desist order requires Analog to report as follows:

> Respondent shall report to the Commission its importation into the United States of covered products, including licensed products, measured in units, if any, during the reporting period in question.
>
> Respondent shall report to the Commission its sales in the United States, including licensed sales, measured in sales values, of all covered products, if any, during the reporting period in question.
>
> Respondent shall report to the Commission its sales of all licensed products in the United States, if any, measured in sales values up to the license ceiling.

14. Concurrently with the issuance of the modified cease and desist order, the Commission issued an Order and Opinion. In its Order and Opinion, the Commission stated that the amount of the limited license held by Analog from TI by virtue of Analog's acquisition of PMI is $94 million in annual sales of licensed products.

IV. Analog's Violations of the Commission's Cease and Desist Orders

15. [ ]
16. [ ]
17. [ ]

18. Instead, the cease and desist orders, read in conjunction with the Commission's opinions, clearly require Analog to cease and desist from importing or selling covered encapsulated circuits once $94 million in licensed products have been sold by Analog in an annual period.

19. Analog has not sought an advisory opinion from the Commission regarding whether Analog is permitted under either the original or the modified cease and desist order to [ ].

20. Public information regarding Analog's product lines and Analog's sales levels appears in Analog's technical reference manuals, annual reports, and 10–Q and 10–K reports filed with the Securities and Exchange Commission.

21. [ ]
22. [ ]

23. Analog's worldwide sales of all products [ ] for the period November 1991 through July 1993, based upon publicly available information, are set forth below:

Fiscal Qtr.	Last date of period	Worldwide sales [ ]
1st 1992	02/01/92	$131 million.
2nd 1992	05/02/92	143 million.
3rd 1992	08/01/92	144 million.
4th 1992	10/31/92	149 million.
1st 1993	01/30/93	151 million.
2nd 1993	05/01/93	163 million.
3rd 1993	07/31/93	173 million.
4th 1993	10/31/93	No information.

24. [ ]
25. [ ]

26. Therefore, Analog has imported covered encapsulated circuits after having exceeded the $94 million annual license limit. Those imports are not licensed under the TI-PMI license. Consequently, those imports violate the Commission's original and modified

[1] The other four Respondents named in TI's complaint as having violated section 337 were LSI Logic Corporation, VLSI Technology, Inc., Cypress Semiconductor Corporation, and Integrated Device Technology, Inc. They are not expected to participate as parties in this enforcement proceeding.

cease and desist orders, which permit Analog to import covered encapsulated circuits only "to the extent that it is licensed to do so".

27. At this time, OUII does not possess sufficient information to determine exactly the date in each annual period on which Analog exhausted the $94 million license ceiling, and thus does not know exactly the volume of Analog's imports that have been in violation of the Commission's cease and desist orders. Moreover, OUII has not yet reviewed Analog's importation or sales records and thus does not have information at this time as to how many violation days there have been on which Analog imported encapsulated circuits in violation of the Commission's cease and desist orders. OUII expects to obtain information on these matters in the enforcement proceeding.

28. Given the facts alleged above regarding Analog's reporting to the Commission and the facts indicating that Analog has imported encapsulated circuits in violation of the Commission's original and modified cease and desist orders, a formal enforcement proceeding initiated by the Commission is necessary to establish that Analog has and is violating the Commission's cease and desist orders and, if so, what enforcement measures, including civil penalties or other sanctions, would be appropriate.

V. Appropriate Relief

29. In view of the foregoing, the Office of Unfair Import Investigations requests that the Commission institute a formal enforcement proceeding pursuant to 19 CFR 211.56(c) to determine whether the original cease and desist order of February 18, 1992, or the modified cease and desist order of July 2, 1993, has been violated by Analog Devices, Inc. and, if so, what enforcement measures would be appropriate.

30. In the event that the Commission, after a formal enforcement proceeding, determines that there has been a violation of the Commission's cease and desist orders, the Commission may issue the following remedies:

(A) modify the Commission's exclusion and cease and desist orders pursuant to 19 CFR 211.56(c)(3) in any manner that would assist in the prevention of the unfair practices which were originally the basis for issuing such orders or assist in the detection of violations of such orders, including any desirable modification of the reporting provision;

(B) impose civil penalties pursuant to 19 U.S.C. 1337(f) in an amount not greater than $100,000 for each day on which an importation or sale occurred in violation of the cease and desist orders, or twice the domestic value of the articles entered or sold in violation of the orders, and if necessary, bring a civil action in an appropriate United States District Court pursuant to 19 CFR 211.56(b) and 19 U.S.C. 1337(f) to recover such civil penalties and seek the issuance of a mandatory injunction incorporating any other relief ordered by the Commission; and

(C) impose such other remedies and sanctions as are appropriate and within the Commission's authority.

Dated: January 10, 1994.

Lynn I. Levine,

Director.

T. Spence Chubb,

Supervisory Attorney.

Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., suite 401, Washington, DC 20436, (202) 205-2575.

[FR Doc. 94-1355 Filed 1-19-94; 8:45 am]

BILLING CODE 7020-02-P

[Investigation No. 337-TA-315]

In the Matter of Certain Plastic Encapsulated Integrated Circuits; Enforcement Proceeding

Order

On February 18, 1992, the Commission issued its final determination in the above-captioned investigation.[1] The Commission determined that there was a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the unlicensed importation and sale of certain plastic encapsulated integrated circuits ("encapsulated circuits") by, *inter alia*, respondent Analog Devices, Inc. The Commission determined that a limited exclusion order and a cease and desist order against Analog were appropriate remedies.[2] The Commission's determination and remedial orders became final on April 19, 1992, the President having taken no action with respect to the determination and orders.

On July 2, 1993, following a modification proceeding conducted under Commission Interim Rule 211.57, 19 CFR 211.57, the Commission issued a modified cease and desist order against Analog.

The Commission has authorized the docketing of a complaint by the Office of Unfair Import Investigations to institute a formal enforcement proceeding to determine whether Analog has violated the Commission's cease and desist orders and, if so, what enforcement measures would be appropriate.

The Commission has determined that the enforcement proceeding should be assigned to a presiding administrative law judge for hearing and other proceedings as appropriate. The presiding administrative law judge is to issue, as expeditiously as practicable, a recommended determination addressing the matters at issue in the enforcement proceeding.

Pursuant to Interim Rule 211.52, the Commission is directing the presiding administrative law judge to issue an appropriate administrative protective order for purposes of the enforcement proceeding.

In the event that the Commission finds that there has been a violation of the Commission's orders, the Commission may impose civil penalties pursuant to 19 U.S.C. 1337(f), and may bring a civil action in an appropriate United States district court pursuant to 19 CFR 211.56(b) and 19 U.S.C. 1337(f) seeking the recovery of such civil penalties or the issuance of a mandatory injunction incorporating relief sought by the Commission. In addition, the Commission may modify its exclusion and cease and desist orders against Analog under Interim Rule 211.56(c)(3) and otherwise issue appropriate sanctions or relief.

The Commission having determined that institution of a formal enforcement proceeding is appropriate, it is hereby ordered that

1. Pursuant to Commission Interim Rule 211.56(c), 19 CFR 211.56(c), a formal enforcement proceeding is instituted to determine whether Analog Devices, Inc. has violated the Commission cease and desist order issued on February 18, 1992, and modified on July 2, 1993, in the above-captioned investigation and what, if any, enforcement measures are appropriate.

2. For purposes of the formal enforcement proceeding so instituted, the following are named as parties:

(a) Analog Devices, Inc., One Technology Way, Norwood, Massachusetts 02062, a respondent in the underlying investigation;

(b) Texas Instruments Incorporated, 13500 North Central Expressway, Dallas, Texas 75243, the complainant in the underlying investigation; and

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[1] The Commission Opinion on the Issues Under Review and on Remedy, the Public Interest and Bonding was issued March 3, 1992.

[2] The Commission also issued a cease and desist order against four other respondents in the investigation. That cease and desist order is not at issue for purposes of this Order.

(c) One or more Commission investigative attorneys to be designated by the Director, Office of Unfair Import Investigations.

3. In accordance 211.56(c) of the Commission's Interim Rules of Practice and Procedure, 19 CFR 211.56(c), any response to the complaint must be filed by the respondent within fifteen (15) days after receipt of the complaint.

4. The Chief Administrative Law Judge shall designate the presiding administrative law judge, who shall conduct the enforcement proceeding pursuant to the Commission's Interim Rules of Practice and Procedure, 19 CFR Parts 210 and 211, to the extent that such Rules are applicable. The presiding administrative law judge is directed to submit a recommended determination on the matters at issue in the enforcement proceeding, including recommended enforcement measures, as expeditiously as practicable.

5. Computation of time shall be in accordance with Commission Rule 201.14, 19 CFR 201.14, unless otherwise ordered by the Commission or presiding administrative law judge.

6. Pursuant to Commission Interim Rule 211.52, 19 CFR 211.52, the presiding administrative law judge is to issue an appropriate administrative protective order for purposes of the enforcement proceeding.

7. The presiding administrative law judge may allow discovery, including discovery of third parties, to the extent he or she deems necessary in order to generate an adequate record on the issues raised in the enforcement proceeding.

8. The recommended determination, which is to be consistent with the Commission's findings in the original investigation, shall rule on the question of whether Analog has violated the cease and desist order issued against Analog Devices, Inc. on February 18, 1992, and modified on July 2, 1993. The presiding judge may consider and rule upon violations, if any, that occur subsequent to the publication of the accompanying notice of institution of the enforcement proceeding, as well as violations, if any, that have occurred prior to the notice. If the presiding administrative law judge recommends that the Commission find Analog in violation of Commission orders, he or she shall also recommend to the Commission what enforcement measures, if any, are appropriate in light of the nature and significance of such violations.

9. The parties may file, within fifteen (15) days of the filing of the recommended determination, briefs to the Commission concerning the recommended determination. Reply briefs may be filed by any party within five (5) days of the service of the main briefs.

10. The Secretary shall:

(a) Docket the attached complaint (confidential and public versions) of the Office of Unfair Import Investigations;

(b) Serve a copy of the confidential version of the complaint on respondent Analog Devices, Inc. and serve a copy of the public version of the complaint on complainant Texas Instruments Incorporated;

(c) Serve a copy of this Order and the accompanying notice upon each party to the formal enforcement proceeding and upon each party of record in the underlying investigation; and

(d) Publish the accompanying notice in the **Federal Register** along with an addendum consisting of this Order and the public version of the complaint.

Issued: January 10, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–1356 Filed 1–19–94; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–315]

In the Matter of Certain Plastic Encapsulated Integrated Circuits; Notice of Institution of Formal Enforcement Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has docketed a complaint and an Order instituting a formal enforcement proceeding concerning certain remedial orders issued in the above-captioned investigation on February 18, 1992, and July 2, 1993. The enforcement proceeding is referred to the Chief Administrative Law Judge, who is directed to assign a presiding administrative law judge for appropriate proceedings and the issuance, as expeditiously as practicable, of a recommended determination.

FOR FURTHER INFORMATION CONTACT: Andrea Casson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3105.

SUPPLEMENTARY INFORMATION: The authority for the Commission's action is contained in section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and in § 211.56(c) of the Commission's Interim Rules of Practice and Procedure, 19 CFR 211.56(c).

Concurrently with the issuance of this notice, the Commission caused the docketing with the Secretary to the Commission of a confidential complaint by the Commission's Office of Unfair Import Investigations. The complaint alleges violations by Analog Devices, Inc. (Analog) of the original cease and desist order issued by the Commission on February 18, 1992, against Analog and the modified cease and desist order issued on July 2, 1993, against Analog. The Commission has also issued an Order concerning the enforcement proceeding. A public version of the complaint has been placed on the public docket file. The Order and the public version of the complaint are being published in the **Federal Register** as an addendum to this notice.

The following are named as parties to the enforcement proceeding:

(a) Analog Devices, Inc., One Technology Way, Norwood, Massachusetts 02062, a respondent in the underlying investigation;

(b) Texas Instruments Incorporated, 13500 North Central Expressway, Dallas, Texas 75243, the complainant in the underlying investigation; and

(c) One or more Commission investigative attorneys to be designated by the Director, Office of Unfair Import Investigations.

As set forth in the accompanying Order, the Commission has determined to refer the enforcement proceeding to the Chief Administrative Law Judge for designation of a presiding administrative law judge, for discovery, hearing, and issuance of a recommended determination concerning whether Analog is in violation of the Commission's orders and, if so, what enforcement measures would be appropriate. The recommended determination shall be issued as expeditiously as practicable.

In accordance with § 211.56(c) of the Commission's Interim Rules of Practice and Procedure, 19 CFR 211.56(c), any response to the complaint must be filed by the respondent within fifteen (15) days after receipt of the complaint.

Copies of the public version of the complaint, the Commission's Order, and all other nonconfidential documents filed in connection with this formal enforcement proceeding 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., room 112, Washington, DC 20436, telephone 202–205–1802.

Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: January 10, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–1357 Filed 1–19–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–361]

In the Matter of Certain Portable On-Car Disc Brake Lathes and Components Thereof; Change of Commission Investigative Attorney

Notice is hereby given that, as of this date, Juan S. Cockburn, Esq. of the Office of Unfair Import Investigations is designated as the Commission investigative attorney in the above-cited investigation instead of John M. Whealan, Esq.

The Secretary is requested to publish this Notice in the **Federal Register**.

Dated: January 10, 1994.

Lynn I. Levine,

Director, Office of Unfair Import Investigations, 500 E Street, SW., Washington, DC 20436.

[FR Doc. 94–1361 Filed 1–19–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–357]

In the Matter of Certain Sports Sandals and Components Thereof

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

Notice of Decision Not To Review Initial Determination Granting Joint Motion To Terminate the Investigation With Respect to Respondent Kinney Shoe Corporation on the Basis of a Settlement Agreement

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 3) issued on December 9, 1993, by the presiding administrative law judge (ALJ) in the above-captioned investigation granting the joint motion of complainant Deckers Corporation and respondent Kinney Shoe Corporation to terminate the investigation as to Kinney on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Rhonda M. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3083.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of section 337 violations in the importation, the sale for importation, and the sale within the United States after importation of sports sandals that infringe three claims of U.S. Letters Patent 4,793,075, on September 8, 1993.

On November 19, 1993, Deckers and Kinney filed a joint motion to terminate the investigation on the basis of a settlement agreement. The ALJ issued an ID granting the joint motion and terminating the investigation as to Kinney. No petitions for review, or agency or public comments were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53, 19 CFR 210.53.

Copies of the ID 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 persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: January 10, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–1360 Filed 1–19–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–354]

In the Matter of Certain Tape Dispensers; Change of Commission Investigative Attorney

Notice is hereby given that, as of this date, Juan S. Cockburn, Esq. of the Office of Unfair Import Investigations is designated as the Commission investigative attorney in the above-cited investigation instead of Jeffrey R. Whieldon, Esq.

The Secretary is requested to publish this Notice in the **Federal Register**.

Dated: January 10, 1994.

Lynn I. Levine,

Director, Office of Unfair Import Investigations, 500 E Street, SW., Washington, DC 20436.

[FR Doc. 94–1362 Filed 1–19–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32417]

The Great Miami & Scioto Railway Co.—Change in Operator Exemption—Certain Lines of the City of Jackson, OH

The Great Miami & Scioto Railway Company (GMRY), a noncarrier, has filed a notice of exemption pursuant to 49 CFR 1150.31 for GMRY to operate approximately 60.36 miles of rail line presently owned by the City of Jackson, OH, from milepost 32.76, near Firebrick, OH, to milepost 0.00/127.0),[1] near Hamden, OH; (2) from milepost 127.0, near Hamden, OH, to milepost 112.3, near West Junction, OH; (3) from milepost 112.3,[2] at West Junction, OH, to milepost 91.6 at RA Junction;[3] and (4) from milepost 127.71, near Hamden, OH, to milepost 136.71, at a point known as Red Diamond, OH (Red Diamond Line).[4] Incidental trackage rights will also be granted over the lines of CSX Transportation, Inc. (CSXT) from milepost 91.6 at RA Junction to milepost 85.7 near Vauces, OH, solely for purposes of interchange between the GMRY and CSXT. These lines presently are being operated by The Indiana & Ohio Eastern Railroad, Inc. (IOER). GMRY will perform common carrier operations over these lines in place of the IOER. The transaction was scheduled to become effective on January 1, 1994.

Any comments must be filed with the Commission and served on: Robert L. Calhoun, Sullivan & Worcester, 1025 Connecticut Avenue, NW., suite 1000, Washington, DC 20036.

This notice is filed under 49 CFR 1150.31. If the notice contains false or

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[1] This is the point where the GMRY's north-south line (formerly the old Portsmouth Subdivision of CSXT, the owner of the line prior to its acquisition by the City of Jackson) at milepost 0.00 and its insection with the east-west line, also formerly owned by CSXT, at milepost 127.0.

[2] Also known as milepost 95.5.

[3] In City of Jackson, OH—Exemption Acquisition—Certain Lines of Baltimore and Ohio Railroad Company and Chesapeake and Ohio Railway Company, Finance Docket No. 31020 (ICC served Apr. 24, 1987), the City of Jackson acquired 52.83 route miles of line from Firebrick, OH (milepost 32.76) to Hamden, OH (milepost 0.00/127.0) to West Junction (milepost 112.3/95.5) to RA Junction (milepost 91.6). This description for 52.83 route miles appears to match the 51.36 miles described in (1), (2), and (3) *supra*. There is no explanation for the 1.47-mile discrepancy.

Incidental trackage rights were also acquired over 5.9 miles, owned by B&O and C&O, from RA Junction (milepost 91.6) to RA Junction (milepost 85.7) near Vauces, OH.

[4] The Red Diamond Line was acquired following the abandonment by CSX Transportation in The Indiana & Ohio Eastern Railroad, Inc., Finance Docket No. 31803 (ICC served Jan. 18, 1991).

misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: January 13, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–1404 Filed 1–19–94; 8:45 am]

BILLING CODE 7035–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for clearance of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted by February 18, 1994.

ADDRESSES: Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington DC 20503; (2020395–7316). In addition, copies of such comments may be sent to Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington DC 20506; (202–682–5401).

FOR FURTHER INFORMATION CONTACT: Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington DC 20506; (202–682–5401).

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a revision of a currently approved collection of information. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required to ask to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Panelist Profile Form.

Frequency of Collection: Triennially.

Respondents: Individuals wishing to be considered for panel service.

Use: The form is used to collect basic information from qualified individuals who have been recommended for panel service. Information is entered into a computer database which serves as a reference tool for Endowment staff to aid in assembling advisory panels which meet Congressional requirements for broad representation.

Estimated Number of Respondents: 1,000.

Average Burden Hours Per Response: .3.

Total Estimated Burden: 333.

Judith E. O'Brien,

Management Analyst, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 94–1323 Filed 1–19–94; 8:45 am]

BILLING CODE 7537–01–M

Cooperative Agreement for Management of Technical Assistance

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement for the management of technical assistance services to up to 40 developing nonprofit arts organizations selected for participation in the FY 94 Advancement Program. The work involves the engagement and coordination of a team of nonprofit management consultants who will work on-site with assigned organizations over a fifteen month period. Consultants will assist each organization with the development of a multi-year artistic and management plan and provide additional services in areas of identified need such as governance and board development, financial reporting and control systems, public relations, facilities planning, marketing, personnel management, and resource and program development. Those interested in receiving the Solicitation package should reference Program Solicitation PS 94–04 in their written request and include two (2) self-addressed mailing labels. Verbal request for the Solicitation will not be honored.

DATES: Program Solicitation PS 94–04 is scheduled for release approximately February 8, 1994 with proposals due on March 8, 1994.

ADDRESSES: Requests for the Solicitation should be addressed to National Endowment for the Arts, Contracts Division, room 217, 1100 Pennsylvania Ave., NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: William I. Hummel, Contracts Division, National Endowment for the Arts, 1100 Pennsylvania Ave., NW., Washington, DC 20506 (202/682–5482).

William I. Hummel,

Director, Contracts and Procurement Division.

[FR Doc. 94–1295 Filed 1–6–94; 8:45 am]

BILLING CODE 7537–01–M

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 and Advancement Advisory Panel (Opera-Musical Theater Advancement Section) to the National Council on the Arts will be held on February 9, 1994 from 9 a.m. to 3 p.m. This meeting will be held in room 730, 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.–9:45 a.m. for introductions and a brief Advancement Overview.

The remaining portion of this meeting from 9:45 a.m. to 3 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 24, 1992, 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, TDD 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 Sabine, Committee Management Officer, National Endowment for the

Arts, Washington, DC, 20506, or call 202/682–5439.

Dated: January 12, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operation, National Endowment for the Arts.

[FR Doc. 94–1273 Filed 1–19–94; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION OF THE ARTS AND THE HUMANITIES

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 and Advancement Advisory Panel (Expansion Arts Advancement Section) to the National Council on the Arts will be held on February 23, 1994 from 9 a.m. to 5:30 p.m. on February 23, 1994. This meeting will be held in Room 730, 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. to 9:45 a.m. for introductions and a brief Advancement overview.

The remaining portion of this meeting from 9:45 a.m. to 5:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, 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, TDD 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 Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5439.

Dated: January 12, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operation, National Endowment for the Arts.

[FR Doc. 94–1274 Filed 1–19–94; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Directorate for Education and Human Resources, Division of Graduate Education and Research Development, Graduate Research Traineeship Program Announcement; Closing Date: March 31, 1994

This printed information contains the essence of the announcement for this program, and is not a full copy of the actual brochure containing the guidelines for submission. Before submitting a proposal, obtain a printed copy of the guidelines by writing or calling the publications office of NSF.

The National Science Foundation (NSF) announces the FY 1994 competition for the Graduate Research Traineeship (GRT) Program. The principle objective of the program is to increase the numbers of talented American undergraduates enrolling in doctoral programs in the following areas which NSF has selected as being particularly representative of our nation's science, mathematics, engineering and technology priorities:

Education and Human Resources

Research on the Teaching and Learning of Science and Mathematics
Applications of Advanced Technology for Education

Biological Sciences

Environmental Biology—Plant Biology

Computer Science

Human Interface Design for Access to Computers and Networked Information

Training in the study of intelligent information retrieval from heterogeneous distributed databases, man-machine interfaces for computer users including the use of multimedia, multi-media or visualization output from high performance computers, and other areas dealing with the effective use of computers and networked information by experts and novices.

Hardware and Software Co-Design for High Performance Systems

Includes the design of hardware with the associated software to optimize speed, size, power consumption, or other performance measures in computing systems; and collaborative programs combining hardware/software training, with an emphasis on the hardware/software tradoffs in systems ranging from application-specific integrated circuits to networks of heterogeneous high-performance subsystems.

Engineering

Environmentally Conscious Manufacturing

Training in the study of new technologies and methods of pollution prevention and minimization of resource waste. Some of the key intellectual issues are: optimization/control of manufacturing processes; alternative chemistries and processes; design for the environment; and management of technological innovation (e.g. strategies/tools for life cycle analysis).

Civil Infrastructure Systems

Training in the development and application of new knowledge in the following four key areas: deterioration science, assessment technologies, renewal engineering, and institutional effectiveness and productivity. Such research efforts will lead to new designs, more durable materials, network systems with better controls and communications, and improved decision-making and management processes.

Geosciences

Coastal Ocean Processes

Interdisciplinary training in the study of processes active in the coastal ocean that affect circulation of coastal waters, ocean-atmospheric interactions, chemical processes and their effects on marine life and marine resources.

Hydrology

Interdisciplinary training in the study of the occurrences, movements, and physical and chemical interactions of fresh water with the ocean, atmosphere, and solid earth over the full range of space and time scales found on land areas. Special emphasis is given to how those interactions are altered by and alter ecological systems, are impacted by human activity, and fair with global change.

Mathematics and Physical Sciences

Environmental Physical and Mathematical Science

Training in interdisciplinary approaches to environmental research in the physical and mathematical sciences.

Integrating High Performance Computing into Research in the Mathematical and Physical Sciences

Social and Behavioral Sciences

Cognitive Science

Interdisciplinary training in the study of the capacities and processes of the mind, bringing to bear methods and perspectives from cognitive psychology, linguistics, computer science, cognitive neuroscience, and related fields.

Democratization

Interdisciplinary training in the foundation of democracies, including the variety of contributions that the social and behavioral sciences can make to understanding the formation, stabilization, and maintenance of democratic systems. It is anticipated that the list of targeted subdisciplines will be reviewed annually and, therefore, is subject to change if there are subsequent competitions.

Graduate Research Traineeship awards are packages of student support. The colleges and universities that receive the awards are responsible for the selection of trainees, retention of trainees, and administration of traineeships. Approximately 30 awards will be made, supporting 150 traineeship positions in FY 1994.

Program Highlights

Eligible Disciplinary (Focus) Area

Each proposal must be developed around one of the previously identified targeted subdisciplines.

Eligible Institutions

Any university or other academic institution in the United States and its territories that awards a Ph.D. in a subject area represented by a targeted field of science or engineering identified in this announcement is eligible to submit proposals.

Stipend Level/Award Type

Within each award, traineeships will provide a $14,000/year stipend and a $7,500/year cost-of-education allowance in lieu of tuition and fees normally charged to students of similar academic standing (unless such charges are optional or refundable). Contingent upon satisfactory progress and the availability of funds, the Foundation expects to provide renewal support annually for a maximum of five years.

Innovative Structural Components

The program is also intended to contribute to strengthening the Nation's human resource base across all geographical sectors and among all underrepresented groups. In an effort to have a more significant impact on human resource development within the scientific and technological community, the FY 1994 GRT program will encourage and give preference to proposals which include unique and progressive characteristics such as, but not limited to:

a. *Consortial arrangements* between Ph.D. granting institutions and institutions that do not grant graduate degrees—The undergraduate institutions would serve as feeder schools for the graduate institutions. Consortial arrangements should achieve objectives which would otherwise be difficult to accomplish. A variety of affinity groupings could conceivably benefit from this type of targeting, including, but not limited to, university systems which might proactively utilize feeder institutions to increase participation of minorities and women in graduate science and engineering programs and alliances that develop through the activities of such NSF programs as EPSCoR and AMP.

b. *Interdisciplinary, intersectoral, and international interactions* that provide unique graduate training opportunities for American students—Programs in this category might include:

(i) Cross disciplinary interactions involving multidisciplinary training activities that maintain a clearly identified focal point, rather than arrays of unrelated, but possibly strong discipline areas;

(ii) Interactions between universities and industry involving student participation and with industry cost-sharing; and

(iii) Programs which include opportunities for international activities on the part of American graduate students. Such program components would have to provide clearly defined unique research and training benefits to the American student participants.

Numbers of Submissions

Only one proposal per targeted subdiscipline may be submitted by an eligible institution. Overall, an institution may not submit more than three (3) GRT proposals. Multi-institutional proposals will be counted as single proposals from each of the participating institutions for the purpose of determining adherence to the proposal submission limits. If the proposal submission limit is exceeded, NSF will require that the institution(s) determine which proposals will be withdrawn from the competition before any proposals from that institution will be declared eligible for review.

Number of Traineeship Positions

Funded proposals will support five (5) traineeship positions.

Contact Person

Roosevelt Johnson, (703) 306–1696 Program Director.

Dated: January 6, 1994.

Roosevelt Johnson,

Program Director.

[FR Doc. 94–1390 Filed 1–19–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Materials Research (1203).

Date and Time: February 7–8, 1994; 8 a.m. to 5 p.m.

Place: Florida State University, Tallahassee, FL.

Type of Meeting: Closed.

Contact Person: Dr. Adriaan M. de Graaf, Deputy Division Director, Division of Materials Research, room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1812; FAX (703) 306–0515.

Purpose of Meeting: To provide advice and recommendations concerning the continued support for the National High Magnetic Field Laboratory (NHMFL) being established by Florida State University, the University of Florida, and Los Alamos National Laboratory.

Agenda: To review and evaluate the progress report and proposal for continued funding from the NHMFL.

Reason for Closing: The progress report being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposal. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 14, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–1391 Filed 1–19–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Systemic Reform; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Code: Special Emphasis Panel in Systemic Reform (1198).

Date and Time: Part I—February 8, 1994 (9 a.m.–5 p.m.); Part II—March 3, 1994 (6 p.m.–9 p.m.); March 4 & 5 (8 a.m.–9 p.m.); March 6 (8 a.m.–5 p.m.).

Place: NSF, 3rd Floor, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Madeleine Long, Paula Duckett, or Daniel Burke, Program Directors, Urban Systemic Initiatives, room 875, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1684.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals for the Urban Systemic Initiatives Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 14, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–1392 Fined 1–19–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Withdrawal of Staff Technical Positions Relating to a High-Level Waste Repository

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of draft staff technical positions now considered obsolete.

SUMMARY: The Nuclear Regulatory Commission staff is announcing its intention to withdraw from further consideration five (listed below) draft staff technical positions (STPs) (currently listed in the "Selected NRC Products—High Level Waste Programs").

The staff does not intend to finalize these five draft STPs and therefore considers them to be obsolete. However, the staff continues to have a regulatory interest in these subjects and will rely on ongoing or future activities, as necessary, to communicate guidance in these areas.

FOR FURTHER INFORMATION CONTACT: Anne Garica, Licensing Assistant, Repository Licensing and Quality Assurance Project Directorate, Division of High-Level Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop 4–H–3, Washington, DC 20555. Telephone (301) 504–2438.

SUPPLEMENTARY INFORMATION: The NRC staff is withdrawing from further consideration the following five draft STPs.

Title	Date
1. Licensing Assessment Methodology for HLW Geologic Repositories (Draft).	July 1984.
2. ISTP for Nevada Nuclear Waste Storage Investigations (NNWSI) (Draft).	September 1984.
3. Interpretation and Identification of the Disturbed Zone (Draft).	July 1986.
4. Groundwater Travel Time (Draft).	July 1986.
5. Guidance for Determination of Anticipated Processes and Events and Unanticipated Processes and Events (Draft).	February 1988.

Under current plans, the staff will likely cover several of the topics of the draft STPs in its review plan for reviewing a license application of the U.S. Department of Energy (DOE) for a geologic repository (i.e., License Application Review Plan for the Review of a License Application for a Geologic Repository for Spent Nuclear Fuel and High-Level Radioactive Waste, Yucca Mountain Site, Nevada). Other topics of the draft STPs may be addressed by NRC rulemaking or implementing guidance after the U.S. Environmental Protection Agency (EPA) issues general standards for disposal of High-Level Waste (HLW) at the proposed Yucca Mountain repository site. Issuance of those EPA standards, expected possibly by late 1995, will trigger NRC's obligation to conform its technical criteria and requirements for HLW disposal pursuant to the Energy Policy Act of 1992 (Pub. L. 102–486). In developing any such documents or rulemakings, the staff will take into consideration all relevant information including, as appropriate, previously received comments on the draft STPs.

Dated at Rockville, Maryland, this 11th day of January 1994.

B.J. Youngblood,

Director, Division of High-Level Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94–1325 Filed 1–19–94; 8:45 am]

BILLING CODE 7590–01–M

[License SNM–960; Docket 70–754]

Finding of No Significant Impact and Notice of Opportunity for a Hearing; Renewal of Special Nuclear Materials; General Electric Co., Vallecitos Nuclear Center, Pleasanton, California

The U.S. Nuclear Regulatory Commission is considering the renewal of Special Nuclear Materials License SNM–960 for General Electric Company, Vallecitos Nuclear Center (VNC), Pleasanton, California for a period of 10 years.

Summary of the Environmental Assessment

Identification of the Proposed Action

The proposed action is the renewal of VNC's operating license for a period of 10 years authorizing the receipt, possession, use, and transfer of special nuclear material and associated byproduct material. Authorized activities include assembly, modification, cleaning, and repair of unirradiated, encapsulated experimental assemblies; chemical, metallurgical, health physics, and hot laboratory operations; research and development; and waste treatment.

The Need for The Proposed Action

Operations at VNC primarily support GE Nuclear Fuels Programs through fuel specimen examination and evaluation. The demand for these operations will continue as long as GE-designed and fabricated fuels continue to be used in commercial nuclear power reactors. Renewal of the license allows continued research into nuclear technologies and materials which may hold the promise of more efficient and less polluting energy producing facilities. The products of continued research may produce positive effects in the years to come, not only through expanding knowledge and refining technologies applicable to energy generation, but also by providing alternatives to technologies that contribute to acid rain.

Environmental Impacts of the Proposed Action

Liquid waste streams are managed to preclude radioactive contamination under normal operating conditions. Monitoring is conducted on the industrial wastewater stream (non-contact cooling water) to confirm the absence of significant levels of radioactivity. Both VNC's operating procedures and the facility's NPDES Permit require confirmatory sampling prior to any release from the retention basins. Prior to the discharge of this stream, grab samples are collected and

analyzed for gross alpha and gross beta-gamma radioactivity to verify that radioactivity concentrations do not exceed limits specified by appendix B of 10 CFR part 20. All discharge samples for the week are accumulated as a weekly composite and analyzed for ^{131}I. Monthly basin composites are analyzed for gross alpha and gross beta-gamma concentrations, and quarterly composites are analyzed for tritium, ^{137}Cs, and ^{60}Co. The effectiveness of effluent controls is illustrated by the fact that the measured radioactivity concentrations of liquid releases from VNC do not exhibit a statistically significant difference when compared to influent samples from the San Francisco water supply system.

In addition to the industrial wastewater stream at the retention basins, monitoring is also conducted on the sanitary wastewater stream. Grab samples are collected and analyzed for gross alpha and gross beta-gamma radioactivity to verify that radioactivity concentrations do not exceed limits specified by Appendix B of 10 CFR part 20.

Potentially contaminated liquids are routed to VNC's Radioactive Liquid Waste Evaporator Plant for processing. Post-processing condensate from the evaporator is sampled and analyzed for radioactivity. If levels of radioactivity are less than the values specified in appendix B of 10 CFR part 20, the condensate is vaporized and emitted as steam through a continuously sampled stack.

Operations with potential to generate airborne radioactive contaminants are conducted within a confined, ventilated structure with exhausts routed to a filtered and monitored stack. The number of stacks actually monitored or sampled in a given year will vary dependent upon usage of the facilities. Annual average emission levels as measured by the airborne radioactive effluent monitoring program indicate that levels are significantly less than values specified in appendix B of 10 CFR part 20.

VNC has maintained an environmental surveillance program since 1956 in order to determine the impact, if any, of site operations on radiation levels in the environment surrounding the facility, and verify the effectiveness of its radiation control and release point monitoring programs. The program includes routine collection and analysis of water, vegetation, soil, stream bottom, and air samples from strategic onsite and offsite locations.

In order to assess whether recent VNC operations may have caused cumulative impacts on the surrounding environment, recent surveillance data for the period 1986 through 1990 was reviewed. During this time, radioactive concentrations in the environment have remained well below background statistical levels and action levels.

Nonradiological effluents from current GE VNC operations include airborne emissions from building exhaust stacks, a gasoline pump, a spent photochemical storage tank and a solvent cleaning facility; and liquid discharges include industrial wastewater and sanitary wastewater, as well as clean water discharges. Emissions from stacks are not monitored for nonradiological pollutants. GE VNC is exempt from continuous emissions monitoring under Regulation 1, Section 520 of the Rules and Regulations of the Bay Area Air Quality Management District. Industrial wastewater releases from GE VNC are monitored in accordance with the California Regional Water Quality Control Board Order 90–0058 and NPDES Permit. Prior to discharge, water is sampled from each basin and tested for acceptable pH and radioactivity levels. Aliquots from all basin discharges are composited and analyzed for chlorides, chromium, lead, mercury, zinc, nickel, silver, and total dissolved solids. In addition, at specific intervals, grab sampling is performed for dissolved copper, dissolved oxygen, turbidity, oil and grease, fish toxicity, and temperature. All sanitary wastes are routed to an Imhoff tank; and, after undergoing sand filtration, chlorination, and pH adjustments, are land disposed on site by irrigation. The NPDES permit requires no analysis for sanitary waste sprinkled onsite and establishes no requirements for sampling or analysis. VNC does, however, sample and analyze for pH, radioactivity, and coliform bacteria.

During routine operations at VNC, small quantities of radioactive material are released to the environment. Release levels, however, have historically resulted in only a small fraction of the offsite concentration limits specified by regulation. The offsite radiological impacts associated with airborne emissions during a typical recent year of normal operations at VNC were assessed by calculation of the committed effective dose equivalents to the nearest site boundary, and to the nearest resident, who represents the maximally exposed individual from VNC operations. Impacts were additionally assessed by calculation of the collective dose to the population residing within an 80-km (50-mile) radius of the site.

The dose delivered to a hypothetical individual, situated about 360 meters distance from the site boundary, is estimated at one millirem per year. The highest organ dose is estimated at 1.2 millirem to the gonads. The nearest actual resident to VNC is considered the maximally exposed individual, and is situated 450 meters south-southeast of Stack 102A. The annual effective dose to this resident is about 0.8 millirem from airborne effluents. The highest organ dose is about 0.9 millirem delivered to the gonads.

To assess the dose delivered to individuals as a result of airborne emissions from VNC operations, annual average emissions data for the year 1990 and representative meteorological data were input to the computer, Code AIRDOS–PC35. The code applies a Gaussian plume dispersion model to calculate downwind ambient concentrations in air, and surface depositions. Various pathways for the possible uptake of radionuclides by an individual, and the effects of irradiation by plume immersion and ground deposition are then analyzed to estimate the dose delivered to an individual as a result of the annual release. During normal operations at VNC, no realistic pathway exists for the offsite discharge of radioactive materials in liquid effluents. Monitoring of the liquid pathway has shown that no measurable or significant concentrations of radioactivity are being discharged. For these reasons, the offsite impact of radioactive materials discharged via liquid effluent pathways is considered to be negligible.

Conclusion

Operational and administrative controls at VNC are designed to ensure that radioactive materials are stored and utilized in such a manner as to minimize radiation exposures to workers and the surrounding population. During routine operations at VNC, small quantities of radioactive material are released to the environment. Release levels, however, have historically resulted in only a small fraction of the offsite concentration limits specified by regulation.

Exposure to airborne emissions is assumed to be the only significant radiological effluent pathway. This pathway was assessed for impacts to an individual at the site boundary, at the nearest residence, and to the population within an 80-km radius. The highest dose at a site boundary location was calculated based on current stack emissions data. The resulting dose is less than 1 millirem effective, with the highest organ dose being about 1.2 millirem to the gonads. From environmental perimeter TLD

measurements, a conservative estimate of gamma-ray dose is 9 millirem for the northern boundary. Both methods show that doses from facility operations are well within the standards of 40 CFR part 190, and indicate that VNC will readily comply with the new requirements of 10 CFR 20.1301.

No significant nonradiological impacts are expected with the continued operation of the GE VNC. The proposed action would result in continuation of the current baseline conditions, with no change to the socioeconomic character of the community. Land currently grazed and cultivated would continue to be used in the same manner as it has been in the past. Traffic on area roads, along with its inherent emissions and noise, would continue as it has in the past. Water use would continue, with peaks reaching only 4.5 l/s, and with a peak discharge of only 2.2 l/s. The nonradioactive gaseous emissions from the GE VNC facilities are relatively minor and will result in only slight increases of regulated pollutants, and are not expected to contribute to further deterioration of local air quality.

Alternatives to the Proposed Action

The alternative of no license renewal would end light-water reactor fuel research and development activities at VNC, particularly the examination of irradiated fuels, and would remove from service unique research facilities. Accordingly, GE would be required to seek other hot cell facilities capable of and willing to do the work (e.g., a facility not connected with a competitor), to build new facilities (necessitating proliferation of sites and commitment of new resources), or abandon reactor fuel improvement research programs altogether.

Another alternative would be to consider licensing with restrictions in order to mitigate any unacceptable adverse environmental impacts.

Agencies and Persons Consulted

The following outside agencies were contacted for supporting documentation:

Alameda County Flood Control and Water Conservation District
Alameda County Planning Department
Bay Area Air Quality Management District
Cal-EPA Department of Toxic Substances Control
City of Livermore Planning Department
Office of the California State Demographer
U.S. Bureau of the Census

Finding of No Significant Impact

The Commission has prepared an Environmental Assessment related to the renewal of Special Nuclear Materials License SNM–960. On the basis of the assessment, the Commission has concluded that environmental impacts that would be created by the proposed licensing action would not be significant and would not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The Environmental Assessment and the above documents related to this proposed action are available for public inspection and copying at the Commission's Public Document Room at the Gelman Building, 2120 L Street NW., Washington, DC.

Opportunity for a Hearing

Any person whose interest may be affected by the issuance of this renewal may file a request for a hearing. Any request for a hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the **Federal Register**; be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852); on the licensee (General Electric Company, Vallecitos Nuclear Center, P.O. Box 460, Vallecitos Road, Pleasanton, California 94566), and must comply with the requirements for requesting a hearing set forth in the Commission's regulation, 10 CFR part 2, subpart L, "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings."

These requirements, which the requestor must address in detail, are:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing;

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for hearing is timely, that is, filed within 30 days of the date of this notice.

In addressing how the requestor's interest may be affected by the proceeding, the request should describe the nature of the requestor's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding; the nature and extent of the requestor's property, financial, or other (i.e., health, safety) interest in the proceeding; and the possible effect of any order that may be entered in the proceeding upon the requestor's interest.

Dated at Rockville, Maryland, this 12th day of January 1994.

For the Nuclear Regulatory Commission.

Robert C. Pierson,

Chief, Licensing Branch, Division of Fuel Cycle Safety and Safeguards, NMSS.

[FR Doc. 94–1324 Filed 1–19–94; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Notice of Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: The Office of Personnel Management (OPM) announces a meeting of the National Partnership Council (the Council). Notice of this meeting is required under the Federal Advisory Committee Act.

TIME AND PLACE: The Council will meet on January 25, 1994, at 2 p.m., in the auditorium at the Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Washington, DC 20415–0001. The auditorium is located on the ground level.

TYPE OF MEETING: These meetings will be open to the public. Seating will be available on a first-come, first-served basis. Handicapped individuals wishing to attend should contact OPM to obtain appropriate accommodations.

POINT OF CONTACT: Douglas K. Walker, Office of Communications, Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., room 5F12, Washington, DC 20415–0001, (202) 606–1800.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to develop proposals to the President on legislative changes to the Federal Labor-Management Relations Statute that are necessary to achieve the partnership objectives outlined in the National Performance Review (NPR) report. The Council will also make proposals concerning legislation consistent with the NPR's recommendations for the creation of a flexible and responsive hiring system and the reform of the General Schedule classification system and the performance management system.

PUBLIC PARTICIPATION: We invite interested persons and organizations to submit comments on the principles and

features that should be embodied in any of these legislative proposals. We are especially interested in suggestions and ideas to ensure that the proposed legislation carries out the intent of the NPR, as discussed in its report. Mail or deliver your comments or recommendations to Mr. Douglas K. Walker at the address shown above. Comments should be received by January 21 in order to be considered at the January 25 meeting.

Office of Personnel Management.

James B. King,

Director.

[FR Doc. 94–1426 Filed 1–19–94; 8:45 am]

BILLING CODE 6325–01–M

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Sherry Turpenoff, (202) 606–0950.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on November 1, 1993 (58 FR 58353). Individual authorities established or revoked under Schedules A and B and established under Schedule C between October 1 and November 30, 1993, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30, 1993, will also be published.

Schedule A

No Schedule A authorities were established or revoked during October or November 1993.

Schedule B

No Schedule B authorities were established or revoked during October or November 1993.

Schedule C

ACTION

Special Assistant to the Director of ACTION. Effective November 19, 1993.

Confidential Assistant to the Director of ACTION. Effective November 19, 1993.

Agency for International Development

Special Assistant to the Administrator. Effective October 18, 1993.

Executive Assistant to the Chief of Staff. Effective October 27, 1993.

Special Assistant to the Director, Office of External Affairs. Effective October 27, 1993.

Public Affairs Specialist to the Chief of Public Relations Division, Office of External Affairs. Effective October 27, 1993.

Public Affairs Specialist to the Deputy Chief of Public Liaison Division, Office of External Affairs. Effective October 27, 1993.

Public Affairs Specialist to the Chief of Public Liaison Division, Office of External Affairs. Effective October 27, 1993.

Supervisory Public Affairs Specialist to the Chief of Public Liaison Division, Office of External Affairs. Effective October 27, 1993.

Public Affairs Specialist to the Chief of Public Relations Division, Office of External Affairs. Effective October 27, 1993.

Special Assistant to the Chief of Public Relations, Office of External Affairs. Effective October 27, 1993.

Junior Press Officer to the Chief of Press Relations Division, Office of External Affairs. Effective November 9, 1993.

Supervisory Public Affairs Specialist to the Director, Office of External Affairs. Effective November 19, 1993.

Commission on Civil Rights

Special Assistant to the Commissioner. Effective October 7, 1993.

Commodity Futures Trading Commission

Administrative Assistant to a Commissioner. Effective November 24, 1993.

Department of Agriculture

Confidential Assistant to the Administrator, Food Safety and Inspection Service. Effective October 7, 1993.

Confidential Assistant to the Administrator, Food Safety and Inspection Service. Effective October 7, 1993.

Confidential Assistant to the Assistant Secretary for Congressional Relations. Effective November 22, 1993.

Confidential Assistant to the Manager, Federal Crop Insurance Corporation. Effective November 22, 1993.

Staff Assistant to the Administrator, Foreign Agricultural Service. Effective November 22, 1993.

Confidential Assistant to the Manager, Federal Crop Insurance Corporation. Effective November 22, 1993.

Secretary (Typing) to the Assistant Secretary for Administration. Effective November 22, 1993.

Department of the Air Force (DOD)

Confidential Assistant to the Secretary of the Air Force. Effective October 14, 1993.

Secretary (S/OA) to the Secretary of the Air Force. Effective November 9, 1993.

Department of the Army (DOD)

Staff Assistant to the Special Assistant to the Secretary of the Army. Effective October 7, 1993.

Department of Commerce

Special Assistant to the Deputy Assistant Secretary for Economic Development, Economic Development Administration. Effective October 7, 1993.

Special Assistant to the Counselor to the Secretary of Commerce. Effective October 7, 1993.

Confidential Assistant to the Assistant Secretary for Export Administration, Bureau of Export Administration. Effective October 27, 1993.

Confidential Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective October 27, 1993.

Congressional Liaison Specialist to the Congressional Affairs Officer. Effective October 27, 1993.

Congressional Affairs Specialist to the Chief of Congressional Affairs, National Oceanic and Atmospheric Administration. Effective October 27, 1993.

Special Assistant to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning. Effective October 27, 1993.

Confidential Assistant to the Director of Public Affairs, U.S. Travel and Tourism Administration. Effective October 27, 1993.

Chief, Intergovernmental Affairs to the Director, Office of Sustainable Development and Intergovernmental Affairs. Effective October 27, 1993.

Confidential Assistant to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning. Effective October 27, 1993.

Confidential Assistant to the Deputy Director, Minority Business Development Agency. Effective October 27, 1993.

Special Assistant to the Under Secretary for Travel and Tourism, U.S. Travel and Tourism. Effective November 3, 1993.

Special Assistant to the Deputy Assistant Secretary for White House Liaison. Effective November 9, 1993.

Special Assistant to the Under Secretary for Technology, Technology Administration. Effective November 22, 1993.

Congressional Affairs Specialist to the Director, Office of Legislative Affairs, National Oceanic Atmospheric Administration. Effective November 22, 1993.

Special Assistant to the Director, Office of Public and Constituent Affairs, National Oceanic and Atmospheric Administration. Effective November 22, 1993.

Special Assistant to the Assistant Secretary for Import Administration, International Trade Administration. Effective November 29, 1993.

Confidential Assistant to the Director, Office of Space Commerce. Effective November 29, 1993.

Special Assistant to the Assistant Secretary for Oceans and Atmosphere, National Oceanic and Atmospheric Administration. Effective November 30, 1993.

Department of Defense

Assistant for Strategy Development to the Deputy Assistant Secretary of Defense (Strategy). Effective October 7, 1993.

Assistant for Strategy Development to the Deputy Assistant Secretary Defense (Strategy). Effective October 7, 1993.

Special Assistant for Family Advocacy and External Affairs to the Deputy Assistant Secretary of Defense, (Prisoner of War/Missing in Action Affairs). Effective October 7, 1993.

Defense Fellow to the Deputy Assistant Secretary of Defense (Humanitarian and Refugee Affairs). Effective October 7, 1993.

Defense Fellow to the Assistant Secretary of Defense (Personnel and Readiness). Effective October 8, 1993.

Policy Assistant to the Deputy Assistant Secretary of Defense (Russian, Ukrainian, and Eurasian Affairs). Effective October 13, 1993.

Staff Assistant to the Deputy Assistant Secretary of Defense (Democracy and Human Rights). Effective October 13, 1993.

Protocol Specialist to the Director of Protocol, Office of the Secretary of Defense. Effective October 13, 1993.

Special Assistant to the Deputy Assistant Secretary of Defense for Drug Enforcement Policy and Support. Effective October 14, 1993.

Special Assistant to the Deputy Assistant Secretary of Defense (Drug Enforcement Policy and Support). Effective October 27, 1993.

Defense Fellow to the Director of Protocol, Office of the Secretary of Defense. Effective October 27, 1993.

Public Affairs Specialist to the Assistant to the Secretary of Defense for Public Affairs. Effecteive October 27, 1993.

Defense Fellow to the Deputy Assistant Secretary of Defense (Drug Enforcement Policy and Support). Effective October 27, 1993.

Defense Fellow to the Deputy Under Secretary for Logistics. Effective October 27, 1993.

Defense Fellow to the Deputy Under Secretary for Environmental Security. Effective October 27, 1993.

Staff Assistant to the Director, Defense Information Systems Agency. Effective October 27, 1993.

Staff Specialist to the Special Assistant to the Secretary and Deputy Secretary of Defense. Effective October 27, 1993.

Defense Fellow to the Deputy Assistant Secretary Defense (European and NATO Policy). Effective October 27, 1993.

Defense Fellow to the Assistant Secretary of Defense (Special Operations and Low Intensity Conflict). Effective October 27, 1993.

Personal and Confidential Assistant to the Assistant Secretary of Defense for Strategy, Requirements and Resources. Effective October 27, 1993.

Personal and Confidential Assistant to the Assistant Secretary of Defense (Nuclear Security and Counterproliferation). Effective October 27, 1993.

Special Assistant to the Counselor to the Secretary and Deputy Secretary of Defense. Effective November 1, 1993.

Special Assistant to the Assistant to the Secretary of Defense (Legislative Affairs). Effective November 3, 1993.

Special Assistant the Assistant Secretary of Defense (Personal and Readiness). Effective November 9, 1993.

Public Affairs Plans and Program Specialist to the Special Assistant to Secretary of Defense (Public Affairs). Effective November 9, 1993.

Confidential Assistant to the Assistant to the Secretary of Defense for Public Affairs. Effective November 9, 1993.

Defense Fellow to the Deputy Assistant Secretary of Defense (Humanitarian and Refugee Affairs). Effective November 9, 1993.

Special Assistant to the Assistant Secretary of Defense (Nuclear Security and Counterproliferation). Effective November 9, 1993.

Executive Assistant to the Assistant Secretary of Defense (Strategy Requirements and Resources). Effective November 9, 1993.

Personal and Confidential Assistant to the Principal Deputy Assistant Secretary of Defense for Special Operations and Low Intensity Conflict. Effective November 9, 1993.

Staff Assistant to the Deputy Assistant Secretary of Defense (Humanitarian and Refugee Affairs). Effective November 9, 1993.

Defense Fellow to the Principal Deputy Under Secetary of Defense (Policy). Effective November 16, 1993.

Program Analyst to the Deputy Under Secretary (Environmental Security). Effective November 22, 1993.

Private Secretary to the Principal Deputy Assistant Secretary of Defense (Reserve Affairs). Effective November 22, 1993.

Defense Fellow to the Deputy Assistant Secretary of Defense (Peacekeeping and Peace Enforcement Policy). Effective November 22, 1993.

Defense Fellow to the Deputy Assistant Secretary of Defense (Peacekeeping and Peace Enforcement Policy). Effective November 22, 1993.

Personal and Confidential Assistant to the Counsellor to the Secretary and Deputy Secretary of Defense. Effective November 22, 1993.

Media Analyst to the Assistant to the Secretary Defense for Public Affairs. Effective November 23, 1993.

Personal and Confidential Assistant to the Comptroller. Effective November 29, 1993.

Department of Education

Confidential Assistant to the Deputy Secretary of Education. Effective October 13, 1993.

Special Assistant to the Deputy Assistant Secretary, Office of Student Financial Assistance Programs. Effective October 29, 1993.

Confidential Assistant to the Assistant Secretary, Office of Postsecondary Education. Effective October 29, 1993.

Special Assistant to the Assistant Secretary, Office of Elementary and Secondary Education. Effective November 8, 1993.

Confidential Assistant to the Chief of Staff, Office of the Deputy Secretary of Education. Effective November 9, 1993.

Special Assistant to the Assistant Secretary, Office of Postsecondary Education. Effective November 9, 1993.

Special Assistant to the Director, Policy, Training and Analysis Service. Effective November 9, 1993.

Secretary's Regional Representatives Regional VI-Dallas, Texas to the Assistant Secretary for Intergovernmental and Interagency Affairs. Effective November 19, 1993.

Secretary's Regional Representative Region I-Boston, Massachusetts to the

Assistant Secretary for Intergovernmental and Interagency Affairs. Effective November 19, 1993.

Secretary's Regional Representative Region VIII-Denver, Colorado to the Assistant Secretary for Intergovernmental and Interagency Affairs. Effective November 19, 1993.

Special Assistant to the Assistant Secretary, Office of Elementary and Secondary Education. Effective November 22, 1993.

Special Assistant to the Assistant Secretary for Special Education and Rehabilitation Services. Effective November 22, 1993.

Department of Energy

Legislative Assistant to the Assistant Secretary for Environmental Restoration and Waste Management. Effective October 26, 1993.

Senior Policy Specialist to the Director, Office of Civilian Radioactive Waste Management. Effective October 26, 1993.

Staff Assistant to the Assistant Secretary for Environmental Safety and Health. Effective October 26, 1993.

Deputy Director to the Director, Office of Scheduling and Logistics. Effective October 26, 1993.

Congressional Liaison Officer to the Deputy Assistant Secretary for House Liaison. Effective October 26, 1993.

Staff Assistant to the Assistant Secretary for Energy Efficiency and Renewable Energy. Effective October 26, 1993.

Staff Assistant to the Deputy Assistant Secretary for Building Technologies. Effective October 26, 1993.

Staff Assistant to the Deputy Assistant Secretary for Gas and Technology. Effective October 26, 1993.

Special Assistant to the Assistant Secretary for Policy Planning and Program Evaluation. Effective October 26, 1993.

Staff Assistant to the Assistant Secretary for Congressional, Intergovernmental, and International Affairs. Effective November 1, 1993.

Special Assistant to the Deputy Secretary of Energy. Effective November 16, 1993.

Special Assistant to the General Counsel. Effective November 22, 1993.

Legislative Affairs Specialist to the Assistant Secretary for Congressional, Intergovernmental and International Affairs. Effective November 22, 1993.

Department of Health and Human Services

Executive Assistant to the Assistant Secretary for Legislation. Effective October 27, 1993.

Special Assistant to the Deputy Assistant Secretary for Planning and Evaluation, Office of Family, Community and Long-Term Care Policy. Effective November 22, 1993.

Director, Office of Public Liaison to the Associate Administrator for Communications, Health Care Financing Administration. Effective November 29, 1993.

Department of Housing and Urban Development

Director, Office of Resident Initiatives to the Assistant Secretary for Public and Indian Housing. Effective October 7, 1993.

Staff Assistant to the Assistant Secretary for Administration. Effective October 7, 1993.

Staff Assistant to the Assistant Secretary for Administration. Effective October 7, 1993.

Special Projects Officer to the Director, Special Actions Office, Office of the Assistant Secretary for Administration. Effective October 7, 1993.

Special Assistant to the Chief Financial Officer. Effective October 7, 1993.

Special Assistant to the Assistant Secretary for Public Affairs, Office of Press Relations. Effective October 14, 1993.

Special Assistant to the Assistant Secretary for Administration. Effective October 14, 1993.

Deputy Assistant Secretary for Public Affairs to the Assistant Secretary for Public Affairs. Effective October 14, 1993.

Special Projects Officer to the Director, Special Actions Office, Office of the Assistant Secretary for Administration. Effective October 14, 1993.

Special Assistant to the Assistant Secretary for Administration. Effective October 14, 1993.

Director, Special Actions Office to the Secretary. Effective October 19, 1993.

Special Assistant (Speechwriter) to the Assistant Secretary for Public Affairs, Office of Policy Support. Effective November 1, 1993.

Executive Assistant to the Assistant Secretary for Fair Housing and Equal Opportunity. Effective November 1, 1993.

Legislative Officer to the Deputy Assistant Secretary for Legislation, Office of Congressional and Intergovernmental Relations. Effective November 1, 1993.

Special Assistant to the Assistant to the Secretary for Field Management. Effective November 1, 1993.

Special Assistant to the General Counsel. Effective November 1, 1993.

Special Assistant to the Assistant Secretary for Public and Indian Housing. Effective November 1, 1993.

Special Assistant to the Assistant Secretary for Public Affairs, Office of Press Relations. Effective November 1, 1993.

Special Projects Officer to the Director, Special Actions Office. Effective November 1, 1993.

Staff Assistant to the Deputy Assistant Secretary for Federal Relief (South Dade County). Effective November 1, 1993.

Department of the Interior

Special Assistant to the Chief of Staff. Effective October 14, 1993.

Special Assistant to the Director, Mineral Management Service. Effective October 22, 1993.

Special Assistant to the Chief of Staff. Effective November 16, 1993.

Special Assistant to the Chief of Staff. Effective November 16, 1993.

Supervisory Public Affairs Specialist to the Commissioner of Reclamation, Bureau of Reclamation. Effective November 22, 1993.

Special Assistant to the Director of the Mineral Management Service. Effective November 22, 1993.

Special Assistant to the Chief of Staff. Effective November 22, 1993.

Special Assistant to the Director, Mineral Management Service. Effective November 22, 1993.

Director of Policy and External Affairs to the Commissioner of Reclamation, Bureau of Reclamation. Effective November 22, 1993.

Special Assistant to the Assistant Secretary, Indian Affairs. Effective November 30, 1993.

Department of Justice

Confidential Assistant to the U.S. Attorney, Eastern District of New York. Effective October 1, 1993.

Special Assistant to the Assistant Attorney General, Office of Policy and Development. Effective October 7, 1993.

Special Assistant to the Assistant Attorney General, Office of Policy and Development. Effective October 7, 1993.

Staff Assistant to the Attorney General. Effective October 7, 1993.

Staff Assistant to the Attorney General. Effective October 8, 1993.

Senior Counsel to the Assistant Attorney General, Office of Policy Development. Effective October 21, 1993.

Senior Liaison Officer to the Assistant Attorney General. Effective October 21, 1993.

Senior Liaison Officer to the Assistant Attorney General, Office of Policy Development. Effective October 21, 1993.

Special Assistant to the Assistant Attorney General, Office of Policy Development. Effective October 21, 1993.

Director, Liaison Services to the Assistant Attorney General, Office of Policy Development. Effective October 21, 1993.

Staff Assistant to the Assistant Attorney. Effective October 22, 1993.

Senior Counsel to the Assistant Attorney General, Office of Policy Development. Effective November 5, 1993.

Special Assistant to the Assistant Attorney General. Effective November 5, 1993.

Secretary (OA) to the U.S. Attorney, District of Columbia. Effective November 10, 1993.

Secretary (OA) to the United States Attorney, Northern District of Illinois. Effective November 10, 1993.

Secretary (OA) to the United States Attorney, Northern District of Texas. Effective November 10, 1993.

Secretary (OA) to the United States Attorney, District of Arizona. Effective November 10, 1993.

Secretary (OA) to the U.S. Attorney, District of Nebraska. Effective November 10, 1993.

Secretary (OA/Stenography) to the United States Attorney, Northern District of Florida. Effective November 19, 1993.

Staff Assistant (OA) to the Attorney General. Effective November 22, 1993.

Confidential Assistant to the United States Attorney, Eastern District of Pennsylvania. Effective November 30, 1993.

Department of Labor

Special Assistant to the Deputy Under Secretary for International Affairs, Bureau of International Labor Affairs. Effective October 7, 1993.

Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective October 14, 1993.

Intergovernmental Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective October 14, 1993.

Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective October 14, 1993.

Special Assistant to the Assistant Secretary, Employment Standards Administration. Effective October 14, 1993.

Special Assistant to the Administrator Wage and Hour Division, Employment Standards Administration. Effective October 14, 1993.

Special Assistant to the Director of the Women's Bureau. Effective October 14, 1993.

Special Assistant to the Director of the Women's Bureau. Effective October 14, 1993.

Special Assistant to the Director of the Women's Bureau. Effective October 21, 1993.

Special Assistant to the Deputy Assistant Secretary, Employment and Training Administration. Effective October 21, 1993.

Special Assistant to the Director of the Executive Secretariat. Effective October 21, 1993.

Attorney-Advisor (Labor) to the Solicitor of Labor. Effective October 21, 1993.

Special Assistant to the Assistant Secretary of Labor, Employment and Training Administration. Effective October 21, 1993.

Special Assistant to the Deputy Secretary. Effective October 22, 1993.

Special Assistant to the Assistant Secretary to the Assistant Secretary for Occupational Safety and Health Administration. Effective October 22, 1993.

Special Assistant to the Deputy Under Secretary for International Affairs. Effective October 27, 1993.

Special Assistant to the Deputy Under Secretary for International Labor Affairs. Effective October 27, 1993.

Confidential Assistant to the Assistant Secretary for the American Workplace. Effective October 27, 1993.

Special Assistant to the Chief Economist. Effective October 27, 1993.

Special Assistant to the Director of the Women's Bureau. Effective October 29, 1993.

Special Assistant to the Assistant Secretary for Public Affairs. Effective November 1, 1993.

Legislative Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective November 3, 1993.

Special Assistant to the Assistant Secretary to the Assistant Secretary for Public Affairs. Effective November 3, 1993.

Chief of Staff to the Assistant Secretary for Employment and Training. Effective November 9, 1993.

Special Assistant to the Assistant Secretary for Occupational Safety and Health, Occupational Safety and Health Administration. Effective November 9, 1993.

Department of the Navy (DOD)

Staff Assistant to the Assistant Secretary of the Navy (Manpower and Reserve Affairs) Effective November 3, 1993.

Staff Assistant to the Under Secretary of the Navy. Effective November 9, 1993.

Defense Fellow to the Under Secretary of the Navy. Effective November 9, 1993.

Private Secretary (OA) to the Assistant Secretary of the Navy (Manpower and Reserve Affairs). Effective November 22, 1993.

Staff Assistant to the Assistant Secretary of the Navy (Research, Development and Acquisition). Effective November 29, 1993.

Staff Assistant to the General Counsel. Effective November 29, 1993.

Department of State

Special Assistant to the Counselor to the Secretary. Effective November 14, 1993.

Special Assistant to the Counselor to the Department. Effective October 14, 1993.

Special Assistant to the Director, Policy Planning Staff. Effective October 14, 1993.

Special Assistant to the Under Secretary for Political Affairs. Effective November 1, 1993.

Special Assistant to the Deputy Assistant Secretary, for Environment and Development. Effective November 1, 1993.

Member, Policy Planning Staff to the Director of the Policy Planning Staff. Effective November 9, 1993.

Protocol Officer (Visits) to the Foreign Affairs Officer (Visits). Effective November 15, 1993.

Deputy Director to the Director, Officer of Policy Planning. Effective November 17, 1993.

Foreign Affairs Officer to the Assistant Secretary, Bureau of Public Affairs. Effective November 22, 1993.

Staff Assistant to the Assistant Secretary, Bureau of Legislative Affairs. Effective November 22, 1993.

Department of Transportation

Special Assistant to the Deputy Secretary. Effective October 15, 1993.

Senior Congressional Liaison Officer to the Director of Congressional Affairs. Effective October 19, 1993.

Special Assistant to the Maritime Administrator. Effective November 2, 1993.

Intergovernmental Relations Officer to the Director, Office of the Intergovernmental and Consumer Affairs. Effective November 5, 1993.

Congressional Liaison Officer to the Director, Office of Congressional Affairs. Effective November 5, 1993.

Scheduling Assistant to the Special Assistant for Scheduling and Advance, Office of the Secretary. Effective November 16, 1993.

Intergovernmental Relations Officer to the Director, Intergovernmental and Consumer Affairs. Effective November 22, 1993.

Chief, Consumer Information Division to the Director, Office of Public and Consumer Affairs. Effective November 23, 1993.

Special Assistant for Scheduling and Advance to the Secretary of Transportation. Effective November 24, 1993.

Department of the Treasury

Special Assistant to the Deputy Secretary of the Treasury. Effective October 7, 1993.

Special Assistant (External Affairs) to the Director of the United States Mint. Effective October 27, 1993.

Confidential Assistant to the Assistant Secretary (Management) Effective November 3, 1993.

Confidential Assistant to the Treasurer of the United States. Effective November 3, 1993.

Special Assistant to the Deputy Assistant Secretary (Administration). Effective November 3, 1993.

Legislative Policy Advisor to the Assistant Secretary (Enforcement). Effective November 3, 1993.

Senior Advisor to the Assistant Secretary (Enforcement). Effective November 9, 1993.

Special Assistant to the General Counsel. Effective November 30, 1993.

Staff Assistant to the Assistant Secretary (Enforcement). Effective November 30, 1993.

Environmental Protection Agency

Director, Public Liaison Division to the Associate Administrator for Communications, Education and Public Affairs. Effective October 7, 1993.

Staff Assistant (Management) to the Assistant Administrator for Office of Policy, Planning and Evaluation. Effective October 12, 1993.

Congressional Liaison Specialist to the Director, Congressional Liaison Division. Effective October 21, 1993.

Special Assistant to the Assistant Administrator for Solid Waste and Emergency Response. Effective October 27, 1993.

Special Assistant to the Assistant Administrator, Office of Solid Waste and Emergency Response. Effective November 5, 1993.

Director, Office of the Executive Secretariat to the Chief of Staff, Office of the Administrator. Effective November 9, 1993.

Special Assistant to the Chief of Staff. Effective November 9, 1993.

Policy Advisor to the Assistant Administrator, Office of Air and Radiation. Effective November 19 1993.

Senior Policy Advisor to the Assistant Administrator, Office of Air and Radiation. Effective November 19, 1993.

Staff Assistant to the Associate Administrator, Office of Communications, Education and Public Affairs. Effective November 22, 1993.

Farm Credit Administration

Congressional and Public Affairs Specialist to the Director of Congressional and Public Affairs. Effective October 13, 1993.

Federal Communications Commission

Special Assistant to the Director, Officer of Public Affairs. Effective October 13, 1993.

Special Assistant to the Director, Office of Legislative Affairs. Effective November 19, 1993.

Federal Labor Relations Authority

Staff Assistant to the General Counsel. Effective November 24, 1993.

Executive Assistant to the General Counsel. Effective November 24, 1993.

General Services Administration

Special Assistant to the Commissioner, Public Buildings Service. Effective October 27, 1993.

Special Assistant to the Associate Administrator for Public Affairs. Effective November 1, 1993.

International Trade Commission

Staff Assistant to the Chairman. Effective November 29, 1993.

National Archives and Records Administration

Supervisory Public Affairs Specialist to the Archivist of the United States. Effective November 23, 1993.

White House Liaison to the Archivist of the United States. Effective November 29, 1993.

National Endowment for the Arts

Congressional Liaison Officer to the Chairman. Effective October 14, 1993.

Director of Public Affairs to the Chairman. Effective October 21, 1993.

Secretary (Typing) to the Chairman. Effective October 21, 1993.

Special Assistant to the Chairman. Effective October 21, 1993.

Director of Policy, Planning and Research to the Chairman. Effective October 27, 1993.

Director of External Affairs and White House Liaison to the Chairman. Effective October 27, 1993.

Staff Assistant to the Chairman. Effective November 9, 1993.

Attorney Adviser to the Chairman. Effective November 10, 1993.

Attorney Adviser to the Chairman, National Endowment for the Arts. Effective November 22, 1993.

National Endowment for the Humanities

Congressional Liaison Officer to the Chairman. Effective October 1, 1993.

Special Assistant to the Chairman for Institutional Relations. Effective November 9, 1993

National Transportation Safety Board

Special Assistant to the Member. Effective November 5, 1993.

Office of Management and Budget

Legislative Assistant to the Director, Office of Management and Budget. Effective October 14, 1993.

Office of National Drug Control Policy

Special Assistant to the Director, Office of National Drug Control Policy. Effective November 1, 1993.

Office of Personnel Management

Director of International Affairs to the Director, Office of Personnel Management. Effective October 8, 1993.

Public Affairs Specialist to the Deputy Director, Office of Communications. Effective October 29, 1993.

Public Affairs Specialist to the Deputy Director, Office of Communications. Effective October 29, 1993.

Securities and Exchange Commission

Secretary to the Chief Economist. Effective October 18, 1993.

Small Business Administration

Special Assistant to the Regional Administrator, Dallas Regional Office. Effective October 27, 1993.

United States Information Agency

Special Assistant to the Director, Office of Public Liaison. Effective October 14, 1993.

Special Assistant to the Director of Worldnet Television and Film Service, Bureau of Broadcasting. Effective November 3, 1993.

United States Trade and Development Agency

Special Assistant for Policy and Public Affairs to the Director of the U.S. Trade and Development Agency. Effective October 7, 1993.

Congressional Liaison Officer to the Director, Trade and Development Agency. Effective October 22, 1993.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 94–1277 Filed 1–19–94; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33466; File No. SR–DTC–93–07]

Self-Regulatory Organizations; the Depository Trust Company; Order Approving a Proposed Rule Change Relating to an Enhanced Institutional Delivery System

January 12, 1994.

On July 7, 1993, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–DTC–93–07) under Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] to enhance DTC's Institutional Delivery ("ID") system. Notice of the proposal was published in the **Federal Register** on October 13, 1993.[2] DTC received one comment letter.[3] For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change will enhance the ID system by including interactive options and other new features in order to improve post-trade data flow and to reduce costs to participants and other ID system users. All new features are optional. The principal new features of the enhanced ID system are described below with the planned implementation period for each feature indicated in parenthesis. This order approves the overall concept of the enhanced ID system. DTC will submit a proposed rule change under section 19(b)(2) of the Act setting forth the finalized rules and procedures for each principal new feature. Each such proposed rule change will be submitted for Commission approval prior to implementation of the subject principal new feature.

1. *Standing Instructions Database* (early 1994). The Standing Instructions Database ("SID") will be a repository for customer account and settlement information furnished by institutions, agents, and broker-dealers. The information will include items such as interested parties, the agent for the customer, and the agent's internal account number for the customer. When entering trade data into the ID system, a broker-dealer can simply refer to the account designations in the SID, and the ID system automatically will add the necessary associated detail, such as customer name, agent, and interested parties to the confirmation. The SID will eliminate the need for the broker-dealer to maintain all such information in its internal records and the need to provide all such information each time that it enters trade data into the ID system.

2. *Electronic Mail Features* (early 1994). These features will enable ID system users to send and receive Notification of Order Execution ("NOE"), Institution Instructions, and Institution Request for Cancellation/Correction. An NOE can be sent by a broker-dealer to communicate the details of an order execution to an institution. If the institution accepts the NOE, the institution can send the broker-dealer Institution Instructions containing information, such as allocations of block trades, which is needed by the broker-dealer to enter trade data into the ID system for preparation of confirmations. The institution can send the broker-dealer an Institution Request for Cancellation/Correction when the institution disagrees with a confirmation that the institution has received through the ID system. Currently, broker-dealers and institutions make telephone calls or send facsimile transmissions to communicate the information which will be sent through these electronic mail features.

3. *Interactive ID* (early 1994). In addition to using the ID system in the current batch mode, ID system users will be able to use the system interactively with the capability of accomplishing all ID system processing within as short a time as a single business day.

4. *Matching* (mid 1994). As an alternative to the current confirmation and affirmation processing in the ID system, DTC will offer a matching option. The enhanced ID system will match trade data received from the broker-dealer with Institution Instructions received from the institution. The results of the matching will be reported through the distribution of various output reports to the broker-dealer, the agent, and the institution.

5. *Authorization/Exception Processing and T+5 Reporting* (mid 1994). Because most unaffirmed trades of DTC-eligible securities eventually result in book-entry deliveries effected by deliver orders, the enhanced ID system will enable the delivering parties to ID system trades to authorize automated settlement of unaffirmed trades. In addition, delivering parties will be allowed to authorize settlements of trades on the settlement dates and later. This feature will enable delivering parties to take advantage of the efficiencies of preauthorized automated settlement.

II. Discussion

Section 17A(a)(1)(C) of the Act sets forth Congress' findings that new data processing and communications techniques create the opportunity for more efficient, effective, and safe procedures for clearance and settlement.[4] In Section 17A(a)(2), Congress directed the Commission to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions.[5] Furthermore, Sections 17A(b)(3) (A) and (F) require that a clearing agency be organized and its rules designed to facilitate the prompt and accurate clearance and settlement of securities transactions.[6] The Commission believes the proposed rule change facilitates a more efficient and effective system for the prompt and accurate clearance and settlement of institutional trades.

Furthermore, the Commission in its order adopting Rule 15c6–1, which establishes three business days as the standard settlement timeframe for broker-dealer trades effective June 1, 1995, stated that implementation of an interactive ID system is a critical building block that must be in place before the settlement cycle can be shortened.[7] The Commission believes that approving the overall interactive ID concept is an important step that will help to provide the framework for a shortened settlement cycle and all the benefits that are derived therefrom.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act, and the rules and regulations thereunder.

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[1] 15 U.S.C. 78(b)(1) (1988).

[2] Securities Exchange Act Release No. 33010 (October 4, 1993), 58 FR 53007.

[3] Letter from Marshall N. Carter, Co-Chairman, and Ronald W. Readmond, Co-Chairman, U.S. Working Committee of the Group of Thirty Clearance and Settlement Project, to William Jaenike, President and Chief Operating Officer, DTC (December 15, 1993). In its letter, the U.S. Working Committee expresses its support of DTC's proposal and asks DTC to survey its participants to determine if there is support to extend the use of the ID system for depository ineligible issues.

[4] 15 U.S.C. 78q–1(a)(1)(C).

[5] 15 U.S.C. 78q–1(a)(2).

[6] 15 U.S.C. 78q–1(b)(3) (A) and (F).

[7] For a detailed description and discussion of Rule 15c6–1, refer to Securities and Exchange Commission Release Nos. 33–7022, 34–33023, and IC–19768 (October 13, 1993), 58 FR 52891 [File No. S7–5–93] (order adopting Rule 15c6–1).

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR-DTC-93-07) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-1338 Filed 1-19-94; 8:45 am]

BILLING CODE 8010-01-M

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30-3(a)(12).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Boston Stock Exchange, Inc.

January 13, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

PacTel Corp.
Common Stock, $.01 Par Value (File No. 7-11823)
Corestates Financial Corp.
Common Stock, $1.00 Par Value (File No. 7-11824)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 3, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94-1281 Filed 1-19-94; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

January 13, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Aktiebolaget Svensk Exportkredit
Exch. Pfd. Cap. Securities (File No. 7-11827)
ICF Kaiser International, Inc.
Common Stock, $.01 Par value (File No. 7-11828)
JP Realty, Inc.
Common Stock, $.0001 Par Value (File No. 7-11829)
ServiceMaster LP
Common Stock, $1.00 Par Value (File No. 7-11830)
Statesman Group, Inc.
Common Stock, $1.00 Par Value (File No. 7-11831)
Amway Asia Pacific, Ltd.
Common Stock, $.01 Par Value (File No. 7-11832)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 3, 1994, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94-1282 Filed 1-19-94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-33476; File No. SR-Amex-93-33]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to, a Proposed Rule Change Relating to Increasing AUTO-EX Eligibility for Japan Index Options

January 13, 1994.

I. Introduction

On November 4, 1993, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to increase, from 20 to 99 contracts, the size of the orders for Japan Index ("JPN") options that are eligible for execution through the Exchange's automated execution system ("AUTO-EX").

The proposed rule change was published for comment in Securities Exchange Act Release No. 33293 (December 6, 1993), 58 FR 65409 (December 14, 1993). No comments were received on the proposed rule change.[3]

II. Description of AUTO-EX

In December 1985, the Amex implemented a pilot program to initiate the AUTO-EX system, which provided for the automatic execution of options contracts.[4] Since that time, AUTO-EX has been expanded to include all equity and stock index options traded on the Amex.[5] AUTO-EX is an automated system that executes public customer market and marketable limit orders[6] in

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1993).

[3] The proposal was amended on January 3, 1994 to clarify that an expansion of the AUTO-EX order eligibility size to 99 contracts for JPN options would require a corresponding expansion of the AMOS order eligibility size to 99 contracts. Letter form Claire P. McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Richard Zack, Branch Chief, Division of Market Regulation, Commission, dated January 3, 1994 ("Amendment No. 1").

[4] The AUTO-EX pilot program initially only provided for the automatic execution of options on the Amex's Major Market Index. Securities Exchange Act Release No. 22610 (November 8, 1985), 50 FR 47480 (November 18, 1990). The pilot was approved on a permanent basis in August 1986. Securities Exchange Act Release No. 23544 (August 20, 1986), 51 FR 30601 (August 27, 1986).

[5] See *e.g.* Securities Exchange Act Release Nos. 25996 (August 15, 1988), 53 FR 31779 (August 19, 1988) and 23573 (August 28, 1986), 51 FR 31889 (September 5, 1986).

[6] A market order is an order to buy or sell a stated amount of a security at the most advantageous price

options at the best bid or offer displayed at the time the order is entered into the Automatic Amex Options Switch ("AMOS") system.

AMOS is an electronic order routing system which transmits market and marketable limit orders of up to 30 contracts[7] and related administrative messages from member firms directly to the specialist on the Exchange floor via printers at each trading post. After arriving at the appropriate specialist's post, the order must be executed either automatically through AUTO–EX, or printed out and executed manually against an order on the book, the specialist principal, or one or more brokers or traders in the crowd. When the order is executed, the system transmits related execution reports and responses to administrative inquiries directly back to the member firm from the specialist via mark sense card input.

Each specialist in an AUTO–EX eligible option is automatically signed onto the system from the moment the system is activated and remains a participant until the system is turned off. Registered Options Traders ("ROTs") participate on the system on a voluntary basis.

III. Description of the Proposal

The current proposal increases AUTO–EX eligibility for JPN options from 20 to 99 contracts.[8] In addition, the proposal requires that the AMOS order eligibility size be expanded from 30 to 99 contracts for JPN options.

Under the proposal, each order for JPN options will be split into individuals units of 10 contracts per unit. Participants on the AUTO-EX wheel will then be assigned 10 contracts per transaction. If, however, there are fewer participants on the wheel than the number of 10-contract units, those participants will receive additional 10-contract units until the entire order is filled. Although participation on the AUTO-EX system is voluntary for ROTs, participation for Amex specialists is mandatory, which ensures that orders entered into the AUTO-EX system will be executed.[9]

IV. Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 and section 11A.[10] The Commission believes that enhancing the AUTO–EX system to provide for the automatic execution of larger customer orders in JPN options will provide for more efficient handling and reporting of orders in JPN options, thereby improving order processing and turnaround time.

In addition, the Commission believes that increasing the order eligibility size from 20 to 99 contracts for JPN options can benefit the investing public by facilitating the execution of orders that have been routed through the Amex's AMOS system. The Commission believes that this increase in the number of contracts that can be executed through AUTO-EX enhances the Exchange's ability to process transactions expeditiously and effectively. Further, the Commission believes that increasing the size of orders eligible for execution through AUTO-EX should increase overall AUTO-EX order flow and extend the system's benefits, such as increased order routing efficiencies, to more Amex member firms and customers.

The Commission also believes that the expansion of the AMOS order eligibility size, from 30 to 99 contracts, for JPN options is appropriate given the close operating relationship between the AUTO-EX and AMOS systems. Since the AUTO-EX automatic execution system interlocks with the AMOS automatic order routing system, the Exchange believes that the contract limit for both systems must be the same for these two systems to operate efficiently and effectively. Accordingly, the Commission believes it is consistent with the Act to expand the order routing capabilities of AMOS to accommodate the greater order execution efficiencies obtainable through the expansion of AUTO-EX.

Finally, the Commission believes that increasing the size of the orders eligible for execution through AUTO-EX (and order routing through AMOS) for JPN options will not expose the Amex's options markets or equity markets to an operational breakdown. Specifically, the Commission believes that the increase in order size eligibility will not have a negative impact on the capacity of the Exchange's AMOS and AUTO-EX systems.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** Amendment No. 1 merely provides for the corresponding increase in the order size eligibility for AMOS. Because any order automatically executed through AUTO-EX is first entered on the AMOS order routing system, the order size eligibility for both AMOS and AUTO-EX must be consistent to permit the efficient execution of orders in JPN options. The Commission believes that the corresponding increase in the AMOS order eligibility size is a necessary part of the Amex proposal to increase the AUTO-EX order eligibility size and, thus, raises no new issues. Accordingly, the Commission believes it is consistent with sections 6(b)(5) of the Act to approve the proposal on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposal. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 10, 1994.

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obtainable after the order is represented in the trading crowd. A marketable limit order is an order to buy or sell a stated amount of a security at a specified price or at a better price if obtainable, after the order is represented in the trading crowd, entered at a time when the market is trading at or better than the specified price.

[7] The Amex has filed a proposal to increase the order eligibility size for AMOS to 50 contracts. See Securities Exchange Act Release No. 32882 (September 14, 1993), 58 FR 49336 (September 22, 1993).

[8] The JPN is a price-weighted, broad market index based on 210 Japanese stocks traded on the Tokyo Stock Exchange. JPN options were approved for trading on the Amex in September 1990. See Securities Exchange Act Release No. 28475 (September 27, 1990), 55 FR 40492 (October 3, 1990).

[9] Telephone conversation between Claire P. McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, and Monica C. Michelizzi, Staff Attorney, Division of Market Regulation, Commission, on January 3, 1994.

[10] 15 U.S.C. 78f and 78k–1 (1988).

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (SR–AMEX–93–33) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–1337 Filed 1–19–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33464; File No. SR–GSCC–93–05]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of Amendment to Proposed Rule Change Relating to Conditions for the Release of Confidential Data

January 12, 1994.

On December 30, 1993, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") an amendment ("Amendment No. 1") [1] to its filing of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[2] Notice of that proposed rule change appeared in the **Federal Register** on August 10, 1993.[3] No written comments were received in response to that notice. The Commission is publishing this notice of Amendment No. 1 to solicit comments on the proposed rule change from interested persons.

I. Introduction

On June 18, 1993, GSCC filed with the Commission a proposed rule change that would modify GSCC Rule 29, Release of Clearing Data, to permit clearing data [4] to be released to the Federal Reserve Bank of New York ("FRBNY") and other persons that perform a regulatory or oversight function related to the government securities marketplace. The rule change as originally proposed placed several conditions on the release of data. With respect to the FRBNY, the information could not be released until GSCC management had made the following determinations:

- There has been a showing by the FRBNY of a legitimate need for such data, related to its market surveillance function.
- Any data provided by GSCC will be used solely for market surveillance purposes.
- The informational request is made in writing and with sufficient specificity.
- If the data is specific to a particular member, the member has been notified of the request and has been given the opportunity to present to GSCC any objections to the request. (This prerequisite will not apply if valid legal process prohibits GSCC from informing the member of the request for data.)
- If the data is specific to a particular member, there has been a showing by the FRBNY that it has unsuccessfully attempted to obtain the data directly from the member. (This prerequisite will not apply if valid legal process prohibits FRBNY from contacting the member regarding the request for data.)

II. Description of the Proposal As Amended

GSCC Rule 29, as amended, would allow GSCC to release clearing data to the FRBNY for market surveillance purposes. GSCC and the FRBNY have entered into an agreement that will govern the release of information to the FRBNY. The agreement provides that the FRBNY will maintain member specific information in confidence, subject to certain exceptions. The FRBNY may share GSCC data with the members of the Interagency Working Group on Market Surveillance.[5] The FRBNY also can release GSCC data as required by law.

The FRBNY has agreed to follow certain procedures should third parties attempt to obtain the release of GSCC data through the FRBNY. If the FRBNY is presented with a request under the Freedom of Information Act ("FOIA"),[6] the FRBNY will decline requests for member specific information to the extent that the information is exempt from FOIA. If the FRBNY determination under FOIA is appealed, the FRBNY will notify GSCC to permit GSCC to raise an objection. If the information is requested under a subpoena or other form of legal process, the FRBNY will notify GSCC, if not prohibited by law. The FRBNY, however, will make its own determination whether it is required to comply with the disclosure request under the subpoena.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, and written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to File No. SR–GSCC–93–05 and should be submitted by February 10, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–1278 Filed 1–19–94; 8:45 am]

BILLING CODE 8010–01–M

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[11] 15 U.S.C. 78s(b)(2) (1988).

[12] 17 CFR 200.30–3(a)(12) (1993).

(1) Letter from Jeffrey Ingber, General Counsel, GSCC, to Christine Sibille, Attorney, Commission (December 28, 1993).

(2) 15 U.S.C. 78s(b)(1) (1988).

(3) Securities Exchange Act Release No. 32710 (August 2, 1993), 58 FR 42584.

(4) Clearing data is defined essentially to include any data relating to a member's trading activity that is held or produced by GSCC.

[5] The Interagency Working Group on Market Surveillance is composed of representatives from the FRBNY, the Board of Governors of the Federal Reserve System, the United States Department of the Treasury, the Commission, and the Commodity Futures Trading Commission. The FRBNY will provide each member of the working group with a copy of the agreement with GSCC and request confirmation that the other members will follow the procedures contained in that agreement.

[6] 5 U.S.C. 552 (Supp. I 1993).

[Release No. 34–33463; File No. SR–NSCC–93–13]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving a Proposed Rule Change Relating to Buy-Ins

January 12, 1994.

On September 1, 1993, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") under Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] a proposed rule change (File No. SR–NSCC–93–13) relating to buy-ins. The Commission published notice of this proposed rule change in the **Federal Register** on December 2, 1993.[2] No public comments were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change modifies the timing under which a buy-in of a security settling in NSCC's Continuous Net Settlement ("CNS") system may be executed under NSCC's rules. This change conforms buy-in execution practices for exchange-listed CNS trades and buy-in execution practices for over-the-counter ("OTC") CNS trades.

An NSCC member that has a long position (*i.e.*, the member is entitled to receive a number of units of a CNS security) at the end of any day may submit a buy-in notice to NSCC. The day the buy-in notice is submitted is "N." If a position subject to a buy-in remains unfilled after the evening allocation[3] on N+1 (*i.e.*, the day after the buy-in notice is submitted to NSCC), NSCC will issue retransmittal notices during the morning of N+1 to a number of members that have short positions (*i.e.*, members obligated to deliver a number of units of CNS securities). The quantity of securities specified as owing on a retransmittal notice is the short member's buy-in liability.[4] NSCC's rules currently provide that if a short member has not satisfied its buy-in liability by the end of the evening allocation on the day after it receives a retransmittal notice from NSCC (*i.e.*, on N+2), it is subject to a buy-in.[5]

While buy-ins executed as floor trades may be executed at any time on N+2, under the rules of the National Association of Securities Dealers ("NASD"), buy-ins executed as OTC trades cannot be executed until 2:30 p.m. on N+2. The proposed rule change amends NSCC's rules so that a short member's buy-in liability may be satisfied up to the completion of the day cycle on N+2 (*i.e.*, 2 p.m.) instead of up to the completion of the evening cycle on N+2 (*i.e.*, 8 a.m.). Extending the time during which a member may satisfy its buy-in liability from the end of the evening cycle to the end of the day cycle will have the practical effect of conforming the timing for the execution of buy-ins involving exchange-listed securities and OTC securities.

II. Discussion

The Commission believes that NSCC's proposal is consistent with the Act and in particular with Section 17A(b)(3)(F) thereunder.[6] That section requires, among other things, that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. In adopting Section 17A of the Act, Congress found that the development of uniform standards and procedures for clearance and settlement will reduce unnecessary costs and will increase the protection of investors and persons facilitating transactions by and acting on behalf of investors.[7] In this regard, Congress directed the Commission to use its authority under the Act to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions.[8]

By conforming the buy-in execution practices for trades of exchange-listed securities with those for trades of OTC securities, NSCC's proposal appears to be consistent with NSCC's requirements under the Act to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. Moreover, the move toward uniform buy-in procedures for exchange-listed and OTC securities is consistent with the Commission's Congressional directive to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions through the development of uniform standards and procedures.

The amended rule will give members with short positions the opportunity to meet their delivery obligations by delivering shares during the day cycle on N+2 without being subject to buy-in liability. Currently, such deliveries cannot be used to mitigate a member's buy-in liability. This limitation was instituted because in the past members with long positions had no way of knowing whether deliveries were made during the day cycle in fulfillment of buy-in liabilities and therefore, to allow day cycle deliveries to mitigate buy-in liabilities would have placed long members at risk if those members executed buy-ins. This limitation now may be removed because all NSCC members currently have access to The Depository Trust Company's Participant Terminal System which allows them to monitor deliveries made to NSCC during the day cycle.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act and in particular with Section 17A thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (File No. SR–NSCC–93–13) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–1279 Filed 1–19–94; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 33248 (November 24, 1993), 58 FR 63602.

[3] NSCC's daily processing cycle commences in the evening and includes an evening cycle which runs from 6 p.m. until 8 a.m. the following morning and a day cycle which runs from 8:30 a.m. until 2 p.m. Telephone conversation between Karen L. Saperstein, Vice President/Director of Legal and Associate General Counsel, NSCC, and Jerry W. Carpenter, Branch Chief, and Richard C. Strasser, Attorney, Division of Market Regulation, Commission (August 4, 1993).

[4] The buy-in liability of a member will not exceed the buy-in position or the total short position of the member. NSCC Procedures, Section VII, J.

[5] A member's buy-in liability may be satisfied by the actual settlement of the short position, which may require a deposit of securities. NSCC Procedures, Section VIII, J.

[6] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[7] 15 U.S.C. 78q–1(a)(1)(D) (1988).

[8] 15 U.S.C. 78q–1(a)(2)(A)(i) (1988).

[9] 15 U.S.C. 78s(b)(2) (1988).

[10] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–33474; File No. SR–NYSE–93–52]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Fingerprint Processing Fees

January 13, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 27, 1994,

the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested person.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE is proposing to amend its plan for fingerprinting pursuant to rule 17f–2(c) under the Act as follows:

Fingerprint Processing Fee

$25.50 per fingerprint card processed, consisting of $24.00 per fingerprint card for Federal Bureau of investigation processing and $1.50 per fingerprint cared for Exchange processing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to a plan filed with the Commission pursuant to rule 17f–2(c) under the Act, 17 CFR 240.17f–2(c), the Exchange acts as a processor of fingerprints for its members and channels fingerprint cards and attendant payments to the Federal Bureau of Investigation ("FBI"). The purpose of the proposed rule change is to pass along an increase in the user fee for processing fingerprint cards, promulgated by the FBI.

On January 3, 1994, the FBI increased its fee for processing fingerprint cards from $23.00 to $24.00 per card. Accordingly, the Exchange is proposing to amend its plan as follows: $25.50 per fingerprint card processed, consisting of $24.00 per fingerprint card for FBI processing and $1.50 per fingerprint card for Exchange processing (the Exchange fee of $1.50 is not being increased).

2. Statutory Basis

The proposed rule change is consistent with the requirement under section 6(b)(4) of the Act that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of rule 19b–4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provision of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–93–52 and should be submitted by February 10, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–1339 Filed 1–19–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33475; File No. SR–NYSE–93–45]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Exchange's Specialist Combination Review Policy

January 13, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78S(b)(1), notice is hereby given that on December 3, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of the Exchange's Specialist Combination Review Policy. The full text of the Policy is available at the NYSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in

Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the Policy is to ensure that the Exchange maintains a uniform process for reviewing specialist unit combinations that might result in levels of concentration that could be detrimental to the Exchange's operation of a marketplace.

The Policy requires Exchange approval of proposed specialist unit combinations. In any instance where a proposed combination will result in a specialist unit accounting for more than five percent of any "concentration measure,"[1] as defined in the Policy, the Exchange's Quality of Markets Committee (the "Committee") is required to conduct a review of the proposed combination. This review includes an analysis of specialist performance and market quality in the stocks subject to the proposed combination. The Committee looks at the effects of the proposed combination in terms of strengthening the capital base of the new unit, minimizing the potential for financial failure of the unit and maintaining or increasing operational efficiencies within the unit. The Committee also considers the proposed unit's commitment to the Exchange market and the effect of the proposed combination on overall concentration of specialist organizations.

Where a proposed combination would result in a specialist unit which accounts for more than ten percent of a concentration measure, the primary consideration during the Committee's review is the effect of the proposed combination on overall concentration of specialist units. If the new unit accounts for more than ten percent, but less than or equal to 155, of a concentration measure, the Policy requires the proponents of the combination to prove, by a preponderance of the evidence, that the proposed combination:

(i) Would not cause detrimental concentration to the Exchange and its markets;

(ii) Would foster competition among specialist units; and

(iii) Would enhance the performance of the constituent specialist unit and the quality of the markets in the stocks involved.

The Policy also requires the proponents of any combination greater than ten percent, but less than or equal to 15%, to prove, by a preponderance of the evidence, that the proposed combination, if approved, is otherwise in the public's interest.

Where the proposed combination would result in a specialist unit which accounts for greater than 15% of a concentration measure, the Policy requires the proponents of the combination to provide clear and convincing evidence of the factors stated in (i) through (iii) above. The proponents of the combination would also be required to provide clear and convincing evidence that the proposed combination is otherwise in the public's interest.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited not received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or written such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–93–45 and should be submitted by February 10, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–1340 Filed 1–19–93; 8:45 am]

BILLING CODE 8010–01–M

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[1] The concentration measures include specialist share of:

- listed common stocks
- the 250 most active listed stocks
- total share volume of stock trading on the Exchange
- total dollar value of stock trading on the Exchange

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Pacific Stock Exchange, Inc.

January 13, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Corestates Financial Corporation
Common Stock, $1.00 Par Value (File No. 7–11825)

Crompton & Knowles Corporation
Common Stock, $.01 Par Value (File No., 7–11826)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 3, 1994, written data, views and arguments concerning the above-referenced

application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–1283 Filed 1–19–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33462; File No. SR–PTC–93–05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Participants Trust Company Relating to Restrictions in the Intraday Payment of Principal and Interest

January 12, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 12, 1993, Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to amend PTC's rules to restrict intraday payments of principal and interest ("P&I") from PTC to its participants and limited purpose participants, to the amount of funds from collected P&I payments available to PTC at such time.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend PTC Rule 2, Article III to restrict intraday payments of P&I from PTC to its participants and limited purpose participants, to the amount of funds from collected P&I payments available to PTC at such time.

PTC's Rules and Procedures formerly provided that PTC disburse P&I on securities deposited at PTC by means of a credit to the Participant's applicable account cash balance. As a result, a participant would receive available funds in the amount of the P&I, net of any account debits and/or credits, at the end of the day as part of the settlement payment process.

PTC's rules were amended on November 2, 1993[2] to eliminate the requirement that P&I be disbursed by means of a credit to a participant's cash balance, to permit PTC to make payment of P&I either by intraday Fedwire transfer of immediately available funds or by means of a credit to the applicable cash balance, as PTC deems advisable from time to time. In the order approving the proposed rule change on a temporary basis until April 30, 1994, the Commission required PTC to limit intraday disbursement of P&I to the amount of collected and available P&I payments, on the basis that funds available to PTC for P&I disbursement from other sources, such as PTC's own funds, the cash portion of the mandatory deposits to the participant's fund, borrowed funds secured by the P&I receipts or by the securities portion of the mandatory deposits to the participant's fund, and PTC capital, should be available if required to achieve end-of-day settlement. The purpose of this proposed rule change is to incorporate that restriction explicitly into PTC's Rules.

The proposed rule change is consistent with Section 17A of the Act and the rules and regulations thereunder because the orderly disbursement of P&I funds to participants and the preservation of alternate sources of funds to achieve settlement, facilitates the prompt and accurate clearance and settlement of securities transactions, and promotes the safeguarding of securities and funds in PTC's custody and control.

B. Self-Regulatory Organization's Statement of Burden on Competition

PTC does not believe that the proposed rule change will have an impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

PTC has not solicited, and does not intend to solicit, comments on this proposed rule change. PTC has not received any unsolicited comments from participants or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal

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[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 33132 (November 2, 1993), 58 FR 59501.

office of PTC. All submissions should refer to File Number SR-PTC-93-05 and should be submitted by February 10, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-1280 Filed 1-19-94; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

January 13, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

ICF Kaiser International, Inc.,
Common Stock, $0.01 Par Value (File No. 7-11833).
Grupo Casa Autry S.A. De C.V.,
American Depositary Shares (File No. 7-11834).
Wiser Oil Company,
Common Stock, $3.00 Par Value (File No. 7-11835).
Emerging Market Infrastructure Fund, Inc.,
Common Stock, $.001 Par Value (File No. 7-11836).
Aprogenex, Inc.,
Common Stock, $.001 Par Value (File No. 7-11837).
Koninklijke Ahold NV,
American Depositary Shares each representing one Ordinary Share NLG 1.25 Par Value (File No. 7-11838).
Corestates Financial Corporation,
Common Stock, $1.00 Par Value (File No. 7-11839).
Salomon Brothers Worldwide Income Fund, Inc.,
Common Stock, $.01 Par Value (File No. 7-11840).
Schroder Asian Growth Fund, Inc.,
Common Stock, $.01 Par Value (File No. 7-11841).
San Diego Gas & Electric Co.,
Preferred Stock (File No. 7-11842).
Coastcast Corporation,
Common Stock, $.01 Par Value (File No. 7-11843).
J&L Specialty Steel, Inc.,
Common Stock, $.01 Par Value (File No. 7-11844).
Amway Asia Pacific Ltd.,
Common Stock, $.01 Par Value (File No. 7-11845).
Home Holding, Inc.,
Common Stock, $0.01 Par Value (File No. 7-11846).

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 3, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94-1284 Filed 1-19-94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-33467; File No. SR-OCC-92-09]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change Relating to the Acceptance of Depository Receipts and Escrow Receipts

January 12, 1994.

On March 17, 1992, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] a proposed rule change to establish a consistent policy for the acceptance of depository receipts, escrow receipts, and letters of credit. On April 21, 1992, notice of the proposed rule change was published in the **Federal Register** to solicit comments from interested persons.[2] No comments were received. This order approves the proposal.

I. Description

Depository receipts and escrow receipts are issued by approved banks, trust companies, or depositories (collectively referred to as "depository" or "depositories") to acknowledge that the issuing depository is holding securities either for the benefit of OCC or for the benefit of the depositing clearing member. Clearing members may submit depository receipts in fulfillment of their margin and clearing fund obligations. Clearing members may submit escrow receipts in fulfillment of their margin obligations.

The proposed rule change establishes a policy under which OCC will not accept a depository receipt or an escrow receipt issued by a depository if such depository, a parent, or an affiliate has a 20% or greater equity interest in the total capital of the clearing member making the deposit or for whose account such a deposit is being made.[3] The policy will apply to depository receipts and escrow receipts issued by both U.S. and foreign depositories. If OCC determines that a depository has a 20% or greater interest in the total capital of a submitting clearing member, the clearing member will not be able to use the collateral services of the depository. However, such a prohibition will not prevent the depository from providing collateral services to other OCC clearing members with whom the depository does not have such interests.

II. Discussion

The Commission believes that OCC's proposed rule change is consistent with the Act and particularly with section 17A.[4] Sections 17A(b)(3) (A) and (F) of the Act require that each registered clearing agency must be organized and its rules must be designed to assure the safeguarding of funds and securities which are in the custody or control of the clearing agency or for which it is responsible.[5] As discussed below, the Commission believes that OCC's proposal is consistent with this requirement.

OCC states in its filing that there appears to be a growing trend of common ownership between depositories and broker-dealers. OCC believes that it is exposed to unreasonable credit risks when there is a close affiliation between a depository and a clearing member that is using the depository receipt and escrow receipt services of the depository. In response to this trend and to reduce its credit risk exposure, OCC filed this proposal.

Currently, OCC will not accept as margin a letter of credit for the account of a clearing member in which the issuing institution, a parent, or an

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 30584 (April 14, 1992, 57 FR 14608.

[3] The proposal will add an interpretation to each of the following by-laws and rules: By-Laws Article VIII, Section 3 (forms of clearing fund contribution); Rule 604 (forms of acceptable margin); Rule 610 (deposit of underlying security as margin); Rule 613 (escrow receipt depository program); and Rule 1801 (deposits of index option escrow).

[4] 15 U.S.C. 78q-1.

[5] 15 U.S.C. 78q-1(b)(3) (A) and (F).

affiliate has an equity interest of 20% or more of such clearing member.[6] The prohibition against accepting letters of credit issued by an affiliated financial institution is intended to limit OCC's risk exposure in the event of the simultaneous failure of both a clearing member and its affiliate. Because clearing members' margin deposits and clearing fund contributions serve to protect OCC in the event a clearing member is not able to fulfill its obligations to OCC, OCC believes that this same policy rationale supports its proposed rule change regarding the issuance of depository receipts and escrow receipts by affiliated depositories.

As the interdependence between a clearing member and the depository issuing depository receipts and escrow receipts for the clearing member decreases, the likelihood of a simultaneous failure becomes more remote. The 20% limitation on common ownership will reduce OCC's potential risk and will further enable OCC to assure the safeguarding of funds and securities which are in OCC's custody or control or for which it is responsible.

III. Conclusion

Based on the foregoing, the Commission finds that OCC's proposed rule change is consistent with the requirements of the Act and, in particular section 17A of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–92–09) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–1341 Filed 1–19–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20017; 812–8358]

Cowen Funds, Inc., et al.; Notice of Application

January 13, 1994

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Cowen Funds, Inc., Cowen Income & Growth Fund, Inc., Cowen Standby Reserve Fund, Inc., Cowen Standby Tax-Exempt Reserve Fund, Inc. (together with each series of the Cowen Funds, Inc. described below, the "Funds") and Cowen & Company ("Cowen").

RELEVANT ACT SECTIONS: Order requested under section 6(c) granting a conditional exemption from sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c), and 22(d) of the Act, and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order permitting certain open-end management investment companies to issue multiple classes of shares representing interests in the same portfolio of securities, and assess and, under certain circumstances, waive a contingent deferred sales charge ("CDSC") on certain redemptions of the shares.

FILING DATES: The application was filed on April 19, 1993, and amended on November 9, 1993 and January 6, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 7, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, Financial Square, New York, New York 10005.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Senior Attorney, at (202) 272–2190, or Robert A. Robertson, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the Funds is an open-end management investment company registered under the Act. Cowen Funds, Inc. consists of multiple series: Cowen Opportunity Fund, Cowen Special Value Fund, Cowen Intermediate Fixed Income Fund, and Cowen Tradition Fixed Income Fund. Each Fund has entered into an investment management agreement with Cowen under which Cowen Asset Management, a division of Cowen, provides management and investment advisory services to the Funds. Each Fund has also entered into a distribution agreement with Cowen under which Cowen acts as principal underwriter for each Fund. Cowen Asset Management is referred to herein as the "Adviser" and Cowen as the "Distributor."

2. Currently, four of the Funds (Cowen Income & Growth Fund, Inc., Cowen Opportunity Fund, Cowen Intermediate Fixed Income Fund, and Cowen Tradition Fixed Income Fund) offer their shares at net asset value plus a front-end sales load. Two of the Funds (Cowen Standby Reserve Fund, Inc. and Cowen Standby Tax-Exempt Reserve Fund, Inc.) are money market funds (the "Money Market Funds") and issue their shares at net asset value without the imposition of any sales charges.

3. Applicants request that any order issued concerning this application also apply to shares of any future open-end investment company registered under the Act that is advised by the Adviser and whose principal underwriter is (1) Cowen or (2) any person controlling, controlled by or under common control with Cowen and whose shares are identical in all material respects to those described in the application.

4. Applicants seek relief to implement a dual distribution system. Under this system, each of the Funds may offer investors the option of purchasing shares subject to a conventional front-end sales load and possibly a service fee (the "Front-End Load Option") or subject to a CDSC and distribution and service fees (the "Deferred Option"). In addition, under the dual distribution system, applicants may from time to time create one or more additional classes of shares.

5. Under the Front-End Load Option, investors would purchase shares designated as Class A at the then current net asset value plus a front-end sales load. In addition, Class A shareholders of certain Funds may be assessed a "service fee" under a rule 12b–1 plan at an annual rate of up to .25% of the average daily net assets of the Class A shares. The term "service fee" has the meaning given to that term in Section 26 of Article III of the NASD's Rules of Fair Practice.

6. Under the Deferred Option, investors would purchase shares designated as Class B shares at net asset value without the imposition of a sales load at the time of purchase. However, the shares would be subject to a rule

[6] OCC Rule 604, Interpretations and Policies .07.

12b–1 plan with a service fee of up to .25% and a distribution fee of up to .75% of the average daily net asset value of the Class B shares. In addition, the Class B shares may be subject to a CDSC, as described below. The sum of any front-end sale charge, CDSC, and asset based sales charge imposed by the Funds will not exceed the maximum sales charge provided for in article III, section 26(d) of the Rules of Fair Practice of the NASD.

7. The Funds may create additional classes of shares, the terms of which may differ from the Class A and Class B shares only in the following respects: (1) Each class would have a different designation; (2) each class might be sold under different sales arrangements (*e.g.*, sales with a front-end sales load, subject to a CDSC, or at net asset value); (3) each class would bear any payments incurred in connection with a rule 12b–1 plan or a non-rule 12b–1 service plan related to that class (and any other costs relating to obtaining shareholder approval of the rule 12b–1 plan for that class or an amendment to its plan); (4) each class would bear expenses attributable to the particular class as set forth in condition 1 below (the "Class Expenses") and any other expenses that are subsequently identified and determined to be properly allocated to one class which shall be approved by the Commission pursuant to an amended order; (5) the related voting rights as to matters exclusively affecting one class (*e.g.*, the adoption, amendment or termination of the rule 12b–1 plan) in accordance with the procedures set forth in rule 12b–1; and (6) each class would have different exchange privileges.

8. If a Fund offers a shareholder services plan, these shares would be available for purchase by banks and other financial intermediaries for the benefit of their customers. The financial intermediaries would provide support services to their customers, such as processing shareholder orders to purchase and redeem shares, processing dividend payments, providing information to shareholders with respect to their holdings, arranging bank wires, answering shareholder inquiries relating to the services performed by the financial intermediary, and other similar services.These services will augment and not replace the services provided to the Funds by Cowen and the Funds' transfer agent and custodian pursuant to their respective agreements with the Funds.

9. Under the dual distribution system, all expenses incurred by a Fund (other than a Money Market Fund) will be allocated among the various classes of shares based on the net assets of the Fund attributable to that class and all expenses incurred by a Money Market Fund will be allocated among the shares of the Fund based on the number of outstanding shares of such Fund regardless of class, except that each class's net asset value and expenses will reflect the expenses associated with that class's rule 12b–1 plan or service plan (if any) and any Class Expenses attributable to a particular class. Because of the higher distribution fees paid by the holders of certain classes (Class B), the net income attributable to and the dividends payable on each class with higher distribution fees would be lower than the net income attributable to and the dividends payable on each class with lower distribution fees or with no distribution fee at all (Class A). As a result, the net asset value per share of the classes will differ at times. The Money Market Funds will take steps detailed in condition 15 below to ensure that the net asset value per share of each class of a Money Market Fund does not deviate from the net asset value per share of the other classes of such Fund.

10. Currently, shares of the Funds generally may be exchanged for shares of other Funds. Applicants contemplate that each class of a Fund will be exchangeable only for the same class of the other Funds, including shares of the Money Market funds. The exchange privileges applicable to each class will comply with rule 11a–3 under the Act.

11. Applicants also seek relief to permit the Funds to assess a CDSC on redemptions of certain classes of shares, and to permit the Funds to waive the CDSC on redemptions of certain shares. Shares of the Funds may be subject to the imposition of a CDSC if such shares are redeemed within a specified period after their purchase. Applicants currently expect that the percentage generally will vary from 5% for redemptions made during the first year from initial purchase to 0% for redemptions made after the sixth year from purchase. The CDSC will apply only to those shares that are issued by the Fund after the Commission grants the requested exemption.

12. No CDSC would be imposed with respect to: (a) Redemptions of shares that were purchased more than a fixed number of years prior to the redemptions; (b) shares derived from reinvestment of distributions; or (c) the amount that represents an increase in the value of the shareholder's account resulting from capital appreciation. The amount of the CDSC will be calculated as the lesser of the amount that represents a specified percentage of the net asset value of the shares at the time of purchase, or the amount that represents such percentage of the net asset value of the shares at the time of redemption.

13. In determining the applicability and rate of any CDSC, it will be assumed that a redemption is made first of amounts due to capital appreciation, next of shares representing reinvestment of dividends and capital gain distributions, and then of other shares held by the shareholder for the longest period of time. This will result in the charge, if any, being imposed at the lowest possible rate. If a shareholder who owns both Class A and Class B shares places a redemption request, the shareholder will be required to elect specifically whether the Class A or Class B shares are to be redeemed.

14. The CDSC would be waived for the following redemptions: (a) Following the death or disability, as defined in section 72(m)(7) of the Internal Revenue Code of 1986, of a shareholder if redemption is made within one year of death or disability of a shareholder and (b) in connection with a lump-sum or other distribution following retirement or, in the case of an IRA or Keogh Plan or custodial account pursuant to section 403(b)(7) of the Code, after attaining the age of 59½. The charge also may be waived on any redemption that results from a tax-free return of an excess contribution pursuant to section 408(d)(4) or (5) of the Code or from death or disability of the employee. In sum, the CDSC may be waived on redemptions of shares that constitute retirement plan distributions that are permitted to be made without penalty pursuant to the Code, other than tax-free rollovers or transfers of assets. If the Funds waive the CDSC, the waiver or reduction will be uniformly applied to all offerees in the class specified.

Applicants' Legal Analysis

1. Applicants request an exemption under section 6(c) from sections 18(f), 18(g), and 18(i) to issue multiple classes of shares representing interests in the same portfolio of securities. Applicants believe that, by implementing the multiple class distribution system, the Funds would be able to facilitate the distribution of their shares and provide a broad array of services without assuming excessive accounting and bookkeeping costs. Applicants also believe that the proposed allocation of expenses and voting rights is equitable and would not discriminate against any group of shareholders. The proposed arrangement does not involve borrowings, affect the Funds' existing assets or reserves, or increase the

speculative character of the shares of a Fund.

2. Applicants also request an exemption under section 6(c) from sections 2(a)(32), 2(a)(35), 22(c), and 22(d), and rule 22c–1, to assess and, under certain circumstances, waive a CDSC on redemptions of shares. Applicants believe that their request to permit the CDSC arrangement would place the purchaser in a better position than if a sales load were imposed at the time of sale, since the shareholder may have to pay only a reduced sales charge, or no sales charge at all.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of a Fund and be identical in all respects, except as set forth below. The only differences among the terms of the various classes of shares of the same Fund will relate solely to: (a) The designation of each class of shares of a Fund; (b) expenses assessed to a class as a result of a rule 12b–1 plan providing for a distribution fee or a service fee or a service plan (*e.g.*, Class B, and possible Class A, shares would pay a rule 12b–1 service fee and Class B shares would pay a rule 12b–1 distribution fee); (c) different Class Expenses for each class of shares, which are limited to: (i) Transfer agency fees as identified by the transfer agent as being attributable to a specific class; (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxies to current shareholders; (iii) Blue Sky registration fees incurred by a class of shares; (iv) SEC registration fees incurred by a class of shares; (v) the expenses of administrative personnel and services as required to support the shareholders of a specific class; (vi) litigation or other legal expenses relating solely to one class of shares; and (vii) directors' fees incurred as a result of issues relating to one class of shares; (d) the related voting rights as to matters exclusively affecting one class of shares (*e.g.*, the adoption, amendment or termination of a rule 12b–1 plan) in accordance with the procedures set forth in rule 12b–1, and (e) different exchange privileges. Any additional incremental expenses not specifically identified above that are subsequently identified and determined to be properly allocated to one class of shares shall not be so allocated until approved by the SEC.

2. The directors of each of the Funds, including a majority of the independent directors, shall have approved the dual distribution system prior to the implementation of the dual distribution system by a particular Fund. The minutes of the meetings of the directors of each of the Funds regarding the deliberations of the directors with respect to the approvals necessary to implement the dual distribution system will reflect in detail the reasons for determining that the proposal dual distribution system is in the best interests of both the Funds and their respective shareholders.

3. The initial determination of the Class Expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the directors of the affected Fund, including a majority of the independent directors. Any person authorized to direct the allocation and disposition of monies paid or payable by the Fund to meet Class Expenses shall provide to the directors, and the directors shall review, at least quarterly, a written report of the amounts so expended and the purpose for which the expenditures were made.

4. On an ongoing basis, the directors of the Funds, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts among the interests of the various classes of shares. The directors, including a majority of the independent directors, shall take such action as is reasonably necessary to eliminate any conflicts that may develop. The Adviser and the Distributor will be responsible for reporting any potential or existing conflicts to the directors. If a conflict arises, the Adviser and the Distributor at their own expense will remedy the conflict up to and including establishing a new registered management investment company.

5. If any class will be subject to a service plan, the service plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1 (b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders will not enjoy the voting rights specified in rule 12b–1.

6. The directors of the Funds will receive quarterly and annual statements concerning distribution and shareholder servicing expenditures and service payments complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only distribution or shareholder servicing expenditures properly attributable to the sale or servicing of one class of shares will be used to support any distribution or shareholder servicing fee charged to shareholders of that class of shares. Expenditures not related to the sale or servicing of a specific class of shares will not be presented to the directors to support any fees charged to shareholders of that class of shares. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent directors in the exercise of their fiduciary duties.

7. Dividends paid by a Fund with respect to each class of shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that Class Expenses and costs and distribution fees associated with any rule 12b–1 plan and service plan relating to a particular class will be borne exclusively by each respective class.

8. The methodology and procedures for calculating the net asset value and dividends/distributions of the various classes and the proper allocation of expenses among the various classes have been reviewed by an expert (the "Independent Examiner"). The Independent Examiner has rendered a report to applicants which has been provided to the staff of the SEC stating that the methodology and procedures are adequate to ensure that the calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Independent Examiner, or an appropriate substitute Independent Examiner, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Independent Examiner shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Independent Examiner with respect to these reports, following request by the Funds which the Funds agree to make, will be available for inspection by the SEC's staff upon the written request for these work papers by a senior member of the Division of Investment Management or of a Regional Office of the SEC, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate or Assistant Administrators. The initial report of the Independent Examiner is a "report on policies and procedures placed in operation" and the ongoing reports will be "reports on policies and procedures placed in operation and tests

of operating effectiveness" as defined and described in Statement of Auditing Standards No. 70 of the American Institute of Certified Public Accountants ("AICPA"), as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

9. The applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends/distributions among the various classes of shares and the proper allocation of expenses among the classes of shares and this representation has been concurred with by the Independent Examiner in the initial report referred to in condition 8 above and will be concurred with by the Independent Examiner, or an appropriate substitute Independent Examiner, on an ongoing basis at least annually in the ongoing reports referred to in condition 8 above. The applicants agree to take immediate corrective action if the Independent Examiner, or appropriate substitute Independent Examiner, does not so concur in the ongoing reports.

10. The prospectuses of the Funds will contain a statement to the effect that a salesperson and any other person entitled to receive any compensation for selling or servicing Fund shares may receive different compensation with respect to one particular class of shares over another in the Fund.

11. The Distributor will adopt compliance standards as to when shares of a particular class may appropriately be sold to particular investors. The applicants will require all persons selling shares of the Funds to agree to conform to these standards.

12. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the directors of the Funds with respect to the dual distribution system will be set forth in guidelines that will be furnished to the directors as part of the materials setting forth the duties and responsibilities of the directors.

13. Each Fund will disclose in its prospectus the respective expenses, performance data, distribution arrangements, services, fees, sales loads, CDSCs, and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. The shareholder reports of each Fund will disclose the respective expenses and performance data applicable to each class of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to the classes of shares of the Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will disclose the respective expenses and/or performance data applicable to all classes of shares. The information provided by applicants for publication in any newspaper or similar listing of the Fund's net asset values and public offering prices will present each class of shares separately.

14. Applicants acknowledge that the grant of the exemptive order requested by this application will not imply SEC approval, authorization, or acquiescence in any particular level of payments that the Funds may make pursuant to rule 12b–1 plans or service plans in reliance on the exemptive order.

15. To ensure that the net asset value per share of each class of shares of a Money Market Fund remains the same regardless of variations in net income among the classes from day to day, no class will on any day bear any expenses associated with that class's rule 12b–1 plan or service plan (if any) and Class Expenses that would cause the accrued expenses of such class for such day to exceed its allocated gross income. To accomplish this, each Money Market Fund may seek to obtain undertakings from its service providers stating that, if necessary to prevent the accrued expenses of any class from exceeding the allocated gross income of such class on any given day, they will waive some or all of the payments to which they otherwise would have been entitled. If such waivers are not obtained or they are not sufficient to prevent the expenses associated with a class's rule 12b–1 plan or service plan (if any) and Class Expenses from exceeding its gross income on any given day, the Adviser and/or the Distributor will within five business days, reimburse the Money Market Fund in such amount as may be necessary to prevent such expenses from exceeding a class's gross income for the day. Fees and expenses waived by a service provider or reimbursed to the Fund by the Adviser and/or the Distributor will not be carried forward or recouped at a future date.

16. Applicants will comply with the provisions of proposed rule 6c–10 under the Act, Release No. 16619 (November 2, 1988), as the rule is currently proposed and as it may be reproposed, adopted, or amended.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–1342 Filed 1–19–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted within 30 days of this publication in the **Federal Register**. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3RD Street, SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205–6629.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: SBIR Mailing List and Confirmation Request

Form No.: SBA Form 1386

Frequency: On Occasion

Description of Respondents: Small Businesses interested participating in the SBIR solicitation process

Annual Responses: 30,000

Annual Burden: 250

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 94–1305 Filed 1–19–94; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2670]

North Dakota; Amendment #6; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, effective December 9, 1993, to establish the incident period for Benson, Nelson, Ramsey, and Stutsman Counties in the State of North Dakota as beginning on June 22, 1993 and continuing through and including November 15, 1993. The incident period for all other designated counties in June 22, 1993 through and including September 24, 1993.

All other information remains the same, i.e., the termination date for filing applications for physical damage is January 15, 1994 and for economic injury the deadline is April 26, 1994.

The economic injury number for North Dakota is 795500.

Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.

Dated: December 29, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 94–1303 Filed 1–19–94; 8:45 am]

BILLING CODE 8025–01–M

Interest Rate

AGENCY: Small Business Administration.

ACTION: Notice of interest rate.

SUMMARY: Pursuant to 13 CFR 108.503–8(b)(4), the maximum legal interest rate for a commercial loan which funds any portion of the cost of a project (see 13 CFR 108.503–4) shall be the greater of 6% over the New York prime rate or the limitation established by the constitution or laws of a given State. For a fixed rate loan, the initial rate shall be the legal rate for the term of the loan.

John R. Cox,

Acting Assistant Administrator for Financial Assistance.

[FR Doc. 94–1304 Filed 1–19–94; 8:45 am]

BILLING CODE 8025–01–M

UBD Capital, Inc.; Surrender of License

[License No. 08/08–0146]

Notice is hereby given that UBD Capital, Inc., 1700 Broadway, Denver, Colorado 80274, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act).

UBD Capital, Inc. was licensed by the Small Business Administration on October 23, 1985.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on December 22, 1993, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 5, 1994.

Charles R. Hertzberg,

Associate Administrator for Investment.

[FR Doc. 94–1302 Filed 1–19–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 93–090]

National Environmental Policy Act: Agency Procedures for Categorical Exclusions

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed revision of agency procedures and policy.

SUMMARY: The Coast Guard proposes to revise its procedures and policies concerning agency actions which do not individually or cumulatively have a significant effect on the human environment. Under the National Environmental Policy Act, these actions are categorically excluded from the requirement that the proposed action undergo the additional analysis that accompanies preparation of an Environmental Assessment or an Environmental Impact Statement. This revision is necessary to eliminate overly expansive and inconsistent interpretations of existing policies and procedures.

DATES: Comments must be received on or before March 7, 1994.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 93–090), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–6233.

FOR FURTHER INFORMATION CONTACT: Ms. Bonnie Gallahan, Environmental Compliance and Restoration Branch (G–ECV–1B), (202) 267–6034.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this docket (CGD 93–090) and the specific paragraph of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of the bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

Background and Purpose

Under regulations implementing the National Environmental Policy Act (NEPA) (40 CFR parts 1500 through 1508), each Federal agency is required to adopt procedures to supplement those regulations (40 CFR 1507.3). The Coast Guard's procedures and policies are published as a Commandant instruction entitled "National Environmental Policy Act Implementing Procedures and Policy for Considering Environmental Impacts" (COMDTINST M16475.1B). In this notice, the Coast Guard is publishing a proposed revision of section 2.B.2. of the instruction concerning those categories of actions which may be taken by the Coast Guard without the analysis and documentation required for an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). This proposal is being published for public comment under 40 CFR 1507.3, after consultation with the Council on Environmental Quality (CEQ).

Discussion of Proposed Revision

This proposal would completely revise the instructions on categorical exclusions to align them with those of other Federal agencies. It would identify more precisely the categories subject to exclusion to avoid inconsistent interpretations (paragraph 2.B.2.e). It would also provide more complete criteria for screening an action which falls under an excluded category, but which might otherwise warrant additional environmental review (paragraph 2.B.2.b). In addition, the proposal would add a procedure for identifying new categories for potential exclusion (paragraph 2.B.2.a).

For the reasons set out in the preamble, the Coast Guard proposes to amend section 2.B.2. of COMDTINST M16475.1B as follows:

2.B. Environmental Documentation.

* * * * *

2. Categorical Exclusions (CE).

a. Introduction

As defined by the Council on Environmental Quality, a *categorical exclusion* or *CE* means a category of actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an Environmental Assessment (EA) nor an Environmental Impact Statement (EIS) is required. The use of a CE is intended to reduce paperwork and delay by eliminating the unnecessary preparation of EAs and EISs. The CEs listed below are subject to review and any suggested modifications should be provided to COMDT (G–ECV). Additional CEs should be suggested when it becomes clear, through the preparation of EAs, that Findings of No Significant Impact (FONSI) result after numerous analyses of similar actions.

b. Limitations on Using Categorical Exclusions

Some actions that normally would be categorically excluded could require additional environmental review and, for this reason, responsible personnel should be alert for extraordinary circumstances which may dictate the need to prepare an EA or EIS. A CE may not be used if the proposed action is likely to involve any of the four circumstances set forth in section 20.b.(2) of DOT Order 5610.1C, Chg 2 (Enclosure 1).

A determination of whether an action that is normally excluded requires additional review must focus on the action's significance. The proposed action must be evaluated in its context (whether local, state, regional, national or international) and in its intensity by considering whether the action is likely to involve one or more of the following:

(1) Adverse effects on public health or safety.

(2) A site that includes unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, ecologically critical areas, or property requiring special consideration under 49 U.S.C. 303(c) (section 4(f) of the Department of Transportation (DOT) Act).

(3) Effects on the quality of the human environment that are likely to be highly controversial, in terms of scientific validity or public opinion.

(4) Effects on the human environment that are highly uncertain or involve unique or unknown risks.

(5) A precedent for future actions with significant effects or a decision in principle about a future consideration.

(6) Individually insignificant but cumulatively significant impacts when considered along with other past, present and reasonably foreseeable future actions.

(7) Adverse effects on districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

(8) Adverse effects on species or habitats protected by the Endangered Species Act.

(9) A potential or threatened violation of a Federal, State, or local law or requirement imposed for the protection of the environment.

(10) Impacts that may be both beneficial and adverse. A significant effect may exist even if it is believed that on balance the effect will be beneficial.

c. Documentation

The Environmental Analysis Checklist (Enclosure 10) will also be prepared and used to make and substantiate the determination that a CE is appropriate, unless the CE indicates that a checklist is not required.

A written Categorical Exclusion Determination (Enclosure 6) must be prepared in those situations where additional information not readily available from the checklist is being provided to the decisionmaker and when CEs are being relied upon to promulgate regulations.

d. Compliance With Other Laws

Even though an EA or EIS may not be indicated for a Federal action because of a categorical exclusion, that fact does not exempt the action from compliance with any other Federal law. For example, compliance with the Endangered Species Act, the Fish and Wildlife Coordination Act, the National Historic Preservation Act, the Clean Water Act, the Clean Air Act (conformity requirements), etc., is always mandatory, even for actions that do not require an EA or EIS.

e. Categorical Exclusion List

The following are actions that, unless consideration of the factors listed above trigger the need to conduct further analysis, are categorically excluded from further analysis and documentation requirements under NEPA:

(1) Routine personnel, fiscal, and administrative activities and actions, procedures and policies which clearly do not have any environmental impacts, such as military and civilian personnel recruiting, processing, paying, recordkeeping, and training. (Checklist not required.)

(2) Routine procurement activities for goods and services, including office supplies, equipment, mobile assets, and utility services for routine administration, operation, and maintenance. (Checklist not required.)

(3) Maintenance dredging and debris disposal where no new depths are required, applicable permits are secured, and disposal will be at an existing approved disposal site.

(4) Routine repair, renovation, and maintenance actions on aircraft and vessels. (Checklist not required.)

(5) Routine repair and maintenance of buildings, roads, airfields, grounds, equipment, and other facilities which do not result in a change in functional use, a historically significant element, or historically significant setting. (Checklist not required.)

(6) Minor renovations and additions to buildings, roads, airfields, grounds, equipment, and other facilities which do not result in a change in functional use, a historically significant element, or historically significant setting.

(7) Routine repair and maintenance to waterfront facilities including mooring piles, fixed floating piers, existing piers, and unburied power cables. (Checklist not required.)

(8) Minor renovations and additions to waterfront facilities including mooring piles, fixed floating piers, existing piers, and unburied power cables which do not require special, site specific regulatory permits.

(9) Routine grounds maintenance and activities at units and facilities. Examples include localized pest management actions, maintenance of improved grounds such as landscaping, lawn care and minor erosion control measures that are conducted in accordance with applicable federal, state and local directives. (Checklist not required.)

(10) Installation of devices to protect human or animal life, such as raptor electrocution prevention devices, fencing to restrict wildlife movement onto airfields, and fencing and grating to prevent accidental entry to hazardous areas.

(11) New construction on heavily developed portions of Coast Guard property, when construction, use and operation will comply with regulatory requirements and constraints.

(12) Decisions to decommission equipment, and/or temporarily discontinue use of facilities or

equipment. This does not preclude the need to review decommissioning under section 106 of the National Historic Preservation Act.

(13) Demolition or disposal actions that involve buildings or structures neither on nor eligible for listing on the National Register of Historic Places when conducted in accordance with those regulations applying to removal of asbestos, PCB's, and other hazardous materials, or disposal actions mandated by Congress.

(14) Outleasing of historic lighthouse properties as outlined in the Programmatic Memorandum of Agreement between the Coast Guard, Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers.

(15) Transfer of real property from the Coast Guard to the General Services Administration, Department of the Interior, and other Federal departments and agencies, or as mandated by Congress; and the granting of leases, permits and easements where there is no substantial change in use of the property.

(16) Renewals and minor amendments of existing real estate licenses or grants for use of government-owned real property where prior environmental review has determined that no significant environmental effects would occur. (Checklist not required.)

(17) New grants or renewal of existing grants of license, easement, or similar arrangements for the use of existing rights-of-way or incidental easements complementing the use of existing rights-of-way for use by vehicles; for such existing rights-of-way as electrical, telephone, and other transmission and communication lines; water, wastewater, stormwater, and irrigation pipelines, pumping stations, and facilities; and for similar utility and transportation uses.

(18) Defense preparedness training and exercises conducted on other than USCG property, where the lead agency or department is not USCG or DOT and the lead agency or department has responsibility for NEPA compliance. (Checklist not required).

(19) Defense preparedness training and exercises conducted on USCG property that do not involve undeveloped property or increased noise levels over adjacent property and that involve a limited number of personnel, such as exercises involving primarily electronic simulation or command post personnel.

(20) Simulated exercises, including tactical and logistical exercises that involve small numbers of personnel. (Checklist not required.)

(21) Training of an administrative or classroom nature. (Checklist not required.)

(22) Operations to carry out maritime safety, maritime law enforcement, search and rescue, domestic ice breaking, and oil or hazardous substance removal programs that have been the subject of a programmatic NEPA analysis and documentation. (Checklist not required.)

(23) Actions performed as a part of Coast Guard operations to carry out statutory authority in the area of establishment of floating and minor fixed aids to navigation, except electronic sound signals. (Checklist not required.)

(24) Routine movement of personnel and equipment, and the routine movement, handling and distribution of nonhazardous and hazardous materials and wastes in accordance with applicable regulations. (Checklist not required.)

(25) USCG participation in disaster relief efforts under the guidance or leadership of another Federal agency that has taken responsibility for NEPA compliance. (Checklist not required.)

(26) Studies, data and information gathering that involve no physical change to the environment. Examples include topographic surveys, bird counts, wetland mapping and other inventories. (Checklist not required.)

(27) Natural and cultural resource management and research activities that are in accordance with interagency agreements and which are designed to improve and/or upgrade Coast Guard ability to manage those resources. (Checklist not required.)

(28) Contracts for activities conducted at established laboratories and facilities, to include contractor-operated laboratories and facilities, on Coast Guard owned property where all airborne emissions, waterborne effluents, external radiation levels, outdoor noise, and solid and bulk waste disposal practices are in compliance with existing applicable federal, state, and local laws and regulations.

(29) Approval of recreational activities (such as a Coast Guard unit picnic) which do not involve significant physical alteration of the environment, increases in human disturbance in sensitive natural habitats, disturbance of historic properties and which do not occur in, or adjacent to, areas inhabited by threatened or endangered species.

(30) Review of documents such as studies, reports, analyses, and the like, prepared for legislative proposals not originating in DOT and relating to matters which are not the primary responsibility of the Coast Guard. (Checklist not required.)

(31) Planning and technical studies which do not contain recommendations for authorization or funding for future construction, but may recommend further study. This includes engineering efforts or environmental studies undertaken to define the elements of a proposal or alternatives sufficiently so that the environmental effects may be assessed and does not exclude consideration of environmental matters in the studies. (Checklist not required.)

(32) Bridge Administration Program actions which can accurately be described as one of the following:

(a) Modification or replacement of an existing bridge on essentially the same alignment or location. Excluded are bridges with historic significance or bridges providing access to undeveloped barrier islands and beaches.

(b) Construction of pipeline bridges for transporting potable water.

(c) Construction of pedestrian, bicycle, and/or equestrian bridges and stream gauging cableways used to transport people.

(d) Temporary replacement of a bridge which commences immediately after a natural disaster or a catastrophic failure occurs, and such bridge project is related to public safety, health and welfare.

(e) Promulgation of operating regulations or procedures for drawbridges.

(f) Identification of advance approval waterways under 33 CFR 115.70.

(g) Any Bridge Program action which is classified as a Categorical Exclusion by another Department of Transportation agency acting as lead agency for such an action.

(33) Preparation of guidance documents that implement, without substantive change, the applicable Commandant Instruction or other federal agency regulations, procedures, manuals, and other guidance documents. (Checklist not required.)

(34) Promulgation of the following regulations (Note, when relying upon a CE in promulgating regulations, a Categorical Exclusion Determination (Enclosure 6) must be completed and filed in the rulemaking docket before publication of the NPRM or of the Final Rule without NPRM):

(a) Regulations of an editorial or procedural nature. Examples include, but are not limited to, regulations addressing consolidation or reorganization of regulations from various parts of the CFR, delegations of authority, matters of internal agency

organization or personnel administration, and changes to record keeping requirements. (Checklist not required.)

(b) Regulations disestablishing, or changing the size of existing Special Anchorage Areas or anchorage grounds.

(c) Regulations establishing or disestablishing security or safety zones.

(d) Special local regulations issued as a condition of a granted regatta permit that was issued after appropriate environmental analysis. (Checklist not required.)

(e) Regulations in aid of navigation, such as those concerning rules of the road, bridge to bridge communications, and marking of navigation systems.

(35) Routine approvals of regatta and marine parade permits for marine events which are accurately described as follows:

(a) Fishing tournaments involving up to approximately fifty powerboats (approximately 26 feet in length with engines of approximately 50 HP) and not more than approximately 200 spectator craft.

(b) Sailing competitions or demonstrations involving up to approximately fifty sailboats (approximately 26 to 50 feet in length which may have auxiliary propulsion of approximately 50 HP) and not more than approximately 200 spectator craft.

(c) Sailing competitions or demonstrations involving up to approximately 100 sailboats or sailboards (approximately 26 feet in length) and not more than approximately 200 spectator craft.

(d) Paddling, rowing or floating competitions or demonstrations involving up to approximately 200 canoes, kayaks, rowboats, rowing sculls or rafts (approximately 26 feet in length) and not more than approximately 200 spectator craft.

(e) Rowing competitions or demonstrations involving up to approximately 200 racing shells (approximately 60 feet in length) and not more than approximately 200 spectator craft.

(f) Parades involving up to approximately 100 sailboats, powerboats, unpowered watercraft, or a combination thereof (of up to approximately 50 feet in length with up to approximately 50 HP primary or auxiliary propulsion), operating at no or low wake speed and not more than approximately 200 spectator craft.

(g) Swimming competitions involving up to approximately 800 swimmers and not more than approximately 200 spectator craft.

(h) Fireworks displays over water not lasting over approximately 30 minutes and involving not more than approximately 200 spectator craft.

Dated: January 12, 1994.

P.A. Bunch,

Rear Admiral, U.S. Coast Guard, Chief, Office of Engineering, Logistics and Development.

[FR Doc. 94–1375 Filed 1–19–94; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Aviation Rulemaking Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of Aircraft Dispatchers Working Group.

SUMMARY: Notice is given of the establishment of an Aircraft Dispatchers Working Group of the FAA Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of the ARAC on training and qualification issues.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Toula, Assistant Executive Director for Training and Qualification Issues, Manager, Air Carrier Training Branch, Flight Standards Service, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3718.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has established the Aviation Rulemaking Advisory Committee (ARAC) (56 FR 2190, January 22, 1991; and 58 FR 9230, February 19, 1993). One area of the ARAC deals with training and qualification issues. These issues involve training and qualification of air carrier crewmembers and other air transportation employees.

The Aircraft Dispatchers Working Group is being formed to review part 65, subpart C and appendix A to part 65 of the Federal Aviation Regulations (FAR) to update the eligibility, knowledge, experience and skill requirements for aircraft dispatchers. The Aircraft Dispatchers Working Group will forward recommendations to the ARAC, which will determine whether to forward them to the FAA.

Specifically, the Aircraft Dispatchers Working Group is charged with reviewing part 65, subpart C and appendix A to part 65 of the Federal Aviation Regulations and making recommendations to the ARAC concerning whether new or revised eligibility, knowledge, experience and skill requirements for aircraft dispatchers are appropriate.

If the ARAC determines that a Notice of Proposed Rulemaking or Advisory Circular would be appropriate, those documents are to be submitted in the format prescribed by the FAA.

Reports

A. The Working Group should recommend timeline(s) for completion of the task, including the rationale, for consideration at the meeting of the ARAC to consider training and qualification issues held following publication of this notice.

B. The Working Group will give a status report of the task at each meeting of the ARAC held to consider training and qualification issues.

The Aircraft Dispatchers Working Group will be comprised of experts from those organizations having an interest in the tasks assigned. A Working Group member need not necessarily be a representative of one of the member organizations of the ARAC. An individual who has expertise in the subject matter and desires to become a member of the Working Group should write the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task, and the expertise he or she will bring to the Working Group. The request will be reviewed with the ARAC Assistant Chair for Training and Qualifications Issues and the Chair of the Aircraft Dispatchers Working Group, and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the formation and use of the ARAC is necessary and in the public interest in connection with the performance of duties of the FAA by law. Meetings of the ARAC to consider training and qualification issues will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Aircraft Dispatcher Working Group will not be open to the public except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of Working Group meetings will be made.

Issued in Washington, DC, on January 13, 1994.

Thomas Toula,

Assistant Executive Director for Training and Qualification Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 94–1352 Filed 1–19–94; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc., Special Committee 177; Eighth Meeting; Test Criteria and Guidance Relative to Portable Electronic Devices Carried on Board Aircraft; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 177 meeting to be held February 2–3, starting at 9 a.m. The meeting will be held at the Electronic Industries Association, 2001 Pennsylvania Avenue, NW., 9th Floor, Washington, DC 20006.

The agenda for this meeting is as follows: (1) Chairman's remarks; (2) Approval of the summary of the seventh meeting; (3) Presentations of subcommittees: (a) Testing Methods and Criteria (b) PED Testing (c) In-Aircraft Testing (d) Reporting Procedures; (4) Discussion of test plans; (5) Task assignments; (6) New/other business; (7) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 11, 1994.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 94–1351 Filed 1–19–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

[Treasury Directive Number: 12–26]

Delegation of Authority To Approve the Use of Cash for Official Travel

Date: January 6, 1994.

1. *Delegation.* This Directive delegates to heads of bureaus, the Deputy Assistant Secretary (Administration), and the Inspector General, the authority to approve all cash purchases of passenger transportation services costing more than $100, including instances where a Federal traveler has failed to use a Government Transportation Request (GTR), a Government Travel Account (GTA), or contractor-issued Government employee charge card. This delegation is in accordance with Federal Property Management Regulation (FPMR) Temporary Regulation G–37, as published in the **Federal Register** on July 26, 1993 (58 FR 39664).

2. *Scope.* This Directive applies to all bureaus, the Departmental Offices (DO), and the Office of Inspector General (OIG). For the purposes of this directive, the term "bureau" includes DO and the OIG.

3. *Redelegation.* Authority may be redelegated to the Bureau Chief Financial Officer, or the equivalent management official at regional locations, to approve the use of cash in excess of $100 for the procurement of transportation services. No other redelegation shall be permitted. Redelegations from bureau heads shall be in writing, and copies of the redelegation shall be retained to permit examination by GSA auditors.

4. *Background.*

a. FPMR Amendment G–43, July 6, 1977, transmitted part 101–41 to establish the policy and procedures governing documentation and audit of payments for domestic and foreign freight and passenger transportation services furnished for the account of the United States. Section 101–41.203 pertains to procurement of transportation services. The GTR, Government contractor-issued charge card, and the GTA are the preferred means for procuring transportation services. Bureaus have had authority to approve emergency cash payments exceeding the $100 limit but were required to request a written exemption from GSA for nonemergency use of cash payments exceeding $100.

b. On July 26, 1993, GSA published a temporary regulation (FPMR Temp. Reg. G–57) which amends 41 CFR 101–41.203 and eliminates the requirement for agencies to request a written exemption from the GSA for approval of cash purchases of nonemergency transportation services exceeding the $100 limit. FPMR Temporary Regulation G–57 expires July 31, 1994.

5. *Procedures.*

a. As long as the conditions set out in FPMR Temp. Reg. G–57 are met, bureau heads, or the Bureau Chief Financial Officers, may approve the use of cash to procure emergency or nonemergency transportation services costing more than $100. In the interest of promoting good cash management, all other methods of disbursement should be considered before providing cash. Approval shall be granted prior to travel only when sufficient justification has been documented.

b. To justify the use of cash in excess of $100 instead of a Government provided method of payment when procuring passenger transportation services, both the bureau head, or designated representative, and the traveler shall certify on the travel voucher the reasons for such use.

c. Cash purchases of transportation services in excess of $100 in non-emergency circumstances shall be discouraged and kept to a minimum. Cash shall not be used to circumvent the use of city-pair contracts. DO, bureaus and OIG shall establish procedures to encourage travelers to use a GTR, Government contractor-issued charge card, or GTA instead of cash to purchase passenger transportation services. Use of a credit card other than the GSA contractor-issued Government employee charge card, or use of travelers checks shall be considered the equivalent of cash and subject to the $100 limitation.

d. Travelers using cash to purchase individual passenger transportation services shall procure such services directly from carriers or from travel agents under GSA contract and shall account for those expenses on their travel vouchers, furnishing passenger coupons or other evidence as appropriate. Furthermore, travelers shall assign to the Government the right to recover any excess payments involving carriers' use of improper rates. That assignment must be preprinted or otherwise annotated on the travel voucher and shall be initialed by the traveler.

e. Each bureau shall apprise travelers using cash to procure passenger transportation services of the provision of FPMR 101–41.209–4 concerning a carrier's liability for liquidated damages because of failure to provide confirmed reserved space.

f. Travelers using cash to procure passenger transportation services shall adhere to the regulations of the General Accounting Office (4 CFR 52.2) regarding the use of U.S. flag vessels and air carriers.

g. Should a traveler make repeated cash purchases without just cause or deliberately attempt to circumvent use of GSA contract air or rail service for personal convenience, the bureau may send all documents related to the travel to the General Accounting Office, Claims Section, Washington, DC, 20548, for a decision on the traveler's right to reimbursement as provided in 31 U.S.C. 3702.

6. *Recordkeeping.* Travel vouchers shall be maintained in the bureau to be available for site audit by GSA auditors. General Records Schedule 9, "Travel and Transportation Records," provides instructions for the disposal of travel vouchers. Suspected travel management errors and/or misroutings which result in higher travel costs to the Government

will be reported by GSA (FWP) to the appropriate bureau travel manager for appropriate action.

7. *Reporting Requirements.* After the traveler has been reimbursed for a cash purchase, copies of the travel authorization, ticket coupons, and any ticket refund applications, or Standard Form 1170, "Redemption of Unused Tickets," shall be forwarded within three working days for audit to the GSA, Transportation Audit Division (FWA), Attention: Code E, Washington, DC 20405.

8. *Expiration Date.* This Directive expires on July 31, 1994, unless superseded or canceled prior to that date.

9. *Authority.* 41 CFR 101–41.203, as amended by FPMR Temp. Reg. G–57.

10. *Office of Primary Interest.* Office of Management Support Systems, Management Programs Directorate, Office of the Deputy Assistant Secretary (Management), Office of the Assistant Secretary (Management)/Chief Financial Officer.

George Muñoz,

Assistant Secretary (Management)/Chief Financial Officer.

[FR Doc. 94–1345 Filed 1–19–94; 8:45 am]

BILLING CODE 4810–25–P

[Treasury Directive Number: 34–01]

Waiver of Claims for Erroneous Payments

Dates: January 6, 1994.

1. *Purpose.* This Directive delegates authority to waive claims of the Government against an employee for erroneous payments of pay and allowances, and erroneous payments of travel, transportation, and relocation expenses and allowances.

2. *Scope.* This directive applies to all bureaus, the Departmental Offices (DO), and the Office of Inspector General (OIG).

3. *Policy.* It is the policy of the Department of the Treasury that standards and procedures for granting waiver of claims to an employee for erroneous payments of pay and allowances, and erroneous payments of travel, transportation, and relocation expenses and allowances, pursuant to 5 U.S.C. 5584 and 4 CFR parts 91 and 92, shall be in compliance with the applicable laws and regulations.

4. *Background.*

a. 5 U.S.C. 5584, as amended, authorizes the waiver, in certain instances, of claims due to the United States by an employee for erroneous payments of pay and allowances, and erroneous payments of travel, transportation, and relocation expenses and allowances.

b. Public Law (Pub. L.) 102–190 (1991) amended 5 U.S C. 5584 to increase from $500 to $1,500 the amount of a claim that an agency may waive under that statute. The General Accounting Office (GAO) published a final rule at 56 FR 67467 (1991) which revised the GAO waiver regulations at 4 CFR parts 91 and 92 accordingly. The head of an agency, or the designated official, now has the authority for granting waiver of claims in the aggregated amount of not more than $1,500. Page 2 TD 34–01

c. Waiver of a claim in the aggregated amount of more than $1,500 shall be submitted to GAO for a consideration.

5. *Delegation.* This Directive authorizes the Deputy Assistant Secretary (Administration), the heads of bureaus, and the Inspector General to perform the following functions for their respective organizations.

a. Waive, in whole or in part, a claim of the United States against an employee arising out of an erroneous payment of pay and allowances, for an erroneous payment of travel, transportation, and relocation expenses and allowances, aggregating not more than $1,500, in accordance with the limitations and standards set forth in 5 U.S.C. 5584, and the regulations of the Comptroller General in 4 CFR parts 91 and 92.

b. Deny requests for waivers in any amount. If a request for waiver is denied, the employee from whom collection is sought must be advised of the right to appeal the denial to GAO pursuant to the procedures in 4 CFR part 92.

c. Refer a report or investigation to the Comptroller General for a determination, where appropriate under the applicable regulations. Such referrals shall be governed by this directive, rather than the procedures of Treasury Directive (TD) 32–09, "Correspondence with the General Accounting Office."

6. *Redelegation.* The Deputy Assistant Secretary (Administration), the heads of bureaus, and the Inspector General may delegate this authority, in writing, to a deputy or assistant bureau head, or to Bureau Chief Financial Officer or equivalent.

7. *Responsibilities.* The Deputy Assistant Secretary (Administration), the heads of bureaus, the Inspector General, their deputy or assistant, or the Bureau Chief Financial Officer or equivalent, for their respective organizations, shall:

a. Promptly notify an employee upon discovery of an erroneous payment to that employee;

b. Compile the written report described in 4 CFR 92.3;

c. Notify the employee, in writing, of the disposition of a request for waiver and any right to appeal, as required by 4 CFR 92.4;

d. Pay a refund when appropriate if a waiver is granted; and

e. Fulfill any other responsibility of the agency imposed by 5 U.S.C. 5584 or 4 CFR Parts 91 and 92, or other applicable laws or regulations.

8. *Reporting Requirements.*

a. The Department is not required to submit an annual written report to GAO. However, the Department still is required to maintain a register of waiver actions, subject to GAO review. In addition, each bureau is required to retain the written record of each waiver action for 6 years and 3 months. The written record is defined at 4 CFR 92.7.

b. Treasury bureaus are required to submit an annual waiver of claims report for the fiscal year ending September 30 to the Department's Deputy Chief Financial Officer (CFO) not later than December 31 of each year. The Deputy CFO will issue a call letter and the report format to the Deputy Assistant Secretary (Administration) and Bureau CFOs.

c. The bureau annual waiver of claims report shall contain the following information.

(1) The total amount waived by the bureau.

(2) The number and dollar amount of waiver applications granted in full.

(3) The number and dollar amount of waiver applications granted in part and denied in part.

(4) The number and dollar amount of waiver applications denied in their entirety.

(5) The number of waiver applications referred to the GAO for action.

(6) The dollar amount refunded as a result of waiver action by the bureau.

(7) The dollar amount refunded as a result of waiver action by the GAO.

9. *Cancellations.* The following directives have been superseded.

a. TD 12–01, "Waiver of Claims for Erroneous Payment," dated February 13, 1989, is superseded.

b. TD 34–01, "Debt Claims Due the Department of the Treasury," dated December 15, 1980, is superseded.

10. *Authorities.*

a. 5 U.S.C. 5584, as amended, "Claims for Overpayment of Pay and Allowances, and of Travel, Transportation and Relocation Expenses and Allowances."

b. 4 CFR Part 91, "Standards for Waiver."

c. 4 CFR Part 92, "Procedure."

d. GAO Title 4, "Claims," GAO Policy and Procedures Manual for Guidance of Federal Agencies.

11. *Office of Primary Interest.* Office of Accounting and Internal Control, Office of the Deputy Chief Financial Officer, Office of the Assistant Secretary (Management)/Chief Financial Officer.

George Muñoz,

Assistant Secretary (Management)/Chief Financial Officer.

[FR Doc. 94–1344 Filed 1–19–94; 8:45 am]

BILLING CODE 4810–25–P

[Treasury Order Number: 150–02]

Establishment of Certain Offices in the National Office of the Internal Revenue Service

Dated: January 11, 1994.

1. By the authority vested in the Secretary of the Treasury by 31 U.S.C. 321(b), sections 7801(a), 7802 and 7803 of the Internal Revenue Code of 1986, and Reorganization Plan No. 1 of 1952, pursuant to section 7804(a) of the Internal Revenue Code, all offices in the National Office of the Internal Revenue Service (IRS) shall continue uninterrupted, except that:

a. The Chief Operations Officer position is abolished;

b. The following new positions reporting to the Commissioner through the Deputy Commissioner are established: Chief, Management and Administration; Chief, Strategic Planning and Communications; Chief, Taxpayer Services; Chief Compliance Officer; and Chief, Headquarters Operations;

c. The position of Assistant to the Commissioner (Taxpayer Ombudsman) is retitled Taxpayer Ombudsman;

d. The position of Tax Systems Modernization Program Manager has expanded responsibilities and is retitled Modernization Executive reporting to the Commissioner through the Deputy Commissioner; and

e. The following Assistant Commissioner positions are abolished: (Planning and Research), (Finance), (Human Resources and Support), and (Returns Processing).

2. The changes in paragraph 1. shall be implemented at an appropriate time or times as determined by the Commissioner of Internal Revenue. Effective immediately, the Commissioner of Internal Revenue is authorized to effect such transfers of functions, personnel, positions, equipment and funds as may be necessary to implement the provisions of this Order.

3. Except for the specific positions and titles in paragraphs 4. through 15. of this Order, the Commissioner may create, abolish, or modify offices and positions within the IRS as may be necessary to effectively and efficiently administer the tax laws or other responsibilities assigned to the IRS. The authority of the Commissioner to create, abolish, or modify offices under this delegation is subject only to limitations that exist by law or Department of the Treasury rules and regulations, including Treasury Directive 21–01, "Organizational Changes."

4. *Office of Commissioner of Internal Revenue.* The Office of the Commissioner shall consist of the Commissioner; Deputy Commissioner; Chief Financial Officer; Chief Information Officer; Chief, Management and Administration; Chief, Strategic Planning and Communications; Chief, Taxpayer Services; Chief Compliance Officer; Chief, Headquarters Operations; Chief Inspector; Taxpayer Ombudsman; Assistants to the Commissioner (except Legislative Liaison, Equal Opportunity, Quality, and Public Affairs); Assistant to the Deputy Commissioner; and Modernization Executive.

5. *Deputy Commissioner.* The Deputy Commissioner is the highest career official in the IRS and has line authority over all IRS officials and operations, except the Chief Inspector. The Deputy Commissioner is responsible for the following activities.

a. Assists and acts for the Commissioner in planning, directing, coordinating and controlling the policies, programs and other activities of the IRS.

b. Assists the Commissioner in establishing tax administration policy and developing strategic issues and objectives as a basis for strategic management of the Service.

c. Supervises the Chiefs in the Office of the Commissioner (except Chief Inspector); Taxpayer Ombudsman; Modernization Executive; Assistants to the Commissioner (except Legislative Liaison, Public Affairs, Quality, and Equal Opportunity); Assistant to the Deputy Commissioner; and Regional Commissioners.

6. *Modernization Executive.* The Modernization Executive advises the Commissioner and acts as the main IRS spokesperson on the IRS Business Vision and transition activities, including establishing prototype sites to test new organizational concepts and resolving operational and strategic issues with cross-functional impact. The Modernization Executive leads development of IRS policy on implementing new ways of doing business, establishing the strategic direction and providing a critical evaluation of integrated operational and transition activities.

7. *Chief Compliance Officer.* The Chief Compliance Officer is the principal advisor to the Commissioner and Deputy Commissioner on policy and operational matters affecting compliance functions. The Chief Compliance Officer is responsible for the following activities.

a. Serves as national spokesperson for the field compliance functions, which include:

(1) Compliance research;

(2) Delinquent accounts and returns;

(3) Criminal tax fraud investigation;

(4) Tax return examination;

(5) Employee plans and exempt organizations approval and examination;

(6) Tax treaty administration;

(7) Foreign tax administration assistance; and

(8) Disclosure.

b. Supervises the Assistant Commissioners (Collection), (Criminal Investigation), (Employee Plans and Exempt Organizations), (Examination), and (International), and the Directors of: Research, and Statistics of Income.

c. Represents IRS, as designated by the Commissioner or Deputy Commissioner, to other executive branch agencies, the Congress, other tax authorities and the public on field compliance operations and major cross-functional issues related to compliance.

8. *Chief, Taxpayer Services.* The Chief, Taxpayer Services, is the principal advisor to the Commissioner and Deputy Commissioner on policy and operational matters affecting taxpayer assistance, and tax return and document processing. The Chief, Taxpayer Services, is responsible for the following activities.

a. Serves as national spokesperson for the field taxpayer services functions, which include:

(1) Assisting taxpayers in complying with the tax laws; and

(2) Processing tax returns and information documents.

b. Supervises the Assistant Commissioner (Taxpayer Services) and the Directors for: Input Processing, and Case Processing.

c. Represents IRS, as designated by the Commissioner or Deputy Commissioner, to other executive branch agencies, the Congress, other tax authorities and the public on field taxpayer services operations and major cross-functional issues related to taxpayer services.

9. *Chief Financial Officer.* The Chief Financial Officer is the principal

advisor to the Commissioner and Deputy Commissioner on Servicewide financial management and revenue accounting and is responsible for the following activities.

a. Serves as the main IRS spokesperson on planning and managing financial resources, including formulating budgets and controlling their execution; and accounting for revenue collected by the Service.

b. Establishes practices, procedures, standards and controls for the Service's financial systems.

c. Supervises the following Directors of: Budget, Accounting Standards and Systems, and Financial Management; and the Chief, Revenue Accounting.

d. Represents IRS, as designated by the Commissioner or Deputy Commissioner, to other executive branch agencies, Congress, other tax authorities and the public on the management of financial resources, and major cross-functional issues related to financial management.

10. *Chief, Management and Administration.* The Chief, Management and Administration, is the principal advisor to the Commissioner and Deputy Commissioner on Servicewide management of human resources and procurement and is responsible for the following activities.

a. Serves as national spokesperson for the management of human resources and procurement, which include:

(1) Administering human resource policies;

(2) Providing Servicewide guidance on facilities and logistical support; and

(3) Contracting.

b. Establishes practices, procedures, standards and controls for IRS human resource and procurement systems.

c. Supervises the Assistant Commissioner (Procurement), the Assistant to the Commissioner (Equal Opportunity), and the Directors of: Human Resources, Training and Development, Facilities and Information Management Systems, and Analysis and Studies.

d. Represents IRS, as designated by the Commissioner or Deputy Commissioner, to other executive branch agencies, Congress, other tax authorities, and the public on the management of human resources and procurement, and on major cross-functional issues related to management and administration.

11. *Chief Information Officer.* The Chief Information Officer is the principal advisor to the Commissioner and Deputy Commissioner on Servicewide information resources and technology management. The Chief Information Officer is responsible for the following activities.

a. Serves as the main IRS spokesperson on the planning, developing, and managing of information resources, including:

(1) Strategic technology planning;

(2) Data administration and privacy assurance;

(3) Technology standards; and

(4) Telecommunications.

b. Establishes policies, practices, standards and controls affecting these functions and the development and acquisition of computer hardware and software.

c. Provides the focus for technology management and plays an essential role in shaping and fostering a shared commitment to technology goals and programs.

d. Supervises the Assistant Commissioners (Information Systems Development) and (Information Systems Management), the Privacy Advocate, and the Systems Architects.

e. Represents IRS, as designated by the Commissioner or Deputy Commissioner, to other executive branch agencies, the Congress, other tax authorities, and the public on Servicewide information resources and technology management and major cross-functional issues related to information systems.

12. *Chief, Strategic Planning and Communications.* The Chief, Strategic Planning and Communications, is the principal advisor to the Commissioner and Deputy Commissioner on Servicewide planning and internal and external communications and is responsible for the following activities.

a. Serves as national spokesperson for the planning and communications functions, which include:

(1) Administering the Strategic Management System; and

(2) Developing communications strategies and mechanisms for internal and external stakeholders.

b. Supervises the following Assistants to the Commissioner: (Public Affairs), (Quality) and (Legislative Liaison); the Directors of: Tax Forms and Publications, and Planning; and the Chief, Publishing Services.

c. Represents IRS, as designated by the Commissioner or Deputy Commissioner, to other executive branch agencies, Congress, other tax authorities, and the public on Servicewide strategic management, communications and major cross-functional issues related to planning and communications.

13. *Chief, Headquarters Operations.* The Chief, Headquarters Operations, advises the Commissioner and Deputy Commissioner on all aspects of managing IRS headquarters operations and is responsible for program management for headquarters support and services, human resources, financial operations, budget formulation and execution, automated data processing activities, equal opportunity, diversity, ethics, and internal communications.

14. *Chief Inspector.* The Chief Inspector shall, to ensure objectivity and integrity, report directly to the Commissioner.

15. *Chief Counsel.* The Office of the Chief Counsel is an office within the Department of the Treasury Legal Division. The Chief Counsel, pursuant to delegated authority from the General Counsel of the Treasury, is authorized to take necessary action on certain personnel and administrative matters pertaining to the Office of the Chief Counsel, including but not limited to those for the appointment, classification, promotion, demotion, reassignment, transfer or separation of officers or employees; however, all personnel and administrative matters concerning Senior Executive Service or managers, management officials and supervisory employees (Grade 13 and above) in the Offices of Associate Chief Counsel (International), (Domestic), and (Employee Benefits and Exempt Organizations), whose primary duties do not involve litigation, and the Office of the National Director of Appeals, shall be approved by the Commissioner of Internal Revenue prior to implementation.

a. The National Director of Appeals is supervised by the Chief Counsel. The Commissioner of Internal Revenue exercises line supervision over the Chief Counsel for this function.

b. The Commissioner of Internal Revenue shall exercise the final authority of the IRS concerning substantive interpretation of the tax laws as reflected in legislative and regulatory proposals, revenue rulings, letter rulings, and technical advice memoranda.

16. *Cancellation.* This Order supersedes Treasury Order 150–02, "Establishment of Certain Offices in the National Office of the Internal Revenue Service," dated October 4, 1991.

Lloyd Bentsen,

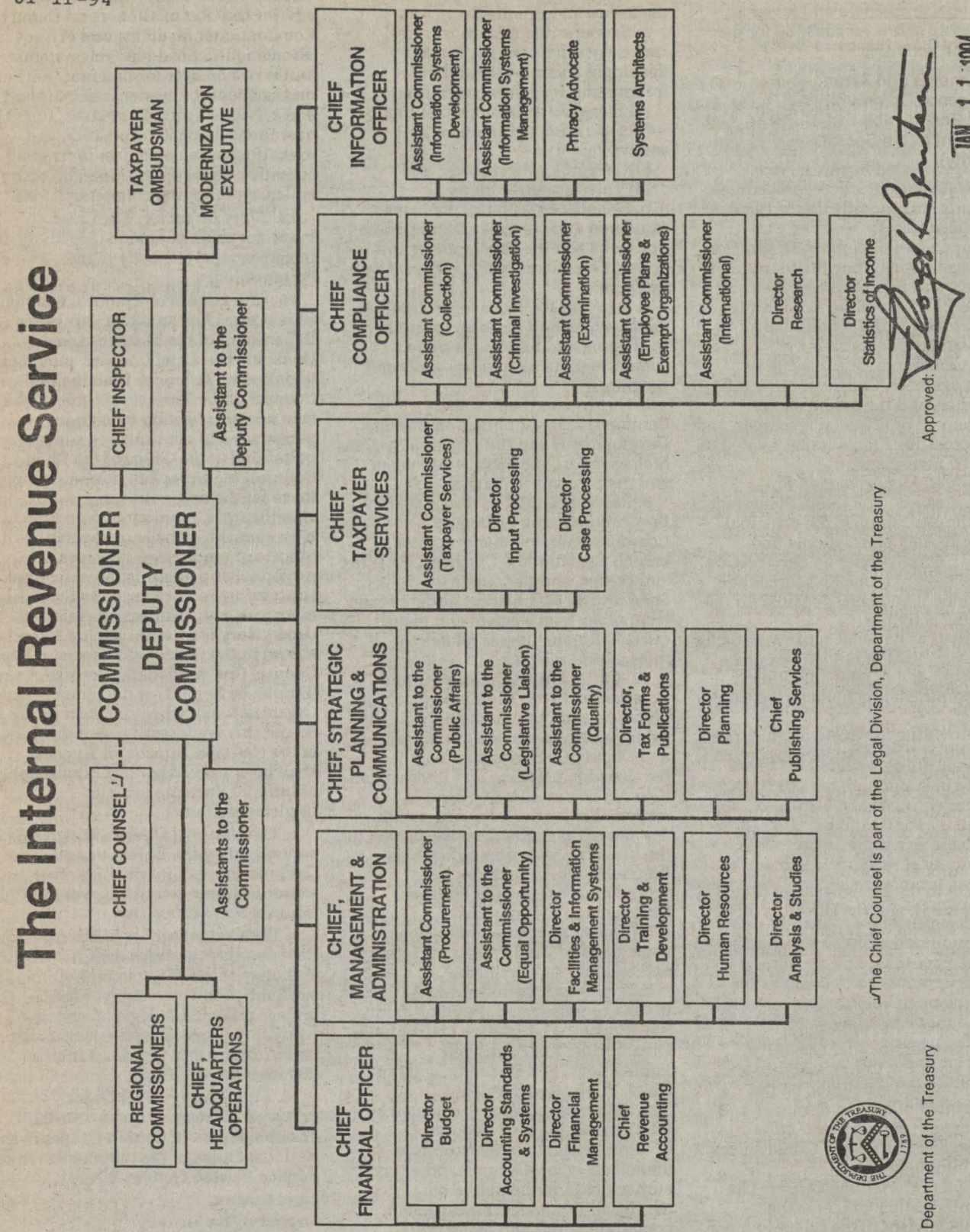
Secretary of the Treasury.

Attachment.

BILLING CODE 4810–25–P

TO 150-02
01-11-94

Attachment



[FR Doc. 94–1347 Filed 1–19–94; 8:45 am]
BILLING CODE 4810–25–C

[Treasury Order Number: 113–01]

Agreements and Arrangements with Intelligence Community Agencies, and Other Responsibilities of the Special Assistant to the Secretary (National Security)

January 11, 1994.

By virtue of the authority vested in the Secretary of the Treasury, including the authority vested in the Secretary by 31 U.S.C. 321(b) and Executive Order (E.O.) 12333, it is ordered that:

1. The Special Assistant to the Secretary (National Security) shall report to the Secretary and the Deputy Secretary. For purposes of administrative and managerial control, the Special Assistant to the Secretary (National Security) and the Office of Intelligence Support shall be part of the Executive Secretariat.

2. The Special Assistant to the Secretary (National Security) shall:

a. Provide day-to-day intelligence support to the Secretary and other officials; and

b. Represent Treasury on intelligence community committees and maintain continuous liaison with elements of the community.

3. Agreements and Arrangements with Intelligence Community Agencies. The Special Assistant to the Secretary (National Security) shall review and coordinate all agreements and arrangements governing Treasury activity in support of one or more agencies within the intelligence community, as defined in E.O. 12333, or its successor, and for any intelligence community activity in support of one or more subordinate organizational units ("components") within the Department of the Treasury.

a. Any proposed agreement or arrangement involving one or more Treasury components acting either on a recurring or ad hoc basis in support of one or more intelligence community agencies, or vice versa, shall be reduced to writing and transmitted to the Special Assistant. Except as otherwise directed by the Secretary, the Special Assistant, after consultation with the General Counsel and Executive Secretary, shall submit the agreement or arrangement directly to the Secretary or Deputy Secretary for review and approval.

b. The Special Assistant to the Secretary (National Security) is authorized to review and monitor, at that official's discretion, all such agreements and arrangements now in effect, and to report on a continuing basis regarding their status to the Secretary and Deputy Secretary.

c. In exigent circumstances, the Special Assistant to the Secretary (National Security) may approve proposed agreements or arrangements of a noncontroversial nature. As soon as possible thereafter, the Special Assistant shall follow the procedure set out in paragraph 3.a.

d. Department of the Treasury components shall notify the Special Assistant to the Secretary (National Security) each time they act pursuant to any agreement or arrangement approved under this or any predecessor Order.

4. This Order shall not affect in any way the normal reporting relationships and operational responsibilities of Treasury officials. This Order does not apply to the routine exchange between the intelligence community and the Department of the Treasury of substantive intelligence information and recurring reports.

5. The Office of Intelligence Support, under the direction of the Special Assistant to the Secretary (National Security), shall:

a. screen and distribute, to appropriate Treasury officials, relevant State Department telegrams;

b. prepare daily cable summaries and regular wire service news summaries on items of interest to Treasury officials;

c. screen and distribute intelligence reports and publications to appropriate Treasury officials; and

d. provide other intelligence support to the Secretary and other Treasury officials as appropriate.

6. *Cancellation.* Treasury Order 113–01, "Redesignation of the Assistant Secretary for Policy Development as the Assistant Secretary for Policy Management," dated March 30, 1989, is superseded.

Lloyd Bentsen,

Secretary of the Treasury.

[FR Doc. 94–1346 Filed 1–19–94; 8:45 am]
BILLING CODE 4810–25–P

Bureau of Alcohol, Tobacco and Firearms

Privacy Act of 1974, as Amended; System of Records

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Notice of alteration of Privacy Act system of records.

SUMMARY: The Treasury Department, Bureau of Alcohol, Tobacco and Firearms (ATF), gives notice of proposed alteration to the system of records entitled Fiscal Record System—Treasury/ATF .004, which is subject to the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988. The system notice was last published in its entirety in the **Federal Register**, Vol. 57, No. 75, Page 13931, April 17, 1992.

DATES: Comments must be received no later than February 22, 1994. The alteration to the system of records will be effective March 1, 1994, unless comments are received which result in a contrary determination.

ADDRESSES: Comments should be sent to Disclosure Branch, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Room 8250, Washington, DC 20226. Comments will be made available for inspection and copying in the Bureau Reference Library upon request.

FOR FURTHER INFORMATION CONTACT: Joyce Thomas, Senior Disclosure Specialist, Disclosure Branch, Bureau of Alcohol, Tobacco and Firearms (202) 927–8480 or Patricia Perpal, Financial Analyst, (202) 927–8629.

SUPPLEMENTARY INFORMATION: The purpose of the alteration is to bring the existing Privacy Act notice into compliance with the requirements of the Privacy Act as amended in 1988. The proposed amendment adds six new routine uses. The new routine uses will enable ATF to participate in the Government-wide Federal salary and administrative offset program, in the tax refund offset program authorized under 31 U.S.C. subsection 3720A, and to otherwise recoup its non-tax debt. In addition to the above, categories of individuals, categories of records, and record source categories are also being altered for the reasons stated above. The amendment also makes certain editorial changes and adds text to certain elements.

The specific changes to the record system being altered are set forth below:

Treasury/ATF .004

SYSTEM NAME:

Fiscal Record System—Treasury/ATF.

SYSTEM LOCATION:

Description of change: After "Bureau of Alcohol, Tobacco and Firearms", remove "1200 Pennsylvania Avenue, NW" and change address to read "650 Massachusetts Avenue, NW."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Description of change: Following "(4) Vendors furnishing goods and services to the Bureau.", add "(5) Individuals who are financially indebted to the U.S.

Government under some particular service or program of the Bureau."

CATEGORIES OF RECORDS IN THE SYSTEM:

Description of change: After "(12) Chief Counsel and Regional Counsel memoranda and opinions." add "(13) History of debt collection activity on individuals. (14) Correspondence with employing agencies of debtors requesting action to begin collecting delinquent debt through voluntary or involuntary offset procedures against individual's salary or benefits."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Description of change: Remove the period at the end of item (7) and substitute a semicolon(;), and add the following new routine uses: (8) the Internal Revenue Service (IRS) to obtain the mailing address of a taxpayer for the purpose of locating such person to collect a debt pursuant to 26 U.S.C. subsection 6103(m). Mailing addresses acquired from the IRS which become part of this system are released to consumer reporting agencies to obtain credit reports or to debt collection agencies and not to other governmental agencies; (9) a consumer reporting agency for the purpose of obtaining a credit report; (10) debt collection agencies for debt collection services; (11) the Defense Manpower Data Center (DMDC), Department of Defense, the U.S. Postal Service, and other agencies through authorized computer matching programs to identify and locate individuals who are delinquent in their repayment of debts owed to ATF in order to collect a debt through salary or administrative offsets; (12) other Federal agencies for the purpose of effecting interagency salary or administrative offsets as well as to the IRS, pursuant to 26 U.S.C. subsection 3720A, for the purpose of effecting tax refund offsets against a debtor; (13) any creditor Federal agency seeking assistance from ATF in requesting voluntary repayment or in implementing salary or administrative offset procedures in collection of a debt owed to the Government.

Following "Routine Uses of Records" insert:

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a (b)(12) and section 3 of the Debt Collection Act of 1982 may be made from this record system to consumer reporting agencies to encourage repayment of an overdue debt.

SYSTEM MANAGER(S) AND ADDRESS:

Descritpion of change: Remove "1200 Pennsylvania Avenue" and insert "650 Massachusetts Avenue."

NOTIFICATION PROCEDURE:

Description of change: Delete text and insert "Inquiries and Privacy Act requests from individuals seeking to determine whether information about them is contained in this system should be addressed to: Privacy Act Request, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, or can be delivered personally to this address in Room 8290."

RECORD ACCESS PROCEDURES:

Description of change: Remove "1200 Pennsylvania Avenue, NW., Room 4412" and insert "650 Massachusetts Avenue, NW., Room 8290."

* * * * *

RECORD SOURCE CATEGORIES:

Description of change: Remove the period at the end of item (5) and substitute a semicolon (;), and add the following: "(6) Creditor agencies; (7) Federal employing agency of debtor; (8) Collection agencies; (9) Federal, state or local agencies, including the IRS, furnishing address of debtor."

Dated: January 11, 1994.

Deborah M. Witchey,

Deputy Assistant Secretary (Administration).

[FR Doc. 94–1343 Filed 1–19–94; 8:45 am]

BILLING CODE 4810–31–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 13
Thursday, January 20, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:03 a.m. on Tuesday, January 18, 1994, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider a personnel matter and matters relating to the Corporation's corporate and supervisory activities.

In calling the meeting, the Board determined, on motion of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), seconded by Director Eugene A. Ludwig (Comptroller of the Currency), concurred in by Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to pubic observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c) (10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: January 18, 1994.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Acting Deputy Executive Secretary.

[FR Doc. 94–1520 Filed 1–18–94; 3:38 pm]

BILLING CODE 6714–01–M

Corrections

Federal Register
Vol. 59, No. 13
Thursday, January 20, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Foregin-Trade Zones Board

[Order No. 671]

Volusia and Flagler Counties, FL; Establishment of a Foreign-Trade Zone

Correction

In notice document 93-31397 appearing on page 68115 in the issue of Thursday, December 23, 1993, in the third column, in the first full paragraph, in the third line,"Docket 4-3" should read "Docket 4-93".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 677]

Sterling Pharmaceuticals, Inc., Barceloneta, Puerto Rico; Application

Correction

In notice document 94-513 beginning on page 1372 in the issue of Monday, January 10, 1994, on page 1372, in the third column, in the last line, "Docket 1-8-" should read "Docket 18-".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 80–9; Notice 8]
RIN 2127–AE86

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

Correction

In rule document 93-24517 beginning on page 52021 in the issue of Wednesday, October 6, 1993, make the following correction:

§ 571.108 [Corrected]

On page 52026, in the third column, in § 571.108, in S5.7.1.4.1, in paragraph (c), in the fifth line, "388" should read "38".

BILLING CODE 1505-01-D

federal register

Thursday
January 20, 1994

Part II

Department of the Interior
Bureau of Indian Affairs

Department of Health and Human Services
Indian Health Service

25 CFR Part 900

Indian Self-Determination and Education Act Amendments; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

25 CFR Part 900

RINs 0905–AC98; 1076–AC20

Indian Self-Determination and Education Act Amendments

AGENCIES: Departments of the Interior and Health and Human Services.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretaries of the Department of Interior (DOI) and the Department of Health and Human Services (DHHS) propose a joint rule to implement sections 1 through 9 and title I, Indian Self-Determination Act ("the Act") and Pubic Law 100–472, the Indian Self-Determination and Education Assistance Act amendments of 1988. A joint rule will permit the agencies to award contracts and grants to Indian tribes without the unnecessary burden or confusion associated with having two sets of rules for single program legislation. The joint rule will also permit the Departments to implement the amendments to the Act and eliminate deficiencies or problem areas which inhibited contracting under the original Act.

DATES: Comments must be submitted on or before May 20, 1994.

In addition, within the 120 day comment period, the Departments will hold a national meeting and may hold meetings at selected locations throughout the country to receive comments on this proposal from Indian and Alaska Native people and others who may be interested. We will inform Indian tribal groups and organizations of, and advertise locally, the dates and places of these meetings.

ADDRESSES: Written comments to these proposed rules may be sent to Betty J. Penn, Indian Self-Determination Amendments Regulations Comments, Chief, Regulations Branch, Office of Planning, Evaluation and Legislation, Indian Health Service, 12300 Twinbrook Parkway, suite 450, Rockville, Maryland 20852. Comments will be made available for public inspection at this address from 8:30 a.m. to 5 p.m., Monday through Friday beginning approximately 2 weeks after publication. Comments will also be available for public inspection at the DOI, room 4627, Main Interior Building, 1849 C Street, NW., Washington, DC. 20240. These comments will be available at the same time as in Rockville.

FOR FURTHER INFORMATION CONTACT: James Thomas, Division of Self-Determination Services, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW., Washington, DC. 20240, Telephone 202/208–5727 or Mitchell L. Parks, Division of Self-Determination Services, Office of Tribal Activities, Indian Health Service, 5600 Fishers Lane, Parklawn Building, room 6A–19, Rockville, Maryland 20857, Telephone 301/443–6840/1104/1044.

SUPPLEMENTARY INFORMATION: The 1975 Indian Self-Determination and Education Assistance Act gave tribes the authority to contract with the Federal Government to operate programs serving their tribal members. The Act was further amended by the Indian Self-Determination and Education Assistance Act Amendments of 1988, Public Law 100–472; Technical Assistance Act and other Acts, Public Law 98–250; Indian Reorganization Act Amendments of 1988, Public Law 100–581; Interior Appropriations Act for Fiscal Year 1988, Public Law 100–446; Miscellaneous Indian Law Amendments, Public Law 101–301; and Indian Self-Determination and Education Assistance Act Amendments of 1990, Public Law 101–644.

These Amendments were intended to increase tribal participation through contracting in the management of Federal Indian programs and to help ensure long-term financial stability for tribally-run programs.

The 1988 Amendments also require the Secretaries of DHHS and the DOI to consider and formulate appropriate regulations with the participation of Indian tribes. The accompanying Senate report called for the two Departments to issue joint regulations.

Public Participation in Pre-Rulemaking Activity

These proposed regulations were prepared during the past Administration. A major area of concern for the current Administration relates to the adequacy of outreach to, and participation in the drafting process by, tribes and tribal organizations during the post-August 1990 period. The DOI's concern is heightened by the fact that the September 1990 draft (which did reflect tribal input) was significantly modified during the more than two-year period in which the two Departments worked on the draft without tribal participation. It is our goal to develop regulations that fully meet statutory requirements and congressional intent, enable the Federal Government to fulfill its responsibilities, and address the needs of all tribes, both those who elect to contract and those who elect not to contract.

The Amendments to the Indian Self-Determination Act (ISDA) were signed by President Reagan on November 1, 1988. Section 107 of the ISDA authorizes the Secretary of the Interior and the Secretary of Health and Human Services to consider and formulate appropriate regulations to implement the 1988 ISDA Amendments, with the participation of Indian tribes. During the month of November 1988, the Bureau of Indian Affairs (BIA) and The Indian Health Service (IHS) held meetings in Arlington, Anchorage, Albuquerque, Aberdeen, Seattle, Sacramento, and Tulsa, to discuss the 1988 ISDA Amendments with tribal representatives. Nationally, over 1200 people attended these joint BIA/IHS sessions.

The BIA and the IHS subsequently held a joint Regulations Drafting Workshop with approximately 300 tribal representatives in Nashville, Tennessee, February 28 to March 3, 1989 (RDW I); a follow-up workshop was held in Albuquerque, New Mexico, on March 21–24, 1989 (RDW II). A working document was produced on April 3, 1989 as a result of the two workshops.

On October 2, 1989, a joint BIA/IHS letter was issued to indicate the decision of the two agencies to develop joint regulations. On December 21, 1989, BIA and IHS jointly released a preliminary set of draft regulations for tribal comments. In January and February, 1990, 13 regional consultation meetings were held with tribal representatives to discuss the joint draft regulations and to collect tribal comments.

On March 13, 1990, the BIA and IHS accepted recommendations from tribes to recognize and permit designated tribal representatives to participate in joint sessions to revise the December 1989 joint draft regulations. These sessions between DOI, DHHS, and tribal representatives—jointly designated as the Coordination Work Group (CWG)—began on March 9, 1990 and continued to be held periodically until the end of August 1990. In September 1990, a new set of draft regulations was issued by DOI/DHHS, reflecting the views of the CWG.

Throughout the following year, each Department conducted preliminary reviews and clearance of the draft regulations. The Secretary of HHS, Louis Sullivan, reviewed and endorsed

the positions reflected in the draft regulation on the major issues. On December 12, 1990, the DOI Secretary, Manuel Lujan, issued a memorandum setting forth his policy on implementation of the ISDA, and formally setting forth the DOI review and clearance process for the draft regulations, including review by the Departmental Review Team (DRT), composed of representatives of all DOI agencies, and resolution of unresolved issues by the Departmental Policy Group (DPG), composed of all DOI Assistant Secretaries and the Solicitor.

Revisions were made by each Department reflecting the result of this preliminary clearance. Each Department issued its own revised draft regulation in November 1991. Each Department subsequently appointed a Negotiation Team to meet and negotiate joint final regulations. The first joint meeting of the DOI and DHHS negotiation teams was held on June 12, 1992. Weekly meetings continued throughout the Summer of 1992, and the final joint DOI/DHHS draft regulations were essentially completed by October 1992.

The DHHS and the DOI have worked together to draft a joint regulatory approach that would meet the needs of both Departments. Throughout the process, the DHHS and the DOI have sought to retain as much of the advice and perspectives provided by the tribes as possible. However, there are differences with some tribal positions and new issues may arise once tribes review the text of the NPRM.

We believe, that the public comment period will provide an adequate opportunity for tribes and tribal organizations to provide comments on the current draft. The anticipated national and regional meetings, in particular, are designed to solicit additional tribal input. We look forward to receiving, and commit to give full consideration to, all comments received during the public comment period. We will send copies of this notice of proposed rulemaking (NPRM) to each federally recognized tribe and invite each tribe to participate at these meetings. We especially invite comments from tribes and tribal organizations, regarding how these proposed rules will impact on their ability to contract for programs serving their members.

The following is a summary of the major issues in each Subpart of the proposed rule.

Subpart A—General

Subpart A of the proposed regulation contains a variety of general provisions including definitions, statements of policy, and provisions governing what may be contracted under the Act, the division of programs for purposes of contracting, the amount of funding for contracts, Indian preference in training and employment, personnel, the availability of information, record retention and access to records, and monitoring by the Secretary.

The proposed regulation identifies three types of relationships between the Federal Government and Indian tribes and tribal organizations under the Act. The first type of relationship concerns the transfer of service delivery programs to tribes and tribal organizations. The Act authorizes a special type of contract with Indian tribes and tribal organizations for the operation of service programs. These "contracts" are not procurement contracts pursuant to which the Government retains control over the work performed by the contractor. Rather, it is a fundamental premise of these proposed regulations that when a program is assumed by contracting under the Act, the Secretary divests himself/herself of the resources to conduct that program and turns over all direction and control of the day-to-day operation of the program to the contracting tribe. (See the statement of Secretarial policy at § 900.103(b)(4) of these proposed regulations).

This relationship ordinarily will be effectuated through a non-procurement contract, but grants or cooperative agreements in lieu of such contracts may also be used. This type of relationship is governed by the same rules in this proposed regulation, whether or not a non-procurement contract, or a grant or cooperative agreement in lieu of a non-procurement contract, is used. Thus, the definition of "contract" in § 900.102 is written broadly to include either non-procurement contracts or grants or cooperative agreements in lieu of non-procurement contracts.

Contracting under the Act for construction involves a different type of relationship between the Federal Government and the contracting tribe or tribal organization. This second type of relationship is a procurement relationship governed by separate rules set out in subpart J. Because construction contracts involve a procurement relationship, which is a different type of relationship from that involving the transfer of service delivery programs, construction contracts are excluded from the definition of "contract" in § 900.102.

Section 103 of the Act also authorizes discretionary grants for certain special purposes such as planning, training, evaluation and other activities designed to improve the capacity of a tribal organization to enter into a contract for the operation of service programs. These discretionary grants and cooperative agreements are a third type of relationship between the Federal Government and Indian tribes and tribal organizations authorized by the Act. Separate rules governing discretionary grants and cooperative agreements are set out in subpart L.

The term "program" is defined to mean "the operation of services for tribal members and other eligible beneficiaries." It is necessary to define "program" because section 102 of the Act directs the Secretary to contract "to plan, conduct, and administer programs or portions thereof." The Act does not define the term "program." However, the legislative history to the 1988 Amendments, Public Law 100–472, indicates that what Congress intended by the term "program" was the operation of services. The statute is unique in that it requires the transfer of resources and control over the operation of services in Indian communities to contracting tribes. The transfer is to assist "another governmental entity" in operating the services formerly provided by the Secretary.

Section 900.106 contains the provisions governing what is contractible under the Act and these regulations. The 1988 Amendments broadened the scope of the Act's coverage to include: Programs administered by either Secretary for the benefit of Indians for which appropriations are made to other agencies; and programs for the benefit of Indians because of their status as Indians without regard to the agency or office of DHHS or DOI within which the programs are performed.

Section 900.106(a)(1)(v) contains a test for determining what programs are for the benefit of Indians because of their status as Indians under section 102(a)(1)(E) of the Act. The terms "primary or significant beneficiaries" and "primary or significant recipients," used in § 900.106(a)(1)(v)(A) refer to those persons, Indian tribes, Indian resources, entities, or public values (such as wetlands or endangered species) whose benefit or enhancement was the principal or a leading motivation for the establishment of the program or portion thereof. In order to determine what programs or portions of programs fall within the scope of the Act, the DOI must necessarily engage in a case-by-case analysis, and look at the purpose, character, and administration of a program or portion thereof, in what is a "totality of the circumstances" approach. The underlying and

predominant inquiry is one of ascertaining congressional intent through analysis of the entire statute and its legislative history, although express congressional invocation of its constitutional authority over Indian affairs is evidence that Congress intended the program or portion thereof to be for the benefit of Indians because of their status as Indians.

Section 900.106(c) of the proposed regulation emphasizes that service delivery programs subject to contracting are generally performed at the reservation level, but may be performed at higher organizational levels within DHHS and DOI. Section 900.106(c) also incorporates the authorization in section 105(g) of the Act allowing tribes operating service delivery programs to perform functions which would otherwise be carried out by Federal employees, such as determining the eligibility of applicants for services and the amount and extent of assistance, benefits, or services, all in accordance with applicable rules and regulations of the appropriate Secretary.

Section 106 clarifies what activities and functions of the two Departments are contractible. Generally functions related to the delivery of services to tribal members are contractible while activities of an executive nature that fulfill the Secretary's obligations as manager of the Federal agency or as an Officer of the United States are not contractible.

Section 900.106(d) contains an illustrative list of activities or functions which are noncontractible Secretarial or Federal functions under most circumstances. They typically involve determining the policy of the United States or the Federal Executive's interpretation of Federal law or the exercise of judgment or discretion vested by law in Officers of the United States. Such functions are generally outside the scope of contractibility under section 102(a)(1) of the Act, and involve "the exercise of significant authority pursuant to the laws of the United States," which constitutionally may be exercised only by Officers of the United States appointed pursuant to the Appointments Clause, Art. II, sec. 2, cl. 2. *Buckley* v. *Valeo*, 424 U.S. 1, 126 (1975). Section 900.106(e) sets forth criteria for determining whether particular functions are noncontractible.

Buckley dealt specifically with "functions necessary to ensure compliance with Federal statutes and rules"—the conduct of litigation to vindicate public rights under Federal statutes, administrative determinations and hearings, and related informal procedures, 424 U.S. at 137–140. These were held to be exclusively vested in Officers of the United States because it is the President to whom "the Constitution entrusts the responsibility to 'take care that the laws be faithfully executed.' Art. II, sec. 3" 424 U.S. at 138. There was no restriction, however, on delegation of responsibility for investigation and information gathering related to such enforcement.

Buckley also addressed other administrative powers—such as rulemaking and the issuance of advisory opinions—and found them not to be "sufficiently removed from the administration and enforcement of public law to allow it to be performed" by persons not "Officers of the United States," 424 U.S. at 140–41. In *Bowsher* v. *Synar*, 478 U.S. 714, 733 (1986), the executive power was defined, for Appointments Clause purposes, to include the interpretation and effectuation of all public law.

In a number of cases after *Buckley*, the Supreme Court has closely scrutinized legislation vesting such powers elsewhere than the Executive Branch, upholding delegations only when satisfied that the President retains "sufficient control * * * to ensure that the President is able to perform his constitutionally assigned duties." *Morrison* v. *Olson*, 108 S. Ct. 2597, 2602 (1988) (judicial appointment of independent prosecutor upheld). Sufficient control most often has been determined in terms of the President's power to remove.

Compare *Morrison* 108 S. Ct. at 2619, and *Mistretta* v. *U.S.*, 107 S. Ct. 647, 666 (1989) (upholding establishment of sentencing commission in the Judicial Branch largely because members were removable by President) with *Bowsher* v. *Synar*, 478 U.S. at 726 (disallowing delegation to Comptroller General of authority to specify budget reductions under Gramm-Rudman-Hollings Act, when officer subject to Congressional removal).

In setting forth the list in § 900.106(d), it is the intent of the Secretaries that these not serve as a barrier to contracting service delivery programs for tribal members.

One item on the list, nondelegable Secretarial duties relating to trust resources, warrants further discussion. Section 111(2) of the Act provides that it is not to be construed as authorizing or requiring termination of an existing trust responsibility of the United States.

In general the DOI may contract with tribal organizations to perform technical functions, to research, document and even recommend. However, as Trustee, the Secretary must retain responsibility for the exercises of discretion and judgment in the management and protection of Indian trust resources, and thus final approvals and determinations must be reserved for decision by Federal employees.

The proposed regulation in § 900.106(f) encourages tribes and tribal organizations to consult with the Secretary prior to the submission of proposals when there is uncertainty regarding the contractibility of a function. The purpose of the consultation is to reach agreement on what functions are contractible and how tribal performance of those functions may be coordinated with non-contractible trust or other responsibilities.

Section 900.106(g) places a restriction on contracting when the program which a tribe proposes to assume is outside that tribe's defined geographic service area and the program was not established for the benefit of that tribe. This provision addresses the situation where a tribe located in one service area may have members who are served in another tribe's service area. The tribe located outside the service area may not contract to serve its members there. For example, a tribe located in South Dakota may not contract to serve its members in Arizona who reside within another tribe's service area.

Section 900.106(h) clarifies that an otherwise contractible program may not be at the time of the proposal, if the proposal involves an irrevocable commitment of Federal funds to a project whose environmental consequences have not been adequately analyzed under the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), or similar statutory prerequisite to a Federal commitment to undertake a project or activity. Likewise a project may not be contractible if the results of such NEPA analysis or ESA consultation discloses unacceptable environmental consequences.

Section 900.107 of the proposed regulation is designed to allow the Secretary to address a difficult set of problems that may arise over dividing programs serving more than one tribe for purposes of contracting. These problems are likely to arise when one or more of the tribes served propose to contract for their share of the program but other tribes served either do not want to contract or want to contract separately for their respective shares of the program.

For example, many IHS programs are operated out of a hospital or health center serving multiple tribes within a defined service area. The service delivery program at that facility may not

be readily divisible in a way which will retain the comprehensive range of services which it is the IHS goal to provide. The situation may be even more complicated when there are large numbers of eligible Indian beneficiaries served by the program who are not affiliated with any of the tribes in the service area. In these situations, a decision concerning the division of the program is likely to involve balancing the relative tribal claims to serve this unaffiliated population.

Section 900.107 encourages a tribe or tribal organization intending to submit a contract proposal involving the division of a service delivery program to consult with all affected tribes as early as possible, preferably prior to submitting the proposal to the Secretary. It is the Secretary's policy to encourage all tribes affected by a proposed program division to confer and resolve among themselves the division of program resources, including funds, facilities, equipment, and personnel. The regulation provides that the Secretary shall review the proposed program division and determine whether to accept or decline the proposal.

A controversial issue with tribal representatives is whether the Secretary may consider the effect of the proposed program division on those tribes and individuals who will not be served by the proposed contract. Some tribal representatives believe that the declination criteria do not allow the Secretary to evaluate how the proposal will affect tribes and individuals who will not be served under the proposal. We do not interpret the declination criteria so narrowly, and believe that the Secretary can look at the needs of other tribes in dividing program resources, as section 106(b) of the Act emphasizes that the Secretary is not required to reduce funding for programs, projects or activities serving a tribe to make funds available to another tribe.

Section 900.108 governs the amount of funding for contracts for the operation of services programs. In accordance with section 106(a) of the Act, we have divided funding into two categories. The first category is termed "the Secretarial amount" which consists of the amount that the Secretary would have provided for the Secretary's direct operation of the contracted program. This amount is determined based upon the processes actually utilized by the Secretary to allocate resources among program activities.

The second category is an amount for "contract support costs" determined in accordance with the allocation processes actually utilized by the Secretary for funds made available from appropriations for this purpose. Contract support costs may not duplicate items in the Secretarial amount. These costs are for activities which must be carried out by the contractor to ensure compliance with the terms of the contract and prudent management, but which are not provided for under the Secretarial amount because such costs:

(1) Would not normally be carried on by the Secretary in the direct operation of the program to be contracted; or

(2) Are provided by the Secretary in support of the contracted program from resources other than those under contract.

Section 900.108(b) lists examples of contract support costs such as employee benefits, executive direction and management, financial management, personnel management, procurement, materials, and records management, legal services, etc. As the list of examples illustrates, when a tribe or tribal organization assumes the operation of a service delivery program, that tribe or tribal organization must perform for itself many of the support functions formerly provided by the Secretary from resources other than those of the program activity to be contracted. While many of these support functions performed for the Secretary's direct operation of the program are not contractible per se as part of the program, the Act provides for contract support costs because the tribe or tribal organization necessarily must perform similar functions to comply with the terms of the contract and prudent management.

For example, when a tribe contracts to carry out an IHS contract health services program under which the Federal Government, in operating the program directly, contracted with local health care providers to render services to eligible Indian beneficiaries, the tribe does not assume the Government's procurement contracting function in support of that program. Rather than entering into Federal procurement contracts with local providers, the tribe enters into its own contracts with local providers to carry out the program. The Federal contracting function, as such, is not transferred to the tribe. The Act, however, provides for "contract support costs" for activities which now must be carried on by the contractor but which were provided in support of the contracted program by the Secretary "from resources other than those under contract."

We emphasize, however, that the amount of contract support costs for a particular contract is determined by application of allocation processes used by the Secretary to allocate funds made available from appropriations for this purpose. Any shortfalls in contract support will be reported to Congress as required by section 106(c) of the Act. In addition, the statement of Secretarial policy at § 900.103(b)(7) of this proposed regulation recognizes that as contracting for programs progresses, Secretarial functions will change in scope and extent, and savings may be realized as a result. As contracting increases, the Secretary will identify such savings, which will be used to provide additional services directly or through contracted programs or both.

Section 900.109 provides that if a tribe or tribal organization believes that the Secretary has not accurately determined the amount of the contract or disagrees with the Secretary's decision regarding contractibility of some or all aspects of the contract proposal, the tribe or tribal organization may appeal pursuant to Subpart H of this regulation. Pending resolution of appeals, the tribe or tribal organization and the Secretary may agree to changes in the proposal and if so, the Secretary will award a contract reflecting the agreement including the contract amount and scope of work agreed upon. Pending resolution of appeals pertaining to annual funding of ongoing contracts and renewal proposals, the Secretary shall provide funding at the same level as the previous year, unless the parties mutually agree to a different level of funding.

Section 900.115 implements section 7(b)(1) of the Act which requires that, to the greatest extent feasible, "preferences and opportunities for training and employment in connection with the administration of [ISDA] contracts or grants shall be given to Indians." While the proposed regulation provides that supplemental preference requirements may be imposed by the tribe receiving services, we are requesting public comment on whether the regulation should prohibit supplemental requirements which give preference to Indians on the basis of membership in, or affiliation with, a particular tribe. The legal determination that section 7(b)(1) of the Act requires preference to Indians regardless of tribal affiliation was made by the DOI Solicitor's Office in a 1986 opinion. The DHHS has questioned DOI's interpretation of this section of the Act. As a result, both agencies hope to receive comments from the Indian community concerning the proposed interpretation of the scope of Indian preference under the Act.

Section 900.124 governs monitoring of contracted programs by the Secretary. This section limits monitoring by each

operating division, Departmental bureau or Departmental agency to no more than one annual formal performance monitoring visit per contract, unless the contractor has agreed to more visits or there is reasonable cause to believe that grounds for reassumption of the contract or other serious contract deficiency exists. Section 900.124 by its terms does *not* apply to technical assistance visits requested by the contractor or visits relating to trust functions, approval of trust related transactions, and Catastrophic Health Emergency Fund transactions. Section 900.124 also does not apply to construction contracts and does not limit monitoring provided for in Subpart J governing construction contracts. Finally, § 900.124 does not limit government access under § 900.121(c) providing for audits by the Comptroller General and the Secretary, or under § 900.402(b) providing for Secretarial review of the adequacy of the contractor's financial management system under certain circumstances.

Subpart B—Preaward and Proposal Process

Subpart B provides the eligibility criteria for Indian tribes when applying for contracts or grants under Public Law 93–638 as well as an item by item description of the required information needed as a part of the contract proposal. Each proposal must be accompanied by a tribal governing body request (resolution) to contract. This Subpart also describes the Secretary's responsibilities to provide technical assistance, access to Federal records and the criteria under which the Secretary will review and approve or decline contract proposals.

A significant issue in this Subpart addresses the restrictions on the Secretary's discretion to decline to contract within the declination criteria and 60-day time limit for Secretarial action on contract proposals, as now provided in the 1988 amendments to Public Law 93–638. Specific reasons for declination are provided, followed by a listing of factors the Secretary will consider when evaluating proposals against the declination criteria. This listing of factors includes a review of the proposed statement of work, program and management assurances, past tribal performance and future abilities and impacts. Additional guidance for Secretarial proposal evaluation is provided through the establishment of "presumptions" which require positive conclusions of tribal capabilities by the Secretary in certain areas, such as previous contracting and tribal governmental experience.

Subpart B lists funding and contractibility determinations separately from declination decisions. As explained in the discussion of subpart A with respect to contractibility, and subpart H with respect to funding appeals, contractibility and funding determinations are not governed by the declination criteria. They are not declination decisions and are treated separately from declination in these regulations. As a practical matter, however, subpart B imposes the same time frames on the Secretary for making funding and contractibility determinations and subpart H provides an administrative appeal process for challenging those determinations.

As a part of pre-application technical assistance, tribes and tribal organizations are encouraged to request information regarding the amount of Secretarial funding for the program to be contracted as well as the availability of contract support costs. The Secretary is required to respond within 30 days with information regarding available funding. It is anticipated that this will facilitate the proposal review process and provide an advance opportunity to resolve disputes over available funding before the review process begins. Rules for each Department regarding funding appeals are addressed in subpart H.

Subpart C—Contract Award and Modification

This subpart governs the type of award instrument, type of contract, contents of the award instrument, renewal and annual funding, contract modifications and miscellaneous related provisions. The principal issues identified in the regulations development process were the provisions to be applied to grants in lieu of contracts, course of action to be followed if a contractor fails to submit either a renewal proposal or a notification not to renew and compliance with congressional reprogramming guidelines.

Consistent with section 9 of the Act, § 900.301(a) provides that tribes and tribal organizations may request a cooperative agreement or grant in lieu of a contract for activities authorized under section 102 and certain activities authorized under section 103(b)(1) of the Act. Many contract provisions, e.g., funding, declination, retrocession and reassumption, also apply to cooperative agreements and grants in lieu of contracts, and § 900.301(b) provides that such awards shall be considered as contracts for purposes of this part.

Section 900.304(a) provides that contract renewals shall be accomplished through bilateral modifications except when contractors fail to submit either a renewal proposal or a notification not to renew. In that case, because the continuation of services is paramount, the Secretary is given the option to either unilaterally extend the contract for a period of up to 1 year or assume responsibility for the program upon expiration of the contract.

Section 900.305 requires most contract revisions to be effected by bilateral modification. These include the shifting of funds between contract line items. This is required in part to comply with reprogramming guidelines of congressional appropriation committees.

Section 900.307(c) provides that contracts to assist the Secretary of the Interior in the management of trust resources shall authorize him/her to immediately suspend such contracts, subject to appeal, upon a determination that continued performance would impair the Secretary's ability to discharge his/her trust responsibility. Such a provision is necessary in order to comply with section 105(g) of the Act.

Subpart D—Financial Management

Subpart D establishes tribal contractor standards for the establishment and maintenance of financial management systems, the applicability of Office of Management and Budget (OMB) Circulars, the use and operation of indirect costs and examples of various types of program income. This Subpart also delineates contractor financial reporting requirements, responsibilities for audits, contract closeout procedures and the collection process.

The issue of determining allowable and unallowable costs has been addressed by requiring the use of those OMB Circulars which have been developed for specific organizations. As an example, Circular A–87 has been established for state and local governments and would be appropriate for use by tribal governments, while A–21 has been developed for educational institutions and would be more appropriate for use by certain tribal education contractors. The regulations also stipulate that when the tribal contractor selects a particular circular, any changes to that circular would also apply to the contractor. In an effort to reinforce the responsibility of the contractor for day-to-day management of the program, most prior approval requirements have been waived.

The 1988 amendments to Public Law 93–638 provide that tribes will not be held liable for amounts of indebtedness attributable to theoretical or actual under-recoveries or theoretical over-

recoveries of indirect costs. In complying with this provision, indirect cost rates must be established in a manner which shows the various indirect cost contributors and the respective actual amounts provided of the total indirect costs for each contractor. This regulation offers the contractor two options in the selection of an indirect cost rate method. If a fixed with-carry-forward rate is negotiated by a tribal contractor, separate rates for each Department will be negotiated. This is required so that funding agencies identify their share of the indirect cost funding in relation to other sources of funding.

Underpayments of an appropriate share of indirect costs from an agency will not affect the rate in subsequent years, unless the underpayment is due to increased actual costs of the contractor. Underpayments due to a deficiency of funds will be included in the Secretary's annual report to Congress as required by section 106(c) of the Act.

Finally, § 900.411 of the regulation provides that in accordance with section 105(b) of the Act, the Secretary may withhold from funds due the contractor amounts that are estimated to be associated with areas of non-compliance. Technical assistance is required, and funds that are withheld, are subject to appropriate appeal processes.

Subpart E—Property Management

This subpart implements section 105(f) of the Act and governs the management of personal and real property, including Federal quarters, under self-determination contracts. It establishes the requirements for the provision, use, care, maintenance, and disposition of both federally-owned and contractor-owned property.

This Subpart was developed with the objectives of: assuring that contractors have the opportunity to obtain available Federal property needed to carry out their contracts; simplifying the acquisition of personal property with contract funds; and simplifying the recordkeeping and reporting responsibilities of contractors.

This Subpart specifies the actions the Secretary must take to notify tribes and tribal organizations of the availability of federally-owned property for use under self-determination contracts, and provides for the donation of excess and surplus Federal personal and real property to contractors for use under self-determination contracts.

To simplify the acquisition of personal property by contractors, this Subpart provides that contractors will take title to personal property acquired with contract funds. Since contractors will take title to the property, the acquisitions will not be subject to many of the limitations and clearances which would apply if the Federal Government were to take title. For example, if title were to vest with the Secretary, the purchase of motor vehicles with IHS contract funds would not be permitted by statute, and the purchase of Automatic Data Processing and printing equipment with contract funds would be subject to prior review and clearance by the cognizant Federal agency.

Many of the provisions covering accountability records, inventory requirements, and control systems, and disposition procedures for personal property were patterned after those contained in the Government-wide Common Rule, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," (OMB Circular A–102), rather than the more stringent requirements contained in Federal procurement contracts.

This Subpart includes the requirements to be met by contractors for: Obtaining and using motor vehicles; handling, storing, transporting and disposing of hazardous property; recovering precious metals; and for protecting and keeping track of controlled substances.

This Subpart includes specific requirements to be met prior to the purchase of real property with contract funds and, for contracts funded by IHS, prior to leasing real property with funds provided by IHS. It also prohibits contractors from using Medicare/Medicaid funds collected on behalf of the Secretary of Health and Human Services for the lease, purchase, or renovation of real property without Secretarial approval. This Subpart specifies that title to real property purchased with contract funds will vest with the Federal Government.

To assure the continuation of the services provided by contracted programs, this subpart provides that, in the event of retrocession or rescission, the cognizant Secretary shall have the option to take title to property acquired with contract funds.

Subpart F—Procurement Management

This subpart governs subcontracts and purchases made by contractors under self-determination contracts. It sets out minimum requirements for contractor procurement systems to ensure that procurements are conducted in a manner which will encourage competition and that proposed contractors and suppliers have the ability to perform. This subpart also defines methods of procurement, e.g., small purchase and sealed bidding procedures and contains other requirements related to individual awards. Contractors are authorized to utilize sources of supply used by the Secretary and to receive Federal Government contract rates and discounts.

This subpart represents a simplification of uniform Federal government-wide requirements which apply to tribal, State and local governments in their administration of discretionary grants received from the Federal Government. These standards were selected since they are considered more appropriate for self-determination contractors than the requirements contained in Federal procurement contracts. Also, they presently apply to tribal governments and have been promulgated with the involvement of such governments. For consistency with non-self-determination awards, § 900.602(b) provides that contractors may elect to utilize the uniform government-wide requirements which are contained in agency grant regulations.

Section 900.605 implements section 7(b)(2) of the Act which requires that, to the greatest extent feasible, "preference in the award of subcontracts and subgrants in connection with the administration of [ISDA] contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974." Although this section authorizes supplemental preference requirements of the tribe receiving services, such additional Indian preference requirements may not take into account the tribal affiliation of the owners of the Indian organization or enterprise. The legal determination that section 7(b)(2) of the Act requires preferences regardless of tribal affiliation was made by the DOI Solicitor's Office in a 1992 opinion. The DHHS has questioned DOI's interpretation of this section of the Act. As a result, both agencies hope to receive comments from the Indian community regarding the proposed interpretation of the scope of section 7(b)(2) of the Act.

Subpart H—Appeals Process

Subpart H contains appeals procedures available to ISDA contractors and grantees from decisions of Federal officials relating to ISDA contracts and discretionary grants. This subpart also includes a section implementing the Equal Access to Justice Act (EAJA) made applicable to

ISDA administrative appeals pursuant to section 110(c) of the ISDA.

Section 900.802 sets forth which IHS decisions are appealable and contains the appeals procedures to be followed.

Section 102 of the Act was amended to provide, that in case of declination of a contract proposal, tribes should have an opportunity for a due process "on the record" hearing conducted in accordance with the Administrative Procedures Act (APA). The ISDA does not require hearings on the record for funding issues. The IHS has separated funding appeals from all other appealable issues. The inquiry in a funding appeal is limited to whether the agency's funding allocation for the contract was properly reached using IHS allocation processes.

A contractor may request an informal conference or appeal the decision to the Contract Funding Appeals Board (FAB). The FAB, which is composed of five members appointed by the IHS Director conducts a hearing and sends a recommendation to the Director who then makes the final decision. This approach allows the IHS Director to keep the crucial matter of the allocation of IHS funds focused on the uniform and fair application of current allocation processes designed to take into account the needs of all tribes. Courts have observed that agency funding decisions are "notoriously unsuitable for judicial review, for they involve the inherently subjective weighing of the large number of varied priorities which combine to dictate the widest dissemination of an agency's limited budget." *Community Action of Laramie County, Inc.* v. *Bowen*, 866 F. 2d 347, 354 (10th Cir. 1989).

We have taken this approach because we believe that the amount of funding for a contract should be determined as an allocation matter separate from declination, must be based on section 106 of the Act and the funding section of these regulations at § 900.109, and not on the declination criteria in section 102 of the Act which are directed at contract performance. If the IHS had the burden to show on appeal that its funding determinations comply with the declination criteria, we would not be able to show that services would be unsatisfactory with more money.

Other appealable decisions are grouped together (e.g., declination to make or amend an award, reassumption, denial of mature contract status, existence of required tribal resolutions and contractibility of the program). Tribes may request an informal conference or appeal the decision to the HHS Departmental Appeals Board. In addition, where a program division issue is involved, all affected tribes are given an opportunity to be heard.

If the Board determines that the appeal falls within its jurisdiction, it will conduct an "on the record" hearing before an Administrative Law Judge (ALJ) under the APA which affords tribes the following rights: To be represented by counsel, to have the DHHS provide witnesses capable of giving testimony on the issues, to cross examine witnesses, produce oral and documentary evidence, require testimony under oath, right to take depositions, demand production of documents and subpoena documents and witnesses.

These regulations propose that any party (including IHS) may file exception to the recommended decision with the Assistant Secretary for Health (ASH). The recommended decision of the ALJ becomes final unless the ASH modifies or reverses the decision.

Declination of construction contracts under Subpart J is confined to the issue of whether the proposal meets the requirements of the Request for Proposal (RFP).

Grant appeals under subpart L are subject to the appeals procedures for disputes of certain post award adverse determinations located in DHHS grant appeals regulations at 42 CFR part 50D, and 45 CFR part 16.

Section 900.802(j) provides for procedures for hearings in the case of emergency reassumptions which must be held within 10 days after notice to the tribe. Once again the recommended decision of the ALJ goes to the ASH.

Section 900.803 contains appeals procedures applicable to DOI preaward decisions relating to ISDA contracts and grants. This section implements section 102(b)(3) and section 108 of the ISDA which entitle ISDA contractors to a hearing on the record conducted in accordance with the APA in the case of declination or reassumption of programs. Section 900.803(e) also avails ISDA contractors of the opportunity for a hearing on the record with respect to appeals concerning contractibility or funding issues. Although the two Departments do not believe that the Act requires hearings on the record with respect to contractibility or funding issues, the DOI has agreed to provide hearings on the record in such instances because some tribal representatives who participated in the regulation-drafting process disagreed with the departmental position, and strongly recommended that the two Departments provide hearings on the record in such instances.

Section 900.803(e) also authorizes the Director of the Office of Hearings and Appeals (OHA) to appoint an Ad Hoc Board to hear appeals from decisions of officials of DOI agencies other than the BIA. The proposed regulation gives the Interior Board of Indian Appeals (IBIA) jurisdiction over appeals from BIA decisions.

Section 900.804 of these regulations implements section 110(c) of the ISDA which provides that the Equal Access to Justice Act (EAJA) is applicable to administrative appeals filed by ISDA contractors. The EAJA provides for the award of attorneys' fees and expenses to prevailing parties where the position of the Government is not substantially justified. The draft regulation requires ISDA contractors to follow the two Departments' respective EAJA regulations for the submission of their claims.

Section 900.805 implements section 110(d) of the ISDA which provides that the Contract Disputes Act (CDA) applies to self-determination contracts. The Interior Board of Contract Appeals (IBCA) has jurisdiction over appeals from contracting officers' ISDA claims decisions of either Department.

Section 900.806 governs post-award grant disputes for grants awarded under Subpart L.

Subpart I—Liability Insurance and Federal Tort Claims Act Coverage

Coverage under the Federal Tort Claims Act (FTCA) has been extended to Indian tribes, tribal organizations and certain Indian organizations carrying out contract, grants or cooperative agreements under the Act. This Subpart basically contains a restatement of the statutory provisions and spells out the circumstances under which the FTCA may apply and the procedures to be followed to file and report FTCA claims.

This subpart also describes the conditions under which the Secretary will provide or pay for required insurance that is beyond the coverage of the FTCA.

In reviewing this subpart several concepts should be kept in mind. This is a very technical area of the law in that the courts generally construe the waiver of the Federal Government's sovereign immunity inherent in the FTCA narrowly. This subpart is not intended to be a definitive discussion of FTCA coverage but rather a brief outline of the recent statutory extension of FTCA coverage and the basic procedures needed to be followed to protect the legal rights of all parties. This subpart does not deal with all situations where insurance is required, e.g., workmen's compensation or fire and casualty. Finally, the statutes established

different dates for various coverages under the FTCA.

This subpart begins with a section on the Secretary's responsibility for "obtaining or providing" liability insurance beyond FTCA coverage. Indian owned economic enterprises are to be given preference in the purchase of such insurance. Such insurance coverage must exclude claims covered by the FTCA. If national policies cannot be obtained, the cost of individual policies shall be an allowable cost to the individual contracts.

Section 900.902 deals with medical malpractice claims under the FTCA. Contractor employees performing medical functions within the scope of their employment and under the contract are considered employees of the Public Health Service (PHS) for purposes of the FTCA. The section describes who is covered, under what circumstances, who may file a claim, and the procedures that must be followed. The section spells out the FTCA requirement that a claimant must first file an administrative claim before commencing a court action. The contractors and their employees must cooperate with the Department in investigating claims, including giving access to patient records.

Section 900.902 reaffirms that Federal employees working for a contractor as part of their Federal duties remain covered by the FTCA. Finally, § 900.902 clarifies that where contractors extend hospital privileges to non-IHS health care practitioners, these health care practitioners are covered by the FTCA only when treating IHS beneficiaries as provided by section 713(d) of the Indian Health Care Improvement Act, Public Law 94–437.

A separate section deals with non-medical related claims under the FTCA. Such claims will follow the FTCA claim procedures of the agency with which the tribe has a contract, grant, or cooperative agreement.

Other sections provide: That the Secretary will provide a statement verifying FTCA coverage, the extent of such coverage and any changes therein to enable contractors to determine what if any additional insurance is needed and to document coverage required by any third party; that the recipient of a contract, grant, or cooperative agreement will promptly notify the awarding official of any claim brought against it that could potentially be covered by the subpart and will cooperate fully in any defense; and procedures for settling claims.

Subpart J—Construction Contracts

This subpart governs the award and operation of construction contracts under the Act. Construction contracts remain procurement contracts. All other subparts apply to non-procurement instruments. Therefore, subpart J is freestanding. No other subparts or portions of subparts of this regulation are applicable to procurement contracts for the construction of facilities under subpart J unless they are specifically made applicable.

Contracts for general program functions described in § 900.1001(b) of the regulation that are related to but not part of the construction of a specific facility or project are, to the extent contractible, covered by other subparts of this regulation.

The Act makes the Federal Acquisition Regulations (FAR) applicable to construction contracts. The Act also permits the Secretary to waive any provision of contracting laws and regulations which are determined to be: (1) Inappropriate for the purposes of the contract involved; or (2) inconsistent with the provisions of the Act. This subpart includes an exhibit which lists the FAR provisions and clauses and indicates which are proposed to be waived, the reason for the waiver, and, where not waived, their applicability. Though the list appears extensive, it should be noted that, in addition to including provisions proposed to be waived, those provisions that are proposed for retention include many provisions that can be waived on an ad hoc basis and that most of the retained provisions are not applicable to all contracts.

A particular problem that needed to be addressed was how to protect the government's interest with regards to the performance of subcontractors. This problem was addressed by applying certain FAR clauses only to subcontractors with the tribe responsible for enforcing these claims.

Before entering into any contract to construct a facility under subpart J, the Secretary must consult with the affected tribe concerning its preferences and, where practical, honor those preferences. Once funds are allocated for a project, the tribe to be benefitted will be notified and given the right of first refusal to contract for the project.

There are somewhat different application procedures for the two Departments. However, in general, if the tribe notifies the Secretary of its intent to contract, the Secretary will submit a "Request for Proposal" (RFP) to the tribe and offer technical assistance in developing the tribe's application. The Secretary will also provide a Program of Requirements (POR).

The application must be responsive and will be evaluated against the criteria in the RFP/POR. The standards applicable to the project (local, state, Federal, industry) will be contained in the RFP/POR. The application may only be declined under § 900.207(b)(3), i.e. the project cannot be properly completed or maintained by the proposed contract, and any appeal will be confined to the issue of whether the proposal meets the requirements of the RFP/POR.

Section 900.1004 reflects two different approaches to development of construction projects based upon the existing processes in each Department.

This subpart describes the types of contracts that are available and under what conditions as well as when and if bonding is necessary. Davis-Bacon Wage and Labor Standards are applicable except for employees of tribes and public non-profit tribal instrumentalities.

The contractor and subcontractors shall provide access to the Secretary for inspection at any time. This is a factor of the procurement relationship, the nature of construction, and the FAR provisions and differs from program monitoring spelled out elsewhere in the proposal. Construction requires an ongoing process of inspection to protect the interest of the government in receiving a facility that meets its requirements. After the fact inspection is often impractical or useless and the timing must be determined by the progress of construction rather than a set number or a calendar.

Architect and engineering services are included. The method of selecting qualified architects and engineers is contained in this Subpart and is designed to meet the requirements of the Brooks Act as codified in the FAR.

Contractors will benefit from savings resulting from approved value engineering proposals and from savings realized under fixed price contracts. Unexpended funds under cost reimbursement contracts will be returned to the Secretary since they are not considered savings as used in section 106(a)(3) of the Act referring to contractor efficiencies.

Finally, subpart J provides for granting waivers of otherwise applicable contracting laws and regulations. The Secretary will attempt to respond to waiver requests before the award but failure to do so is not a basis to postpone the contract award. Waiver denials are not appealable and may be considered separate from the proposal. The declination criteria do not apply to

waiver requests. The tribe will be notified in writing of the reason for any denial.

Subpart K—Retrocession, Recision, and Reassumption

Procedures are described when the retroceded contract is with a tribe, a tribal organization serving one tribe, or a tribal organization serving multiple tribes. Program division rules apply in the latter case, and reference is made to these and the funding provisions of subpart A.

Retrocession becomes effective one year after the date of the request, or at such time as may be mutually agreed by the Secretary and the tribe. Withdrawal of the tribe's request for retrocession may be made only by mutual agreement between the tribe and the Secretary. If the intent of the tribe is to continue operation of the program, the Secretary must make a determination as to whether the tribe can continue to operate in a satisfactory manner, in light of problems that may have led to the request to retrocede. While a tribal resolution itself does not require Secretarial approval, the effect of cancelling the retrocession request and continuing to operate as if no request had been made, does require Secretarial approval.

While a tribe's retrocession will generally be without prejudice, if a program is reassumed, the Secretary may decline to enter into a new contract with that Indian tribe or tribal organization until the Secretary is satisfied that the conditions which caused the contract to be rescinded have been corrected.

Subpart L—Discretionary Grants

This subpart implements the discretionary grant authorities given to the DOI and DHHS in section 103 of the Act. Subpart L provides information on the requirements that will be applicable to the administration of these discretionary grant authorities. These authorities are discretionary actions which may be taken by the Secretaries and should not be confused with the self-determination grants/contracts as authorized under section 102 of the Act.

There was considerable discussion as to whether the discretionary authorities should be addressed in a separate document. There was concern that eligible recipients would confuse this discretionary authority with the terminology and procedures contained in the self-determination authorities under the remainder of the Act. However, it was determined that it would be in the best interest of all parties to have all of the authorities contained in the Act addressed in a single regulation.

The requirements in this subpart are essentially self contained except that the subpart does refer to other sections of the regulation and other documents that are standard conditions on discretionary grants awarded by the two Departments.

Concern was expressed by a number of tribes that they would not be provided with adequate notification of funds availability and programmatic information. To accommodate this concern, § 900.1203 provides that announcements on availability of funds, modifications thereto, and program announcements will be made in the **Federal Register** and copies provided to eligible applicants.

Concern had been expressed by a number of tribal representatives that the regulations needed to contain language to assure objective evaluation. Section 900.1205(g) provides that applications will be reviewed in a consistent manner in accordance with agency review requirements and § 900.1205(h) provides that awards will be made on the basis of merit as determined by evaluation of applications against review criteria which have been published in the **Federal Register**.

Section 900.1210 implements section 7(b)(2) of the Act. The proposed approach to the scope of Indian preference in this section is similar to that taken under § 900.605 discussed above.

Subpart M—Secretarial Reports

Subpart M provides specifications for two Secretarial reports. The first implements section 106(c) of the Act, and includes information on amounts provided to contractors for the previous fiscal year, and estimated deficiencies in funding of contract support costs for the current fiscal year.

The second report implements section 5(e) of the Act. This is the Secretary's annual report to tribes and tribal organizations. The report will detail the previous year's annual obligations for each program operated directly by the Secretary.

Subpart N—Program Standards, DHHS

This subpart deals with program standards, data collection and reporting, and quality assurance for health programs supported or provided by the DHHS. These three functions, though their specifics will vary from program to program, are necessary, interrelated, and essential components of health programs and are part of any health program taken over by a tribe.

This subpart establishes joint tribal/Federal processes to review and advise on departmental standards, quality assurance programs, and data collection and reporting.

In most cases the requirements of this subpart can be met by including in proposals, contracts, and modifications assurances that the requirements governing standards, data collection and reporting, and quality assurance will be complied with.

With regard to health program standards, where Joint Commission on the Accreditation of Health Care Organizations (JCAHO) or Health Care Financing Administration (HCFA) accreditation standards or conditions of participation exist for the program covered by the contract or proposal, the assurance need only make reference to these. If there is no applicable JCAHO or HCFA standard, the assurance must identify the proposed standard (which may include tribal standards) and supply sufficient information on the proposed standard to enable the government to evaluate its sufficiency.

Health program data collection and reporting requirements are spelled out in the Core Data Set Requirements (CDSR) which has already been issued as a **Federal Register** notice. The current CDSR is republished in this issue of the **Federal Register** for your convenience in reviewing this notice of proposed rulemaking. The CDSR would be made applicable to self-determination contractors. Any changes in the CDSR will be published as a notice in the **Federal Register**, following review and advice from a joint tribal/Federal participatory process. The goal is to keep data collection and reporting to a minimum within good management practices.

The contractor is not required to adopt the IHS data collection and reporting system. The contract must contain an assurance that the contractor will maintain or establish a data collection and reporting system that meets the requirements of the CDSR and enables the contractor to provide required data on at least a quarterly basis or more frequently where required by the CDSR.

The proposal takes the approach that standards, quality assurance, and data collection and reporting requirements should not be determined through negotiations on a contract by contract basis. Standards and quality assurance are necessary components of a health program and data collection and reporting must have major elements of uniformity to be useful.

The contract or proposal must contain an assurance that the contractor will establish and maintain an appropriate quality assurance program.

The Secretary must make known to the proposed contractor all standards, quality assurance programs, and data collection and reporting systems currently applicable to the Secretary's operation of the program. The Secretary may not impose higher standards.

Fair and Uniform Provision of Services—Section 105(h) of the Act requires that contracts and grants and regulations adopted by the Secretary include provisions to assure the fair and uniform provision by tribes and tribal organizations of services and assistance they provide to Indians. Section 900.1404 in subpart N implements this requirement for DHHS programs under contract. That section requires contractors to assure the fair and uniform provision of services, including access by Indian beneficiaries to tribal administrative or judicial bodies empowered to adjudicate complaints. We have not included a provision allowing Indian beneficiaries to complain directly to the Secretary because DHHS regulations at 42 CFR 36.25 (1986) already provide an appeal process for denials of contract health services, which in our experience with contracted health programs is the only area that warrants instituting a formal appeal process to the Secretary.

Subpart O—Program Standards—DOI

Subpart O pertains only to the DOI. It provides that contractors are to adhere to all program standards to which the Federal agency is subject, including statutes, regulations, orders, policies, agency manuals, industry standards, etc. The standards are only applicable, however, to the extent that they have been in fact met by the Federal agency and to the extent that they have been disclosed to the contractor in advance of approval of the contract. As the standards applicable to the Federal agency change, the revised standards will apply to a contractor unless it shows that compliance would materially increase its costs and sufficient funding is unavailable.

Section 900.1501(c) establishes a variance procedure for tribal contractors who propose alternate means of meeting performance levels or standards. The Secretary is to approve such variances to the extent consistent with applicable law, meeting the trust responsibility to Indians, and assurance of performance of the functions or activities at a level comparable to that of the contracting agency. New contractors who wish to include such variances in their initial proposal are encouraged to seek pre-contract technical assistance to facilitate approval.

During the development of the regulations, some tribal representatives suggested that section 107 of the Act required that every Federal program standard had to be individually specified in these regulations or else they would not apply to tribal contractors. Given the wide range of programs for the benefit of Indians operated by the several bureaus of the DOI, it would be immensely impractical to try to anticipate in these regulations every program standard that may be applicable to every potentially contractible program. The Secretary does not believe that the Congress intended to require that all requirements applicable to the operation of every single contractible program be set forth in this regulation, or any regulation for that matter. For example, it would be very unreasonable to attribute to Congress a desire that the Minerals Management Service Audit Manual, which depends for its effectiveness on the fact that it is not available to oil and gas producers, be publicly available, much less subject to notice and comment. It is quite clear from the legislative history of the Federal Oil and Gas Royalty Management Act, that Congress insists that the same auditing standards be applied to oil and gas operators, whether the auditing is done by a Federal employee, or by States or Indian tribes. We conclude, therefore, that despite the facially overbroad language, section 107 only requires that all Federal requirements pertinent to obtaining a Self-Determination Contract be promulgated as part of these rules.

Section 900.1501(e) requires that contractors and subcontractors assure that employees working under self-determination contracts avoid conflicts of interest arising from a financial or property interest, receipt of gratuities from regulated parties, use of inside information, or other specified ethical problems. Tribes are encouraged to develop their own standards of conduct for officers and employees, with sanctions for violations, which will govern persons employed under self-determination contracts upon the Secretary's determination that it provides adequate protection against conflicts prohibited of government trustees. This provision reflects the very strict fiduciary standards to which trustees and their agents are held under the law and the requirements of section 105(a) of the Act that no contract for personal services impair the Secretary's ability to meet responsibilities to any Indian tribe or individual. Section 900.1501(e)(4) follows the Ethics in Government Act, 18 U.S.C. 208(b)(4) in exempting interests arising from a birthright in an Indian tribe or Alaska Native village corporation, an Indian allotment, or in an Indian claims fund, while prohibiting such employees from acting in a particular matter directly involving his/her interest in an allotment or claims fund.

Section 900.1501(f) requires contract proposals, for programs that have existing quality assurance plans, to include provisions for quality assurance or an election to participate in the Secretary's quality assurance plan for that program. Section 900.1501(g) requires a program information system to assure fulfillment of the program data requirements for the program as operated by the Secretary. Section 900.1502 implements section 105(h) of the Act which requires that ISDA contracts and grants and these regulations include provisions to assure the fair and uniform provision by ISDA contractors of the services and assistance they provide to Indians under such contracts and grants. This provision, applicable only to DOI contracts and grants, defines the term "fair and uniform provision of services", and authorizes a beneficiary who believes that he or she is not receiving services in a fair and uniform manner to seek redress in an appropriate tribal forum.

Subpart P—Regulation Administration

This subpart implements section 107(c) of the Act governing revision and amendments of these regulations, and section 105(a) of the Act which authorizes the waiver of contracting laws and regulations under certain conditions.

Section 900.1603 contains a process for tribal participation in revision and amendments of these regulations, as required by the Act.

Section 900.1605 contains a procedure for the waiver of contracting laws and regulations and for the discretionary waiver of these regulations for a specific contract. Section 900.1605(c) specifies that waiver requests contained in a contract proposal may be considered separately from the proposal.

Issuance Statement—DOI

This rule is published in exercise of authority delegated by the Secretary of Interior to the Assistant Secretary—Indian Affairs by 208 DM 8.

Public Participation Statement—DOI

The policy of the DOI is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly,

interested persons may submit written comments regarding this proposed rule to the locations identified in the Addresses section of this document.

Executive Order 12778, Civil Justice Reform—DOI

The Department has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in section 2(a) and 2(b)(2) of Executive Order 12778.

Executive Order 12866

This rule will not: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments, or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order. Therefore, the Secretaries have determined that this rule is not a significant regulatory action under Executive Order 12866, and a significant regulatory action analysis is not required. Further, this regulation will not have a significant economic impact on a substantial number of small entities and, therefore, do not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

Executive Order 12630, Takings Implication Assessments—DOI

In accordance with Executive Order 12630, DOI has determined that this rule does not have significant takings implications.

Executive Order 12612—Federalism

This rule has no significant impact on Federalism under Executive Order No. 12612 because the rule governs the awarding of contracts and grants to Indian tribes. It does not involve a state/Federal relationship.

NEPA Statement—DOI

The DOI has determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Paperwork Reduction Act

The following information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 et seq., and assigned OMB clearance numbers 1076–0091; 1076–0096; 1076–0088; 1076–0090; 0910–0002; 0917–0007; 0917–0010 and 0937–0189.

The following information collections required by this rule have not been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 et seq. and are being sent to the OMB for review. This information will not be solicited until OMB approval is obtained:

Patient Registration System; Dental Reporting System; Pharmacy System; Environmental Health Activity Reporting and Facility Data System's Mental Health and Social Services Reporting System; Chemical Dependency Management Information System; Community Health Activity Reporting System; Health Education Resource Management System; Nutrition and Dietetic's Program Activities Reporting System; Clinical Laboratory Workload Reporting System and the Fluoridation Reporting System.

Authorship Statement—DOI

The primary authors of this document are James Thomas and Robin York, BIA; George Skibine and Justin Patterson, Solicitor's Office; and Dean Titcomb, Policy, Management and Budget.

List of Subjects in 25 CFR Part 900

Alaska natives, Administrative practice and procedure, Indians, Indians-business and finance, Indians-education, Government contracts, Grant Programs-Indians, Health, Health facilities, Reporting and recordkeeping requirements, School construction.

Dated: October 12, 1993.

Ada E. Deer,

Assistant Secretary-Indian Affairs-DOI.

Dated: July 28, 1993.

Philip R. Lee,

Assistant Secretary for Health-DHHS.

Approved: August 2, 1993.

Donna E. Shalala,

Secretary—DHHS.

It is proposed to establish a new chapter V in title 25 of the Code of Federal Regulations consisting at this time of part 900 to read as set forth below.

Chapter V—Bureau of Indian Affairs, Department of the Interior and Indian Health Service, Department of Health and Human Services

PART 900—INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT PROGRAM

Subpart A—General

Subpart B—Preaward and Proposal Process

Subpart C—Contract Award and Modification

Subpart D—Financial Management

Authority: 25 U.S.C. 450 et seq.

Subpart A—General

§ 900.101 Purpose and Scope.

(a) *General.* These regulations are established for the codification of uniform policies and procedures for use by the Department of Health and Human Services (DHHS) and the Department of the Interior (DOI) in implementation of title I of the Indian Self-Determination and Education Assistance Act, Public Law 93–638 as amended, and sections 1–9 preceding that title. These regulations set out the rights and responsibilities of Indian tribes and tribal organizations and of the Departments with respect to the planning, conduct, and administration by Indian tribes and tribal organizations of programs, or portions of programs, authorized under specified laws or otherwise administered by these Departments for the benefit of Indians because of their status as Indians.

(b) *Programs of other Departments and Agencies.* Included under this Part are programs administered (under current or future law or interagency agreement) by the DHHS and the DOI

for the benefit of Indians for which appropriations are made to other Federal agencies.

(c) *This Part included in Contracts by Reference.* Each contract, including grants and cooperative agreements in-lieu-of contracts, shall include by reference the provisions of this part, and any amendment thereto, and they are binding on the Secretary and the contractor except as otherwise specifically authorized by a waiver under § 900.1605 of subpart P. In the event of conflict between a provision of subpart J of this part and a provision of any other subpart(s) in a construction contract, the provisions of subpart J of this part shall govern.

§ 900.102 Definitions.

Unless otherwise provided in this Part:

Act means section 1 through 9 and title I (the "Indian Self-Determination Act") of the Indian Self-Determination and Education Assistance Act, Public Law 93–638, as amended.

Architect-Engineer Services (A/E) means:

(1) Professional services of an architectural or engineering nature, as defined by State law, if applicable, which are required to be performed or approved by a person licensed, registered, or certified to provide such services;

(2) Professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and

(3) Such other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.

Budget Period is the interval of time (usually 12 months) into which the project period is divided for budgetary and funding purposes.

Capitalized Personal Property is all nonexpendable personal property with an original acquisition cost of $5,000 or more.

Cognizant Federal Agency means a Federal agency assigned by the Office of Management and Budget (OMB) to be responsible for negotiating with the tribe or tribal organization and approving an indirect cost agreement on behalf of the Federal Government; for auditing, reviewing and approving audits; and for assuring compliance with the Single Audit Act of 1984.

Construction means construction, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other real property. For purposes of this definition, the terms "buildings, structures, or other real property" include but are not limited to improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, cemeteries, pumping stations, railways, airport facilities, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, and channels. Construction does not include the manufacture, production, furnishing, construction, alteration, repair, processing, or assembling of vessels, aircraft, or other kinds of personal property.

Contract means, except for those contracts entered into under subpart J of this part regulations or unless otherwise specified, a non-procurement contract, or a grant or a cooperative agreement under section 102 of the Act, or a grant or cooperative agreement under section 103(b)(1) entered into in-lieu-of a contract under section 102 between a tribe or tribal organization and the appropriate Secretary. The term contract when used in subpart J means a procurement contract.

Contract Appeals Board means the Interior Board of Contract Appeals (IBCA).

Contract funding base means the base level from which contract funding needs are determined, including all contract costs.

Contract support costs means reasonable costs for activities which must be carried on by a tribe or tribal organization to ensure compliance with the terms of the contract and prudent management, but which normally are not carried on by the respective Secretary in his/her direct operation of the program, or are provided by the Secretary in support of the contracted program from resources other than those under contract.

Contracting Officer means any person who, by appointment in accordance with applicable regulations has the authority to enter into and administer contracts on behalf of the United States of America and make determinations and findings with respect thereto. For purposes of construction contracts, the term also includes the authorized representative of the Contracting Officer, acting within the limits of his authority.

Contractor means the recipient of a contract as herein defined.

Cooperative agreement means a mechanism used either in lieu of a contract or a discretionary grant under subpart L of this part when substantial Federal programmatic involvement with the recipient during performance is anticipated.

Days means calendar days.

Department(s) means the Department of Health and Human Services (DHHS) or the Department of Interior (DOI), or both.

Direct program costs means recurring costs that can be identified specifically with a particular contract objective.

Dismantling/Demolition means dismantling or demolition of buildings, ground improvements and other real property structures and for the removal of such structures or portions of them.

Expendable Personal Property is all personal property that may be consumed or expended that has a useful life of less than one year after being placed in use.

Flow-through funds means those funds appropriated to another agency and then transferred to the Secretary for the operation of programs, services, and functions under the Act.

Grant means, for the purposes of section 103 of the Act, a discretionary financial assistance award under subpart L whereby money and/or direct assistance in lieu of cash is provided to carry out approved activities, or a cooperative agreement when substantial Federal programmatic involvement with the recipient during performance is anticipated.

Grantee means a recipient of a grant as herein defined.

Grant in lieu of a contract means a non-discretionary grant or cooperative agreement entered into by either Secretary in lieu of a contract under section 102, or entered into by the Secretary of HHS under section 103(b)(1) of the Act. Such grants and cooperative agreements are considered contracts as defined in this Section.

Indian means a person who is a member of an Indian tribe.

Indian-owned economic enterprise means any Indian owned commercial, industrial or business activity established or organized for the purpose of profit, provided that such Indian ownership shall constitute not less than 51 percent of the enterprise.

Indian tribe means any Indian tribe, band, nation or other organized group or community, including pueblos,

rancherias, colonies and any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Indirect cost rate means the rate(s) arrived at through negotiation between an Indian tribe or tribal organization and the appropriate cognizant Federal agency.

Indirect costs means costs incurred for a common or joint purpose benefiting more than one contract objective, or which are not readily assignable to the contract objectives specifically benefitted without effort disproportionate to the results achieved.

Mature contract means a contract that has been continuously operated for three or more years, and for which there are no significant and material audit exceptions in the most recent annual financial audit report for the contractor and for which a contractor has requested such status. A mature contract may be for a definite or an indefinite term as requested by the tribe (or, to the extent not limited by tribal resolution, by the tribal organization).

Non-Capitalized Personal Property is all personal property not defined as capitalized personal property.

Nonexpendable Personal Property is all personal property that has a useful life of more than one year after being placed in use.

Pass-through funds means those funds in a contract that do not receive the same degree of administrative effort as do other direct activities performed by a contractor. These funds may be for, but are not limited to, subcontracts, capitalized equipment, and capital improvements. They shall be limited to those funds which the contractor and the Secretary agree upon or are so designated in the indirect cost agreement or contract.

Personal Property is all supplies, materials, equipment, and other property including expendable and nonexpendable property whether capitalized or noncapitalized but does not include real property.

Program means the operation of services for tribal members and other eligible beneficiaries.

Program income means income received by the contractor directly generated by an activity supported by the contract, and earned only as a result of the contract during the term of the contract.

Project Period is the total time for which support of a discretionary project has been programmatically approved. A project period may consist of one or more budget periods. The total project period comprises the original project period and any extensions.

Real Property is any interest in land together with the improvements, structures, and fixtures located thereon, including prefabricated movable structures such as Butler-type storage warehouses and Quonset huts, mobile homes and trailers with or without undercarriages, and appurtenances thereto.

Secretary unless otherwise designated, means either the Secretary of HHS or the Secretary of the Interior, or both, and any other Federal officer or employee of either Department to whom an authority or duty has been delegated or assigned. The Secretary reserves the right to change any delegations or assignments indicated in this Part.

Sensitive Personal Property is all nonexpendable federally owned personal property regardless of acquisition cost that is subject to theft or pilferage. All firearms shall be considered sensitive personal property.

Significant and material audit exceptions means any of the following in an audit report concerning a contract:

(1) unresolved audit exceptions involving amounts aggregating the greater of $15,000 or 5 percent of the amount of the contract(s);

(2) unresolved audit exceptions involving major financial reporting deficiencies, or an opinion of the auditor qualifying the audit results because of serious departure from generally accepted accounting principles in the maintenance of the contractor's accounts or financial records; or

(3) express findings of financial mismanagement or misappropriation of funds or assets.

Term contract means a contract (other than a mature contract) which is for a specific period of time, not to exceed three years unless otherwise agreed to by the Secretary and the contractor. The term may not be longer than that provided by any applicable tribal resolution which limits the period of the contractor's authority.

Tribal organization means the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities.

Trust resources means an interest in land, water, minerals, funds or other assets or property which is held by the United States in trust for an Indian tribe or an Indian or which is held by an Indian tribe or Indian subject to a restriction on alienation imposed by the United States.

§ 900.103 Policy statements.

(a) *Congressional policy.* (1) Congress has recognized the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of educational as well as other Federal services to Indian communities so as to render such services more responsive to the needs and desires of those communities.

(2) Congress has declared its commitment to the maintenance of the Federal Government's unique and continuing relationship with, and responsibility to, individual Indian tribes and to the Indian people as a whole through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from the Federal domination of programs for, and services to, Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services. In accordance with this policy, the United States is committed to supporting and assisting Indian tribes in the development of strong and stable tribal governments, capable of administering quality programs and developing the economies of their respective communities.

(3) Congress has further declared that a major national goal of the United States is to provide the quantity and quality of educational services and opportunities which will permit Indian children to compete and excel in the life areas of their choice, and to achieve the measure of self-determination essential to their social and economic well-being.

(b) *Secretarial policy.* (1) It is the policy of the Secretary to facilitate the efforts of Indian tribes and tribal organizations to plan, conduct and administer programs, or portions thereof, which the Departments are authorized to administer for the benefit of Indians because of their status as Indians and for which funds are appropriated by Congress.

(2) It is the policy of the Secretary to encourage Indian tribes and tribal organizations to become increasingly knowledgeable about the Department's programs administered for the benefit of Indians by providing information on

such programs, and the opportunities Indian tribes have regarding them.

(3) It is the policy of the Secretary by these regulations to provide a uniform and consistent set of rules for contracts and grants under the Act. The rules contained herein are designed to facilitate and encourage Indian tribes to participate in the planning, conduct, and administration of those Federal programs serving Indian people. These regulations shall afford Indian tribes and tribal organizations the flexibility, information, and discretion necessary to design contractible programs to meet the needs of their communities consistent with their diverse demographic, geographic, economic, cultural, social, religious and institutional needs. Such programs must be consistent with standards set forth in these regulations and the contracts.

(4) It is the policy of the Secretary that contracting under the Act is an exercise by Indian tribes of the government-to-government relationship between the United States and the Indian tribes. When a tribe undertakes a contract, there is a transfer of responsibility and accountability to the tribal contractor for managing the day-to-day operations of the contracted Federal program, and the tribe becomes the entity primarily responsible for delivering the services. The contracting tribe thereby accepts the responsibility and accountability to the beneficiaries under the contract both for the use of the funds and for the satisfactory performance of the program funded under the program. The Secretary retains the responsibility to allocate and account for appropriated funds; to conduct monitoring necessary to meet the continuing obligations of the Secretary under the Act and other laws; to ensure that the contracting tribe delivers contracted services in a fair and uniform manner to all beneficiaries; and to ensure that a process exists to adjudicate complaints under the contract. The Secretary will continue to discharge the trust responsibilities vested in the Secretary to Indian tribes and individual Indians.

(5) A fundamental premise of the Self-Determination Act is that self-determination involves more than just contracting. Tribes also have the right not to contract and such decision is equally an expression of self-determination.

(6) The Secretary shall maintain budgetary consultation with tribal governments or tribal organizations in the Secretary's budget process relating to activities under the Act. This includes requesting tribal participation in formulating annual budget requests in accordance with guidelines provided by the Secretary.

(7) The Secretary recognizes that as programs are contracted by Indian tribes and tribal organizations under self-determination contracts, Secretarial functions will change in scope and extent. As contracting increases, the Secretary will identify and provide additional services resulting from changes in the Secretary's functions, or provide savings to the contractors which will be used for the purpose of providing contract services. The Secretary will ensure that non-contracted programs are not adversely affected.

(8) The Secretary is committed to implementing and fully supporting the policy of Indian self-determination by recognizing and supporting the many positive and successful efforts and directions of tribal governments and extending the applicability of this policy to all operational components within the Department. By fully extending Indian self-determination contracting to all operational components within the Department having programs or portions of programs for the benefit of Indians because of their status as Indians, it is the Secretary's intent to support and assist Indian tribes in the development of strong and stable tribal governments capable of administering quality programs that meet the tribally determined needs and directions of their respective communities. It is also the policy of the Secretary to have all other operational components within the Department work cooperatively with tribal governments on a government-to-government basis so as to expedite the transition away from Federal domination of Indian programs and make the ideals of Indian self-government and self-determination a reality.

§ 900.104 Effect on existing tribal rights.

Nothing in these regulations shall be construed as:

(a) Affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by Indian tribes;

(b) Authorizing or requiring the termination of any trust responsibility of the United States with respect to the Indian people;

(c) Requiring the Secretary to reduce funding for programs, projects and activities serving a tribe to make funds available to another tribe or tribal organization;

(d) Mandating an Indian tribe to apply; for a contract(s) or grant(s) as described in section 102 or section 103 of the Act; or

(e) Impeding awards by other Departments and agencies of the United States to Indian tribes to administer Indian programs under any other applicable law.

§ 900.105 Effect of these regulations.

(a) These regulations are the exclusive provisions governing contracts and grants under the Indian Self-Determination Act except as otherwise provided by applicable laws and regulations.

(b) The regulations in this part do not change the eligibility criteria that individuals must meet to be eligible for any program operated by the Departments, and contractors must follow applicable rules and regulations of the appropriate Secretary regarding eligibility of applicants for assistance, benefits or services.

§ 900.106 Contractibility.

(a)(1) The Secretary, upon the request of any Indian tribe or tribal organization by tribal resolution, shall enter into a contract(s) with the tribe or tribal organization to plan, conduct, and administer programs, or portions thereof:

(i) Provided by the Act of April 16, 1934, 48 Stat. 596, Johnson-O'Malley Act, as amended;

(ii) Which the Secretary is authorized to administer for the benefit of Indians under the Act of November 2, 1921, 42 Stat. 208, Snyder Act, and Acts subsequent thereto;

(iii) Provided by the Secretary of HHS under the Act of August 5, 1954, 68 Stat. 674, Transfer Act, as amended;

(iv) Administered by the Secretary for the benefit of Indians for which appropriations are made to agencies other than the Departments of HHS and Interior; or

(v) For the benefit of Indians because of their status as Indians without regard to the agency or office of the DHHS or the DOI within which it is performed. A program or portion of a program is for the benefit of Indians because of their status as Indians when:

(A) The authorizing statute or legislative history specifically identifies Indians, because of their status as Indians, as primary or significant beneficiaries of the program or portion of the program or otherwise indicates that congressional intent was to benefit Indians because of their status as Indians; or

(B) The appropriation of funds for the operation of the program or portion of the program specifically targets Indians, because of their status as Indians, or

reflects an intent to benefit Indians, because of their status as Indians, as primary or significant beneficiaries of the appropriations, as evidenced in the statutory or committee report language or the budget justifications submitted to the Appropriations Committee; or

(C) Regulations or administration of a program or portion of a program identify Indians, because of their status as Indians, or reflect a Departmental intent to benefit Indians, because of their status as Indians, as primary or significant recipients of the services to be provided by the program or portion of the program.

(2) In order to be subject to the mandate of (a)(1) above, a program or portion thereof must be authorized by Congress within one of the categories listed in (a)(1) for which Congress has appropriated funds.

(b) The Secretary of the Interior, upon the request of any Indian tribe and from funds appropriated for the benefit of Indians pursuant to the Act of November 2, 1921, 42 Stat. 208, Snyder Act and any Acts subsequent thereto, is authorized under section 103(a) of the Act to contract with any Indian tribe or tribal organization for:

(1) the strengthening or improvement of tribal government including, but not limited to, the development, improvement, maintenance, preservation, or operation of tribal facilities or resources;

(2) The planning, training, or evaluation of their activities designed to improve the capacity of an Indian tribe or tribal organization to enter into a contract(s) pursuant to section 102 of the Act and the additional cost associated with the initial years of operation under such a contract(s); or

(3) The acquisition of land in connection with paragraphs (b) (1) and (2) of this section: *Provided*, That in the case of land within Indian country as defined in Chapter 53 of title 18 U.S.C. or which adjoins on at least two sides lands held in trust by the United States for the tribe or for individual Indians, the Secretary of the Interior may, upon request of the tribe, acquire such land in trust for the tribe.

(c) The Act directs the Secretary to contract for "programs or portions thereof." The term "program" is defined in § 900.102 as "the operation of services for tribal members and other eligible beneficiaries." Service delivery programs subject to contracting under these regulations are generally performed at the reservation level, but may be performed at higher organizational levels within the DHHS and DOI. In providing services under a contracted program, the tribe or tribal organization may perform functions which would otherwise be performed by Federal employees, such as determining the eligibility of applicants for, and the amount and extent of, assistance, benefits, or services in accordance with the terms of the contract and applicable regulations of the appropriate Secretary: *Provided*, That the Secretary shall not make any contract which would impair the ability to discharge trust responsibilities to any Indian tribe or individuals or obligation under the Constitution to ensure the laws are faithfully executed.

(d) Contracting for the operation of services to tribal members and other eligible beneficiaries does not permit the transfer to the tribe or tribal organization of inherently Federal responsibilities involving the exercise of significant authority under the Constitution, and functions integral to the exercise of discretion, judgment or oversight vested in the Secretary by law or by virtue of the Secretary's trust responsibilities. Such functions and responsibilities may only be carried out for the Federal Government by Federal officials and are not contractible under the Act. Examples of Federal responsibilities and functions carried out for the Secretary and under the Secretary's authority which are not contractible include, but are not limited to, the following:

(1) Allocation, award (including discretionary grant funds), and obligation of Federal funds and approving amounts of Federal expenditures.

(2) The selection or nonselection of individuals for Federal Government employment and the direction and control of Federal employees including the approval of position descriptions and performance standards for Federal employees except as authorized under section 104 of the Act.

(3) Administration of Federal contracting and grant laws for the Federal Government, including monitoring and auditing of Federal contract and grant projects necessary to maintain the continuing trust, programmatic and fiscal responsibilities of the Secretary. These Federal responsibilities and functions include, but are not limited to, determining what property or services are to be acquired or supported by the Federal Government, the award and administration of Federal contracts and grants, and determining for the Federal agency involved whether contract and grant costs are reasonable, allocable, and allowable.

(4) Deciding Federal administrative appeals or hearings, and the exercise of supervisory review.

(5) Determination of the Secretary's views and recommendations concerning Federal administrative appeals or litigation and representation of the Secretary in Federal administrative appeals or litigation.

(6) Formulation of the Secretary's and the President's policies as expressed in budgetary and legislative recommendations and views and the publication of regulations, policies or notices in the **Federal Register**.

(7) Nondelegable Secretarial duties relating to trust resources.

(8) Federal agency determinations to issue discretionary Federal licenses or permits.

(9) Federal agency determinations to:

(i) Acquire, use or dispose of, (whether by sale, lease or otherwise) lands, interests in lands, natural resources or other property;

(ii) To establish the terms (financial or otherwise) of acquisition or disposition; and

(iii) In this connection, to render title opinions on behalf of the United States or to order, prepare instructions for, and approve appraisals, surveys and title examinations.

(10) Federal agency decisions determining the rights, or claims or obligations of others in relation to the United States and the correlative rights, claims, and obligations of the United States.

(11) Executive Branch determinations of, or Federal agency decisions and orders imposing sanctions or penalties for, violations of Federal statutes, regulations or orders, or breaches of permits, grants, leases or contracts.

(e) In determining whether Federal responsibilities and functions are contractible, the Secretary shall consider whether the responsibility or function:

(1) Involves the discretionary exercise of Governmental authority for or on behalf of the Secretary or the making of value judgments in making decisions for the Federal Government (as distinguished from the operation of services for tribal members, or activities eligible for funding as contract support costs described in § 900.109(b), gathering information, providing advice or purely ministerial functions);

(2) Impermissibly limits the degree of Federal discretion as indicated by the finality of the proposed contractor action or the degree to which contractor discretion would be circumscribed by detailed laws, regulation or procedure;

(3) Can be implemented through special agency authority, such as the power to deputize nonfederal personnel;

(4) Is required by law to be carried out by Federal officials; or

(5) Cannot be feasibly separated from the exercise of nondelegable trust responsibilities or significant Federal authority for the Federal Government under this or other laws.

(f) In order to limit the instances in which it is necessary to reject a proposal because it may include noncontractible functions, tribes and tribal organizations are encouraged to consult with the Secretary prior to the submission of proposals when there is uncertainty regarding the contractibility of a function. The purpose of these consultations will be to reach agreement as to the functions in the activity being considered for contracting that are contractible and how tribal performance of such functions closely supportive of noncontractible functions may be effectively coordinated with the Secretary's performance of noncontractible trust or other responsibilities. These agreements, to insure adequate Federal oversight and capacity for independent judgement to meet legal requirements, may be reflected in a memorandum of understanding between the parties or in the terms of a contract or grant.

(g) The Secretary is not authorized to enter into a contract under this Part if the applicant tribe does not benefit from the services proposed for contracting as provided in section 4(1) of the Act.

(1) In determining whether an applicant tribe benefits from a program proposed for contracting, the Secretary shall consider the following:

(i) Whether the program to be contracted is within the tribe's geographic base as defined by factors such as, but not limited to, geographic service areas (e.g., Service Unit as defined in section 4(j)) of the Indian Health Care Improvement Act, 25 U.S.C. 1603, current or former reservation boundaries, statutes, and court orders;

(ii) Whether the program was established for the tribe;

(iii) Whether a resolution would be required from the applicant tribe if another tribe were to propose to contract for the program; and

(iv) Changed circumstances such as unification of two or more tribes into a single tribe or division of a tribe into two or more tribes.

(2) A tribe does not benefit from a program under section 4(1) of the Act based only on the happenstance that some of its members find themselves in the geographical area served by a local program and, incidental to this, are served.

(3) Resolutions of support are not required from every tribe which happens to have members who are served by a local program absent a determination that that tribe itself benefits from the program.

(4) More than one tribe can benefit from the same program as a result of such factors as a shared geographical base or program.

(5) A tribe does not have the authority to require the Secretary to award a contract to serve its members who are located in an established service area outside its own established service area unless it is proposing to join the established service area and it has resolutions of support from all tribes served by the established service areas.

(h) The Secretary is not authorized to enter into any contract under this part if such a contract:

(1) Is for an activity or project which the Secretary determines cannot be contracted before completing an environmental impact statement or environmental assessment, pursuant to the National Environmental Policy Act (NEPA), (42 U.S.C. 4321 et seq.); consultation pursuant to the Endangered Species Act (ESA), (16 U.S.C. 1531 et seq.); a consistency determination pursuant to the Coastal Zone Management Act (16 U.S.C. 1451 et seq.); decision to undertake a project affecting a historic property under section 106 of the National Historic Preservation Act, (16 U.S.C. 469 et seq.); or other Federal statutory prerequisite to a commitment to undertake a Federal activity or project.

(2) Is for an activity or project which the Secretary has determined would:

(i) Jeopardize the continued existence of an endangered or threatened species;

(ii) Result in the destruction or adverse modification of the habitat of such species;

(iii) Be inconsistent with an approved state coastal zone management plan; or

(iv) Otherwise pose environmental risks the Secretary finds unacceptable following review in an environmental assessment or environmental impact statement.

(3) Is entered into on behalf of an Indian tribe that has not approved the letting of the contract by tribal resolution; or

(4) Authorizes or requires the termination of any trust responsibility of the United States with respect to the Indian people.

§ 900.107 Program division.

(a) Approving and funding a contract proposal may require that the Secretary divide a program serving other tribes or individuals that are not parties to the contract proposal. It is the Secretary's policy to encourage all tribes affected by a proposed program division to confer and resolve among themselves the division of program resources, including funds, facilities, equipment, and personnel. A tribe or tribal organization intending to submit a contract proposal is encouraged to commence that inter-tribal consultation process as early as possible, and preferably before submitting the proposal to the Secretary. The Secretary will facilitate this government-to-government dialogue to the extent resources are available.

(b) In order to facilitate contracting of programs serving more than one tribe, the Secretary shall:

(1) Within 10 days of receiving a proposal from a tribe or tribal organization to contract for its proposed share of a program serving other tribes, send copies of the proposal to all affected tribes other than those submitting the contract proposal;

(2) Within a specified time period, afford all tribes affected with the opportunity to comment on the proposed division of the program; and

(3) Facilitate inter-tribal consultation with respect to the proposed division of the program. In consulting with affected tribes, the Secretary shall consider regional and local circumstances, and the consultation process shall, to the extent practicable, accommodate such unique circumstances.

(c) Based on consultation with all affected tribes identified in paragraphs (a) and (b) of this section, the Secretary shall review the proposed division of the available program resources, including funds, equipment, personnel, and facilities and determine the appropriate funding level for the proposed contract under § 900.108. While the Secretary is not required to reduce funding for programs, projects, or activities serving one tribe to make funds available to another tribe or tribal organization, the Secretary may identify additional funds from any savings within the Federal contracting organization resulting from reductions in the Secretary's functions.

(d) For purposes of determining whether or not to decline the proposal under § 900.207, the Secretary shall consider the effect the proposed contract will have on the level, scope and quality of services not only for those tribes and individuals to be served under the contract proposal but also those tribes and individuals who are served by the current program but who would not be served under the contract proposal. A proposal to divide a

program for purposes of contracting may result in losing certain economies of scale realized in the prior administration of the program. This may result in a reduction in the level, scope or quality of services previously provided due to contracting. Such reduction is not in itself a reason for declining a contract proposal unless such reduction reaches the declination criteria in § 900.207.

(e) In the event the determinations made pursuant to this section do not lead the Secretary to decline the contract proposal, but result in the delivery of diminished services or resources to the contracting tribes, to other tribes, or to both sets of tribes, the Secretary may confer with all the affected tribes for the purpose of rearranging priorities to better meet the needs of all the affected tribes.

(f) Approving and funding a contract proposal may require that the Secretary divide a program, a portion of which is for the benefit of Indians because of their status as Indians. In these cases, the tribe or tribal organization and the Secretary shall, upon mutual agreement, include in the contract provisions to assure adequate coordination and division of the program to facilitate the ability of the Secretary and the tribe or tribal organization to effectively carry out their respective responsibilities. In order to facilitate the division of such a program (or portion thereof), the Secretary shall, to the degree practicable, make an effort to identify the affected beneficiaries and assess the impacts of the contract on the noncontracting parties so as to determine a reasonable way of coordinating and dividing the program.

§ 900.108 Amount of funding.

(a) Subject to the availability of appropriations, the amount of funds to be provided for each budget period of the contract shall be determined by the Secretary as follows:

(1) The Secretarial amount shall consist of the amount (exclusive of funds provided under paragraph (a)(2) of this section) that the Secretary would have provided for the Secretary's operation of the program(s) to be contracted. This amount shall be determined based on the processes actually utilized by the Secretary to allocate resources among program activities; provided that the Secretary of DOI shall, in the absence of advance allocation for the benefit of particular tribes, allocate to each tribe its proportionate share of the expenditures actually made on behalf of Indian tribes in the last complete fiscal year, as adjusted by the current fiscal year's budget; and

(2) The Secretary shall add to the amount provided under paragraph (a)(1) of this section an amount for contract support costs in accordance with the allocation processes actually utilized by the Secretary for funds made available from appropriations for this purpose. Contract support costs are reasonable costs for activities which must be carried out by the contractor to ensure compliance with the terms of the contract and prudent management, but which are not provided for under paragraph (a)(1) of this section because such costs:

(i) Would not normally be carried on by the Secretary in the direct operation of the program to be contracted; or

(ii) Are provided by the Secretary in support of the contracted program from resources other than those of the program activity to be contracted as provided for under paragraph (a)(1) of this section.

(b) Contract support costs may be recurring or non-recurring and may include, but are not limited to, the following examples, to the extent they are allowable under Subpart D of this part:

(1) Employee benefits and related costs, including unemployment taxes, retirement fund contributions and workers compensation insurance or its equivalent;

(2) Executive direction and management including related policy and planning functions, program evaluation, and quality assurance;

(3) Financial management, including accounting and other related financial functions;

(4) Personnel management, including recruitment, staffing, personnel classification, recordkeeping, benefits management, employee counseling and other personnel management functions;

(5) Human resource development, including employee training and career development;

(6) Procurement and materials management, including purchasing, receiving, inventory management, warehousing and distributing materials, and subcontracting;

(7) Records management, including activities involving the management of current and cumulative records and filing systems (including retention scheduling, storage, microfilming, and library management);

(8) Data processing and information management, including system design and analysis, programming, hardware, software and related functions;

(9) Office services, including general clerical supplies and personnel required for typing, copying, reception, telephone answering services, mail management and general office management;

(10) Legal services, including reasonable expenses to retain legal counsel for activities related to the operation of programs and administrative matters, including policy and contract review and employee functions, but not attorney fees for appeals and litigation which are payable only under the Equal Access to Justice Act (EAJA);

(11) Auditing services, including provision of single audits required under the Single Audit Act, including compliance reports, audits of internal control, system certifications, examination of financial statements; independent review of indirect cost proposals and general assistance in review and improvement of financial systems;

(12) General support services, including outside services for photocopying, transportation, communications and other similar services;

(13) Various types of insurance;

(14) Governing bodies, including tribal councils, executive boards or other bodies which are considered the governing body of tribes or tribal organizations while acting in their role in support of contracted programs;

(15) Facilities that house programs and related support services, including rent and lease payments;

(16) Facilities operations and maintenance not duplicative of items listed in paragraph (b)(15) of this section, includes costs of electricity, fuel, water, sewer, refuse removal, housekeeping and janitorial services, building and grounds maintenance, preventative maintenance, snow removal, security guards and devices, etc.;

(17) Purchase of capital equipment; and

(18) Start-up costs (i.e., one time costs necessary to implement the contract).

(c) The Secretary may provide for annual renegotiation of amounts of such contracts to reflect changed circumstances and factors, including but not limited to cost increases beyond the contractor's control, significant decreases in the actual number of beneficiaries served under the contract, or other significant changes in the scope of the contract.

(d) The Secretary shall identify for the Indian tribe or tribal organization detailed funding data supporting the amount identified in paragraph (a)(1) of this section. At the contractor's request, the Secretary shall assist the contractor

in determining the reasonable amount of contract support costs needed under paragraph (a)(2) of this section.

(e) At the discretion of the Secretary, as programs are contracted and as savings become available, the contracting Bureau or office will identify such savings and may provide them to tribal contractors to the extent to which:

(1) Support services to other programs, projects, or activities can be maintained at satisfactory levels, and

(2) The Secretary can continue to fulfill the Secretary's trust responsibility and other Federal obligations under this or other laws.

(f) The total contract award, consisting of available amounts determined under paragraph (a) (1) and (2) of this section, can be recovered from the Secretary in accordance with subpart D, as direct costs or a combination of direct and indirect costs.

(g) When Congress provides additional funding specifically for an Indian tribe or tribal organization, the amount provided shall be deemed to include contract support costs, unless otherwise provided by Congress.

(h) The Secretary is not required to reduce funding for programs serving a tribe to make funds available to another tribe or tribal organization.

(i) Where the contractor uses Federal employees under section 104 of the Act and the employees are compensated by the Federal Government, an amount equivalent to the cost of their compensation shall be deducted in annual budget negotiations. This amount shall be based upon data furnished to the contractor by the Secretary (subject to a full accounting to the contractor on the Secretary's actual expenditure of such funds and to reimbursement to the contractor at the end of the contract funding period of any unexpended portion of such amount). The amount so deducted shall be negotiated and may be renegotiated at any time with the contractor. Any disagreement over the Secretary's accounting reimbursement (if any) shall be subject to appeal pursuant to the Contract Disputes Act, as provided in subpart H of this part. Where Federal employees are used pursuant to an Intergovernmental Personnel Act Agreement, an agreement subject to section 214 of the PHS Act, or other agreement, such agreement shall be subject to revocation by the contractor at any time with or without cause, and shall terminate no later than 60 days from the date of the contractor's notification to the Secretary. In the event a contractor ceases utilization of one or more such Federal employees prior to the end of the current funding period, and absent utilization of a replacement Federal employee, the Secretary shall within 60 days, reimburse to the contractor the estimated unexpended portion of the amount previously deducted, calculated from the last date of the Federal employee's utilization. Additional amounts shall not be deducted from the award without the consent of the contractor.

§ 900.109 Funding and/or contractibility impasse.

(a) If the tribe or tribal organization believes that the Secretary has not accurately determined the amount of the contract pursuant to § 900.108 or disagrees with the Secretary's decision based on § 900.106 contractibility of some or all aspects of the contract proposal, the tribe or tribal organization may appeal pursuant to subpart H of this part.

(b) Pending resolution of appeals pertaining to a new proposal,

(1) The tribe or tribal organization and the Secretary may agree to changes in the proposal.

(2) The Secretary will award a contract reflecting the agreement including the contract amount and scope of work agreed upon.

(c) Pending resolution of appeals pertaining to annual funding of ongoing contracts and renewal proposals, the Secretary shall provide funding at the same level as the previous year, unless the parties mutually agree to a different level of funding.

§ 900.110 Limitation of funds.

(a) It is anticipated that the amount of funds to be provided by the Secretary for the current budget period as determined pursuant to § 900.108 and reflected in the contract award plus any carry-over funds from previous budget periods will be adequate for the contractor to perform all work and to comply with all contractual obligations for the current budget period. The contractor agrees to use its best efforts to perform all work and all obligations with such funds.

(b) The contract will specify the amount currently allotted to this contract and available for payment by the Secretary for the current budget period. If the amount currently allotted is less than the full amount for the current budget period, any additional funds allotted by the Secretary shall be accomplished by unilateral modification(s) to the contract up to the full amount of funds to be provided by the Secretary for the budget period.

(c) The Secretary is not obligated to reimburse the contractor for costs incurred in excess of the total amount of funds allotted by the Secretary to the contract for the current and prior budget periods; and the contractor is not obligated to continue performance under the contract or otherwise incur costs in excess of the amount then allotted to the contract until the Secretary notifies the contractor in writing that the amount allotted by the Secretary has been increased and specifies an increased amount, which shall then constitute the total amount allotted by the Secretary to the contract.

(d) To the extent the amount allotted by the Secretary to the contract is increased as provided under paragraph (c) of this section, any costs the contractor incurs prior to the increase, that are in excess of the amount previously allotted by the Secretary, shall be allowable to the same extent as if incurred afterward.

§ 900.111 Carryover funding.

(a) Any funds appropriated pursuant to the Act of November 2, 1921, 25 U.S.C. 13, or as otherwise authorized by law, awarded during a contract funding period which are not expended during that period, may be carried over and used in the succeeding contract funding period.

(b) Carryover funds shall be added to the award amount for the succeeding period. The savings or unexpended funds shall not reduce the amount that would have been made available by the respective Secretary if there had been no unexpended funds. Savings and other unobligated funds that are carried forward into a succeeding funding period will not be used either to lower the priority for funding or to increase the base in the succeeding year.

(c) Carryover funds may be used for the same general purpose for which they were originally appropriated or authorized under the contract without additional documentation or justification for such use. Where funds are being contemplated for use for other purposes, Secretarial approval is required, and the contractor must provide sufficient information for the Secretary to evaluate the program merits of the request and assess its impact on reprogramming which may be accomplished without the approval of Congress.

§ 900.112 Protection against funding reductions.

The amount of funds for a contract shall not be reduced by the Secretary to pay for:

(a) Contract monitoring or administration that may be performed by or on behalf of the Secretary;

(b) Federal functions including, but not limited to, Federal pay costs, Federal employee retirement benefits, automated data processing, contract technical assistance or contract monitoring; or

(c) The costs, both direct and indirect, of Federal personnel displaced by a contract.

§ 900.113 Funding reduction.

The amount of funds for a contract determined in § 900.108 (a) and (b) may be reduced in the initial and subsequent years only if one or more of the following conditions exist:

(a) A reduction in the amount of the agency's appropriation for the program to be contracted as compared to the previous appropriation for that program. Unless the Appropriation Act or related Congressional report provides specific directions, any such reduction shall be shared proportionately among contracts and federally operated programs;

(b) An approval from an Indian tribe or tribal organization authorized by tribal resolution;

(c) If a contract is with a multi-tribal consortium and at least one member of the consortium withdraws its supporting resolution;

(d) A change in the amount of flow-through funds needed under a contract. When the amount of flow-through funds is less than in the previous year, the amount of the contract pursuant to the flow-through funds may be reduced by an amount proportionate to the reduction in flow-through funds;

(e) A decrease in the amount of the indirect cost portion of contract support funds results from the application of the indirect cost rate to a smaller base or from a smaller indirect cost rate; or

(f) In the case of the completion of a one-time contracted project or portion(s) of a project, activity, or program, contracts may be reduced by amounts corresponding to completed portions of a project, activity, or program. Funds for one-time projects with a specific term or completion date shall be funded on a nonrecurring basis.

§ 900.114 Increase to contracts.

Additional funds that may become available shall be provided to contracted programs on the same basis as such funds are provided to programs operated directly by the Secretary.

§ 900.115 Indian preference in training and employment.

(a) Contractors, subcontractors, grantees, and subgrantees shall, to the greatest extent feasible, give preference to Indians regardless of tribal affiliation in training and employment.

(b) Indian tribes and tribal organizations shall maintain such records as are necessary to indicate compliance with this section.

(c) If any contractor, subcontractor, grantee, or subgrantee is unable to fill its employment openings after giving full consideration to Indians as required by paragraph (a), these employment openings may then be filled by other than Indians under the conditions set forth in § 900.116.

(d) Any contract, subcontract, grant, or subgrant awarded pursuant to the Act shall be subject to any supplemental Indian preference requirements established by the tribe receiving services under the contract, subcontract, grant, or subgrant, to the extent such requirements are consistent with the purpose and intent of this section.

§ 900.116 Equal opportunity and civil rights.

Subject to the Indian preference in training and employment requirements of § 900.115, any contract, subcontract, grant or subgrant awarded pursuant to the Act shall prohibit discrimination against any employee and applicant for employment because of race, creed, color, national origin, sex, age, or handicap.

§ 900.117 Penalties.

Whoever, being an officer, director, agent, or employee of, or connected in any capacity with any recipient of any contract or subcontract, pursuant to the Act or the Act of April 16, 1934, 48 Stat. 596, as amended, embezzles, willfully misapplies, steals, or obtains by fraud any of the money, funds, assets, or property which are the subject of such a grant, subgrant, contract, or subcontract, shall be fined not more than $10,000 or imprisoned for not more than two years, or both, but if the amount so embezzled, misapplied, stolen, or obtained by fraud does not exceed $100, he/she shall be fined not more than $1,000 or imprisoned not more than one year, or both. The contractor agrees to insert the above requirement in all subcontracts.

§ 900.118 Anti-Kickback Act.

The provisions of the Anti-Kickback Act of 1986, Public Law 86–695, 41 U.S.C. 51–58 are applicable to prime contracts and subcontracts entered into under this regulation. Payment, directly or indirectly, by or on behalf of a contractor or subcontractor in any tier under any negotiated contract of any fee, gift or gratuity as an inducement or acknowledgment for the award of a contract, subcontract or order is prohibited.

§ 900.119 Personnel.

(a) A tribe or tribal organization, in accordance with section 104 of the Act, may utilize Federal employees for the operation of programs authorized to be contracted under section 102 of the Act. A tribe or tribal organization may elect to directly hire Federal employees, as provided in (b) below; or enter into either an Intergovernmental Personnel Act (IPA) agreement, as provided in (c), or an agreement pursuant to section 214(d) of the Public Health Service (PHS) Act.

(b) Direct Hire: A tribe or tribal organization may employ Federal personnel who were previously employed by a Federal agency in the operation of programs authorized to be contracted under section 102 of the Act. Such employees shall, upon the effective date of transfer, be subject to a tribe's or tribal organization's personnel policies and procedures, except that a tribe or tribal organization may agree to extend to the affected employee the coverage, rights, and benefits provided in section 104 (e) (1), (2), (3), and (g) of the Act.

(1) If the tribe or tribal organization, and the affected employee agree to the above coverage, the tribe or tribal organization shall arrange for appropriate contributions and employee deductions in payment for coverage, rights, and benefits for the period of employment with the tribe or tribal organization.

(2) Funds necessary for such contributions may be derived from contract funds, as provided in § 900.108(h).

(c) Intergovernmental Personnel Act. A tribe or tribal organization may request temporary assignment of any Federal employee under an IPA agreement to assist in performing the contract awarded under section 102 of the Act. The IPA agreement shall be entered into between the tribe or tribal organization and the Secretary with the concurrence of the affected employee.

(1) The agreement shall be for a period not to exceed 2 years with an option to extend the period of assignment indefinitely in increments of 2 years or less when it is determined that doing so will continue to benefit both the Secretary and the tribe or tribal organization. In the event the assigned Federal employee fails to complete the period of assignment and there is another employee willing and available to do so, the appropriate Secretary may, with the consent of the tribe or tribal

organization, assign the employee to complete the period of assignment and may execute an agreement with the tribe or tribal organization with respect to the replacement employee. Such agreement may change the period of assignment.

(2) The assigned Federal employee shall remain an employee of the Federal Government and shall be eligible for promotions, periodic step increases, additional step increases, merit pay, and cash awards on the same basis as other Federal employees.

(3) The costs necessary for the assignment may be negotiated between the tribe or tribal organization and the appropriate Secretary. Any tribe's or tribal organization's contributions may be derived from contract funds, as provided in § 900.108(h).

§ 900.120 Availability of information.

(a) Except as otherwise provided in law or regulations, and providing that the release of information does not constitute an unwarranted invasion of personal privacy, trade secrets or proprietary data, the contractor shall make all reports and information concerning the contract available to the Indian people served or represented by the contractor.

(b) The contractor shall hold confidential all information obtained from persons receiving services under the contract related to their examination, care, and treatment, and shall not release such information without the individual's consent except in accordance with the Privacy Act and Department Privacy Act regulations and the alcohol and drug abuse patient confidentiality regulations where applicable. Under such regulations, individual patient information may be disclosed to provide medical service to the individual, or as may be necessary to monitor the operations of the program or otherwise protect the public health. Information may also be disclosed in a form which does not identify particular individuals.

(c) The contractor shall hold confidential all information obtained from any person relating to the financial affairs of individual Indians, lessees, permittees or contractors, and shall not release such information without the individual's consent except in accordance with the Privacy Act or other relevant law.

§ 900.121 Record retention and access to records.

(a) *Recordkeeping.* Each contractor shall keep records which will allow the Secretary to meet legal records program requirements under the Federal Records Act (44 U.S.C. 3101 et seq.) and to facilitate contract retrocession or reassumption under Subpart K of this Part. Such records shall, at a minimum, fully disclose:

(1) The amount and disposition of awarded funds;

(2) The cost of the contract;

(3) The cost of the contract supplied by other sources; and

(4) Such other financial information as will facilitate an effective audit.

(b) *Program Records.* The contractor shall be responsible for maintaining files of correspondence and other documents relating to the administration of the contracted program pursuant to the Privacy Act (5 U.S.C. 552a).

(c) *Retention of Records.* (1) The contractor shall preserve and make available its program, e.g., medical records, in accordance with the General Records Schedules issued by the National Archives and Records Administration in accordance with 36 CFR part 1228 and the records retention schedules of the Federal agency providing the contract. Upon expiration of a record's retention period, it shall be returned to the Secretary for retirement to the National Archives in accordance with 44 U.S.C. 3101–3314, and 36 CFR part 1228.

(2) Records other than program records shall be retained for three years from the starting date specified in paragraph (c)(4) of this section. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the three-year period, the records shall be retained until the action is completed.

(3) To avoid duplicate recordkeeping, a contractor and the Secretary may make arrangements to retain records in a single location which are needed for joint use.

(4) The retention period for the records of each budget period starts on the day the contractor submits to the Secretary its last expenditure report to the Secretary.

(5) Real property and equipment records. The retention period for real property and equipment records starts from the date of the disposition, replacement or transfer of the property or equipment.

(6) Indirect cost rate proposals, cost allocation plans, etc. This paragraph applies to the following types of documents, and their supporting records: Indirect cost rate computations or proposals, cost allocation plans and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as composite fringe benefit rates). If the proposal, plan, or other computation is required to be submitted to the Secretary to form the basis for negotiation of the rate, then the three-year retention period for its supporting records starts from the date of each submission.

(7) Electronic, magnetic, photographic or other means may be substituted for hard copies.

(d) *Government Access.* The Comptroller General of the United States and the Secretary, or any of their authorized representatives, shall until the expiration of three years after completion of the contract or grant, have access (for the purpose of audit and examination) to any books, documents, papers, and records of contractors and grantees, which in the opinion of the Comptroller General or the Secretary may be related or pertinent to the grant, contract, subcontract, subgrant or other arrangements. Contractors and grantees shall include this provision in all subcontracts and subgrants.

§ 900.122 Freedom of information.

Access to records maintained by the Secretary is governed by the Freedom of Information Act (5 U.S.C. 552) and other applicable Federal law. The Freedom of Information Act does not apply to records maintained solely by Indian tribes and tribal organizations.

§ 900.123 Privacy Act.

The Privacy Act (5 U.S.C. 552a) is applicable to a system of records that contain confidential information about individuals served under Indian self-determination contracts. Individuals can obtain access to their own records under the Privacy Act.

§ 900.124 Monitoring.

(a) Contractors are responsible for managing the day-to-day operations of the contract and for monitoring activities to assure compliance with the contract, applicable Federal requirements and that performance goals are being achieved. Monitoring by the contractor must cover each program, function or activity included in the contract.

(b) Monitoring by the Secretary shall be performed to adequately maintain the continuing trust, programmatic, and fiscal responsibilities of the Secretary, or as otherwise required by Federal law.

(c) Each operating division, Departmental bureau or Departmental agency or duly authorized representative(s), may make no more than one annual formal performance monitoring visit per contract, unless:

(1) The contractor has agreed to such visit(s) either in a schedule attached to the contract or otherwise, or

(2) There is reasonable cause to believe that grounds for reassumption of

the contract or other serious contract deficiency exists, provided that such additional visits will be made after notice to the contractor including the nature of the problem which requires the additional visit.

(d) This section does not apply to technical assistance visits requested by the contractor. It also does not apply to visits relating to trust functions, approval of trust related transactions, Catastrophic Health Emergency Fund transactions, or except as may be provided for in subpart J.

(e) Nothing in this section is intended to limit government access under § 900.121(c) or § 900.402(b).

Subpart B—Preaward and Proposal Process

§ 900.201 Eligibility.

Any federally recognized Indian tribe or tribal organization duly authorized by a tribe is eligible to apply for a contract(s) or grant(s) under the Act.

§ 900.202 Tribal resolution.

(a) A tribe exercises its sovereignty through a tribal resolution when it decides to contract any program or portion thereof.

(1) Before the Secretary can enter into a contract, the Secretary must be requested to do so by the Indian tribe or tribes to be served under the contract. The request shall be in the form of a resolution by the tribal governing body or bodies. No additional resolution shall be required to serve eligible Indians from tribes located outside the same geographical service area.

(2) If a tribe or tribal organization proposes to contract to perform services benefiting more than one Indian tribe located within the same geographical service area, an authorizing resolution from each tribal governing body to be so served must be obtained. No additional resolutions shall be required to serve eligible Indians from tribes located outside the same geographical service area.

(3) For the Alaska area, the following order of precedence shall be applied in determining which entity shall be recognized as the tribal governing body.

(i) A recognized Indian Reorganization Act (IRA) Council, providing governmental functions for the Alaska Native village;

(ii) If there is no IRA Council, the recognized traditional tribal council providing governmental functions for the Alaska Native village;

(iii) If none of the tribal entities within paragraphs (a)(3) (i) or (ii) of this section exists, the village corporations established pursuant to the Alaska Native Claims Settlement Act; or

(iv) If none of the entities in paragraphs (a)(3) (i), (ii) or (iii) of this section exists, the regional corporation established pursuant to the Alaska Native Claims Settlement Act for the region within which the Alaska Native community is located.

(4) The Secretary will accept resolutions authorizing a tribal organization to apply for, negotiate, and execute multiple contracts on behalf of the tribe(s) being served.

(5) A resolution shall remain in effect until such time as it expires by its own terms or is rescinded.

(b) A tribal resolution shall include the following:

(1) The full name of the tribal governing body.

(2) The full name of the tribal organization, if applicable, authorized by a tribe to enter into the contract(s).

(3) A brief description of the program(s) or portion(s) thereof to be contracted, provided that no description shall be necessary when the resolution generally authorizes a tribal organization to contract for all programs subject to the Act.

(4) Any delegations of authorities or limitations of authorities.

(5) The expiration date, if any, of the authorities granted by the resolution.

(6) Signatures of the tribal officials authorized by the tribal governing body to sign resolutions.

(7) Nothing herein is intended to disturb or alter the validity or effect of resolutions adopted prior to the promulgation of these regulations.

§ 900.203 Pre-application technical assistance.

(a) The Secretary, upon the request of any Indian tribe or tribal organization, as soon as possible, but not later than 45 days after receipt of the request, and subject to the availability of resources, either by contract or with Federal employees, shall commence to provide technical assistance on a nonreimbursable basis to the requesting tribe or tribal organization:

(1) To develop any new contract authorized pursuant to the Act;

(2) To provide for the assumption by such Indian tribe or tribal organization of any program, or portion thereof, provided for in section 102(a)(1) of the Act;

(3) To develop modifications to any proposal for a contract which the Secretary has declined to approve pursuant to section 102 of the Act; or

(4) To develop program requirements which differ from the Secretary's requirements in Subpart O of this part.

(b) An Indian tribe or tribal organization may also apply for a grant for technical assistance pursuant to section 103 of the Act and Subpart L of this part.

(c) In order to facilitate the contracting process, tribes and tribal organizations intending to contract for programs or portions of programs under the Act, should request information concerning the amount of funds available for the proposed contract from the Secretary prior to submission of the contract proposal. Within 30 days of the receipt of such request, the Secretary shall identify the Secretarial amount and provide information regarding the availability of contract support costs.

§ 900.204 Access to federal records.

(a) The Secretary shall provide information or access to records. Access to Federal records generally is governed by the Freedom of Information Act (FOIA), HHS FOIA regulations (45 CFR part 5) and DOI FOIA regulations (43 CFR 4.5). Access to records on individual patients, which are part of a system of records, is governed by the Privacy Act, HHS Privacy Act regulations (45 CFR part 5b) and DOI Privacy Act regulations (43 CFR part 2). Moreover, if an individual is receiving or has received treatment for alcohol or drug abuse, access to these medical records is governed by 42 CFR part 2, the Confidentiality of Alcohol and Drug Abuse Patient Records Regulations.

(b) Upon receipt of a written request from a tribe or tribal organization, the Secretary shall make information and/or records available concerning the program or portion thereof to be contracted to assist the tribe or tribal organization in preparing a contract proposal.

(c) Information to be made available shall include, but is not limited to:

(1) A description of the program services to be contracted and how those services are delivered to the beneficiaries;

(2) Reports on program operations (or the facilities used therein) for the past three years, including any program plan or program information documents used by the Department in the administration of the program;

(3) Present staffing pattern and grade levels for personnel conducting the program activity to be contracted, including funded vacancies, position descriptions, professional standards, and program standards;

(4) Fiscal data and budget structure data, including data on the amount of funds which have been provided by the appropriate Secretary for the direct operation of the specific program(s) or portions thereof to be contracted for the

current and the past three fiscal years; and

(5) Existing appraisals, inventories, and assessments of trust resources.

(d) The Indian tribe or tribal organization shall have access to necessary Federal records at the appropriate office for review and making copies of selected records. If the Indian tribe or tribal organization requests identifiable records, the Secretary will furnish the copies to the Indian tribe or tribal organization: *Provided*, That where a large volume of records is requested and copying is not practical or feasible, the records may be made available for inspection and copying by tribal representatives at the government site. The Secretary shall remain the custodian of any such records.

(e) Following a request from an Indian tribe or tribal organization, the responding official shall provide updated information regarding programmatic changes.

(f) Use of the information made available shall be subject to any confidentiality requirement to which the agency is subject.

(g) In the event disagreements arise regarding access to records, tribes and tribal organizations may request records pursuant to FOIA and be afforded appeal rights pursuant to the Secretary's applicable FOIA regulations.

§ 900.205 Initial proposal requirements.

A contract proposal shall consist of the following:

(a) Full name, address and telephone number of the Indian tribe or tribal organization which is applying for the contract.

(b) Where the applicant is not an Indian tribe, the request shall include:

(1) A copy of the applicant's organizational documents, e.g., charter, articles, bylaws, etc.

(2) Full name of Indian tribe(s) with which the Indian tribal organization is affiliated.

(c) Full name of Indian tribe(s) and an identification of other eligible Indians that the Indian tribe or tribal organization proposes to serve.

(d) A copy of the authorizing resolution of the Indian tribe(s) to be served or, if already provided, a reference to such resolution.

(e) Date of submission of the proposal.

(f) Signature of the authorized representative of the Indian tribe or tribal organization and the date thereof.

(g) A contract statement of work proposed to be performed by the contractor consisting of the following:

(1) Identification of geographical service area, if applicable, to be served and identification of and estimated number of Indian people who will receive benefits or services from the contract based on available data, including tribal records.

(2) A descriptive narrative of what programs, or portions of programs, the Indian tribe or tribal organization proposes to contract, including a statement of goals and objectives, and a detailed description of the approach and methodology, including identification of program standards and quality assurance measures and assurances as required by subparts N and O of this part.

(h) Detailed staffing plans and an identification of key personnel, including experience, training and qualifications.

(i) If the proposed contract involves the administration of trust resources, the proposal shall contain provisions to assure that performance will adequately protect trust resources and may include inventory levels and values to tribes and to individuals.

(j) Assurances as specified in subparts N and O.

(k) Separate budgets for the Secretarial amount (§ 900.108(a)(1)) and contract support (§ 900.108(a)(2)). The total proposed budget shall be displayed in two formats as follows:

(1) The amount proposed for each contract line items and for contract support.

(i) For IHS, contract line items shall correspond to each budget sub-activity specified in the annual budget justification (as may be modified by Congressional action), e.g., hospitals and clinics, dental health, community health representatives, and mental health.

(ii) For BIA, contract line items shall correspond to each program specified in the annual budget justification (as may be modified by Congressional action), e.g., social services, forestry, roads, and law enforcement.

(iii) For non-BIA DOI bureaus and offices, contract line items shall correspond to the lowest level of detail set out in the annual budget justification for the bureau or office (as may be modified by Congressional action).

(2) The amount proposed for each major category, e.g., personnel (differentiating salary and fringe benefits), equipment, materials and supplies, travel, subcontracts, and indirect costs, as appropriate.

(3) If the applicant proposes to recover indirect costs, the budget shall include a copy of the most recent negotiated indirect cost agreement or specify an estimated amount requested for indirect costs pending timely establishment of a rate or lump sum.

(4) When other sources of funding are to be relied upon, the amounts and the other sources should be identified separately.

(l) A listing of equipment, facilities, and buildings needed to carry out the contract and how the Indian tribe or tribal organization proposes to obtain them. Where equipment is shared by the programs to be contracted and other non-contracted programs, equipment sharing or other arrangements shall be so stated in the contract.

(m) A statement that the Indian tribe or tribal organization will comply with the Single Audit Act of 1984.

(n) Assurance that the Indian tribe or tribal organization has and maintains, or will have and maintain, financial, property, and procurement management systems specified in these regulations.

(o) Assurance that the Indian tribe or tribal organization has and maintains or will have and maintain a personnel management system that prescribes occupational qualification standards that meet minimum professional requirements and uses such system for the recruitment, selection, and management of personnel.

(p) Any preaward costs requested by the Indian tribe or tribal organization including the amount and time period to be covered.

(q) A statement assuring that services and assistance shall be provided to all Indians eligible for services under the contract in a fair and uniform manner as provided in § 900.115.

(r) The proposed starting date and term of the contract.

(s) The extent of any planned use of Federal personnel, and other Federal resources.

(t) In the case of a cooperative agreement, the nature and degree of Federal programmatic involvement with the recipient anticipated during the term of the agreement.

(u) In the event there is a potential conflict of interest on the part of the contractor as an organization, a description of the potential conflict and description of the procedures to be employed to avoid an organizational conflict of interest. Such description shall be included when the nature of the work to be performed under a proposed contract may, without some restriction, (1) result in an unfair competitive advantage to the contractor, (2) impair the contractor's objectivity in performing the contract work, or (3) involve a conflict between tribes and other beneficiaries of the program. Such procedures shall include prompt disclosure of such conflicts, when they

arise, and a report to the Secretary on their resolution.

§ 900.206 Review and approval of contract proposals.

(a) Upon receipt of a contract proposal, the Secretary shall:

(1) Within 5 days notify the applicant in writing that the proposal has been received. If the proposal does not contain the required resolutions, it will be returned without further action.

(2) Within 10 days provide the notification specified in § 900.107(b) where applicable.

(3) Within 15 days, notify the applicant in writing of any missing items required pursuant to § 900.205. The notification shall require that the missing items be submitted within 15 days of such notification.

(4) Review the contract proposal to determine:

(i) The contractibility of the program or portion thereof to be contracted pursuant to § 900.106;

(ii) The validity of all required tribal resolutions;

(iii) The availability of funds, including whether the proposed budget exceeds the secretarial amount identified in accordance with § 900.203(c) for the program or portion thereof to be contracted;

(iv) Whether declination issues exist;

(v) Whether the contract terminates any existing trust responsibility of the United States with respect to Indian people; and

(vi) What analysis, if any is required for compliance with (or has been performed in compliance with) the NEPA, the ESA, the CZMA, NHPA, or other applicable Federal statutes, and the extent to which the tribe or contractor may assist such analysis.

(b) The Secretary shall, within 90 days after receipt of a proposal, approve the proposal unless, within 60 days of receipt, a specific finding is made that the Secretary cannot enter into a contract for any of the reasons in (a)(4)(i)–(v) above. If the Secretary determines that the proposal cannot be approved for any of the reasons in paragraphs (a)(4)(i) through (v) of this section, the Secretary shall issue written notice to the tribe or tribal organization within 60 days after receipt of the contract proposal. The notice shall include, at a minimum:

(1) Detailed explanation of the reason for the decision not to contract;

(2) An available appeal rights under subpart H of this part; and

(3) An available technical assistance.

(c) The 60 day deadline may be extended upon the request of the Secretary and the written consent of the applicant. If no agreement is reached, the 60 day deadline applies. The time periods shall commence from receipt of the proposal, except that; upon notice to the tribe or tribal organization that the proposal is incomplete as provided in paragraph (a)(3) of this section, the tribe has the option of either: submitting the missing items which upon receipt by the Secretary shall be considered a new proposal from which the 60 day period shall commence or; requiring the Secretary to make a determination 60 days from receipt of the original proposal.

(d) If no action is taken to approve the contract proposal within 90 days, or for such longer time as extended pursuant to paragraph (c) of this section, and absent a timely finding as provided in paragraph (b) of this section, the contract proposal shall be deemed approved on the 90th day or on the last day of any extension pursuant to paragraph (c) of this section, at the funding level determined by the Secretary under § 900.108 and to the extent that the proposal is accompanied by the requisite resolutions and addresses a program which is contractible as provided in § 900.106.

§ 900.207 Declination.

(a) The Secretary may, within 60 days of receipt of a proposal, decline to contract for the specific causes provided in paragraph (b) of this section. The burden of proof is on the Secretary to demonstrate that one of the specific grounds for declination exists and that, therefore, the application must be declined. The Secretary may not decline to enter into a contract with a tribe or tribal organization because of any objection that will be overcome through the contract.

(b) The Secretary may decline to contract when a specific finding is made that:

(1) The services to be rendered to the Indian beneficiaries of the particular program or function to be contracted will not be satisfactory;

(2) Adequate protection of trust resources is not assured under the criteria provided in these regulations; or

(3) The proposed project or function to be contracted for cannot be properly completed or maintained by the proposed contract.

(c) The findings to be made under paragraph (b) (1) and (2) of this section may be based upon the effect that funding the proposed contract would have on the Indian beneficiaries or trust resources of that portion of the program which would not be contracted, as provided in § 900.107.

(d) In determining whether to decline to enter into a contract as provided in paragraph (b) of this section, the Secretary shall evaluate the tribe or tribal organization's proposal with respect to the following factors:

(1) The Statement of Work contains an approach and methodology for accomplishing the goals and objectives of the proposal that will result in the provision of satisfactory services.

(2) The Staffing Plan is consistent with the approach, methodology, goals, and objectives in the Statement of Work and the experience, training, and qualification of key personnel are appropriate to the requirements of the program to be contracted.

(3) The financial, property, and purchasing systems are found to be adequate and meet requirements of subparts D, E, and F of this part based on such factors as:

(i) Past performance based on information from audits and site visit reports;

(ii) Preaward site assessments;

(iii) Assurances regarding management systems contained in the proposal; and

(iv) The expected ability to establish new systems or to improve existing systems during contract performance.

(4) The impact of any plan to provide services to non-Indians under the contract; and

(5) The results of any analysis required by law such as under the NEPA, the ESA, or other applicable law.

(6) The equipment, buildings, and facilities listed for use in the proposal and/or the plan to obtain the listed items will be adequate to meet the requirements the proposal will place on them.

(e) In reviewing a proposal, the Secretary shall apply the following rebuttable presumptions except as provided in paragraph (e)(2)(iv) of this section:

(1) Tribal governing body resolution(s) required under § 900.205(d) shall be presumed to demonstrate that there is support for the proposed contract by the community or communities covered by the resolution(s).

(2) The tribal organization shall be presumed to have substantive knowledge of the program to be contracted if it meets one or more of the following conditions:

(i) The tribal organization has successfully, previously, managed a similar program (through grant or contract) for which standards have been established.

(ii) The tribal organization has made arrangements to develop its knowledge of the program.

(iii) The members of the tribal organization have developed an understanding of the issues involved with the program sufficient to enable it to effectively carry out the contract operation.

(iv) The tribal organization is the tribal governing body, the proposal has been made to the Secretary of the Interior, and that which is being proposed for contracting is a tribal governmental program operated by the Bureau of Indian Affairs (BIA). In this case only, the presumption is an irrebuttable presumption.

(3) The personnel available to the tribal organization to carry out the proposed contract will be presumed to be adequately trained if any of the following conditions exist.

(i) The tribal organization has in place a personnel system that prescribes occupational qualification standards that meet minimum professional requirements and uses such system for the recruitment, selection, and management of personnel.

(ii) If there is no personnel system, the tribe or tribal organization has established position descriptions for key personnel to be employed under the contract and agrees to establish within a reasonable time a personnel system similar to the one described in paragraph (e)(3)(i) of this section.

(f) If a contract proposal includes a project or function which is related to the Secretary of the Interior's performance of a trust responsibility in the area of trust resources, the Secretary shall decline to contract if the proposal provides for:

(1) Completion or maintenance of the project or function to a lesser standard than under the Secretary's administration;

(2) Activity which requires special skills for its performance and the contractor's key staff does not meet Office of Personnel Management's or excepted qualification standards, other accepted professional standards appropriate to the discipline involved, or are not otherwise recognized as technically qualified, notwithstanding the presumptions in paragraph (c) of this section; or

(3) Activities involving unresolved conflicts of interest between the contractor and the beneficial owners of the trust resources served under the contract.

Subpart C—Contract Award and Modification

§ 900.301 Award instrument.

(a) A contract shall ordinarily be the award instrument used to accomplish the purposes of section 102 of the Act. However, an Indian tribe or tribal organization may request a grant or a cooperative agreement in lieu of a contract to carry out the activities authorized under section 102. In addition, certain activities authorized under section 103(b)(1) of the Act (see § 900.1202(b) of subpart L of this part) may be funded through contracts.

(b) If a grant or cooperative agreement is used in lieu of a contract under paragraph (a) of this section, the procedures prescribed under subpart B shall apply and the resulting award shall be considered a contract for purposes of this part except as otherwise specifically provided herein.

(c) Where a cooperative agreement is the award instrument used to accomplish the purposes of section 102 of the Act, the agreement shall set forth the nature and extent of Federal programmatic involvement anticipated during the term of the cooperative agreement.

§ 900.302 Calendar year contract.

Where requested by the contractor, a contract shall be on a calendar year basis unless the Secretary and the Indian tribe or tribal organization agree to a different period.

§ 900.303 Types of contracts.

Contracts shall be awarded on a cost-reimbursement basis unless the Secretary and the tribe or tribal organization agree to an award on a fixed-price or other basis. Contracts awarded on other than a cost-reimbursement basis shall be subject to such terms and conditions as may be agreed upon by the Secretary and the tribe or tribal organization.

§ 900.304 Renewal and continuation of contracts.

(a) *Renewal of fixed term contracts.* (1) The Secretary shall renew a contract for the same program(s) or portions(s) of the program(s) for an additional term in accordance with this paragraph. Except as provided in paragraph (a)(2) of this section, the contract renewal shall be accomplished through a bilateral modification.

(2) The contractor shall submit a renewal proposal or notification of intent not to renew to the Secretary at least 120 days in advance of the expiration date of the contract. If the Secretary does not receive either a renewal proposal or the notification by the indicated date, the Secretary may either extend the contract for a term up to one year, or take such other action as deemed necessary to assume responsibility for the program upon expiration of the contract.

(3) The renewal proposal shall provide budget information in the same detail and format as the original proposal and shall include any significant proposed changes in the contract scope of work. The budget for the initial year of the renewed term shall also include an estimate of the amount of any carryover funds and a schedule for their expenditure in order to calculate advance payments. If carryover funds will not be used for the same general purposes for which they were originally awarded, the proposal should contain a justification for any proposed alternative use(s).

(4) The Secretary may extend a fixed term contract for a limited period as agreed to by the Indian tribe or tribal organization pending consideration of a renewal request.

(b) *Annual funding of contracts.* (1) The contractor shall provide budget information in the same detail and format as the original proposal for the upcoming year of the contract. The budget shall include an estimate of the amount of any carryover funds and a schedule for their expenditure in order to calculate advance payments. If they will not be used for the same general purposes for which they were awarded, the contractor shall provide justification for any proposed alternate use(s).

(2) The annual budget shall be submitted at least 60 days prior to the anniversary date of the award.

(3) If such a budget is not received within the specified 60 days, the contract will be unilaterally modified to provide the funding at the same level as the previous year, subject to availability of appropriations.

§ 900.305 Contract modifications.

(a) All revisions and amendments to existing contracts, including but not limited to shifting of funds between contract line items, will be executed by bilateral modification except for:

(1) Correction by either party of typographical errors, changing mailing addresses, or making other changes that do not modify the contractual obligations of the parties;

(2) Addition by the Secretary of funds to partially fund contracts within the previously approved funding amounts pursuant to § 900.110(b);

(3) Renewal by the Secretary of a contract pursuant to § 900.304(a)(2);

(4) Modification by the Secretary of a contract pursuant to § 900.304(b)(3);

(5) Funding reductions by the Secretary as provided in § 900.113; and

(6) Shifting by the contractor of not to exceed ten percent of funds allocated to a BIA tribal priority allocation program to another tribal priority allocation program included within the same contract.

(b) The Secretary shall have 30 calendar days from receipt of the request to approve or disapprove the request made under paragraph (a) of this section or notify the contractor when a response is anticipated;

(c) If a proposed contract modification would result in a material change in the scope, the population served, or the nature, standards or objectives of the services to be provided, the tribe or tribal organization shall submit a proposal pursuant to § 900.205. All other contractor initiated requests for modification should be in writing and provide sufficient detail to allow for Secretarial review and decision.

(d) Bilateral modifications do not require a resolution unless the authorizing resolution pursuant to § 900.202 requires a separate resolution or otherwise limits the authority of the contractor.

(e) *Rebudgeting.* (1) The contractor is expected to carry out the contract within the amount of funds provided. Changes within the total amount provided may be accomplished without approval of the Secretary, unless the change would require a bilateral modification of the contract as provided in paragraph (a) of this section.

(2) If a contractor revises its budget pursuant to paragraph (e)(1) of this section, the revised budget shall be reflected in and shall accompany its next scheduled quarterly Financial Status Report.

(f) *Retrocession modifications.* Procedures for retrocession modifications are contained in § 900.1104 of subpart K of this part.

§ 900.306 Consolidation of mature contracts.

(a) Upon request of a contractor operating two or more mature contracts, the Secretary may consolidate such contracts awarded by the same agency or bureau within the Department. The Secretary may also, upon request, consolidate such contracts of different agencies within the same Department or of different Departments.

(b) A contractor may consolidate reports required by these regulations under consolidated contracts.

§ 900.307 Contents of award document.

(a) The award document for non-construction contracts, which shall also be used for modifications, as appropriate, shall include the following:

(1) Type of Contract: Cost-reimbursement or fixed price.

(2) Statutory contracting and program authority.

(3) Contract Number: A unique identifier for each contract.

(4) Title of Project: The descriptive title for the work to be accomplished.

(5) Indian Tribe or Tribal Organization: The name of the Indian tribe or tribal organization receiving the award.

(6) Awarding Office: The Federal office making the award.

(7) Period of Performance: Fixed or indefinite term.

(8) Applicable Cost Principles: Citation of the applicable cost principles, e.g., OMB Circular A–87, A–122, or A–21.

(9) Accounting and Appropriation Data: Accounting data pertinent to the current budget period.

(10) Budget Period: The period of time covered by any funding authorized by the award.

(11) Award Computation: The total amount of the negotiated budget displayed in terms of both:

(i) The applicable contract line items as provided in § 900.205(k)(1); and

(ii) The major category breakdown specified in § 900.205(k)(2).

(12) Amount Allotted: The amount currently allotted to this contract and available for payment by the Secretary for the current budget period.

(13) Carryover Funds: A statement of authority for carryover funds if any, except for funds appropriated pursuant to the Act of November 2, 1921, 25 U.S.C. 13.

(14) Applicable Regulations: A statement incorporating this Part into the contract by reference along with any modifications or waiver to this Part agreed to by the Secretary and the Contractor.

(15) Special Terms and Conditions: Any special terms and conditions agreed to by the Secretary and the Contractor.

(16) Statement of Work: A statement incorporating the statement of work submitted in accordance with § 900.205(g) into the contract by reference along with any modifications to subpart H of this part agreed to by the Secretary and the Contractor.

(17) Program Standards: A statement of program standards and requirements pursuant to Subpart O of this part.

(18) Contractor Official: The official who has the legal authority to sign the award, and request and sign modifications thereto, on behalf of the Indian tribe or tribal organization.

(19) Contracting Officer: The Federal official with the authority to enter into and administer contracts for the Secretary.

(20) Contracting Officer's Representative: The Federal official responsible for monitoring contract performance;

(21) Tribal Project Director: The individual who directs the project on behalf of the contractor.

(22) Federal Property Administrator: The individual assigned to administer the contract requirements and obligations relating to government property. In addition, provides technical assistance in the area of Property Management/Administration to contractors, when required.

(b) The contractor and the Secretary shall notify the other party in writing of changes in designations under paragraphs (a) (18) through (21) of this section. However, such notification does not confer on either party the right to approve or disapprove the act of replacement or the individual designated.

(c) In the case of contracts to assist the Secretary of the Interior in the management of trust resources, the contract shall provide for immediate suspension upon determination by the Secretary that the contractor's continued performance would impair the Secretary's ability to discharge his trust responsibility. The contractor may appeal a suspension order under § 900.805.

(d) The contract shall authorize the Secretary to require such revisions in the statement of work as the Secretary determines to be necessary to avoid jeopardy to an endangered or threatened species; destruction or adverse modification of the habitat of such species; inconsistency with an approved coastal zone management plan; or environmental consequences deemed unacceptable following review in an environmental assessment or environmental impact statement.

§ 900.308 Status of contracts in effect on effective date of regulations.

(a) *Fixed term contracts.* (1) Any fixed term contract between the Secretary and an Indian tribe or tribal organization, which was entered into before the effective date of these regulations and which has 12 months or less remaining, shall continue until expiration of that contract.

(2) Any such contract renewed after the effective date of these regulations

shall be subject to these regulations as of the date of the renewal.

(b) *Other contracts.* (1) Existing contracts with more than 12 months remaining shall be subject to these regulations upon their effective date, upon completion of the following process:

(2) The Secretary will notify the affected contractor in writing within 45 days after the effective date of these regulations of any areas of its existing contract(s) that are not in conformance with these regulations.

(3) The contractor shall submit any required information to the Secretary within 30 days of such notice.

(4) The above time frames may be extended by mutual agreement of the Secretary and the contractor.

(5) In the event parties are unable to agree to a modification to bring a contract into conformance with these regulations, the awarding official shall issue a modification subject to appeal under § 900.802 or § 900.803.

(c) Existing contracts for which contractors request mature designation after the effective date of these regulations shall be processed in accordance with (a) of this section. The initial 45 day period will commence on the date of receipt of the contractor's written request.

§ 900.309 Designation as a mature contract.

(a) Upon request by a tribal organization or the tribal organization's Indian tribe to the Secretary, a contract awarded pursuant to these regulations which meets the requirements for mature contract status in § 900.102, shall be designated mature consistent with these regulations.

(b) A new activity may be added to an existing mature contract by mutual agreement provided that the activity is similar to an activity under that existing mature contract and does not require significantly different expertise in program and financial management.

§ 900.310 Commencement of services.

(a) Contracts shall be awarded to Indian tribes or tribal organizations no later than 120 days from receipt of a proposal which is subsequently approved unless extended by mutual agreement.

(b) A contractor shall not incur costs for providing proposed services under a contract until the contract is signed by both parties, unless the Secretary authorizes preaward costs.

Subpart D—Financial Management

§ 900.401 Purpose and scope.

This Subpart establishes requirements for the administration of funds provided under Self-Determination contracts, including minimum standards for Financial Management Systems by Indian tribes and tribal organizations (contractors).

§ 900.402 Standards for financial management.

(a) A contractor's financial management system must meet the following standards:

(1) *Financial reporting.* Accurate, current, and complete disclosure of its financial activities must be made in accordance with the financial reporting requirements of this Part.

(2) *Accounting records.* Contractors must maintain records that adequately identify the source and application of funds awarded pursuant to these regulations. These records must contain information pertaining to contracts or subcontracts and authorizations, obligations (liquidated and unliquidated), unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) *Internal control.* Effective control and accountability must be maintained for all contract cash, real and personal property, and other assets. Contractors must adequately safeguard all such property and must assure that it is used only for authorized purposes.

(4) *Budget control.* Actual expenditures or outlays must be compared with budgeted amounts for each contract. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or when specifically required in the contract or subcontract. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) *Source documentation.* Accounting records must be supported by such source documentation as canceled checks, paid bills, payrolls, time and attendance records, contract and subcontract documents, and other documentation as required in the contractor's financial management system.

(b) The Secretary may review the adequacy of the financial management system of an Indian tribe or tribal organization:

(1) As part of a preaward review;

(2) As part of the annual monitoring review;

(3) At any time subsequent to the award if warranted by unresolved findings in the Single Audit Act of 1984 audit report, or when there is other reason to believe that financial mismanagement or misappropriation of funds has taken place; or

(4) At the contractor's invitation.

§ 900.403 Matching and cost participation.

Nothing in this subpart is intended to prohibit a contractor from using contract funds to meet matching or cost participation requirements under other Federal, State or other programs.

§ 900.404 Allowable/unallowable costs.

(a) The allowable costs of a contract consist of the allowable, allocable, and reasonable direct and indirect costs actually incurred in the performance of the contract, determined in accordance with the cost principles as set forth in this part.

(b) OMB Circular A–87, A–122 or A–21, as amended, which otherwise applies to a contractor is applicable to contracts entered into under the Act. The applicable version of the OMB Circulars are those in effect as of the date of final publication of these regulations. Any revisions to these circulars which are promulgated by the Office of Management and Budget shall apply as of the effective dates specified in those revisions. The current version of the OMB circulars listed in this part are available from the Division of Management Support, Bureau of Indian Affairs, 1849 C St. NW, Washington, DC 20245.

§ 900.405 Waiver of prior approval requirements.

Notwithstanding the requirements of the applicable OMB cost circulars regarding prior approval, the following categories of costs that are charged directly, are not subject to the prior approval of the Contracting Officer:

(a) Automatic Data Processing;

(b) Building Space and Related Facilities;

(c) Insurance and Indemnification;

(d) Management Studies;

(e) Professional Services; and

(f) Capital expenditures, exclusive of the cost of facilities.

§ 900.406 Indirect costs.

(a) *Negotiation and reimbursement of indirect costs under contracts.* The negotiation of indirect costs under a contract shall be covered by the following provisions and the cost principles defined in these regulations. Reimbursement of indirect costs shall be within the amount established for the contract under § 900.108.

(1) *Negotiation of indirect cost agreements.* Contractors and the Secretary will negotiate indirect cost

agreements on an organization-wide, multiple rate, self-determination contract(s), or lump sum basis, as appropriate. Indirect cost rates may be either provisional-final or fixed-with-a-carry-forward provision, as agreed to by the contractor and cognizant Federal agency. However, if the fixed-with-a-carry-forward provision is chosen, separate rates must be established for the contract(s) funded by each Secretary under which an Indian tribe or tribal organization receives self-determination awards, and for such other grouping(s) of activities as may be appropriate in the circumstances. Costs will be allocated to each rate in accordance with the applicable cost principles. At an Indian tribe's or tribal organization's request, the Secretary shall, subject to the availability of resources, provide technical assistance in the development of an indirect cost proposal.

(2) *Indirect cost agreement proposals.* Indian tribes and tribal organizations shall submit to the cognizant Federal agency proposals to finalize provisional-final rates and to establish rates for future periods within 6 months after the expiration of their fiscal year or such period as may mutually be agreed upon. These proposals must contain information as specified by the cognizant Federal agency. Negotiation of indirect cost rate(s) shall be undertaken as promptly as practicable after receipt of a proposal.

(3) *Negotiated indirect cost lump sums.* Indian tribes and tribal organizations and the Secretary may negotiate lump sums in lieu of an indirect cost rate. Lump sums may be negotiated in those situations where the amounts of indirect costs are small or the contractor has not established an indirect cost rate. If an indirect cost lump sum is proposed, the Indian tribe or tribal organization shall submit its proposal to the Secretary as part of the contract proposal. The results of the negotiation shall be set forth in the contract agreement.

(b) *Negotiated indirect cost rate agreement.* The results of each negotiation shall be set forth in an agreement which shall specify, the agreed to rate(s), the base(s) to which the rate(s) applies, and the periods for which the rate(s) applies.

(c) *Reimbursement/advances pending negotiated rates.* Subsequent to the receipt of an indirect cost rate proposal and pending establishment of negotiated indirect cost rates, or negotiated dollar amounts, as appropriate, for any period, a contractor shall be advanced funds or reimbursed either at negotiated provisional rates or amounts or at billing rates agreed to between the contractor and the Contracting Officer, subject to appropriate adjustment when the rates or amounts for that period are established.

(d) *Shortfalls in indirect cost recovery.* (1) Where an Indian tribe or tribal organization has negotiated fixed-with-a-carry-forward indirect cost rates and its allowable indirect cost recoveries are below the level of indirect cost that the Indian tribe or tribal organization should have received for its Indian Self-Determination Act contracts in any given year from the application of its approved Indian Self-determination Act contracts' indirect cost rate(s), and such shortfall is the result of lack of full indirect cost funding by the Federal agency, such shortfall in recoveries shall not form the basis for any theoretical over-recovery or other adverse adjustment to any future year's indirect cost rate or amount for such Indian tribe or tribal organization, nor shall the agency seek to collect such shortfall from the Indian tribe or tribal organization. This provision shall be applied separately for each Indian Self-Determination Act indirect cost rate negotiated.

(2) Over payments or under payments resulting from differences between provisional and final rates shall be separately resolved by an adjustment to either allowable or reimbursed costs assignable under each Federal award affected by the rate.

(3) Indirect cost rate(s) negotiated for Indian Self-Determination Act contracts shall not include any shortfalls experienced by the contractor due to the failure of any Federal, State or other agency to pay the full negotiated indirect cost rate.

(4) Actual underrecoveries experienced by a contractor due to the failure of any Federal agency to pay the full negotiated indirect cost rate may be paid by the Secretary to the contractor only at the Secretary's option and only to the extent specifically authorized and funded by Appropriation Acts.

(e) *Indebtedness.* Contractors shall not be held liable for amounts of indebtedness attributable to theoretical or actual underrecoveries or theoretical overrecoveries of indirect costs as defined in the applicable cost principles, as appropriate, incurred for fiscal years prior to Fiscal Year 1992. Theoretical overrecoveries will be eliminated and actual overrecoveries shall be used to offset actual underrecoveries. Any remaining actual overrecoveries or underrecoveries may be reflected in future indirect cost rate negotiations.

§ 900.407 Failure to agree.

Any failure by the parties to agree on any final rate or rates shall be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of subpart H, § 900.805.

§ 900.408 Payment.

(a) Payments on any contract awarded pursuant to these regulations may be made in advance or by way of reimbursement and in such installments and on such conditions as the appropriate Secretary deems necessary to carry out the contract. These conditions may include requiring the contractor to establish a special bank account for contract funds.

(b) When using advance payments, the transfer of funds shall be scheduled consistent with program requirements and applicable Department of Treasury regulations so as to minimize the time elapsing between the transfer of such funds from the United States Treasury and the disbursement thereof by the contractor, whether such disbursement occurs prior to or subsequent to such transfer of funds.

(c) Where the actual disbursements are less than had been anticipated when the advances were made, the Secretary may either require the excess funds to be returned or adjust future payments to bring the advances (including carryover funds) and disbursements into compliance with program requirements and appropriate Department of Treasury regulations.

(d) When a contractor is deficient with respect to its financial management or administration of advance payments, fails to submit quarterly financial reports, or fails to submit annual audits as required by these regulations, the Secretary may convert the contract(s) to a reimbursement payment method.

(e) In the event that the contractor fails to comply with the terms of the contract including the provisions of these regulations, e.g., program reporting requirements, the Secretary will notify the contractor and provide a reasonable period for the contractor to come into compliance. During this period the Secretary shall provide technical assistance subject to the availability of resources if requested to do so. If the contractor remains out of compliance, the Secretary may withhold from advances or reimbursement an amount of funds which are estimated to be associated with the area of noncompliance, e.g., cost of preparing and submitting program reports. Such funds shall be released to the contractor upon subsequent compliance.

Funds which are withheld are subject to appeal under § 900.805.

(f) Contractors shall not be held accountable for interest earned on advanced funds, pending their disbursement.

(g) Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. 3727, 41 U.S.C. 15), claims for moneys due or to become due the contractor from the Secretary under a self-determination contract, where payment is on a cost reimbursement basis, may be assigned to a financial institution.

§ 900.409 Program income.

(a) Program income includes but is not limited to the following:

(1) Income received by or accruing to the contractor from third party payers, e.g., insurance carriers, Medicare and Medicaid, from fees for services performed for non-beneficiaries;

(2) Income from fees for services performed, from the use or rental of real or personal property acquired with project funds, or from the sale of commodities or items fabricated under an award;

(3) Income from payments of principal and interest on loans made with program funds provided for such purpose in accordance with Federal law; and

(4) Income from royalties and license fees for copyrighted material, patents, and inventions.

(b) Costs incident to the generation of program income may be deducted from gross income to determine program income.

(c) Taxes, special assessments, levies, fines, and other such revenues raised by a tribe are not program income.

(d) Except as otherwise provided by law, program income earned during the term of the contract shall be retained by the contractor and shall be used for the general purposes of the contract and shall not offset or limit the amount of funds provided to the contractor by the Secretary.

(e) Medicare and Medicaid collections under title IV of Public Law 94–437, as amended, shall be governed by any statutory restrictions on the use of such funds.

§ 900.410 Reporting.

(a) Contractors shall submit to the Contracting Officer, within 30 days of the end of each quarter of contract performance a completed financial status report (SF–269A) supplemented with a statement regarding the amount of program income and the following information regarding the amount shown for total federal share:

(1) Amount, by category, both for the current reporting quarter and cumulative for the budget period, for personnel, equipment and supplies, subcontracts, other direct costs, and indirect costs; and

(2) The total, both for the current reporting quarter and cumulative for budget period, for each contract line item identified in the contract.

(b) For IHS contracts paid through the DHHS Payment Management System (PMS), the contractor shall complete and submit to the specified payment office within 45 days following the end of the quarter Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a. Quarterly reporting shall be required until the project is closed out of PMS. For DOI contracts, within 90 days of the end of the contract funding period, the contractor must submit a year-end financial report which identifies an estimate of carryover funding; however, the contractor may continue to expend carryover funds notwithstanding this report.

(c) For IHS contracts, contractors shall submit program data as provided in Subpart N of this Part.

(d) An annual narrative report, describing the program(s) and services provided under the contract, including both progress achieved and problems encountered, shall be submitted to the Contracting Officer within 90 days of the end of the budget period.

(e) Each contractor shall publicly disclose and otherwise make available copies of the reports required by (a) and (c) above to the Indian people served under the contract.

§ 900.411 Audit.

(a) Contractors are responsible for obtaining audits in accordance with the Single Audit Act of 1984 (31 U.S.C. 501–7) and the provisions of OMB Circular A–128, "Audits of State and Local Governments," or OMB Circular A–133, "Audits of Institutions of Higher Education and Other Nonprofit Institutions," as appropriate.

(b) Each contractor is responsible for forwarding a copy of the Single Audit Act of 1984 audit report to the cognizant Federal agency and each Contracting Officer. The audit report shall be transmitted within 30 days of receipt from the independent auditor. The audit report must include the contractor's comments on the auditors' findings and recommendations.

(c) The cognizant Federal agency shall notify the contractor of the acceptance or rejection of the audit report within 60 days of the receipt of the audit report. Based upon the report's compliance with the Single Audit Act, a decision to reject a report shall be set forth in writing together with the reason for rejection.

(d) Upon request from the cognizant agency, the contractor shall provide to the audit resolution official within 30 days from the date of the request, any comments or additional information which may have a bearing on final determinations on the audit report's findings and recommendations.

(e) Resolution of the audit report's findings and recommendations is the responsibility of the contractor and the audit resolution agency.

(f) The Secretary shall notify the contractor, through the awarding official, of the disposition of the findings and recommendations contained in the Single Audit Act of 1984 audit report within 6 months from receipt of such audit report.

(g) Any right of action or other remedy (other than those relating to a criminal offense) relating to any disallowance of costs shall be barred unless the Secretary has given notice of any such disallowance within 365 days of receiving any required and accepted annual single agency audit report or, for any period covered by law or regulation in force prior to enactment of the Single Audit Act of 1984 (chapter 75, title 31, U.S.C.), any other required final audit report. Such notice shall be subject to the Contracts Disputes Act provisions of these regulations. Nothing in this paragraph shall be deemed to enlarge the rights of the Secretary under section 16 of the Indian Reorganization Act of June 18, 1934, 48 Stat. 984; 25 U.S.C. 476.

(h) To the extent that a single audit provides the Secretary with information and assurances needed to carry out his overall responsibilities, he/she shall rely upon and use such information. However, the Secretary may make at no expense to the contractor, any additional audits and investigations which are necessary to carry out his responsibilities on awards made under these regulations. The planning and performance of any additional Federal audit effort shall not duplicate the work conducted under the Single Audit Act of 1984 audit.

§ 900.412 Closeout.

(a) Closeout is an administrative process which takes place after the physical completion of the contract (e.g., end of project, end of the contract term, retrocession, reassumption).

(b) In order for the Secretary to close out the contract, the contractor must provide the following:

(1) Final financial status report (SF-269) (see § 900.411(c)) or invoice, if the contract is paid by the reimbursement method;

(2) A final performance report pursuant to § 900.411(c) stating that performance under the contract is complete;

(3) A final property report listing federally owned property in the possession of the contractor;

(4) The single audits of the contractor for the period of the contract; and

(5) A release statement as specified in (d) of this section.

(c) Upon receipt of the information required by (b) of this section, the Secretary shall initiate action to ensure that any outstanding claims or disputes under the contract have been settled and shall determine the final amount payable under the contract, including the application of final indirect cost rates for the contract period.

(1) If the amount payable exceeds the amount already paid to the contractor, the Secretary will authorize payment of the additional costs.

(2) If the amount advanced to the contractor exceeds the amount payable, the contractor shall refund to the Government the amount over-advanced exclusive of funds which are carried over under § 900.111 of this part.

(d) As part of the closeout process, an authorized official of the contractor shall complete and execute a release, in the standard form utilized by the Secretary for this purpose, which:

(1) Releases the Government from liabilities, obligations, claims, and demands under the contract; and

(2) Certifies that pursuant to the provisions of the contract concerning allowable costs, the amount of any sustained audit exceptions resulting from any audit made after final payment will be refunded to the Government.

(e) Nothing in this regulation limits the right of the Secretary to request an audit prior to closeout under § 900.411(h).

(f) Closeout of a contract pursuant to this section does not relieve the Contractor of its responsibility to maintain contract related records as required by § 900.121.

§ 900.413 Collection of amounts due.

(a) Any funds paid to a contractor in excess of the amount to which the contractor is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government. If not paid within a reasonable period after demand, the Federal agency may reduce the debt by:

(1) Making an administrative offset against other requests for reimbursements;

(2) Withholding advance payments otherwise due to the contractor; or

(3) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, the Federal agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR ch. II). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

Subpart E—Property Management

§ 900.501 Purpose and Scope.

This subpart establishes the minimum requirements for the management of property by Indian tribes and tribal organizations (contractors) under self-determination contracts. Property management, for the purposes of this Subpart, includes provision, use, and disposition of both personal and real property.

§ 900.502 Federally-owned personal property.

(a) *Provision of Federally-owned personal property.* (1) In the case of an initial request for a self-determination contract, the Secretary shall provide a list of personal property to be furnished for direct operation of the program to the tribe or tribal organization.

(2) The tribe or tribal organization may select from the Secretary's list the personal property which it requires for use in performance of the contract.

(i) For items shared by the Secretary and the contractor, an agreement shall be negotiated stating the provisions of the shared use.

(ii) If shared use is agreed upon, title shall remain vested in the Secretary.

(iii) If shared use is not agreed upon, the parties shall explore the possibility of alternatives to provide for the contractor's need.

(3) A list of all federally-owned personal property to be utilized under the contract shall be included in the contract.

(4) Requests for the use of federally-owned personal property which arise after signing of the contract shall be submitted by the contractor to the Secretary for approval. If the Secretary approves such requests, the contract will be appropriately amended.

(5) All personal property made available for use under the contract must, at the time of assignment to the contractor, conform to the minimum standards established by the Occupational Safety and Health Act of 1970 (84 Stat. 1590), as amended (29 U.S.C. 651).

(b) *Title to Federally-owned personal property.* Title to all federally-owned personal property, furnished for use in performance of the contract, shall remain vested in the Secretary.

(c) *Use of Federally-owned personal property.* Contractors will use, account for and control federally-owned personal property in accordance with the following:

(1) Accountability records shall include capitalized, non-capitalized, and sensitive property.

(2) Procedures for managing personal property with an acquisition value of $1,000 (including replacement property), whether acquired in whole or in part with contract funds, until disposition takes place will, as a minimum, meet the following requirements:

(i) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(ii) A physical inventory of the property must be taken and the results reconciled with the property records annually. Capitalized personal property items must be reconciled with accounting records on an annual basis. The contractor shall submit to the Secretary an annual inventory listing within 30 days following the end of each budget period. This information is required to enable the Secretary to reconcile the Federal records with the contractor's records on an annual basis.

(iii) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.

(iv) Adequate maintenance procedures must be developed to keep the property in good condition.

(v) If the contractor is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(vi) All firearms and any other items considered as sensitive property by the contractor, regardless of dollar value, must be controlled through detailed accountability records as described above.

(d) *Care and Maintenance of Federally-owned personal property.* (1) The contractor shall maintain, repair, and protect federally-owned personal property in its possession or control.

(2) The contractor is responsible for protecting the Federal interest in any

express warranties or guarantees covering federally-owned personal property.

(e) *Disposal of Federally-owned personal property.* (1) In the event federally-owned personal property which is used on a contract becomes worn out due to fair wear and tear, the contractor shall notify the Secretary in writing. Upon receipt of written instruction from the Secretary, the contractor shall dispose of the property in accordance with the guidance provided.

(2) In the event federally-owned personal property becomes lost, stolen, or damaged beyond repair, the contractor shall notify the Secretary in writing of all of the circumstances surrounding the loss, theft, or damage. In the event of theft or vandalism, the contractor shall also immediately inform local law enforcement authorities of the theft or vandalism, and forward a copy of the police report with the notification to the Secretary. The Secretary will convene a Board of Survey in accordance with appropriate Agency requirements, and will notify the contractor, in writing, of the findings and determinations of the Board.

(3) Federally-owned personal property which is no longer needed for use in the performance of the contract shall be reported to the Secretary in writing. Disposition instructions will be forwarded from the Secretary in writing.

§ 900.503 Contractor-owned personal property purchased with contract funds.

(a) *Title to personal property purchased with contract funds.* The contractor will take title to all personal property purchased under the contract. Personal property which is purchased under the contract is referred to in this regulation as contractor acquired personal property subject to the provisions of § 900.512.

(b) *Procedures for using, managing, and disposing of contractor acquired personal property.* Contractors are authorized to follow their own procedures for using, managing and disposing of personal property as long as they conform to the requirements of this section.

(c) *Use of contractor acquired personal property.* (1) Personal Property shall be used by the contractor for as long as it is needed for the contract. When no longer needed for the contract, property may be used in other activities currently or previously supported by a Federal agency.

(2) The contractor shall also make personal property available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.

(3) When acquiring replacement personal property, the contractor may use the property to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.

(d) *Management of contractor acquired personal property.* Personal property procedures for managing personal property (including replacement personal property), whether acquired in whole or in part with contract funds, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the personal property, a serial number or other identification number, the source of property, who holds title, the acquisition date, cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the contractor is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) *Care and replacement of contractor acquired personal property.* (1) The contractor shall maintain, repair, and protect contractor acquired personal property.

(2) Contractor acquired personal property shall be eligible for replacement funding, if any, on the same basis as if title to such property were held by the Secretary, provided such property continues to be used in a contracted program.

(3) The Secretary will annually advise the contractor of the information which the contractor must provide in order to be considered for allocation of maintenance and repair funds, if any.

(4) The contractor is responsible for protecting its interest in any warranties or guarantees.

(f) *Disposal of contractor acquired personal property.* When original or replacement personal property acquired under a contract or subcontract is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the personal property will be made as follows:

(1) Items of personal property with a current per-unit fair market value of less than $5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of personal property with a current per unit fair market value in excess of $5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the personal property.

(3) In cases where a contractor fails to take appropriate disposition actions, the Contracting Officer may direct the contractor to take excess and disposition actions.

§ 900.504 Donation of excess personal property.

(a) *IHS and BIA excess.* (1) In accordance with section 105 of the Act, the Secretary may donate to the contractor excess personal property which, for purposes of this section is defined as personal property under the control of the BIA or IHS which is not required for its needs and the discharge of its responsibilities. Personal property will not be considered as excess to the BIA or IHS by virtue of the execution of a contract which calls for performance by the contractor of the activities in which the personal property was previously used.

(2) The Secretary shall periodically furnish to contractors a listing of all excess personal property prior to reporting such property to the GSA or to any other Federal agency as excess. Such listing shall identify the agency official to whom a request for donation shall be submitted.

(3) A contractor may submit to the designated agency official a written request for donation of any excess personal property to be used in the performance of their self-determination contracts.

(4) The date and time of receipt of the request shall govern priority. In the event of ties, the designated agency official shall award the item to the requestor with the lowest transportation costs.

(5) Decisions of the Secretary to donate personal property shall be considered final, *Provided*, That the Secretary shall donate personal property to a contractor only after determining that such personal property will be used in the performance of a self-determination contract.

(6) The contractor shall arrange for and bear the cost of any necessary travel, packaging, shipping, and transportation associated with inspection or delivery of such personal property. The contractor shall assume, upon receipt of such property, all responsibility and relieve the Secretary of all liability for such personal property, ensuring its removal from its government location within 30 days after receiving notification of approval unless the agency and the recipient agree on a different time. These costs may be paid from contract funds.

(b) *Other Federal excess or surplus personal property.* In accordance with the following procedures, the Secretary may acquire for donation to contractors for use in performance of a self-determination contract, personal property declared excess or surplus by any Federal agency.

(1) Upon request, the Secretary shall provide listings of excess and surplus personal property from all Federal agencies to the extent available.

(2) The contractor shall notify the Secretary of its interest in specific items of government excess or surplus personal property. The Secretary will arrange for any desired inspection and notify the contractor when the request is approved by the holding agency.

(3) The contractor shall arrange for and bear the cost of any necessary travel, packaging, shipping, and transportation associated with the inspection or delivery of such personal property. The contractor shall assume, upon receipt of such property, all responsibility and relieve the Secretary of all liability for such personal property, ensuring its removal from its government location within 30 days after receiving notification of approval unless the agency and the recipient agree on a different time. These costs may be paid from contract funds.

(c) *Title.* Title to all donated personal property shall vest in the contractor subject to the provisions of § 900.512.

(d) *Disposition.* When donated personal property is no longer required for use in connection with the self-determination contract, the contractor shall assume all responsibility for the disposition of the personal property and shall relieve the Secretary of all liability for such personal property.

§ 900.505 Motor vehicles.

(a) *Obtaining motor vehicles.* (1) Contractors shall obtain vehicles for use in the performance of the contract in the most economical manner from among the following sources: contractor-owned, HHS or DOI-owned, contractor acquired, GSA Interagency Fleet Management System (GSA–IFMS), GSA Consolidated Leasing Program (GSA–CLP), commercial sources.

(2) Contractors shall submit requests for GSA–IFMS vehicles in writing to the appropriate General Services Administration (GSA) regional Federal Supply Service Bureau. GSA will advise the contractor that the vehicle support will be provided through the GSA–IFMS, or provide specific information concerning use of the GSA–CLP.

(b) *Official use of motor vehicles.* Contractors are responsible for assuring that contractor employees use vehicles obtained under this contract for official purposes only in the performance of the contract. Official purposes do not include transportation between domicile and place of employment unless specifically provided for under the terms of the contract. Any costs arising from unauthorized use shall be borne by the contractor.

§ 900.506 Hazardous property.

(a) The contractor shall handle, store, transport and dispose of hazardous property in accordance with all applicable Federal environmental laws and regulations.

Examples include: flammable solids or liquids, fatal or toxic poisons, etiological agents, and radioactive materials.

(b) The Secretary shall provide, upon request by the contractor, technical assistance on environmental and hazardous property matters.

§ 900.507 Recovery of precious metals.

(a) The contractor shall identify all contract activities that use precious metals or generate precious metal bearing scrap. Precious metals designated for recovery include: gold, silver, metals in the platinum family and metal bearing scrap, such as used photographic hypo solution and scrap film, silver alloys, and dental scrap. Other metal bearing materials include electronic scrap, automatic data processing equipment, welding and brazing wire, anodes and batteries.

(b) The contractor shall establish and maintain a program for the recovery of precious metals when such items are used in the performance of the contract.

(c) Contractors may use DOI, DHHS, GSA, or the Department of Defense precious metal recovery programs and/or disposal contracts.

(d) Upon request, the Secretary will provide assistance in establishing the required precious metals recovery program and in conducting a survey of the contractor's activities that generate scrap from these materials.

§ 900.508 Controlled substances.

The contractor shall comply with Food and Drug Administration and Drug Enforcement Administration Regulations regarding recordkeeping, security, and inventory requirements for controlled substances.

§ 900.509 Federally-owned real property.

(a) *Provision of Federally-owned real property.* (1) In connection with any self-determination contract, the Secretary may permit a contractor to utilize existing school buildings, hospitals, other facilities, and all fixtures therein or appertaining thereto, within the Secretary's jurisdiction under the terms and conditions of this section.

(2) The Secretary shall provide a listing to the requesting contractor of the real property which is used solely for the contracted program(s) and that which is shared or pooled with other agency programs not under contract.

(3) The contractor may elect to use any or all of the real property listed for exclusive use of the program(s) proposed for contract.

(4) From the listing of real property shared with other programs operated by the Secretary, the Secretary and the contractor shall endeavor to negotiate an agreement for shared use. If shared use is not agreed upon, the parties shall endeavor to negotiate alternatives to provide for the contractor's needs, if any.

(b) *Title to Federally-owned real property.* The provision of federally-owned real property pursuant to a contract conveys no title or other legal interest in such real property. The contractor may not sell, encumber, or otherwise convey an interest in such real property.

(c) *Use of Federally-owned real property.* (1) The contract shall include a listing of the real property to be provided by the Secretary for use under the contract.

(2) The contractor shall not modify, abandon, or divert the property to any use other than that for which it was originally provided without the prior written approval of the Secretary.

(3) Contractors shall not raise or demolish any Federal buildings or structures without the prior written approval of the Secretary.

(4) In the event federally-owned real property becomes damaged,

deteriorated, or destroyed, the contractor shall notify the Secretary, in writing, of all related circumstances surrounding the loss or damage. In the event of arson or vandalism, the contractor shall also immediately inform appropriate law enforcement authorities, and forward a copy of the police report with the notification to the Secretary.

(d) *Inventory.* (1) The contractor shall review and annually certify to the Secretary the itemized inventory of all real property including federally-owned buildings, structures, and related fixtures provided by the Secretary.

(2) The annual certification shall include adjustments for capitalized improvements, i.e., increases or decreases in costs of $5,000 or more affecting any line item or the total book value for the property.

(e) *Operations and maintenance of Federally-owned real property.* (1) Contractors who are responsible for operations and maintenance shall submit to the Secretary annual work plans in accordance with instructions provided by the Secretary.

(2) Work plans shall include all projected construction, maintenance, and repair activities for the upcoming Federal fiscal year.

(3) Data provided by contractors will be considered by the Secretary in making annual funds allocations for operations, maintenance, and repair activities. Such allocations will be on the same basis as those for federally-operated programs.

(f) *Disposition of Federally-owned real property.* Federally-owned real property which is no longer needed for use in the performance of the contract shall be reported by the contractor, in writing, to the Secretary and the contractor shall request written disposition instructions from the Secretary.

§ 900.510 Contractor provided real property.

(a) *Contractor-owned real property.* The expenses associated with the use and depreciation of real property owned by the contractor used in the performance of a self-determination contract shall be recovered in accordance with the cost principles covered in Subpart D. The Secretary will not negotiate a separate lease agreement with the contractor.

(b) *Purchase of real property with contract funds.* (1) A contractor's purchase of additional space to be used in the performance of a self-determination contract shall not obligate the Secretary to provide additional employees or equipment, or to increase the level of contract funds.

(2) The purchase of real property using Federal contract funds requires specific legislative authority and Secretarial approval.

(3) Title to real property purchased by the contractor with contract funds shall vest with the Federal Government.

(c) *Lease of real property with contract funds.* (1) Contractors who have self-determination contracts with DOI may lease with existing contract funds such real property as they determine necessary for the performance of work or delivery of services under their contracts.

(2) Prior to leasing new, expanded, or replacement space with funds appropriated to the IHS, contractors shall make an application, through the IHS Area Office in accordance with the IHS Lease Priority System. Approved projects will be included in the IHS Quarterly Report to the Congress on Lease Space Activities.

(3) A contractor's lease of additional space to be used in the performance of a self-determination contract shall not obligate the Secretary to provide additional employees or equipment, or to increase the level of contract funds.

(d) *Use of Medicare/Medicaid funds.* Contractors are prohibited from using Medicare/Medicaid funds collected on behalf of the Secretary of HHS pursuant to title IV of the Indian Health Care Improvement Act, Public Law 94–437, 25 U.S.C. 1601 *et seq.*, 42 U.S.C. 1395qq, 42 U.S.C. 1396j, for the lease, purchase, or renovation of real property used in the performance of a contract, without Secretarial approval.

§ 900.511 Donation of excess and surplus real property.

(a) *Excess IHS or BIA real property.* (1) In accordance with section 105 of the Act, the Secretary may donate to the contractor excess real property which, for purposes of this section, is defined as real property under the control of the IHS or the BIA which is not required for its needs and the discharge of its responsibilities. Real property will not be considered as excess to the IHS or the BIA by virtue of the execution of a contract which calls for performance by the contractor of the activities for which the real property was previously used.

(2) The Secretary shall periodically furnish to contractors a listing of the excess real property owned by the Secretary which may be eligible for donation to be used in the performance of the contract.

(3) If the contractor requests conveyance of such property, conveyance may be effected contingent on the following:

(i) A determination that the property is excess to the needs of the BIA or IHS;

(ii) If requested by the Secretary, submission of a written resolution requesting such conveyance from the tribal governing body of the tribe serviced; and

(iii) The use of the property in the performance of a self-determination contract.

(4) If more than one contractor applies for the same real property, the Secretary may convey the excess real property to the contractor with the lowest cost for habitability and most effective utilization.

(5) If the excess real property cannot be effectively utilized for the purposes of a single contract, the Secretary may divide the parcel to allow for multiple donations.

(6) If the excess real property cannot be divided, the Secretary may rescind the excess determination and permit shared use.

(7) Decisions of the Secretary shall be considered final.

(8) When a contractor accepts donation of excess real property from the Secretary, the following shall apply:

(i) Legal title to all excess real property conveyed by the Secretary to the contractor shall vest in the contractor upon acceptance of a proper deed of conveyance.

(ii) The contractor shall be solely responsible for the operations and maintenance of all such real property, within available contract funds.

(iii) The contract shall be amended to indicate any donation of real property.

(b) *Other Federal excess and surplus real property.* (1) The Secretary may acquire for donation to the contractor, for use in connection with a contract, real property declared excess or surplus by other Federal agencies pursuant to 41 CFR part 101–47.

(2) The Secretary shall periodically furnish GSA's listings of excess or surplus government real property from all Federal agencies, to the extent available, to all contractors located within the GSA geographical region for which such listings are made.

(3) The contractor shall notify the Secretary of its interest in any available excess or surplus government real property. The request shall include a discussion of the intended use of the property for the purposes of a contract, and a discussion of the site's applicability to the program, projected renovation requirements and costs, and other pertinent data concerning the intended use of the property. The Secretary will arrange for any desired inspection and notify the contractor

when the request is approved by the holding agency.

(4) The Secretary shall request a waiver of fees for transfer to the contractor in accordance with applicable GSA provisions. Legal title to any excess or surplus government real property conveyed by the Secretary to a contractor shall vest in the contractor upon acceptance of a proper deed of conveyance. The contractor or grantee shall be solely responsible for the operations and maintenance of all such real property within available contract funds.

(c) The donation of excess real property to the contractor shall not obligate the Secretary to provide additional employees or equipment, or to increase the level of contract funds.

(d) All deeds for real property donated to the contractor pursuant to paragraph (a) or (b) of this section shall contain a clause stating that in the event of retrocession or recision, the Secretary shall have the option to take title to the property.

§ 900.512 Disposition of property upon retrocession or recision.

(a) In the event of retrocession or recision of the contracted program, the contractor shall return to the Secretary all government-owned property made available to the contractor that is used in the contracted program at the time of retrocession or recision.

(b) Title to any personal property, including supplies and materials, acquired with contract funds and title to any personal or real property donated for use under a contract shall vest in the contractor subject to the condition that in the event of retrocession or recision the Secretary shall have the option to take title to all such property still in use or available for use under the contract. The contractor shall, upon request by the Secretary, provide to the Secretary a listing of all such property.

(c) The Secretary shall assume any packing, shipping or transportation costs associated with the conveyance or delivery of property to the Secretary.

§ 900.513 Federal quarters.

(a) *Establishing rental rates and related charges.* Rates for Federal, contractor and grantee employees shall be established in accordance with the requirements of OMB Circular A–45, as amended. Rates for non-Federal, non-contractor and non-grantee occupants shall be established in accordance with OMB Circular A–25, as amended.

(b) *Collection of rents and related charges.* (1) The Secretary shall collect rents and related charges for quarters occupied by Federal employees through payroll deduction.

(2) For all quarters occupied by contractor employees, the contractor shall charge and collect all rents and related charges through the use of its payroll deduction system, at the appropriate rate as established by the Secretary.

(3) Alternate collection systems may be used to collect quarters fees from non-Federal and non-contract tenants, and whenever Federal or contractor assignments to quarters are of such nature as to preclude the use of payroll deduction.

(c) *Distribution and use of rents and related charges*—(1) *Federally operated and maintained quarters.* Within sixty (60) days of collection, the contractor shall submit all rental collections to the Secretary.

(2) *Contractor operated and maintained quarters*—(i) *Option 1:* All contractors shall deposit quarters collections into a separate account. These funds may be expended only for the operation and maintenance of the quarters.

(A) All quarters collections made by the Secretary for Federal employees occupying quarters shall be submitted to the contractor within 60 days of receipt by the Secretary.

(B) All quarters collections and accrued interest shall remain available in the separate account for quarters operation and maintenance. These funds may not be used for major renovation, expansion, replacement or new quarters construction activities.

(ii) *Option 2:* The contractor may choose to participate in the applicable IHS Area Quarters Return (QR) Fund, or BIA agency-wide fund. Under this option:

(A) The contractor shall collect all rental amounts due from quarters occupied by its employees and other non-Federal tenants permitted to occupy quarters.

(B) The Secretary shall collect all rental amounts due from quarters occupied by Federal employees.

(C) All rental collections made by the Secretary and the contractor shall be submitted to the appropriate Area Office or agency-wide account within 60 days of receipt.

(D) The Secretary and contractor shall negotiate an annual work plan and budget for the operations and maintenance of the Federal quarters. The Secretary shall, within 60 days of receipt, disburse to the contractor funds needed to comply with the negotiated quarters work plan.

(iii) The contractor shall submit to the Secretary any requirements for major renovation, expansion, replacement or new quarters construction projects, for legislative review and approval.

(d) *Management, operation and maintenance.* The Secretary and contractor shall manage, operate, and maintain Federal quarters for which they are responsible in a safe and sanitary condition at all times in accordance with any applicable Departmental handbooks (e.g., U.S. Public Health Service Quarters Management Handbook, as amended; U.S. Department of Interior Quarters Handbook (400 DM)). Exceptions to the handbook's provisions may be approved by the Contracting Officer on an individual basis.

(e) *Quarters records and accounting.* (1) Contractors responsible for the operation and maintenance of quarters shall maintain quarters occupancy records, rental income receipt and utility data, and any other documents necessary to assure proper accounting of quarters occupancy and rental income.

(2) The contractor shall submit such records to the Secretary at least annually or more frequently as specified in the terms of the contract.

§ 900.514 Closure of facilities.

(a) No service hospital or other outpatient health care facility, nor any portion of such hospital or facility may be closed if the Secretary of HHS has not submitted to the Congress at least one year prior to the date such hospital or facility (or portion thereof) is proposed to be closed, an evaluation of the impact of such proposed closure as required by sections 301(b)(1) and of Public Law 100–713, section 105, 25 U.S.C. 450j.

(b) In accordance with section 301(b)(2) of Public Law 100–713, the provisions of paragraph (a) of this section shall not apply to any temporary closures of a facility or any portion of a facility if such closure is necessary for medical, environmental, or safety reasons.

§ 900.515 Non-IHS and non-BIA funds to renovate or modernize health care facilities.

(a) Subject to prior approval of the Secretary and in accordance with applicable law, the Secretary is authorized to accept major renovation or modernization by any Indian tribe of any IHS or BIA facility or of any other Indian facility operated pursuant to a contract, provided such renovation or modernization does not obligate the Secretary to provide additional employees or equipment, and has the approval of the Secretary.

(b) The renovation or modernization using non-IHS funds will not be

approved if the project would require diversion of IHS funds from a higher priority facility. If, within 20 years of the modernization/renovation, the facility ceases to be used as an IHS facility, the tribe will receive the prorata remaining value of the modernization/renovation.

Subpart F—Procurement Management

§ 900.601 Purpose and scope.

This Subpart establishes the minimum requirements for procurement by Indian tribes and tribal organizations (contractors) when procuring property and services under self-determination contracts. Procurement, for purposes of this Subpart, includes both subcontracting and purchasing.

§ 900.602 Procurement system standards.

(a) All contractors shall have procurement systems which at a minimum:

(1) Provide for a review of proposed procurement to ensure compliance with the requirements of this Subpart and to avoid the purchase of unnecessary or duplicative items;

(2) Consider consolidation of items and use of intergovernmental agreements, where appropriate;

(3) Require an analysis of lease versus purchase arrangements and any other appropriate analysis to determine the most economical approach;

(4) Ensure proposed recipients of subcontracts and purchase orders are responsible and have the ability to perform successfully and have not been suspended, debarred, or otherwise determined to be ineligible by the Federal Government;

(5) Include a system to ensure that performance will be in accordance with the terms, conditions and specifications of the procurement;

(6) Require that records be maintained to detail the history of a procurement, e.g., rationale for method of procurement, selection of procurement type, selection of recipients, subcontractor and vendors, price reasonableness, and required justifications;

(7) Include a written code of standards of conduct governing performance of employees engaged in the selection, award and administration of procurement, addressing avoidance of conflicts of interest and penalties for acceptance of gratuities and favors;

(8) Ensure that time and material subcontracts will only be used if no other type is suitable and the contractor includes a ceiling price that the contractor exceeds at its own risk.

(9) Provide for settlement by the contractor of all contractual and administrative issues arising out of a procurement. These issues include source selection, protests, disputes, and claims.

(10) Include procedures providing for prompt disclosure to the Secretary of information regarding unresolved issues relating to source selection, protests, disputes, and claims.

(b) Contractors shall procure property and services in accordance with this Subpart, except that at the option of the contractor, one of the following may be used:

(1) 43 CFR part 12 (Recipients of DOI contracts); 45 CFR part 74 (Tribal organizations receiving DHHS awards); 45 CFR part 92 (Tribes receiving DHHS awards); or

(2) The contractor's procurement procedures, if such procedures meet the requirements of either this Subpart or the applicable regulation cited in paragraph (b)(1) of this section.

(c) If one of the above options is selected by a contractor, it must be reflected in the contract award. Contractors selecting the option in paragraph (b)(2) of this section must provide a copy of their procurement procedures to the Contracting Officer at the time the option is selected.

§ 900.603 Competition.

Contractors shall ensure that all procurement are conducted in a manner which will maximize competition. Written selection procedures shall be developed and followed to ensure that all solicitations:

(a) Include a clear and accurate description of the required item;

(b) Not unduly restrict competition; and

(c) Identify all requirements which offerors must meet and all factors that will be used in evaluating offers.

§ 900.604 Methods of procurement.

(a) *Small purchase procedures.* Small purchase procedures are relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than $25,000 in the aggregate (or any larger amount that may subsequently be established in the Federal Acquisition Regulation after the issuance of this Part) or such lower amount as may be established by the contractor.

(b) *Subcontracting.* Subcontracing is required for all procurements greater than $25,000 or not meeting the definition of small purchases. Subcontracting shall be accomplished either by sealed bids or negotiated procurement as provided below.

(1) *Sealed bids.* The sealed bid method requires pricing on a fixed-price basis. In order for sealed bidding to be feasible, there must be a complete, adequate, and realistic specification or purchase description; two or more responsible bidders willing and able to compete; the procurement must lend itself to a fixed-price contract; and selection of the successful bidder must be made on the basis of price. At a minimum sealed bidding requires:

(i) Public advertisement and opening of bids at the time and place prescribed in the solicitation;

(ii) Solicitation from an adequate number of known suppliers and clear definition of the required items or services;

(iii) Inclusion of any specifications and attachments and a statement that a fixed-price award will be made to the lowest responsive and responsible bidder;

(iv) Provision for the right to reject any or all bids if there is sound documented reason; and

(v) Written justification by the contractor if an award is to be made where only one bid was received or the award will be made to other than the apparent low bidder.

(2) *Procurement by competitive negotiations.* This method is generally used when conditions are not appropriate for the use of sealed bids because negotiation of technical requirements, price, or contract type is in order. Competitive negotiations are normally conducted with more than one source submitting offers, and either a fixed-price or cost-reimbursement contract will be awarded. When using this method, requests for proposals must:

(i) Be solicited from an adequate number of qualified sources;

(ii) Be publicized;

(iii) Identify all evaluation factors and their relative importance; and

(iv) Permit award(s) to the responsible firm(s) whose proposal is most advantageous, with price and other factors considered.

(3) *Procurement by noncompetitive negotiations.* Noncompetitive procurement is a form of negotiated procurement. If an award is to be made without competition, the contractor shall prepare a written justification which shall be maintained as part of the procurement file. Noncompetitive procurement shall be used only when a competitive award is infeasible and one of the following circumstances applies:

(i) The item is available from only one source;

(ii) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(iii) After solicitation of a number of sources, competition is determined inadequate;

(iv) The estimated cost of the purchase is less than $2,500 or 10% of the small purchase threshold or such other lessor amount established by the contractor.

(4) *Purchases from Federal sources of supply.* Purchases from Federal sources of supply, as provided in § 900.605, are not subject to the requirements of paragraphs (a) and (b) of this section.

(5) In any case where a solicitation specifies a "brand name" product or when an award will be made after only one offer is received in response to a solicitation, the contractor shall prepare a written justification for the action which shall be maintained as part of the procurement file.

§ 900.605 Procurement from Indian organizations, Indian-owned economic enterprises, small and minority firms and labor surplus area firms.

(a) Contractors shall give preference to the greatest extent feasible to Indian organizations and Indian-owned economic enterprises regardless of tribal affiliation in the award of any procurement entered into under the contract, and shall require subcontractors to give such preference in any lower-tier awards (see § 900.608(h)). Indian preference requirements established by the tribe receiving services shall also apply to the extent such requirements are consistent with the purpose and intent of this section.

(b) If the contractor determines that there is no qualified Indian organization or Indian-owned economic enterprise available to provide the required product or service, the contractor should use a small or minority firm (which includes woman-owned business enterprises) or a labor surplus area firm, if possible.

(c) To ensure that potential qualified sources under paragraphs (a) and (b) of this section are identified, the contractor shall place such firms on solicitation lists, assure they are solicited when appropriate, divide total requirements when feasible, establish delivery schedules which encourage their participation, and shall require such efforts by subcontractors and vendors in their procurement as well.

§ 900.606 Cost and price analysis.

(a) Contractors must establish the reasonableness of cost or price for every procurement action including modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation.

(b) Price analysis will be used to determine the reasonableness of the proposed price when the contractor can compare proposed prices in a competitive process, can compare the proposed price with a catalog or market price of a commercial product sold in substantial quantities to the general public or with prices set by law or regulation, or can use other appropriate means.

(c) Cost analysis will be performed when the offeror is required to submit the elements of the estimated cost. A cost analysis will also be necessary when an adequate price analysis cannot be performed, e.g., when price competition is lacking, and for noncompetitive procurement, including change orders.

(d) Contractors will negotiate profit, in fixed-price procurement, or fees, in cost-reimbursable procurement, as a separate element of the price for each procurement in which there is no price competition, and in all cases where cost analysis is performed.

(e) Costs or prices based on estimates will be allowable only when consistent with the Federal cost principles that are applicable to the type of recipient.

(f) The cost plus a percentage of cost method of procurement shall not be used.

§ 900.607 Awarding agency review.

(a) Contractors must make available, upon request of the awarding agency, technical specifications on proposed procurement where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the contractor desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) Contractors must, on request, make available for pre-award review by the awarding agency procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc., when:

(1) A contractor's procurement procedures or operation fails to comply with the procurement standards in this section;

(2) The procurement is expected to exceed $25,000 and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

(3) The procurement, which is expected to exceed $25,000, specifies a "brand name" product;

(4) The proposed award over $25,000 is to be awarded to other than the apparent low bidder under a sealed bid procurement;

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than $25,000.

(c) A contractor will be exempt from the pre-award review in paragraph (b) of this section, if the awarding agency determines that its procurement systems comply with the standards of this section.

(1) A contractor may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

(2) A contractor may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely upon written assurances from the contractor that it is complying with these standards. A contractor will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

§ 900.608 Procurement award provisions.

Procurement awards must, at a minimum, include the following provisions:

(a) Administrative, contractual, or legal remedies in instances where subcontractors violate or breach contract terms, and appropriate sanctions and penalties. This affects all procurement other than small purchases.

(b) Termination for cause and for convenience by the contractor including the manner by which it will be effected and the basis for settlement. This affects all procurement other than small purchases.

(c) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations, 29 CFR part 3. This affects all contracts for construction or repair.

(d) Compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations, 29 CFR part 5. This affects construction subcontracts in excess of $2,000 and in excess of $2,500

for other subcontracts which involve the employment of mechanics or laborers.

(e) The Secretary's requirements and regulations pertaining to reporting, record retention and access to records (§§ 900.121 and 900.204).

(f) The Secretary's requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such subcontract and requirements and regulations with respect to copyrights and rights in data.

(g) Compliance with the Walsh-Healey Public Contracts Act (41 U.S.C. 35–45), including the prohibition from employing convict labor in the performance of the subcontract. This affects any subcontract for the manufacture or furnishing of materials, supplies, articles, and equipment.

(h) The requirement to give preference to qualified Indian organizations and Indian-owned economic enterprises in the award of any lower tier procurement consistent with the efficient performance of the subcontract.

(i) The requirement to give preference to Indians in training and employment as provided in § 900.115, Indian Preference in Training and Employment.

(j) Equal Opportunity and Civil Rights. Notice of the requirement to provide, subject to the provisions in paragraph (i) of this section, equal opportunity as provided in § 900.116, Equal Opportunity and Civil Rights.

(k) Davis-Bacon Wage and Labor Standards (40 U.S.C. 276(a)(2a-7). All laborers and mechanics employed by subcontractors, in the construction, alteration, or repair of buildings or other facilities in connection with contracts and grants under this part shall be paid wages not less than those on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act of March 3, 1931, as amended and as supplemented by regulations under 29 CFR part 5. This affects all construction procurement and grants exceeding $2,000.

§ 900.609 Federal sources of supply.

In addition to those sources specified below, contractors are authorized to utilize sources of supply used by the Secretary to the extent agreed to by such sources. Contractors are authorized to utilize the PHS Supply Center at Perry Point, Maryland, and the GSA's supply sources for personal property and supplies that are to be used in the performance of the contract.

§ 900.610 Discounted services.

Contractors are considered cost-reimbursement contractors for purposes of GSA bulletins which provide such contractors access to Federal Government rates or discounts, e.g., contract air carriers, for use in the performance of the contract.

Subpart G—[Reserved]

Subpart H—Appeals, Disputes and Equal Access to Justice Act

§ 900.801 Appeals process.

This subpart applies to appeals and disputes arising from contracts, grants used in lieu of contracts, cooperative agreements, and discretionary grants awarded by the Secretary pursuant to the Act.

§ 900.802 Appeals process—Indian Health Service.

(a) *Appeals of funding allocations.* Determination of amounts allocated under section 106 of the Act and § 900.108 of these regulations for initial contracts, contract modifications, or contract renewals including annual funding negotiations under section 105(c)(2), shall be subject exclusively to the appeals procedures set forth below:

(1) The determination of contract award amounts shall be based upon section 106 of the Act or § 900.108 of these regulations and not on the declination criteria in section 102 of the Act.

(2) Review of the agency's funding allocation shall be limited to whether the amount allocated was properly determined under existing IHS allocation processes whether formal or informal.

(3) On being notified by the appropriate approving official that, based on allocation made pursuant to the IHS allocation process, funds are not available to finance the program or portion thereof at the level requested, the tribal organization may, within thirty (30) days after receipt of such notice, request a conference under (c) of this section or file a written appeal to the Contract Funding Appeals Board (FAB/Board). The written appeal should address why the tribe believes the allocation processes were not accurately applied and may request a hearing before the Board. The FAB shall consider such an appeal, conduct any requested hearing thereon, and recommend a decision to the Director, IHS, or the Director's representative, whose decision shall be final.

(4) If a hearing is requested, it will be conducted within thirty (30) calendar days from receipt of the written request for a hearing or at such later time as may be agreed upon, and the notice of hearing shall specify in writing the date, time, place, and purpose of the hearing.

(5) The decision of the Director, IHS, or the Director's representative, on the appeals will be rendered within 15 calendar days from the date of receipt of the Board's recommendation by the Director, IHS.

(6) The FAB shall be composed of five members appointed by the Director, IHS, one of whom shall be designated to serve as Chairman. For purposes of recommending a decision, a quorum shall consist of the Chairman and not less than two other Board members.

(b) *Appealable decisions other than funding allocations.* The following decisions shall be subject to the appeals procedures set forth below:

(1) Declination to make amend or modify an award under section 102(a)(2) of the Act, or those applicable activities under section 103(b) of the Act.

(2) Rescission of the award and reassumption of the program award under section 109 of the Act.

(3) Denial of mature contract status.

(4) Whether the tribe or tribal organization has the required resolutions of approval from the tribes it proposed to serve under § 900.203, under section 4(e) of the Act; and

(5) Whether the activity is contractible under § 900.106, pursuant to section 102(a)(1) of the Act.

(6) Declination of construction contracts under Subpart J shall be confined to the issue of whether the proposal meets the requirements of the RFP. Disputes dealing with modification and change orders of construction contracts shall be governed by § 900.805.

(c) *Grant appeals under subpart L.* HHS grants awarded under subpart L are subject to the appeal procedures for disputes of certain post-award adverse determinations. Those appeal procedures are located at 42 CFR part 50, subpart D and 45 CFR part 16.

(d) *Informal conference.* (1) Within 30 days of receipt of an appealable decision, an Indian tribe or tribal organization may:

(i) Request an informal conference under this section (the purpose of an informal conference is to attempt to resolve issues expeditiously and without the need for a formal hearing), or

(ii) Appeal the decision under § 900.802 (a) or (b).

(2) If the Indian tribe or tribal organization wishes an informal conference, it shall file its request in the office of the official who rendered the decision. The date of filing shall be the

date of receipt by or the date of personal delivery.

(3) The informal conference will be conducted by a designated representative of the Director, IHS. With respect to program division issues described in § 900.107 of these regulations, all affected tribes shall be notified of the conference and given an opportunity to be parties. The informal conference will be held within 30 days of the date the request was received or at such other time as may be agreed upon and, to the extent feasible, shall be held at the office of the requesting Indian tribe or tribal organization. If the meeting is more than 50 miles from the office of the tribal organization, the Secretary will authorize payment of transportation costs and per diem to allow adequate representation of the parties. Individuals making presentations must be either authorized representatives of the Director, IHS, or of the other parties.

(4) The official who conducted the informal conference shall prepare a report summarizing the results of the conference and a recommended decision and mail it to the parties within 10 calendar days of the conference.

(5) Within 30 days of its receipt of the informal conference report and recommended decision, the Indian tribe or tribal organization may file an appeal under § 900.802 (a) or (b). If such an appeal is not filed, the recommended decision shall become final.

(e) *Notice of appeal under § 900.802(b).* (1) An Indian tribe or tribal organization may file an appeal under paragraphs (b) (1) through (5) of this section by filing a notice of appeal with the Departmental Appeals Board, Civil Remedies Division, room 637–D, Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, within 30 days of its receipt of the decision being appealed or informal conference recommended decision. The date of filing the notice of appeal is the date of mailing or the date of personal delivery to the Board. The Indian tribe or tribal organization shall serve copies of its notice of appeal to the Director, IHS and on the official whose decision is being appealed, and shall certify to the Board that it has done so.

(2) The Director, IHS, shall be a party to all appeals filed with the Board from decisions made in the IHS. With respect to program division issues described in § 900.107 of these regulations, all affected tribes shall be notified of the hearing date and given an opportunity to be parties to the appeal.

(3) The notice of appeal shall contain a statement explaining why the Indian tribe or tribal organization believes the decision or report appealed from is in error and identifying the issues involved.

(4) A notice of appeal that is not timely filed or does not contain the explanation required by paragraph (e)(3) of this section will be dismissed for lack of jurisdiction.

(i) If an Indian tribe or tribal organization requests an extension of time to file its notice of appeal, prior to expiration of the specified time period, the request must be made in writing and good cause shown as to why a notice of appeal cannot be filed within the time period.

(ii) If an Indian tribe or tribal organization, after the time period for filing an appeal has expired, requests additional time to file a notice of appeal, a request for extension of time must be in writing and good cause shown why the notice of appeal was not filed within the stated time period. An extension may be granted if good cause is shown.

(f) *Initial determination by the Board.* (1) Within five days of its receipt of the tribal organization's notice of appeal, the Board will determine whether the appeal is within the scope of paragraph (b) of this section and so notify the parties provided that, if the Board is unable to make a determination from the information included in the notice of appeal, the Board may request additional statements from the tribe or tribal organization and IHS. If additional statements are required, the Board will make a determination within five days of its receipt of the statements. If the Board determines that the appeal is within the scope of paragraphs (b) (1) and (2) of this section, the hearing will be conducted in accordance with paragraph (g) of this section. If the Board determines that the appeal is within the scope of paragraphs (b) (3) through (5) of this section, the Board may make a determination from the information included in the notice of appeal and any additional statements received from the tribal organization and the Agency, or conduct a hearing under paragraph (g) of this section if a material fact is at issue.

(2) If the appeal involves emergency reassumption issues, the hearing will be conducted in accordance with paragraph (j) of this section.

(g) *Appeals where hearing is required.* (1) Any required hearing will be convened within 45 days of the Board's determination under paragraph (f)(1) of this section, or as otherwise ordered by the Board. At least 15 days prior to the hearing, the Director, IHS or the Director's representative shall file and serve on the opposing parties an answer to the notice of appeal. If the hearing is more than 50 miles from the Indian tribe's or tribal organization's office, the Secretary will authorize payment of transportation costs and per diem to allow adequate representation of the Indian tribe or tribal organization. The IHS will, at the request of the Administrative Law Judge (ALJ), render whatever assistance is necessary in making arrangements for the formal hearing.

(2) The hearing will be conducted by an ALJ appointed under 5 U.S.C. 3105. The hearing will be conducted in accordance with the Administrative Procedure Act, 5 U.S.C. 554. The Indian tribe or tribal organization and the Director, IHS, will be afforded the following rights:

(i) The right to be represented by counsel.

(ii) The right to have the DHHS provide witnesses who are capable of giving testimony on the issues.

(iii) The right to cross examine witnesses.

(iv) The right to produce oral and documentary evidence.

(v) The right to require testimony under oath and the production of documents by subpoena both at hearings and depositions.

(vi) The right to a copy of the transcript of the hearing and all documentary evidence introduced.

(vii) All other rights afforded by the Administrative Procedure Act, 5 U.S.C. 554; and

(viii) The right to take depositions, demand production of documents and serve interrogatories.

(h) *Representation of IHS issues.* The IHS will be represented at hearings by the Public Health Division of the Office of the General Counsel, DHHS, and/or the DHHS Regional Attorneys Offices.

(i) *Decisions on IHS issues.* Within 30 days after conclusion of the formal hearing, under paragraph (b) of this section, the ALJ shall prepare and issue to the parties a recommended decision containing findings of fact and conclusion of law on all the issues, and obtain receipt for delivery. Within 15 days of the ALJ's decision, any party may file exceptions or other comments on the recommended decision with the Assistant Secretary for Health (ASH) or ASH's designee in the OASH. Any such exceptions must be precise and supported by specific citations to the record. The recommended decision shall become final within 20 calendar days after the close of the foregoing comment period unless the ASH modifies or reverses the decision. In reviewing the recommended decision, the ASH may consider and determine

all issues properly presented, including questions of law and policy. Where it is alleged that erroneous findings of fact have been made by the ALJ, the review shall be limited to determining whether the record discloses that the findings are supported by substantial evidence. Any such decision by the ASH or the ASH's representative shall be in writing, shall specify the findings of fact or conclusions of law that are modified or reversed, and shall give reasons for such modification or reversal. This is the final administrative decision.

(j) *Hearing in the case of emergency reassumption.* (1) Where the Area Director gives notice to a tribal organization that he/she intends immediately to rescind a contract or grant and resume control or operation of a program activity or service, he/she shall at the same time notify the Departmental Appeals Board, who shall appoint an ALJ to hold a hearing within 10 days or such later date as the tribal organization may approve. The hearing shall be conducted pursuant to paragraph (g) of this section. Within 25 calendar days after conclusion of the formal hearing, the ALJ shall prepare and issue a recommended decision, containing findings of fact and conclusions of law and obtain receipt of delivery to the parties. Within 10 days after receipt of the recommended decision of the ALJ, any party may file exceptions or other comments on the recommended decision with the Director, IHS. Any such exceptions must be precise and supported by specific citations to the record.

(2) The recommended decision shall become final 15 calendar days after the close of the foregoing comment period unless the ASH or his/her representative modifies or reverses the decision. In his review of the recommended decision, the ASH may consider and determine all issues properly presented, including questions of law and policy. Where it is alleged that erroneous findings of fact have been made by the ALJ, review shall be limited to determining whether the record discloses that the findings are supported by substantial evidence. Any such decision by the ASH or his/her representative shall be in writing, shall specify the findings of fact or conclusions of law that are modified or reversed, and shall give reasons for such modification or reversal. This is the final administrative decision.

(k) A pending appeal shall not affect or constitute a barrier to the negotiation or award of a pending contract.

§ 900.803 Appeals Process—Department of the Interior.

(a) *Appealable decisions.* The following decisions shall be subject to the appeals procedures set forth below:

(1) Declination to make, amend or modify an award pursuant to section 102 of the Act.

(2) The determination of contract, contract modification, or contract renewal award amounts under section 106 of the Act and § 900.108 of these regulations.

(3) Decisions relating to the contractibility of a program under section 102(a)(1) of the Act and § 900.106 of these regulations.

(4) Recision and reassumption of awards pursuant to section 109 of the Act.

(5) Denial of mature contract status.

(6) Decisions relating to the validity of required tribal resolutions under section 4(e) of the Act and § 900.202 of these regulations.

(7) Decisions relating to the award of discretionary grants under subpart L of these regulations.

(8) All other appealable preaward decisions by a Federal official as specified in these regulations, except for denials under the Freedom of Information Act, 5 U.S.C. 552, which may be appealed under 43 CFR part 2.

(b) *Decision statements.* An Official who renders an appealable decision shall include the following statement in the decision:

(Within 30 days of the receipt of this decision, you may request an informal conference under 25 CFR 900.803(c), or appeal this decision under 25 CFR 900.803(d). Should you decide to appeal this decision to the Interior Board of Indian Appeals (IBIA) under 25 CFR 900.803(d), you may request a hearing on the record. The IBIA, or Ad Hoc Board to whom this appeal may be referred, will determine whether you are entitled to such a hearing under 25 CFR 900.803(e). Failure to request a hearing on the record will be considered a waiver of any right you may have to such a hearing. An appeal to the IBIA under 25 CFR 900.803(d) must be filed with the IBIA at the following address: Board of Indian Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203.)

(c) *Informal conference.* The purpose of an informal conference is to attempt to resolve issues expeditiously and without the need for a formal hearing.

(1) Within 30 days of its receipt of an appealable decision, an Indian tribe or tribal organization may:

(i) Request an informal conference under this paragraph; or

(ii) Appeal the decision under paragraph (d) of this section.

(2) If the Indian tribe or tribal organization requests an informal conference, it shall file its request in the office of the official who rendered the decision. The date of filing shall be the date of mailing or the date of personal delivery to such official's office.

(3) The informal conference will be conducted by the Secretary or by the Secretary's designated representative. The informal conference will be held within 30 days of the date the request was filed or at such time as may be agreed upon and to the extent feasible shall be held at the office of the Indian tribe or tribal organization. If the meeting is more than 50 miles from the office of the tribal organization, the Secretary will authorize payment of transportation costs and per diem to allow adequate representation of the Indian tribe or tribal organization. Interested parties entitled to present their positions shall be limited to authorized representatives of the Secretary and the Indian tribe or tribal organization.

(4) The official who conducted the informal conference shall prepare a report summarizing the results of the conference and a recommended decision, and mail it to the Indian tribe or tribal organization within 10 days of the conference. The recommended decision shall include the following statement:

Within 30 days of the receipt of this recommended decision, you may file an appeal with the IBIA under 25 CFR 900.803(d). You may request a hearing on the record. The IBIA or Ad Hoc Board to whom this appeal has been referred, will determine, whether you are entitled to such a hearing under 25 CFR 900.803(e). Failure to request a hearing on the record will be considered a waiver of any right you may have to such a hearing. An appeal to the IBIA under 25 CFR, 900.803(d) must be filed with the IBIA at the following address: Board of Indian Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203.

(5) Within 30 days of the receipt of the informal conference report and recommended decision, the Indian tribe or tribal organization may file an appeal under paragraph (d) of this section. If such an appeal is not filed, the recommended decision shall become final.

(d) *Notice of appeal.* (1) An Indian tribe or tribal organization may file an appeal under paragraphs (c)(1) or (c)(5) of this section by filing a notice of appeal with the Board of Indian Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203, within 30 days of its receipt of the decision being appealed or informal conference recommended decision. The date of filing the notice of appeal is the date of

mailing or the date of personal delivery to the Board. The Indian tribe or tribal organization shall serve copies of its notice of appeal on the Secretary and on the official whose decision is being appealed, and shall certify to the Board that it has done so. The Secretary shall be a party to all appeals filed within the Board of Indian Appeals.

(2) The notice of appeal shall contain a statement explaining why the Indian tribe or tribal organization believes the decision or report appealed from is in error and identifying the issues involved. The notice of appeal shall indicate whether the tribe or tribal organization wishes a hearing on the record. Failure to request such a hearing will be considered a waiver of the tribe's or tribal organization's right to such a hearing and will result in appeal proceedings without any evidentiary hearing unless the Board of Indian Appeals or Ad Hoc Board determines that such a hearing is necessary.

(e) *Initial determinations by the Board of Indian Appeals or Ad Hoc Appeals Board.* (1) Appeals from decisions of BIA officials.

(i) Within 5 days of its receipt of the tribe's or tribal organizations's notice of appeal, the Board of Indian Appeals will determine whether the appeal is within the scope of paragraphs (a) (1) through (4) of this section provided that, if the Board is unable to make a determination from the information included in the notice of appeal, the Board may request additional statements from the tribal organization and the appropriate Federal agency. If additional statements are required, the Board will make a determination within 5 days of its receipt of the statements.

(ii) If the Board of Indian Appeals determines that an appeal is within the scope of paragraphs (a) (5) through (8) of this section, it will request the administrative record under 43 CFR 4.335. The Board will notify the parties that the appeal will be considered under the regulations at 43 CFR part 4, subpart D, except that the case will be docketed immediately without consideration of the 20 day period set forth in 43 CFR 4.336.

(2) Appeals from decisions of DOI officials other than officials of the BIA.

(i) Immediately upon receipt of an appeal, the Board of Indian Appeals will refer it to the Director, Office of Hearings and Appeals, if it appeals a decision of a DOI official other than an official of the BIA.

(ii) Within 4 days of referral by the Board of Indian Appeals, the Director will appoint an Ad Hoc Board to hear the appeal.

(iii) The Ad Hoc Appeals Board will follow the procedures in this Subpart and the procedures of the Board of Indian Appeals in 43 CFR part 4, subpart D, as modified by this Subpart.

(iv) Within 5 days of appointment by the Director, the Ad Hoc Appeals Board will determine whether the appeal is within the scope of paragraphs (a) (1) through (4) of this section provided that, if the Board is unable to make a determination from the information included in the notice of appeal, the Board may request additional statements from the tribal organization and the appropriate official of the DOI. If additional statements are required, the Board will make a determination within 5 days of its receipt of the statements.

(v) If the Ad Hoc Appeals Board determines that an appeal is within the scope of paragraphs (a) (5) through (8) of this section, it will request the administrative record under 43 CFR 4.335. The Ad Hoc Appeals Board will notify the parties that the appeal will be considered in accordance with the Board of Indian Appeals' regulations at 43 CFR part 4, subpart D, except that the case will be docketed immediately without consideration of the 20 day period set forth in 43 CFR 4.336.

(f) *Appeals where hearing is required.* (1) If the Board of Indian Appeals or Ad Hoc Appeals Board determines that the appeal is within the scope of paragraphs (a) (1) through (4) of this section and a hearing has been requested, except for emergency reassumption appeals handled under paragraph (g) of this section, it will refer the appeal to the Hearings Division of the Office of Hearings and Appeals, U.S. Department of the Interior, for a hearing under 43 CFR 4.337(a).

(2) The hearing will be convened within 45 days of the Board's referral, or on such date as agreed upon by the parties or as ordered by the ALJ. At least 15 days prior to the hearing, the Secretary shall file and serve on the Indian tribe or tribal organization an answer to the notice of appeal. If the hearing is more than 50 miles from the Indian tribe's or tribal organization's office, the Secretary will authorize payment of transportation costs and per diem to allow adequate representation of the Indian tribe or tribal organization. The Secretary will, at the request of the ALJ, render whatever assistance is necessary in making arrangements for the formal hearing.

(3) The hearing will be conducted in accordance with the Administrative Procedure Act, 5 U.S.C. 554. The Indian tribe or tribal organization and the Secretary will be afforded the following rights:

(i) The right to be represented by counsel;

(ii) The right to have the Secretary provide witnesses who are capable of giving testimony on the issues;

(iii) The right to cross examine witnesses;

(iv) The right to produce oral and documentary evidence;

(v) The right to require testimony under oath and the production of documents by subpoena both at hearings and depositions;

(vi) The right to a copy of the transcript of the hearing and all documentary evidence introduced;

(vii) The right to take depositions, demand production of documents and serve interrogatories; and

(viii) All other rights afforded by the Administrative Procedure Act, 5 U.S.C. 554.

(4) The ALJ shall prepare a recommended decision, in accordance with 43 CFR 4.338, within 30 days of the conclusion of the hearing.

(5) In accordance with 43 CFR 4.339, within 30 days after receipt of the recommended decision of the ALJ, any party may file exceptions or other comments on the decision with the Board of Indian Appeals or Ad Hoc Appeals Board.

(6) The Board of Indian Appeals or Ad Hoc Appeals Board will issue a decision within 15 days of receipt of statements from both parties to the appeals or with 60 days of the hearing, whichever comes first. The Board's decision shall be final for the Department, subject to 43 CFR 4.5.

(g) *Hearing in the case of emergency reassumption.* When the Secretary gives notice to a tribe or tribal organization that the Secretary intends to immediately rescind a contract or grant and resume control or operation of a program, activity or service, the Secretary shall at the same time notify the Deputy Director, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia, 22203 who shall appoint an ALJ to hold a hearing within 10 days or such later date as the tribal organization may approve. The hearing shall be conducted under paragraph (f)(3) of this section. Within 30 calendar days after the conclusion of the formal hearing, the ALJ shall prepare and issue a decision containing findings of fact and conclusions of law, and shall transmit the decision to the parties by Certified Mail, Return Receipt Requested. The ALJ's decision shall be final, unless appealed to the Board of Indian Appeals under 43 CFR part 4, subpart D. If the initial decision in an appeal under this paragraph was made

by a DOI official other than an official of the BIA, the Board of Indian Appeals will refer the appeal to the Director, Office of Hearings and Appeals, who will appoint an Ad Hoc Appeals Board to hear the appeal.

(h) *Effects of pending appeals.* A pending appeal shall not affect or constitute a barrier to the negotiation of a pending contract.

§ 900.804 Equal Access to Justice Act (EAJA).

(a) The EAJA, 5 U.S.C. 504 and 28 U.S.C. 2412, shall apply to administrative appeals pending on or filed after the date of enactment of the Indian Self-Determination and Education Assistance Act Amendments of 1988 by Indian tribes or tribal organizations regarding contracts governed by these regulations. These provisions do not apply to discretionary grants governed by these regulations.

(b) The EAJA claims for DOI will be handled under regulations at 43 CFR part 4, subpart F, §§ 4.601–4.619 and EAJA claims for HHS will be handled under regulations at 45 CFR part 13.

§ 900.805 Post award contract disputes.

(a) This section applies to all contracts under the Act and to all disputes with respect to the awarding official's decisions on matters relating to such contracts except for decisions which are covered under § 900.802 and § 900.803.

(b) It is the Federal Government's policy to attempt to resolve all contractual disputes by mutual agreement at the awarding official's level, without the need for litigation. The awarding official, before issuing a decision on a claim, should consider the use of informal discussions between the parties by individuals who have not participated substantially in the matter in dispute to aide in resolving the differences.

(c) Initiation of a claim. (1) A claim is a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under the contract. However, a written demand or written assertion by the Indian tribe or tribal organization seeking the payment of money exceeding $50,000 is not a claim under the Contract Disputes Act of 1978 until certified as required by section 6.c(1) of the Contract Disputes Act. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim, by written notice to the Contracting Officer by the contracting official designated under § 900.307, if it is disputed either as a liability or amount or is not acted upon in a reasonable time.

(2) Indian tribes' or tribal organizations' claims shall be submitted in writing to the Contracting Officer for a decision. The Contracting Officer shall document the contract file with evidence of the date of receipt of any submission from the Indian tribe or tribal organization deemed to be a claim. Claims submitted to an Indian tribe or tribal organization by the awarding official shall be in writing and shall be provided to the contractor by the Contracting Officer addressed to the contractor official designated under § 900.307.

(3) Written decision. The Contracting Officer shall issue a written decision on any government claim initiated against an Indian tribe or tribal organization. In the same manner, the Contracting Officer shall issue a written decision on any claim against the United States as filed by a tribe or tribal organization pursuant to these regulations.

(d) Indian Tribe or Tribal Organization Claim Certification. (1) An Indian tribe's or tribal organization's claim exceeding $50,000 shall be accompanied by a certification that:

(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Indian tribe's or tribal organization's knowledge and belief; and

(iii) The amount requested accurately reflects the contract adjustment for which the Indian tribe or tribal organization believes the government is liable.

(2) The aggregate amount of both the increased and decreased costs shall be used in determining when the dollar thresholds have been met.

(3) The certification shall be executed by a senior official of the tribe or tribal organization with primary control over the services provided under the contract.

(e) Interest on claims. The Federal Government shall pay interest on an Indian tribe's or tribal organization's claim on the amount found due and unpaid from:

(1) The date the Contracting Officer receives the properly certified claim, if required; or

(2) The date payment otherwise would be due, if that date is later, until the date of payment.

(3) Simple interest on claims shall be paid at the rate fixed by the Secretary of the Treasury pursuant to Public Law 92–41 (85 Stat. 97) for the Renegotiation Board, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each six-month period as fixed by the Secretary of the Treasury during the pendency of the claim.

(f) Suspected fraudulent claims. If the Indian tribe or tribal organization is unable to support any part of the claim and there is evidence that the inability is attributed to misrepresentation of fact; i.e., "misrepresentation of fact" as used in this section, means a false statement of substantive fact, or any conduct with leads to the belief of a substantive fact material to proper understanding of the matter in hand, made with the intent to deceive or mislead, or to fraud on the part of the Indian tribe or tribal organization, the Contracting Officer shall refer the matter to the agency official responsible for investigating fraud.

(g) Contracting officer's decision. When a claim by or against an Indian tribe or tribal organization cannot be satisfied or settled by mutual agreement and a decision on the claim is necessary, the awarding official shall issue such a decision.

(1) The decision shall review the facts pertinent to the claim and reflect any legal or other advisory assistance received and shall:

(i) Be in writing;

(ii) Describe the claim or dispute;

(iii) Reference the pertinent contract terms;

(iv) State the factual areas of the agreement and disagreement;

(v) State the Contracting Officer's decision based on the facts and outlining supporting rationale; and

(vi) Contain the following:

(This is a final decision of the Contracting Officer. You may appeal this decision to the Contract Appeals Board. If you decide to appeal, you must, within 90 days from the date you receive this decision, mail or otherwise furnish written notice to the Contract Appeals Board and provide a copy to the Contracting Officer from whose decision the appeal is taken. The notice shall indicate that an appeal is intended, reference the decision and the award number. Instead of appealing to the Contract Appeals Board, you may bring action in the U.S. Claims Court or the United States District Courts within 12 months of the date you receive this notice.)

(2) The Contracting Officer shall furnish a copy of the decision to the Indian tribe or tribal organization by certified mail, return receipt requested, or by any other method that provides evidence of receipt. This requirement shall apply to decisions on claims

initiated by or against the Indian tribe or tribal organization.

(3) The Contracting Officer shall issue the decision within the following time limitations:

(i) For claims of $50,000 or less, 60 days after receiving a written request from the Indian tribe or tribal organization that a decision be rendered within that period or within a reasonable time after receipt of the claim if the Indian tribe or tribal organization does not make such a request.

(ii) For claims over $50,000, 60 days after receiving a certified claim; provided, however, that if a decision will not be issued within 60 days, the Contracting Officer shall notify the Indian tribe or tribal organization, within that period of time, of the time within which a decision will be issued.

(4) In the event of undue delay by the awarding official in rendering a decision on a claim, the Indian tribe or tribal organization may request the Contract Appeals Board to direct the Contracting Officer to issue a decision in a specified time period determined by the Contract Appeals Board.

(5) Any failure by the Contracting Officer to issue a decision within the required time periods will be deemed a decision denying the claim and will authorize the Indian tribe or tribal organization to file an appeal or suit on the claim.

(6) The amount determined payable under the decision, less any portion already paid, should be paid, if otherwise proper, without waiting for action by an Indian tribe or tribal organization concerning an appeal. Such payment shall be without prejudice to the rights of either party.

(h) Contracting officer's duties upon appeal. The awarding official shall provide data, documentation, information, and support as may be required by the Contract Appeals Board for use on a pending appeal from the Contracting Officer's decision.

(i) Obligation to Continue Performance. Indian tribes and tribal organizations are required to continue performance during appeal of any claims to the same extent as they would have been required had there been no dispute.

(j) Effect of Pending Dispute. A pending dispute shall not affect or constitute a barrier to the negotiation or award of any contract.

(k) Appeals of Cost Disallowances. In any appeal involving a disallowance of costs, the Board of Contract Appeals will give due consideration to the factual circumstances giving rise to the disallowed costs, and shall seek to determine a fair result without rigid adherence to strict accounting principles. The determination of allowability shall assure fair compensation for the work or service performed, using cost and accounting data as guides, but not rigid measures, for ascertaining fair compensation.

§ 900.806 Post award grant disputes.

(a) HHS grants awarded under Subpart L are subject to appeal procedures for disputes of certain post award adverse determinations. Those appeal procedures are located at 42 CFR part 50, subpart D and 45 CFR part 16.

(b) DOI grants awarded under subpart L are subject to the following procedures concerning appeal of post award decisions:

(1) A decision concerning a post award dispute shall be issued in writing by the Contracting Officer. The decision shall be sent by certified mail or personally delivered to the Indian tribe or tribal organization concerned and shall include a statement that it may be appealed in accordance with the procedures in paragraph (b)(2) of this section.

(2) An Indian tribe or tribal organization may file a notice of appeal with the Board of Indian Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203, within 30 days of its receipt of the awarding official's decision. The date of filing the notice of appeal is the date of mailing or the date of personal delivery to the Board. The Indian tribe or tribal organization shall serve copies of its notice of appeal on the Secretary and on the appropriate Contracting Officer, and shall certify to the Board that it has done so.

(3) The notice of appeal shall contain a statement explaining why the Indian tribe or tribal organization believes the decision being appealed from is in error and explaining the issues involved.

(4) The procedures in 43 CFR part 4, subpart D, shall be applicable to appeals under this section, except that the case shall be docketed immediately without consideration of the 20 day period set forth in 43 CFR 4.336.

Subpart I—Liability Insurance and Federal Tort Claims Act Coverage

§ 900.901 Liability insurance and motor vehicle coverage.

(a) Beginning in 1990, the Secretary shall be responsible for obtaining or providing liability insurance or equivalent coverage on the most cost-effective basis, for Indian tribes, tribal organizations, and tribal contractors carrying out contracts, grant agreements and cooperative agreements pursuant to the Act.

(b) In obtaining or providing such coverage, the Secretaries shall take into consideration the extent to which liability under such contracts, grants, or cooperative agreements is covered by the Federal Tort Claims Act (FTCA), so as to ensure that there is no duplication of coverage.

(c) In obtaining or providing such coverage, the Secretary shall, to the greatest extent practicable, give preference to coverage underwritten by Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974, 25 U.S.C. 1451, *et seq.*, except that for purposes of this section, such enterprises may include non-profit corporations.

(d) Any coverage obtained or provided by the Secretary shall contain a provision that the insurance carrier shall waive any right it may have to raise as a defense the sovereign immunity of an Indian tribe from suit, but that such waiver shall extend only to claims the amount and nature of which are within the coverage and limits of the policy and shall not authorize or empower such provider of coverage to waive or otherwise limit the Indian tribe's sovereign immunity outside or beyond the coverage or limits of the policy of insurance.

(1) No such waiver may waive immunity to the extent of any potential liability for interest prior to judgment or for punitive damages or for any other limitation on liability imposed by the law of the State in which the alleged injury occurs.

(2) Any such liability insurance policy or equivalent coverage obtained or provided by the Secretary pursuant to this Subpart shall contain an exclusion for any claims covered by the FTCA.

(e) The Secretary shall provide a written statement of the scope and limits of insurance coverage provided by any national insurance plan to each Indian tribe, tribal organization, or Indian contractor carrying out a contract, grant, or cooperative agreement under Public Law 93–638. In like manner, the Secretary shall also provide a prompt statement of any changes in the scope or limits of any national insurance plan. Where evidence of insurance is required by an applicable law and where any such national insurance plan applies, the Secretary shall provide an appropriate certificate or statement as required by such law.

(f) The cost of insurance beyond that provided by any national insurance plan required by law or regulation or for the responsible or businesslike operation of

a contract, grant, or cooperative agreement under Public Law 93–638 shall be a valid cost to the contract.

§ 900.902 Medical related Federal Tort Claims Act provisions.

(a) The FTCA coverage extends to the claims of any person for personal injury or death arising from the performance of medical, surgical, dental, or related functions of contractors carrying out contracts, grant agreements or cooperative agreements pursuant to the Act. Such coverage is the exclusive remedy a claimant may pursue for such injury or death.

(1) For purposes of determining FTCA coverage, a contractor carrying out and performing such functions shall be deemed a part of the PHS, DHHS, and its employees (including those persons acting on behalf of such entity in an official capacity, temporarily or permanently in the service of such entity, whether with or without compensation) shall be deemed employees of the PHS while acting within the scope of their employment in carrying out the contract or agreement.

(2) Only those contractors carrying out Public Law 93–638 contracts, grants, or cooperative agreements are deemed part of the PHS for purposes of FTCA coverage. Subcontractors or subgrantees providing services to the Public Law 93–638 contractor or grantee are not covered by the FTCA. Based on the statute and the legislative history, the only exceptions to the exclusion of subcontractors and subgrantees from FTCA coverage are Indian organizations that have subcontracts with the California Rural Indian Health Board to carry out comprehensive IHS service programs within geographically defined service areas in California.

(b) Employees of such a contractor shall be deemed to be acting within the scope of their employment in carrying out a contract or agreement pursuant to the Act when their employment requires them to provide medical, surgical, dental or related services to the general population, either in facilities operated by the contractor or in non-contractor facilities under a staff privileges agreement.

(c) Medical, surgical, dental or related functions carried out under contracts or agreements include but are not limited to the following:

(1) The conduct of clinical studies and investigations; and

(2) The provision of emergency services including the operation of emergency motor vehicles where claims are filed after November 29, 1990.

(d) Persons who may assert claims under this section include all individuals, whether Indian or non-Indian, having a claim for personal injury or death arising from the performance of medical, surgical, dental, or related functions by a contractor carrying out a contract, grant agreement, or cooperative agreement pursuant to the Act, including non-Indian individuals lawfully served, whether or not on a fee basis, pursuant to statutory or regulatory authority or the terms of such contract or agreement.

(e)(1) An individual (or his or her legal representative) filing a claim within the scope of the coverage specified in this section shall, before commencing any Federal court action, file an administrative claim by filing a completed Standard Form 95 (Claim for Damage, Injury or Death) or by submitting in writing comparable information (including a definite amount of monetary damage claimed) with the Chief, PHS Claims Branch, room 18–20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Such claims must be filed within two years after such claim accrues and as provided in 28 U.S.C. 2401.

(2) If a contractor (or employee of such entity) receives such a claim (or is served with a summons or complaint in a legal action), such entity or employee shall immediately forward such claim (or summons or complaint) to the PHS Claims Branch and, in the case of receipt of summons or complaint, shall immediately inform by telephone the Chief, Litigation Branch, Business and Administrative Law Division, Office of the General Counsel, DHHS. Such entity or employee shall also forward with the claim the following materials:

(i) Four copies of the claimant's medical records of treatment, inpatient and outpatient, and any correspondence as well as reports by consultants;

(ii) A narrative summary of the care and treatment involved;

(iii) The names and addresses of all personnel who were involved in the care and treatment of the claimant; and

(iv) Any comments or opinions treating employees believed to be pertinent to the allegations contained in the claim.

(3) Contractors and their employees shall fully cooperate with the PHS Claims Branch and Office of the General Counsel, DHHS, in the investigation of claims. Such entities and their employees shall allow complete access to patient records and any other relevant information in connection with the investigation and evaluation of any claim arising under this section.

(f) Employees referred to in paragraph (a)(1) of this section may have occasion to obtain staff privileges at a non-contract facility in order to provide care to eligible beneficiaries. Pursuant to a staff privileges agreement with a non-contract facility, these employees may be required to provide reciprocal medical services to the general population. Where such assistance is extended, and where no additional compensation is received by such medical personnel for the performance of such assistance, such personnel shall be deemed, for purposes of FTCA coverage under this section, to be acting within the scope of the contract or agreement and within their employment when performing such services. Reciprocal medical services are:

(1) Cross-covering other medical personnel who temporarily cannot attend their patients;

(2) Assisting other personnel with surgeries or procedures;

(3) Assisting with unstable patients or at deliveries; or

(4) Assisting in any patient care situation where additional assistance by health care personnel is needed.

(g) The FTCA coverage extended by section 102(d) of the Act extends to all medical, surgical, dental or related services performed under the scope of work set forth in the contract, grant agreement, or cooperative agreement of an Indian tribe, tribal organization, or Indian contractor, regardless of whether such services are funded under the Act or paid or reimbursed from some other source. Employees of such organizations shall be deemed to be acting within the scope of the contract or agreement when performing such services.

(h) Contractors administering contracts, grant agreements, or cooperative agreements pursuant to the Act are authorized to provide services to individuals, whether Indian or non-Indian, on the same basis as services would be provided by the Secretary in the absence of such contract or agreement. Non-beneficiaries and non-Indians may be served under such contract or agreement as provided by applicable laws and regulations, e.g., Health Services for Ineligible Persons, section 813 of the Indian Health Care Improvement Act, Public Law 94–437, as amended; (25 U.S.C. 1680c); Examination and Treatment of Federal Employees, section 324 of the PHS Act (42 U.S.C. 251); Treatment of other Federal beneficiaries under Economy Act arrangements, 31 U.S.C. 1535; temporary treatment of non-beneficiaries in emergency situations, 42 CFR 32.111; and any other authorizations as may in the future be set forth in statute or regulation. For purposes of this section, the scope of the contract shall be deemed to include the

provision of services to all Indian beneficiaries, and non-beneficiaries and non-Indians as provided herein.

(i) Federal employees detailed to or working for a contractor or grantee under authority of the Intergovernmental Personnel Act are covered by the FTCA to the same extent as they would be covered if working for a Federal agency.

(j) Under authority of section 813(d) of the Indian Health Care Improvement Act, Public Law 94–437, as amended, 25 U.S.C. 1680c(d), hospital privileges in facilities operated under a contract may be extended to non-IHS health care practitioners. Where the conditions under which such hospital privileges are extended include the requirement that the non-IHS health care practitioners provide services to IHS beneficiaries, such practitioners may be regarded as employees of the Federal Government for purposes of Federal tort claims under 28 U.S.C. 1346(b) and 28 U.S.C. chapter 171 only when treating IHS beneficiaries (including anyone made eligible under sections 813(a) and (b) of Public Law 94–437) (25 U.S.C. 168 and (b). When treating non-IHS beneficiaries, such practitioners are not considered employees of the Federal government for FTCA purposes.

§ 900.903 Non-Medical Related Federal Tort Claims Act Provisions.

(a) The non-medical related FTCA coverage of Indian tribes, tribal organizations, or Indian contractors carrying out contracts, grants, or cooperative agreements under Public Law 93–638, varies from time to time. Non-medical FTCA coverage, therefore, must be determined on an ad hoc basis as claims arise.

(b) Non-medical FTCA coverage applies to contracts, grants, and cooperative agreements under authority of Public Law 93–638 for claims arising from functions performed under such contracts, grants, and cooperative agreements on or after October 1, 1989, and to any claims first filed on or after October 24, 1989, regardless of when the function complained of was performed.

(c) For periods covered by the FTCA, a contractor carrying out such a contract, grant agreement, or cooperative agreement shall, for purposes of FTCA coverage, be deemed a part of the PHS or the BIA, as appropriate, and a contractor's employees shall be deemed employees of the agency while acting within the scope of their employment in carrying out the contract or agreement.

(d) Claims covered by this section shall, when arising out of a contract, grant, or cooperative agreement with PHS, be processed in the same general manner as set forth in § 900.902.

(e) Claims covered by this section shall, where arising out of a contract, grant, or cooperative agreement with DHHS components other than PHS, be processed in accordance with the procedures then applicable to these components.

(f) Claims covered by this section shall, when arising out of a contract, grant, or cooperative agreement with any agency or office of the DOI, be processed in accordance with the procedures then in effect for the DOI relating to claims under the FTCA.

§ 900.904 Secretarial statement of FTCA coverage.

The Secretary shall provide a statement verifying any coverage by the FTCA to each Indian tribe, tribal organization, or Indian contractor carrying out a contract, grant, or cooperative agreement under Public Law 93–638. In like manner, the Secretary shall also provide a prompt statement of any change in FTCA coverage. Where evidence of insurance is required by an applicable law and where the FTCA applies, the Secretary shall provide an appropriate certificate or statement as required by such law.

§ 900.905 Notification to Government of action filed against recipient.

(a) The recipient of a contract, grant, or cooperative agreement under the Act (herein referred to as recipient) shall give the awarding official immediate notice in writing of:

(1) Any action, including any proceeding before an administrative agency, filed against the recipient arising out of the performance of a contract, grant, or cooperative agreement including, but not limited to, the performance of any subcontract hereunder; and

(2) Any claim against the recipient the cost and expense of which is allowable under Subpart D.

(b) Unless otherwise directed by the awarding official, the recipient shall furnish immediately to the awarding official copies of all pertinent papers received by the recipient with respect to such action or claim.

(c) To the extent not in conflict with any applicable policy of insurance, except as may otherwise be provided under §§ 900.902 and 900.903, the recipient may, with the awarding official's approval, settle any such action or claim.

(d) If required by the awarding official, except as may otherwise be provided under §§ 900.902 and 900.903, the recipient shall:

(1) Effect an assignment and subrogation in favor of the government of all the recipient's rights and claims (except those against the government) arising out of any such action or claim against the recipient; and

(2) Authorize representatives of the Secretary to settle or defend any such action or claim and to represent the recipient in, or to take charge of, any action.

(e) If the settlement or defense of an action or claim is undertaken by the government, the contractor shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

Subpart J—Construction Contracts

§ 900.1001 Purpose and scope.

(a) This subpart establishes requirements for the design, construction, repair, improvement, expansion, or demolition of one or more Federal facilities. In addition, it shall apply to tribal facilities where the Secretary is authorized by law to design, construct and/or renovate such tribal facilities. These requirements may include architect-engineer services and construction services as defined in Federal Acquisition Regulation (48 CFR 36.102), and dismantling/demolition services as defined in 48 CFR 37.300. At the Secretary's option, such contracts may include the procurement of movable equipment, furnishings including works of art, and special purpose equipment, when part of a construction contract let under this subpart.

(b) This subpart does not cover functions generally performed by Federal employees such as preliminary budget planning, justification and execution, general program planning, updating inventory of needs, financial management, accounting, procurement planning and management, personnel management, property management, design reviews, appraisals, title searches, leasing, archaeological studies, and obtaining rights of way. These activities to the extent contractible are covered by the other subparts of this regulation.

§ 900.1002 General.

(a) In accordance with section 105(a) of Public Law 93–638, as amended, self-determination construction contracts, unlike other self-determination contracts, are procurement contracts and remain subject to the FAR and Agency Supplemental Acquisition Regulations, as amended, unless waived by the Secretary. In addition, this subpart and exhibit I identify the FAR solicitation provisions and contract

clauses that apply to construction contracts and/or subcontracts.

(b) Provisions of other subparts of this part are not applicable to this subpart unless their application is specifically provided in the following list:

(1) Subpart A, §§ 900.102, 900.105, 900.118 through 900.121, 900.122 and 900.123;

(2) Subpart B, §§ 900.201 and 900.202;

(3) Subpart H, §§ 900.802(b)(6), 900,802 (c) through (j), and 900.804 through 900.806;

(4) Subpart I, §§ 900.901–900.905;

(5) Subpart P, §§ 900.1601–900.1604.

§ 900.1003 Consultation on facilities.

Prior to entering into a contract for the expenditure of any funds under this subpart for the design, construction, or renovation of any facility, the Secretary will consult with any tribe(s) that would be significantly affected by such an expenditure to determine, and whenever practicable, to honor tribal preferences concerning size, location, type, and other characteristics of such facility.

§ 900.1004 Contract process.

(a) *Right of first refusal.* Within 30 days after the Secretary's allocation of funds for a specific design and construction project, the Secretary will notify the tribe(s) to be benefitted of the availability of the funds for the project. The Secretarial notice may offer technical assistance in the application process, as desired by the tribe(s). The tribe(s) will have 30 days from the date of receipt of the notice to notify the Secretary of its intent to contract for the project design and/or construction under the Act. Such notification shall include authorizing resolutions from other tribes if the project benefits more than one tribe.

(b) *Absence of tribal notification.* If a notification is not received, the tribe(s) will be precluded from later submitting a proposal to contract for the project under the Act. Once an alternate contracting process is publicly announced, the tribe's decision not to contract under the Act will not act as a bar to its bidding on or contracting for the construction project under any other act or process.

(c) *Solicitation and application process.* Upon receipt of notice of the intention to contract in accordance with paragraph (a) of this section, the Secretary shall either issue a "Request for Proposal" (RFP) to the tribe or tribal organization or assist in the development of an application as follows:

(1) *Application (DOI).* After receipt of the notice of intention to contract in accordance with § 900.203, the Secretary of Interior shall respond promptly to any request by the tribe for technical assistance. With technical assistance being provided to the tribe, the Secretary of Interior will provide, using the provisions of 48 CFR 15.4, the Program of Requirements (POR), Project Summary or Statement of Work for the Project. Technical assistance may include a project orientation, explanation of the POR and FAR requirements, and guidance with the preparation of technical and price proposals. When the application, responsive to the POR, is received from the tribe, the 60 day time period in § 900.206 shall commence. The Secretary of Interior will evaluate the application in accordance with the criteria of the POR and applicable FAR provisions to determine whether the application is acceptable, including whether the price is fair and reasonable and whether the terms and conditions of the application are acceptable. The application may be declined pursuant to § 900.207(b)(3). Any appeal under subpart H of this part shall be confined to the issue of whether the proposal meets the requirements of the government.

(2) *Request for proposal.* The Secretary will follow applicable provisions of 48 CFR 15.4 in preparing the RFP, and will furnish a POR or other statement of work which will provide the applicable standards for the project as part of the RFP. These standards shall be based on applicable local, state, and Federal requirements and industry standards, as determined by the Secretary.

(i) The RFP will establish a time period for processing the proposal based on the complexity of the project and related processing and audit requirements. This period will not exceed 180 days following receipt of a complete proposal, and the proposal will either be declined or deemed approved within this period unless the period is extended by mutual agreement of the Secretary and tribal organization.

(ii) The RFP will specify the Secretary's determination of the appropriate type of contract, taking into account the following factors:

(A) Any stated preference of the contractor;

(B) Whether the project involves uncertainties of contract performance that prevent costs from being estimated with a reasonable degree of accuracy;

(C) The type of contract providing the greatest incentive for efficient and economic performance of the contract;

(D) Whether the contractor's accounting system is adequate for a cost-reimbursement contract; and

(E) The experience of the contractor in bidding and performing fixed price contracts.

(iii) The proposal must respond to the RFP and the Secretary will evaluate the proposal in accordance with the criteria in the RFP which shall include fairness and reasonableness of price and applicable FAR provisions and if the Secretary determines that the proposal does not meet the requirements of the RFP it shall be declined under § 900.207(b)(3). Any appeal under subpart H shall be confined to the issue of whether the proposal meets the requirements of the RFP.

§ 900.1005 Conflict of interest.

If there is a potential conflict of interest on the part of the contractor as an organization, a description of the potential conflict and a narrative of the procedures to be employed to avoid an organizational conflict of interest shall be included as part of the proposal. Such a description shall be included when the nature of the work to be performed under a proposed contract may, without some restriction, result in an unfair competitive advantage to the contractor, impair the contractor's objectivity in performing the contract work, or involve a conflict between tribes and other beneficiaries of the program. The procedures shall include prompt disclosure of such conflicts, when they arise, and a report to the Secretary on their resolution.

§ 900.1006 Award.

(a) Construction contracts with tribes or tribal organizations may be awarded as firm fixed-price contracts or cost or cost-sharing types of cost-reimbursement contracts. This subpart and exhibit I identify the solicitation provisions and contract clauses that apply to these types of contracts and their subcontracts.

(b) The Secretary and tribal organizations may mutually agree to enter into another type of contract when special circumstances make the use of a firm fixed-price contract, cost, or cost-sharing type of contract inappropriate. In these cases, the applicable provisions and clauses will also be established by mutual agreement.

(c) The award document will be the appropriate document as prescribed in the FAR.

(d) Fixed price contracts shall not be converted to cost-reimbursement contracts.

(e) Subcontracts awarded by tribes and tribal organizations under

construction contracts shall be fixed-price, unless the use of another type of contract is approved by the Secretary.

(f) Subject to internal Agency approval, letter contracts may be used when the Secretary's interests demand that the contractor be given a binding commitment so that work can start immediately and a negotiated definitive contract is not possible in sufficient time to meet the requirement. Letter contracts will be replaced by a formal contract consistent with these regulations within 180 days after the date of letter contract or before completion of 50 percent of the work to be performed, whichever occurs first.

§ 900.1007 Bonds and warranties.

(a) A tribe or tribal organization contracting for a construction project is not required to furnish performance and payment bonds as required by the Miller Act of August 24, 1935 (49 Stat. 793), as amended, except where the construction contract is a fixed-price contract. Bonding agreements for fixed-price contracts shall also contain a provision which requires the bonding company or its designee to complete the contract if the contractor defaults. However, when actually performing construction work, all construction contractors and subcontractors, including tribally owned enterprises, operating under a fixed-price contract, shall furnish both performance and payment bonds as specified below:

(1) When required, a performance bond shall have a surety or sureties satisfactory to the approving official, in an amount he/she deems adequate for the protection of the United States. The performance bond shall be 100 percent of the contract price when it exceeds the small purchases limitation.

(2) When required, a payment bond shall have a surety or sureties satisfactory to the approving official for the protection of all persons supplying labor and material in the prosecution of the work provided for in the contract or subcontract. Whenever the total amount payable by the terms of the contract is not more than $1,000,000, the payment bond shall be one-half the total amount payable by the terms of the contract or subcontract. Whenever the total amount payable by the terms of the contract is more than $1,000,000 but not more than $5,000,000, the payment bond shall be 40 percent of the total amount payable by the terms of the contract or subcontract. Whenever the total amount payable by the terms of the contract or subcontract is more than $5,000,000, the payment bond shall be $2,500,000.

(3) In lieu of furnishing corporate or individual sureties, the contractor or subcontractor may furnish United States bonds or notes in an amount equal at their market value to the specified sum of the bonds.

(b) All contracts and subcontracts for construction projects shall require warranties for construction and equipment from the contractor, subcontractors, and suppliers. All warranties required and executed in writing will be made and delivered to the Secretary. The contractor or subcontractor are required to enforce the warranties on behalf of the Secretary within the warranty period.

§ 900.1008 Indirect cost.

In calculating the indirect costs associated with a construction contract, the Secretary shall take into consideration only those costs associated with the administration of the contract and shall not take into consideration those moneys actually passed on by the tribal organization to construction contractors and subcontractors.

§ 900.1009 Davis-Bacon wage and labor standards.

All laborers and mechanics, except employees of tribes and public non-profit tribal instrumentalities, employed by contractors or subcontractors in the construction, alteration, or repair (including painting or decorating) of buildings or other facilities in connection with contracts or subcontracts under this part shall be paid wages not less than those on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act of March 3, 1931, as amended.

§ 900.1010 Inspection and acceptance.

(a) The Secretary shall have access to work in preparation or progress at any time, and the contractor and its subcontractors shall provide access for inspection. Final payment for work performed will not be made until the Secretary conducts a final inspection and determines that the work complies with all contract requirements. Generally the Secretary shall complete the final inspection within thirty calendar days of receipt of written notice from the contractor of completion of the work.

(b) The contractor is responsible for managing the day-to-day operations at the construction project site to ensure that all work, including subcontractor's work, conforms with the construction drawings, specifications, and contract terms.

§ 900.1011 Architect/engineer (A/E) services.

(a) When a contractor subcontracts for A/E services:

(1) The requirement for A/E services must be publicly announced for a minimum of 30 calendar days;

(2) The subcontractor must be selected on the basis of its demonstrated competence and qualifications to perform the type of services that are required; and

(3) The cost of the subcontract that is negotiated must be fair and reasonable.

(b) The evaluation of a potential A/E subcontractor shall be undertaken by an evaluation board established by the contractor and composed of members who, collectively, have experience in architecture, engineering, construction, or related professions. Private practitioners may be utilized on the evaluation board. Each board will consist of at least 5 members of which a majority shall be architects or engineers. However, no firm shall be eligible for award of an A/E services subcontract by the contractor while any of its principals, associates, or employees are participating as members of the evaluation board or participated as members of the evaluation board when the firm was evaluated.

(c) The evaluation board shall:

(1) Review the current data files on eligible firms and their responses to a public notice concerning the particular project;

(2) Evaluate the firms in accordance with (f) below;

(3) Conduct formal interviews, obtain additional data, and verify references with at least three of the most highly qualified firms regarding concepts and the relative utility of alternative methods of furnishing the required services, when the prospective A/E contract is estimated to exceed the small purchases limitation. Architect-engineer fees shall not be considered in these discussions; and

(4) Prepare a selection report for the designated selection authority recommending, in order of preference, at least three firms that are considered to be the most highly qualified to perform the required services. The report shall include a description of the discussions and evaluation conducted by the board to allow the selection authority to review the considerations upon which the recommendations are based.

(d) Final selection of the successful A/E subcontractor shall be made by the official designated to perform that function on behalf of the Indian tribe or tribal organization. The final selection shall be submitted to the Secretary for

concurrence before proceeding with negotiations. If the most highly qualified firm recommended by the evaluation board as the top ranked in order of preference is not selected, the deviation must be justified and the selection authority will obtain prior approval from the Secretary for the proposed deviation.

(e) As an alternate to the processes described in paragraphs (c) and (d) of this section, the processes in this paragraph may be used to select firms for contracts not expected to exceed the small purchases limitation.

(1) Selection by the board. The board shall review and evaluate A/E firms in accordance with paragraph (c) of this section, except that the selection report shall serve as the final selection list.

(2) Selection by the chairperson of the board. When the board decides that formal action by the board is not necessary in connection with a particular selection, the following procedures shall be followed:

(i) The chairperson of the board shall perform the functions required in paragraph (c) of this section.

(ii) The designated tribal selection authority shall review the report and approve it or return it to the chairperson for appropriate revision.

(3) Use of Agency Indefinite Delivery A/E Contractors: In lieu of a separate formal selection process, the board or the chairperson of the board with the approval of the tribal selection authority may use any Agency indefinite-delivery A/E contractor whose general area contract coverage includes the project site.

(f) When evaluating potential A/E subcontractors, contractors shall be guided by the following selection criteria: the professional qualifications necessary for satisfactory performance of required services; specialized experience and technical competence in the type of work required; capacity to accomplish the work in the required time; past performance in terms of cost control; quality of work; compliance with performance schedules; location in the general area of the project, if application of this criterion leaves an appropriate number of qualified firms given the nature and size of the project; and acceptability under other appropriate evaluation criteria.

(g) Subcontracts for A/E services will be negotiated between the contractor and the potential A/E subcontractors, beginning with the firm considered best qualified (i.e., the top ranked in the final selection evaluation) in accordance with the provisions of 48 CFR 36.606. If an agreement cannot be reached with the top ranked firm, negotiations with the second ranked firm are authorized. All A/E services will be obtained by negotiated fixed price subcontracts and the A/E fees for design shall not exceed the statutory limitation of 6 percent of the estimated construction contract price.

(h) The A/E subcontract shall, as a minimum, contain the requirements of A/E liabilities in 48 CFR 36.608. All A/E firms will be required to have a liability insurance "occurrence" policy to cover any act or omission occurring through the construction contract warranty period.

§ 900.1012 Payments.

All contract payments, except agreed upon advance payments, will be based upon verified work in place. Payments will be made on a fixed unit price basis or will be scheduled in accordance with an approved construction schedule cost breakdown, e.g., showing percentage of work performed by component, such as project management, site improvement, piping, carpentry, mechanical, electrical, etc. At its request, a contractor may receive advance payments under its construction contract on terms agreed to by the Secretary and the contractor. Where advanced payments have been authorized, any conflicts between § 900.409 and FAR clauses 48 CFR 52.232–5, 52.232–10, 52.237–4 and 52.237–4 (Alt. I), shall be resolved in favor of § 900.409. If the contractor fails to comply with the material terms and conditions of its contract as determined by the Secretary, payments may be withheld as per section 105(b) of the Act.

§ 900.1013 Savings on construction projects.

Funds obligated to a cost-reimbursement construction contract remaining upon completion of the project (including reimbursement of the contractor for all authorized expenditures) shall be returned to the Secretary. However, when the funds remaining are savings resulting from an implemented value engineering proposal (as defined by the FAR clause 48 CFR 52.248–3 listed in exhibit I) which was developed by the contractor, accepted by the Secretary, and which reduces the construction or life cycle facility costs, the amount of such difference shall remain obligated to the contractor for reimbursement of project enhancements or additional benefits under the contract.

§ 900.1014 Unobligated funds.

Congressionally appropriated construction project funds greater than the amount of the contract award and the reserve for contingency may be reprogrammed to other projects in accordance with agency reprogramming procedures.

§ 900.1015 Status of contracts in effect on effective date of regulations.

Any construction contract between the Secretary and an Indian tribe or tribal organization, which was entered into before the effective date of the regulations and which is still in effect, shall continue until completion of construction and expiration, or termination of the contract. A contractor may submit a written request, for consideration and possible approval, that these regulations be incorporated in its construction contract.

§ 900.1016 Waivers.

(a) For the purposes of a specific contract or contracts and pursuant to section 105(a) of the Act, the Secretary may, for good cause shown, grant a waiver of any Federal contracting law or regulation that the Secretary determines is inconsistent with the provisions of the Act or is not appropriate for the purposes of the contract(s) involved. In determining whether to grant a waiver for a particular contract for good cause, the Secretary shall consider:

(1) Whether there are unusual circumstances which make the law or regulations to be waived inappropriate for the particular contract involved; and

(2) Whether the waiver will alleviate substantial hardship which could not have been avoided by diligent action of the contractor or which is due to factors beyond the control of the contractor.

(b)(1) *Initiation of requests.* Requests for waivers may be initiated by a tribe or tribal organization, and sent to the Contracting Officer for processing in accordance with Departmental procedures.

(2) *Contents of request.* Waiver requests shall be in writing and shall include at least the following information:

(i) Identification of the Federal contracting law and/or regulation for which a waiver is requested;

(ii) Reason for the waiver request, including impact on the tribe or tribal organization if the request is not approved;

(iii) The intended effect of the waiver;

(iv) The length of time for which it can be anticipated that the waiver will be required; and

(v) Identification of specific contract(s) to which the waiver will apply. If more than one contract is involved, each specific contract shall be identified and a request shall be made

for a class waiver for such contracts to alleviate the need for separate, duplicative approvals.

(c) Waiver requests which are contained in a contract proposal may be considered separately from the proposal at the discretion of the Secretary. The declination criteria in § 900.206, do not apply to such requests for waivers. While the Secretary will endeavor to respond to a request for waiver prior to award, failure by the Secretary to act on a request for a waiver shall not be grounds to postpone the contract award pending the Secretary's determination.

(d) Whenever a waiver is requested by a tribe or tribal organization and such request is denied, the Secretary will notify the tribe or tribal organization of the reasons for the denial in writing.

(e) The decision of the Secretary with regard to waivers is final for the Department.

Exhibit I to Subpart J—Acquisition Regulation for Construction Projects

The specific Federal Acquisition Regulation (FAR) (48 CFR chapter 1), Department of Health and Human Services Acquisition Regulations (HHSARs) (48 CFR chapter 3), Department of Interior Acquisition Regulations (DIAR) (48 CFR chapter 14), and Public Health Service Acquisition Regulations (PHSARs) that apply to Indian Self-Determination construction contracts have been selected by the Secretary in accordance with section 105(a) of the Act and are set forth below.

(a) The clauses listed in exhibit I are hereby incorporated with the same force and effect as if they were given in full text and are made a part hereof, unless waived by the Secretary, under § 900.1002 for construction contracts under the Act. The FAR clauses that are applicable to any specific construction project are those designated as "required" and those that are determined as applicable by the nature and type of the contract and construction project. An applicable FAR clause may, by mutual agreement, be waived for a specific contract except for those FAR clauses identified as "required" or "required when applicable."

(b) The Public Law 93–638 Contractor shall incorporate the clauses listed in the "Subcontract" columns in exhibit I in each subcontract when applicable, and shall fully enforce these clauses and give the government full access to the site and records when appropriate. There shall be no privity of contract between the Federal Government and the subcontractor.

(c) To the extent 48 CFR parts 1 through 51 and 53 of the FAR prescribe the use of the FAR clauses identified in this exhibit I, they may be used by the Secretary in negotiating the type of contract and the clauses that will be applicable in proposals, solicitations, and contracts for construction projects under the Act. The Secretary will, upon request, furnish the tribes with copies of the applicable regulations, and clauses and will assist the tribes in adapting any clauses to tribal solicitations and subcontracts. The Secretary shall use the clause arrays from exhibit I which he/she believes are appropriate to the instant contract. Those FAR clauses that have mandatory requirement clauses will be included in all construction contracts.

Exhibit I–A—Federal Acquisition Regulation (FAR) Provisions and Clauses for Firm Fixed-Price, Cost, or Cost-Sharing Types of Public Law 93–638 Construction Project Contracts

Column Headings and Codes

Purpose/Type of Construction Contract

A/E—Architectural/Engineering contract as defined in FAR subpart 36.1.
CRC—Cost or cost-sharing type of cost-reimbursement construction contract as defined in FAR subparts 16.3 and 36.1.
DDR—Dismantling, demolition, or removal of improvements contract as defined in FAR subpart 37.3.
FPC—Firm fixed-price construction contract as defined in FAR subpart 16.2 and 36.1.
PRI—Prime contract; i.e., P.L. 93–638 contract with tribal organization.
SUB—Subcontract under the P.L. 93–638 contract.

Reason for Waiving Specific Provisions and Clauses

1—Provision or clause is inconsistent with the type and/or purpose of the contract involved.
2—Provision or clause is inconsistent with P.L. 93–638.

Application of Provisions and Clauses

R—Required in all cases.
A—Required when applicable based on criteria contained in the FAR; e.g., when contract amount exceeds a FAR-specified dollar threshhold.
O—Required when determined to be appropriate by the Contracting Officer on a case-by-case basis.

Notes

In accordance with § 900.1005(i) of the regulation, this matrix assumes that subcontracts will be awarded on a fixed-price basis.

The P.L. 93–638 (prime) contractor is responsible for incorporating clauses into its subcontracts, when applicable, as identified in the SUB columns.

The DDR columns pertains to contracts that are solely for the dismantling, demolition, or removal of improvements. Contracts which combine these services with construction are categorized as construction.

Provision or clause	Prescribed in	FPC PRI	FPC SUB	CRC PRI	DDR PRI	DDR SUB	A/E PRI	A/E SUB	Notes
52.202–1 Definitions	2.201	R	—	R	R	—	R	—	
HHS will substitute the Definitions clause at HHSAR 352.202–1									
52.202–1 Alternate I	2.201	R	—	R	R	—	R	—	
Same comment as under the basic clause above									
52.203–1 Officials Not to Benefit	3.102–2	R	R	R	R	R	R	R	
52.203–2 Certificate of Independent Price Determination	3.103–1	—	A	—	—	A	—	A	
This provision is directed at preventing collusion among contractors, and is irrelevant for "638" prime contracts because there is only one source									
52.203–3 Gratuities	3.202	R	R	R	R	R	R	R	

Provision or clause	Prescribed in	FPC PRI	FPC SUB	CRC PRI	DDR PRI	DDR SUB	A/E PRI	A/E SUB	Notes
52.203–4 Contingent Fee Represent and Agreement	3.404(b)	—	A	—	—	A	—	A	
52.203–5 Covenant Against Contingent Fees	3.404(c)	R	R	R	R	R	R	R	
52.203–6 Restrictions on Subcontractor Sales to Govt	3.503–2	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to supply and services contracts									
52.203–7 Anti-Kickback Procedure	3.502–3	R	R	R	R	R	R	R	
52.203–8 Requirement for Certificate of Procurement Integrity	3.104–10(a)	A	A	A	A	A	A	A	
52.203–8 Alternate I	3.104–10(a)	A	A	A	A	A	A	A	
52.203–9 Requirement for Certificate of Procurement Integrity—Modification.	3.104–10(b)	A	A	A	A	A	A	A	
52.203–10 Price or Fee Adjustment for Illegal or Improper Activity.	3.104(10)(c)	A	A	A	A	A	A	A	
52.203–11 Certification and Disclos. Regarding Payments to Influence Certain Federal Transactions.	3.808(a)	—	A	—	—	A	—	A	
52.203–12 Limitation on Payments to Influence Certain Federal Transactions.	3.808(b)	A	A	A	A	A	A	A	
52.203–13 Procurement Integrity—Service Contracting	3.104–10(d)	—	—	—	—	—	—	—	1
Clause not relevant because it applies to service contracts									
52.204–1 Approval of Contract	4.103	—	—	—	—	—	—	—	1
Clause not relevant because DOI and HHS rely on pre-award review procedures									
52.204–2 Security Requirements	4.404(a)	—	—	—	—	—	—	—	1
No "638" construction project contracts require these security procedures pertaining to classified documents									
52.204–2 Alternate I	4.404(b)	—	—	—	—	—	—	—	1
Not relevant for same reason as 52.204–2 above									
52.204–2 Alternate II	4.404(c)	—	—	—	—	—	—	—	1
Not relevant for same reason as 52.204–2 above									
52.204–3 Taxpayer Identification	4.904	A	—	A	A	—	A	—	
Only required for tribal organizations that pay taxes									
52.204–4 Contractor Establishment Code	4.603	A	—	A	A	—	A	—	
52.207–1 Notice of Cost Comparison (Sealed Bid)	7.305(a)	—	—	—	—	—	—	—	1
Not relevant because "638" contracts are negotiated, and not directed at comparing costs of Contractor and Government performance									
52.207–2 Notice of Cost Comparison (Negotiated)	7.305(b)	—	—	—	—	—	—	—	1
Not relevant because "638" contracts not directed at comparing costs of Contractor and Government performance									
52.207–3 Right of First Refusal of Employment	7.305(c)	—	—	—	—	—	—	—	2
Right of first refusal not relevant to "638"									
52.207–4 Economic Purchase Quantity—Supplies	7.203	—	—	—	—	—	—	—	1
Provision not relevant because it pertains to supply contracts									
52.208–1 Required Sources for Jewel	8.203–1(a)	A	A	A	—	—	—	—	
Bearing and Related Items									
52.208–2 Jewel Bearings and Related Items Certificate	8.203–1(c)	A	A	A	—	—	—	—	
52.208–3 Conflicts	8.309(a)	—	—	—	—	—	—	—	1
Clause not relevant because it applies to utility service contracts									
52.208–4 Vehicle Lease Payments	8.1104(a)	—	—	—	—	—	—	—	1
Clause not relevant because it applies to leasing of motor vehicles									
52.208–5 Condition of Leased Vehicles	8.1104(b)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.208–4 above									
52.208–6 Marking of Leased Vehicles	8.1104(c)	—	—	—	—	—	—	—	1
Clause not relevant for reason as 52.208–4 above									
52.208–7 Tagging of Leased Vehicles	8.1104(d)	—	—	—	—	—	—	—	1
Clause not relevant for reason as 52.208–4 above									
52.209–1 Qualification Requirements	9.206–2	—	—	—	—	—	—	—	1
Clause not relevant to construction contracts									
52.209–3 First Article Approval—Contractor Testing	9.308–1 (a)(1) and (b)(1)	—	—	—	—	—	—	—	1
Clause not relevant to construction contracts									
52.209–3 Alternate I	9.308–1 (a)(2) and (b)(2)	—	—	—	—	—	—	—	1
Clause not relevant to construction contracts									
52.209–3 Alternate II	9.308–1 (a)(3) and (b)(3)	—	—	—	—	—	—	—	1
Clause not relevant to construction contracts									
52.209–4 First Article Approval—Govt. Testing	9.308–2 (a)(1) and (b)(1)	—	—	—	—	—	—	—	1
Clause not relevant to construction contracts									
52.209–4 Alternate I	9.308–2 (a)(1) and (b)(3)	—	—	—	—	—	—	—	1

Provision or clause	Prescribed in	FPC PRI	FPC SUB	CRC PRI	DDR PRI	DDR SUB	A/E PRI	A/E SUB	Notes
Clause not relevant to construction contracts									
52.209–4 Alternate II	9.308–2 (a)(1) and (b)(3)	—	—	—	—	—	—	—	1
Clause not relevant to construction contracts									
52.209–5 Certificate Regarding Debar., Suspens., etc	9.409(a)	A	A	A	A	A	A	A	
52.209–6 Protecting the Government Interest When Contracting With Contractors Suspended, Debarred or Proposed for Debarment.	9.409(b)	A	A	A	A	A	A	A	
52.209–7 Organizational Conflicts of Interest Certificate—Marketing Consultants.	9.507–1(b)	—	—	—	—	—	—	—	2
Provision not relevant to "638" process because directed at preventing conflicting roles that might bias a Contractor's judgement, or preventing unfair competitive advantage									
52.209–8 Organizational Conflicts Interest Certificate—AAS	9.507.1(c)	—	—	—	—	—	—	—	1
Provision not relevant because directed at advisory and assistance services									
52.210–1 Availability of Specs Listed in GSA Index	10.011(a)	A	A	A	A	—	—	—	
52.210–2 Availability of Specs Listed in DOD Index	10.011(b)	—	—	—	—	—	—	—	1
Provision provided for use by DOD and not relevant here									
52.210–3 Availability of Specs Not Listed in GSA	10.011(c)	A	A	A	—	—	—	—	
52.210–4 Availability for Examin. of Specs Not Listed in GSA Index.	10.011(d)	A	A	A	—	—	—	—	
52.210–5 New Material	10.011(e)	—	—	—	—	—	—	—	1
Not relevant because intended for supply contracts									
52.210–6 Listing of Used or Reconditioned Material, Residual Inventory.	10.011(f)	—	—	—	—	—	—	—	1
Not relevant because intended for supply contracts, or service contracts which involve the incidental furnishing of parts									
52.210–7 Used or Reconditioned Material, Residual Inventory,.	10.011(g)(1)	—	—	—	—	—	—	—	1
Not relevant for same reason as 52.210–6 above.									
52.212–1 Time of Delivery	12.104(a)(2)	—	—	—	O	O	—	—	
52.212–1 Alternate I	12.104(a)(2)	—	—	—	O	O	—	—	
52.212–1 Alternate II	12.104(a)(2)	—	—	—	O	O	—	—	
52.212–1 Alternate III	12.104(a)(2)	—	—	—	O	O	—	—	
52.212–2 Desired and Required Time of Delivery	12.104(a)(3)	—	—	—	O	O	—	—	
52.212–2 Alternate I	12.104(a)(3)	—	—	—	O	O	—	—	
52.212–2 Alternate II	12.104(a)(3)	—	—	—	O	O	—	—	
52.212–2 Alternate III	12.104(a)(3)	—	—	—	O	O	—	—	
52.212–3 Commencement, Prosecution, and Completion of Work.	12.104(b)	R	R	—	—	—	—	—	
52.212–3 Alternate I	12.104(b)	A	A	—	—	—	—	—	
52.212–4 Liquidated Damages—Supplies, Services, or R&D	12.204(a)	—	—	—	—	—	—	—	1
This liquidated damages clause not relevant because involves supplies, services, R&D									
52.212–5 Liquidated Damages Construction	12.204(b)	O	O	O	—	—	—	—	
52.212–5 Alternate I	12.204(b)	O	O	O	—	—	—	—	
52.212–6 Time Extensions	12.204(c)	A	A	A	—	—	—	—	
52.212–7 Notice of Priority Rating for National Defense Use	12.304(a)	—	—	—	—	—	—	—	1
Provision not relevant because involves National Defense procurements									
52.212–8 Defense Priority and Allocation Requirements	12.304(b)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.212–7 above									
52.212–9 Variation in Quantity	12.403(a)	—	—	—	—	—	—	—	1
Clause not relevant because pertains to supply contracts or service contracts involving supplies									
52.212–10 Delivery of Excess Quantities	12.402(b)	—	—	—	—	—	—	—	1
Clause not relevant because pertains to supply contracts									
52.212–11 Variation in Estimated Quantity	12.403(c)	A	A	—	—	—	—	—	
52.212–12 Suspension of Work	12.505(a)	A	A	—	—	—	A	A	
52.212–13 Stop-Work Order	12.505(b)(1)	—	—	—	—	—	—	—	1
Clause not relevant because pertains to supply, service, and R&D contracts									
52.212–13 Alternate I	12.505(b)(2)	—	—	—	—	—	—	—	1
Alternate not relevant for same reason as 12.505(b)(2) above									
52.212–14 Stop-Work Order Facilities	12.505(c)	—	—	—	—	—	—	—	1
Clause not relevant because pertains to facilities acquisition or consolidated facilities contracts									
52.212–15 Government Delay of Work	12.505(d)	—	—	—	—	—	—	—	1
Clause not relevant because pertains to supply contracts									
52.213–1 Fast Payment Procedure	13.305	—	—	—	—	—	—	—	1
Clause not relevant because pertains to supply contracts									
52.213–2 Invoices	13.507(c)	—	—	—	—	—	—	—	1

Provision or clause	Prescribed in	FPC PRI	FPC SUB	CRC PRI	DDR PRI	DDR SUB	A/E PRI	A/E SUB	Notes
Clause not relevant because pertains to subscriptions and publications									
52.213–3 Notice To Supplier	13.507(d)	—	—	—	—	—	—	—	1
Clause not relevant because pertains to unpriced purchase orders									
52.214–1 Solicitation Definit. Sealed Bidding	14.201–6(b)(1)	—	A	—	—	A	—	—	
Provision applicable to sealed bid subcontracts when the tribe does not have an approved procurement system pursuant to Part F of the Regulation									
52.214–2 Type of Business Organization—Sealed Bidding	14.201–6(b)(2)	—	A	—	—	A	—	—	
Provision subject to the same comment as 52.214–1 above									
52.214–3 Amendments to Invitations for Bids	14.201–6(b)(3)	—	A	—	—	A	—	—	
Provision subject to the same comment as 52.214–1 above									
52.214–4 False Statements in Bids	14.201–6(b)(4)	—	A	—	—	A	—	—	
Provision subject to the same comment as 52.214–1 above									
52.214–5 Submission of Bids	14.201–6(c)(1)	—	A	—	—	A	—	—	
Provision subject to the same comment as 52.214–1 above									
52.214–6 Explanation to Prospective Bidders	14.201–6(c)(2)	—	A	—	—	A	—	—	
Provision subject to the same comment as 52.214–1 above									
52.214–7 Late Submissions, Modifications, and Withdrawals of Bids.	14.201–6(c)(3)	—	A	—	—	A	—	—	
Provision subject to the same comment as 52.214–1 above									
52.214–9 Failure to Submit Bid	14.201–6(e)(1)	—	—	—	—	—	—	—	1
Provision not relevant because it pertains to the maintenance of bidders lists									
52.214–10 Contract Award—Sealed Bidding	14.201–6(e)(2)	—	—	—	—	A	—	—	
52.214–12 Preparation of Bids	14.201–6(f)	—	A	—	—	A	—	—	
Provision subject to the same comment as 52.214–1 above									
52.214–13 Telegraphic Bids	14.201–6(g)(1)	—	O	—	—	O	—	—	
52.214–13 Alternate I	14.201–6(g)(2)	—	—	—	—	—	—	—	1
Provision not relevant because pertains to perishable subsistence solicitations									
52.214–14 Place of Performance Sealed Bidding	14.201–6(h)	—	—	—	—	—	—	—	1
Provision not necessary because place of performance specified for construction									
52.214–15 Period for Acceptance of Bids	14.201–6(i)	—	—	—	—	A	—	—	
Provision subject to the same comment as 52.214–1 above									
52.214–16 Minimum Bid Acceptance Period	14.201–6(j)	—	—	—	—	A	—	—	
Provision subject to the same comment as 52.214–1 above.									
52.214–17 Affiliated Bidders	14.201–6(k)	—	A	—	—	A	—	—	
Provision subject to the same comment as 52.214–1 above									
52.214–18 Preparation of Bids—Construction	14.201–6(l)	—	A	—	—	—	—	—	
Provision subject to the same comment as 52.214–1 above									
52.214–19 Contract Award-Sealed—Bidding—Construction	14.201–6(m)	—	A	—	—	A	—	—	
Provision subject to the same comment as 52.214–1 above									
52.214–20 Bid Samples	14.201–6(o)(1)	—	—	—	—	—	—	—	1
Provision not relevant because bid samples not practically necessary									
52.214–20 Alternate I	14.201–6(o)(2)(i)	—	—	—	—	—	—	—	1
Alternate not relevant for same reason as provision above									
52.214–20 Alternate II	14.201–6(o)(2)(ii)	—	—	—	—	—	—	—	1
Alternate not relevant for same reason as provision above									
52.214–21 Descriptive Literature	14.201–6(p)(1)	—	—	—	—	—	—	—	1
Provision not practically relevant because pertains to situations where information not otherwise readily available must be submitted to allow the Government to evaluate technical acceptability									
52.214–21 Alternate I	14.201–6(p)(2)	—	—	—	—	—	—	—	1
Alternate not relevant for same reason as provision above									
52.214–22 Evaluation of Bids for Multiple Awards	14.201–6(q)	—	A	—	—	A	—	—	
See comment under 52.214–1 above. Also, the provision only applies to bids for multiple awards									
52.214–23 Late Submis., Mods, and Withdrawals of Tech. Proposals Under Two-Step Sealed Bidding.	14.201–6(r)	—	—	—	—	—	—	—	1
Two-step process not planned for use under Pub. L. 93–638									
52.214–24 Multiple Technical Proposals	14.201–6(s)	—	—	—	—	—	—	—	1
Provision not relevant for same reason as 52.214–23 above									
52.214–25 Step Two of Two-Step Sealed Bidding	14.201–6(t)	—	—	—	—	—	—	—	1
Provision not relevant for same reason as 52.214–23 above									
52.214–26 Audit—Sealed Bidding	14.201–7(a)	—	A	—	—	A	—	—	
Clause subject to the same comment as 52.214–1 above									
52.214–27 Price Reduction for Defect. Cost or Pricing Data—Modifications—Sealed Bidding.	14.201–7(b)(1)	—	A	—	—	A	—	—	

Provision or clause	Prescribed in	FPC PRI	FPC SUB	CRC PRI	DDR PRI	DDR SUB	A/E PRI	A/E SUB	Notes
Clause subject to the same comment as 52.214–1 above									
52.214–28 Subcontractor Cost or Pricing Data—Mods Sealed Bidding.	14.201–7(c)(1)	—	A	—	—	A	—	—	
Clause subject to the same comment as 52.214–1 above									
52.214–29 Order of Precedence Sealed Bidding	14.201–7(d)	—	—	—	—	—	—	—	1
Clause not applicable to contracts such as A/E and construction for which the uniform contract format is not required									
52.214–30 Annual Representation and Certifications Sealed Bidding.	14.201–6(u)	—	—	—	—	—	—	—	1
Provision not relevant because involves use of annual representations and certifications									
52.214–31 Facsimile Bids	14.201–6(w)	—	O	—	—	O	—	—	1
52.214–32 Late Submissions, Mods, and Withdrawals of Bids (Overseas).	14.201–6(c)(4)	—	—	—	—	—	—	—	1
Provision not relevant because pertains to bids submitted outside U.S									
52.214–33 Late Submissions, Mods, and Withdrawals of Tech. Prop. Under Two-Step (Overseas).	14.201–6(v)	—	—	—	—	—	—	—	1
Provision not relevant because pertains to technical proposals submitted outside U.S									
52.214–34 Submission of Offers in English Language	14.201–6(x), 15.407(k), 25.407(c)	—	—	—	—	—	—	—	1
Clause not practically relevant because no problem foreseen in receiving offers written in other than English									
52.214–35 Submission of Offers in U.S. Currency	14.201–6(y), 15.407(i), 25.4–7(c)	—	—	—	—	—	—	—	1
Provision not practically relevant because no problem foreseen in receiving offers involving other than U.S. currency									
52.215–1 Examination of Records by Comptroller General	15.106–1(b)	A	A	A	A	A	A	A	
52.215–2 Audit-Negotiation	15.106–2(b)	A	A	A	A	A	A	A	
52.215–2 Alternate I	15.106–2(b)	A	A	A	—	—	—	—	
52.215–3 Solicitation for Info or Planning Purposes	15.405–2	—	—	—	—	—	—	—	1
Solicitations will not be issued for these purposes									
52.215–4 Notice of Possible Standardization	15.407(b)	—	—	—	—	—	—	—	1
Provision not relevant because it pertains to supply solicitations									
52.215–5 Solicitation Definitions	15.407(c)(1)	A	A	A	A	A	A	A	
Provision applicable to subcontracts when the tribe does not have an approved procurement system pursuant to Part F of the Regulation									
52.215–6 Type of Business Organization	15.407(c)(2)	A	A	A	A	A	A	A	
Provision subject to the same comment as 52.215–5 above									
52.215–7 Unnecessarily Elaborate Proposals or Quotations	15.407(c)(3)	—	—	—	—	—	—	—	1
Provision has no practical application									
52.215–8 Amendments to Solicitations	15.407(c)(4)	A	A	A	A	A	A	A	
Provision subject to the same comment as 52.215–5 above									
52–215–9 Submission of Offers	15.407(c)(5)	—	A	—	—	A	—	A	
Provision subject to the same comment as 52.215–5 above									
52.215–10 Late Submissions, Mods, and Withdrawals of Proposals.	15.407(c)(6)	—	A	—	—	A	—	A	
Provision subject to the same comment as 52.215–5 above									
52.215–11 Authorized Negotiators	15.407(c)(7)	A	A	A	A	A	A	A	
Provision subject to the same comment as 52.215–5 above									
52.215–12 Restriction on Discl. and Use of Data	15.407(c)(8)	—	—	—	—	—	—	—	1
Provision not relevant because HHS will use the provision at HHSAR 352.215–12 and DOI will use the provision at DIAR 1452.215–12									
52.215–13 Preparation of Offers	15.407(d)(1)	—	—	—	—	—	A	A	
52.215–14 Explanation to Prospective Offers	15.407(d)(2)	—	A	—	—	A	—	A	
Provision subject to the same comment as 52.215–5 above									
52.215–15 Failure to Submit Offer	15.407(d)(3)	—	—	—	—	—	—	—	1
Provisions not relevant because it pertains to maintenance of bidder lists									
52.215–16 Contract Award	15.407(d)(4)	—	A	—	—	A	—	A	
Provision subject to the same comment as 52.215–5 above									
52.215–16 Alternate I	15.407(d)(4)(ii)	—	A	—	A	—	—	—	
Alternate subject to the same comment as 52.215–5 above									
51.215–16 Alternate II	15.407(d)(4)(iii)	—	—	—	—	—	—	—	1
Alternate not relevant because it pertains to DOD, Coast Guard, and NASA solicitation									
52.215–16 Alternate III	15.407(d)(4)(iv)	—	—	—	—	—	—	—	1
Alternate III not relevant for same reason as Alternate II above									

Provision or clause	Prescribed in	FPC PRI	FPC SUB	CRC PRI	DDR PRI	DDR SUB	A/E PRI	A/E SUB	Notes
52.215–17 Telegraphic Proposals	15.407(e)(1)	—	O	—	—	O	—	O	
52.215–17 Alternate I	15.407(e)(2)	—	—	—	—	—	—	—	1
Alternate not relevant because pertains to perishable subsistence items									
52.215–18 Facsimile Proposals	15.407(i)	—	O	—	—	O	—	O	
52.215–19 Period for Acceptance of Offer	15.407(f)	—	—	—	—	—	—	A	
Provision subject to the same comment as 52.215–5 above									
52.215–20 Place of Performance	15.407(g)	—	—	—	—	—	—	A	
Provision subject to the same comment as 52.215–5 above									
52.215–21 Changes or Additions to Make-or-Buy Program	15.708	—	—	—	—	—	—	—	1
Clause not relevant because it applies only to Make-or-Buy programs									
52.215–21 Alternate I	15.708	—	—	—	—	—	—	—	1
Alternate not relevant for same reason as basic clause above									
52.215–21 Alternate II	15.708	—	—	—	—	—	—	—	1
Clause not relevant for same reason as basic clause above									
52.215–22 Price Reduction for Defective Cost or Pricing Data	15.804–8(a)	A	A	A	A	A	A	A	
52.215–23 Price Reduction for Defective Cost or Pricing Data—Mods.	15.804–8(b)	A	A	A	A	A	A	A	
52.215–24 Subcontractor Cost or Pricing Data	15.804–8(c)	A	A	A	A	A	A	A	
52.215–25 Subcontractor Cost Pricing Data—Mods	15.804–8(d)	A	A	A	A	A	A	A	
52.215–26 Integrity of Unit Prices	15.812–2(a)	—	—	—	—	—	—	—	1
Clause not applicable to construction projects									
52.215–26 Alternate I	15.812–2(b)	—	—	—	—	—	—	—	1
Alternate not relevant for same reason as basic clause above									
52.215–27 Termination of Defined Benefit Pension Plans	15.804–8(e)	—	—	—	—	—	—	—	1
Clause not applicable because it involves cost principles in FAR Subpart 31.2, and "638" contracts will rely on cost principles in A–87									
52.215–30 Facilities Capital Cost of Money	15.904(a)	—	A	—	—	A	—	A	
52.215–31 Waiver of Facilities Capital Cost of Money	15.904(b)	—	A	—	—	A	—	A	
52.215–32 Certification of Commercial Pricing for Parts or Components.	14.214, 15.813–7(a)(1)	—	—	—	—	—	—	—	1
Clause not relevant because pertains to major systems contracts									
52.215–32 Alternate I	14.214, 15.813–7(a)(2)	—	—	—	—	—	—	—	1
Alternate not relevant for same reason as basic clause above									
52.215–33 Order of Precedence	15.406–3(b)	—	—	—	—	—	—	—	1
Clause not relevant because only pertains to awards subject to uniform contract format, and A/E and construction are not subject to this requirement									
52.215–34 Evaluation of Offers for Multiple Awards	15.407(h)	—	A	—	—	A	—	A	
Provision applicable only if multiple awards envisioned									
52.215–35 Annual Reps and Certs Negotiation	15.407(i)	—	—	—	—	—	—	—	1
Provision not relevant because annual Representations and Certifications are not authorized for 638 contracts									
52.215–36 Late Submissions, Mods, and Withdrawals of Proposals (Overseas).	15.407(c)(9)	—	—	—	—	—	—	—	1
Provision not relevant because pertains to submissions to a Contracting Office outside U.S									
52.215–37 Commercial Pricing Certificate—Notice	14.214, 15.813–7(b)	—	—	—	—	—	—	—	1
Provision not relevant because it pertains to major systems contracts									
52.215–38 Preparation of Offers Construction	15.407(k)	A	A	A	—	—	—	—	
52.215–39 Revision or Adjustment of Plans for Postretirement Benefits Other than Pens.	15.804–8(f)	—	—	—	—	—	—	—	1
Clause not applicable because it involves cost principles in FAR Subpart 31.2, and "638" contracts will rely on cost principles in A–87									
52.216–1 Type of Contract	16.105	A	A	A	A	A	A	A	
52.216–2 Economic Price Adjust. Standard Supplies	16.203–4(a)	—	—	—	—	—	—	—	1
Clause not relevant because pertains to supply contracts									
52.216–3 Economic Price Adjust. Semistandard Supplies	16.203–4(b)	—	—	—	—	—	—	—	1
Clause not relevant because pertains to supply contracts									
52.216.4 Economic Price Adjust.—Labor and Material	16.203–4(c)	—	—	—	—	—	—	—	1
Clause not relevant because 638 contracts do not contain labor or material cost factors that are subject to change									
52.216–5 Price Redetermination—Prospective	16.205–4	—	—	—	—	—	—	—	1

Provision or clause	Prescribed in	FPC PRI	FPC SUB	CRC PRI	DDR PRI	DDR SUB	A/E PRI	A/E SUB	Notes
Clause not relevant because 638 contracts are not quantity production or services contracts involving extended performance periods for which it is impossible to negotiate fair and reasonable prices									
52.216–6 Price Redetermination—Retroactive	16.206–4	—	—	—	—	—	—	—	1
Clause not relevant because it is directed at R&D contracts									
52.216–7 Allowable Cost and Payment	16.307(a)	—	—	R	A	—	A	—	
FAR Subpart 16.307(a) prescribes modifying the clause to substitute reference to Subpart 31.6 for Subpart 31.2 in case of awards to State and Local Governments									
52.216–8 Fixed Fee	16.307(b)	—	—	—	—	—	—	—	1
Clause not relevant because Cost-Plus-Fixed-Fee Contract would not be one of the types of contracts used									
52.216–9 Fixed Fee—Construction	16.307(c)	—	—	—	—	—	—	—	1
Clause not relevant for same reason provided under 52.216–8 above									
52.216–10 Incentive Fee	16.307(d)	—	—	—	—	—	—	—	1
Clause not relevant because incentive-type contracts would not be used									
52.216–11 Cost Contract—No Fee	16.307(e)(1)	—	—	A	A	—	A	—	
52.216–11 Alternate	16.307(e)(2)	—	—	—	—	—	—	—	1
Alternate not relevant because directed at R&D contracts									
52.216–12 Cost Sharing Contract—No Fee	16.307(f)(1)	—	—	A	A	—	A	—	
52.216–12 Alternate I	16.307(f)(2)	—	—	—	—	—	—	—	1
Alternate not relevant because directed at R&D contracts									
52.216–13 Allowable Cost and Payment—Facilities	16.307(g)(1)	—	—	—	—	—	—	—	1
Clause not relevant because directed at consolidated facilities or facilities acquisition contracts									
52.216–13 Alternate I	16.307(g)(2)	—	—	—	—	—	—	—	1
Alternate not relevant because directed at facilities acquisition contracts									
52.216–14 Allowable Cost and Payment—Facilities Use	16.307(h)	—	—	—	—	—	—	—	1
Clause not relevant because directed at facilities-use contracts									
52.216–15 Predetermined Indirect Cost Rates	16.307(1)	—	—	—	—	—	—	—	1
Clause not relevant because directed at R&D contracts									
52.216–16 Incentive Price Revision—Firm Target	16.405(a)	—	—	—	—	—	—	—	1
Clause not relevant because incentive-type contracts would not be used									
52.216–16 Alternate	16.405(a)	—	—	—	—	—	—	—	1
Alternate not relevant for same reason as basic clause. In addition, Alternate directed at contracts involving supplies or services to be ordered under a provisioning document or Government option									
52.216–17 Incentive Price Revision—Successive Targets	16.405(b)	—	—	—	—	—	—	—	1
Clause not relevant for reason provided under 52.216–16 above									
52.216–17 Alternate		—	—	—	—	—	—	—	1
Alternate not relevant for same reasons as Alternate to 52.216–16 above									
52.216–18 Ordering	16.505(a)	—	—	—	—	—	—	—	1
Clause not relevant because directed at indefinite delivery contracts									
52.216–19 Delivery Order Limitations	16.505(b)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.216–18 above									
52.216–20 Definite Quantity	16.505(c)	—	—	—	—	—	—	—	1
Clause not relevant because only applies to definite quantity contracts									
52.216–21 Requirements	16.505(d)	—	—	—	—	—	—	—	1
Clause not relevant because only applies to requirements contracts									
52.216–21 Alternate I	16.505(d)	—	—	—	—	—	—	—	1
Alternate not relevant for same reason as basic clause above									
52.216–21 Alternate II	16.505(d)	—	—	—	—	—	—	—	1
Alternate not relevant for same reason as basic clause above									
52.216–21 Alternate III	16.505(d)	—	—	—	—	—	—	—	1
Alternate not relevant for same reason as basic clause above									
52.216–22 Indefinite Quantity	16.505(e)	—	—	—	—	—	—	—	1
Clause not relevant because only applies to indefinite quantity contracts									
52.216–23 Execution and Commencement of Work	16.603–4(b)(1)	A	—	A	A	—	A		
52.216–24 Limitation of Government Liability	16.603–4(b)(2)	A	—	A	A	—	A	—	
52.216–25 Contract Definitizat.	16.603–4(b)(3)	A	—	A	A	—	A	—	
52.216–25 Alternate I	16.603–4(b)(3)	—	—	—	—	—	—	—	2

Provision or clause	Prescribed in	FPC PRI	FPC SUB	CRC PRI	DDR PRI	DDR SUB	A/E PRI	A/E SUB	Notes
Clause not relevant because used for awards based on price competition									
52.216–26 Payments of Allowable Costs Before Definit.	16.603–4(c)	—	—	A	A	—	A	—	
52.217–1 Limitation of Price and Contractor Obligation	17.105(a)(1)	—	—	—	—	—	—	—	1
Clause not relevant because used for multiyear contracts in which total funds not awarded with the contract									
52.217–2 Cancellation of Items	17.105(a)(2)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as in 52.217–1 above									
52.217–2 Alternate I	17.105(a)(2)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as in 52.217–1 above									
52.217–3 Evaluation Exclusive of Options	17.208(a)	—	—	—	—	—	—	—	2
Provision not relevant because it contemplates more than one potential source									
52.217–4 Evaluation of Options Exercised at Time of Contract Award.	17.208(b)	—	—	—	—	—	—	—	2
Provision not relevant for same reason as in 52.217–3 above									
52.217–5 Evaluation of Options	17.208(c)	—	—	—	—	—	—	—	2
Provision not relevant for same reason as in 52.217–3 above									
52.217–6 Option for Increased Quantity	17.208(d)	—	—	—	—	—	—	—	1
Clause not relevant because directed at supplies									
52.217–7 Option for Increased Quantity—Separately Priced Line Item.	17.208(e)	—	—	—	—	—	—	—	1
Clause not relevant because directed at supplies									
52.217–8 Option to Extend Services	17.208(f)	—	—	—	—	—	—	—	1
Clause not relevant because FAR Section 17.200 states that FAR Subpart 17.2 not applicable to A/E or construction. While options are permissible with A/E and construction contracts, the FAR does not currently prescribe option provisions or clauses for these contracts									
52.217–9 Option to Extend Term of Contract	17.208(g)	—	—	—	—	—	—	—	1
Clause not relevant because directed as contracts with specified terms (e.g., food service) rather than end products									
52.219–1 Small Business Concern Representation	19.304(a)	—	O	—	—	O	—	O	
52.219–2 Small Disadvantaged Business Concern Rep.	19.304(b)	—	O	—	—	O	—	O	
52.219–3 Woman-Owned Small Business Respresent.	19.304(c)	—	O	—	—	O	—	O	
52.219–4 Notice of Small Business Small Purch. Set-Aside	19.508(a)	—	—	—	—	—	—	—	1
Provision not relevant because pertains to small purchases of supplies or services.									
52.219–5 Notice of Total Small Business-Labor Surplus Area Set-Aside.	19.508(b)	—	O	—	—	O	—	O	
52.219–5 Alternate I	19.508(b)	—	—	—	—	—	—	—	1
Alternate not practically relevant because pertains to situations where SBA has determined that no small business manufacturers exist; and this typically invovles supply-type procurements									
52.219–6 Notice of Total Small Business Set-Aside	19.508(c)1	—	O	—	—	O	—	O	
52.219–6 Alternate I	19.508(c)	—	—	—	—	—	—	—	1
Alternate not practically relevant for same reason provided under Alternate I to 52.219–5 above									
52.219–7 Notice of Partial Small Business Set-Aside	19.508(d)	—	—	—	—	—	—	—	1
Clause not relevant because mechanism of a partial set-aside is too cumbersome for tribal procurement systems to accomodate									
52.219–7 Alternate I	19.508(d)	—	—	—	—	—	—	—	1
Alternate not practically relevant for same reason provided under Alternate I to 52.219–5 above									
52.219–8 Utilization of Small and Small and Disadvantaged Business Concerns.	19.708(a)	—	A	—	—	A	—	A	
P.L. 93–638 contracts (the prime contracts) are covered by Section 900.605(b) of proposed regulation									
52.219–9 Small Business and Small Disadvantaged Business Subcontracting Plan.	19.708(b)(1)	A	—	A	A	—	A	—	
52.219–9 Alternate I	19.708(b)(1)	A	—	A	A	—	—	—	
52.219–10 Incentive Subcontracting Program for Small Disadv. Business Concerns.	19.708(c)(1)	—	—	—	—	—	—	—	1
Clause not relevant because no incentives (or fees) are paid to "638" contractors, and because incentive contracting is too cumbersome for tribal procurement systems to accomodate for subcontractors									
52.219–11 Special 8(a) Contract Conditions	19.811–3(a)	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to contracts with the SBA									
52.219–11 Alternate I	19.811–3(a)	—	—	—	—	—	—	—	1

Provision or clause	Prescribed in	FPC PRI	FPC SUB	CRC PRI	DDR PRI	DDR SUB	A/E PRI	A/E SUB	Notes
Same reason as 52.219–11 above									
52.219–12 Special 8(a) Subcontract Conditions	19.811–3(b)	—	—	—	—	—	—	—	1
Same reason as 52.219–11 above									
52.219–12 Alternate I	19.811–3(b)	—	—	—	—	—	—	—	1
Same reason as 52.219–11 above									
52.219–13 Utilization of Women-Owned Businesses	19.902	—	A	—	—	A	—	A	
The P.L. 93–638 (prime) contract is covered by Section 900.605(b) of the proposed regulation									
52.219–14 Limitations on Subcontracting	19.508(e) & 19.811–3(e)	—	A	—	—	A	—	A	
52.219–15 Notice of Participat. by Organizations for the Handicapped.	19.508(f)	—	O	—	—	O	—	O	
52.219–16 Liquidated Damages—Small Business-Small Business Contracting Plan.	19.708(b)(2)	—	—	—	—	—	—	—	1
Clause not practical because achievement of small business subcontracting goals may be complicated by factors such as Indian preference and tribal employment regulations									
52–219–17 Section 8(a) Award	19.811–3(c)	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to contracts with the SBA									
52.219–18 Notification of Competition Limited to Eligible 8(a) Concerns.	19.811–3(d)	—	—	—	—	—	—	—	1
Same as under 52.219–17 above									
52.219–18 Alternate I	19.811–3(d)(1)	—	—	—	—	—	—	—	1
Same as under 52.219–17 above									
52.219–18 Alternate II	19.811–3(d)(2)	—	—	—	—	—	—	—	1
Same as under 52.219–17 above									
52.219–18 Alternate III	19.811–3(d)(3)	—	—	—	—	—	—	—	1
Same as under 52.219–17 above									
52.219–19 Small Business Concern Representation for the Small Business Compet. Demonstration Program.	19.1007(a)	—	—	—	—	—	—	—	1
Provision not relevant because changing coverage makes program too cumbersome for tribal procurement systems to accomodate									
52.219–20 Notice of Emerging Small Business Set-Aside	19.1007(b)	—	—	—	—	—	—	—	1
Provision not relevant for same reason as 52.219–19 above									
52.219–21 Small Business Size Representation for Targeted Industry Categories Under.	19.1007(c)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.219–19 above									
52.219–22 SIC Code and Small Business Size Standard	19.304(d)	—	O	—	—	O	—	O	
52.220–1 Preference for Labor Surplus Area Concerns	20.103(b)	—	O	—	—	O	—	O	
52.220–2 Notice of Total Labor Surplus Area Set-Aside	20.202	—	O	—	—	O	—	O	
52.220–3 Utilization of Labor Surplus Area Concerns	20.302(a)	—	O	—	—	O	—	O	
52.220–4 Labor Surplus Area Subcontracting Program	20.302(b)	O	—	O	O	—	O	—	
52.222–1 Notice to the Govt of Labor Disputes	22.103–5(a)	A	A	A	A	A	A	A	
HHS cost-reimbursement prime contracts awards will normally include the more comprehensive clause at PHSAR 352.280–4(a)(14)									
52.222–2 Payment of Overtime Premiums	22.103–5(b)	—	—	A	A	—	A	—	
52.222–3 Convict Labor	22.202	A	A	A	A	A	A	A	
52.222–4 Contract Work Hours and Safety Stds Act—Overtime Comp.	22.305	A	A	A	A	A	—	—	
52.222–6 Davis-Bacon Act	22.407(a)	A	A	A	—	—	—	—	
Note: This clause is not applicable to prime contractors performing the contract work with tribal force accounts, but is applicable when the prime contractor is a private business corporation, whether owned by the tribe or tribal members. In all cases, the prime contractor is responsible for including the Clause in its subcontracts, and for furnishing IHS with information on subcontractor conformance with the requirements									
52.222–7 Withholding of Funds	22.407(a)	A	A	A	—	—	—	—	
See note under 52.222–6 above									
52.222–8 Payrolls and Basic Records	22.407(a)	A	A	A	—	—	—	—	
See Note under 52.222–6 above									
52.222–9 Apprentices & Trainees	22.407(a)	A	A	A	—	—	—	—	
See note under 52.222–6 above									
52.222–10 Compliance with Copeland Act Requirements	22.407(a)	A	A	A	—	—	—	—	
52.222–11 Subcontracts (Labor Standards)	22.407(a)	A	A	A	—	—	—	—	
See note under 52.222–6 above									
52.222–12 Contract Termination—Debarment	22.407(a)	A	A	A	—	—	—	—	
See note under 52.222–6 above									

Provision or clause	Prescribed in	FPC PRI	FPC SUB	CRC PRI	DDR PRI	DDR SUB	A/E PRI	A/E SUB	Notes
52.222–13 Compliance With Davis-Bacon and Related Act Regulations.	22.407(a)	A	A	A	—	—	—	—	
See note under 52.222–6 above									
52.222–14 Disputes Concerning Labor Standards	22.407(a)	A	A	A	—	—	—	—	
See note under 52.222–6 above									
52.222–15 Certification of Eligibility	22.407(a)	A	A	A	—	—	—	—	
See note under 52.222–6 above									
52.222–16 Approval of Wage Rates	22.407(b)	—	—	A	—	—	—	—	
Clause does not apply to subcontractors because it only pertains to cost-reimbursement construction, and all subcontracts will be fixed-price									
52.222–17 Labor Standards for Construction Work—Facilities Contracts.	22.407(d)	—	—	—	—	—	—	—	1
Clause not relevant because pertains to facilities contracts									
52.222–19 Walsh-Healey Public Contracts Act Rep	22.610(a)	—	A	—	—	—	—	—	
52.222–20 Walsh-Healey Public Contracts Act	22.610(b)	—	A	—	—	—	—	—	
52.222–21 Certification of Non-segregated Facilities	22.810(a)(1)	A	A	A	A	A	A	A	
52.222–22 Previous Contracts and Compliance Reports	22.810(a)(2)	A	A	A	A	A	A	A	
52.222–23 Notice of Requirement for Affirmative Action to ensure EEO.	22.810(b)	A	A	A	—	—	—	—	
52.222–24 Preaward On-site EEO Review	22.810(c)	—	—	—	A	A	A	A	
52.222–25 Affirmative Action Compliance	22.810(d)	—	—	—	A	A	A	A	
52.222–26 Equal Opportunity	22.810(e)	A	A	A	A	A	A	A	
While covered in Sections 900.607(10) and 960.120 of the Regulation, other FAR EEO clauses refer to this clause									
52.222–26 Alternate I	22.810(e)	A	A	A	A	A	A	A	
52.222–27 Affirmative Compliance Requirements for Construction.	22.810(f)	A	A	A	—	—	—	—	
52.222–28 Equal Opportunity Preaward Clearance of Subcontractors.	22.810(g)	—	—	—	A	A	—	—	
52.222–29 Notification of Visa Denial	22.810(h)	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to contracts performed in a foreign country									
52.222–35 Affirmative Action for Special Disabled and Vietnam Era Veterans.	22.1308(a)(1)	A	A	A	A	A	A	A	1
52.222–35 Alternate I	22.1308(a)(2)	—	—	—	—	—	—	—	
Alternate would only be relevant in unlikely event that Agency and OFCCP waived some of terms of the basic clause									
52.222–36 Affirmative Action for Handicapped Workers	22.1408(a)	A	A	A	A	A	A	A	1
52.222–36 Alternate I	22.1408(b)	—	—	—	—	—	—	—	
Alternate would only be relevant in unlikely event that Agency and OFCCP/DOL waived some of the terms of the basic clause									
52.222–37 Employment Reports on Special Disabled Veterans and Veterans of Vietnam Era.	22.1308(b)	A	A	A	A	A	A	A	
This Clause relates to 52.222–35 above									
52.222–40 Service Contract Act of 1965 as Amended—Contr. of $2,500 or less.	22.1005	—	—	—	—	A	—	A	
This Clause has no practical relevant because it pertains to contracts of $2,500 or less									
52.222–41 Service contract Act of 1965 as Amended	22.1006(a)	—	—	—	—	A	—	A	
52.222–42 Statement of Equivalent Rates for Federal Hires	22.1006(b)	—	—	—	—	A	—	A	
52.222–43 Fair Labor Standards Act and Service Contr. Act—Price Adjustment (Multiple Year and Option Contracts).	22.1006(c)(1)	—	—	—	—	A	—	A	
52.222–44 Fair Labor Standards Act and Service Contr. Act—Price Adjustment.	22.1006(c)(2)	—	—	—	—	A	—	A	
52.222–45 Notice of Compensation for Professional Empl.	22.1103	—	—	—	—	—	-	—	
Provision is not relevant because it pertaints to contracts with significant numbers of professional employees, and appears to exclude A/E									
52.222–46 Evaluation of Compen. for Professional Employees.	22.1103	—	—	—	—	—	—	—	
Provision is not relevant for same reason provided under 52.222–45 above									
52.222–47 SCA Minmium Wages and Fringe Benefits Applic. to Successor.	22.1006(d)	—	—	—	—	—	—	—	
Contract	22,1012–3(d)(i)								
Clause not relevant because it pertains to a contract which succeeds a current contract for substantially the same service									
52.222–48 Exemption from Applic. of Service Contract Act Provisions for Contracts for Maint., Calibration, and.	22.1006(e)(1)	—	—	—	—	—	—	—	

Provision or clause	Prescribed in	FPC PRI	FPC SUB	CRC PRI	DDR PRI	DDR SUB	A/E PRI	A/E SUB	Notes
Clause not relevant because it pertains to contracts for maintenance, calibration, and/or repair of ADP, scientific and medical, office, or business equipment									
52.222–49 Service Contract Act—Place of Performance	22.1006(f)	—	—	—	—	—	—	—	
Unknown	22.1009–4(c)	—	—	—	—	—	—	—	1
Clause not practically relevant because it only applies to contracts where the place of performance is unknown, and appears to exclude A/E									
52.223–1 Clean Air and Water Certification	23.105(a)	A	A	A	A	A	A	A	A
52.223–2 Clean Air and Water Act	23.105(b)	A	A	A	A	A	A	A	A
52.223–3 Hazardous Material Identification and Material Safety Data.	23.303	A	A	A	A	A	A	A	A
52.223–4 Recovered Material Certification	23.405	A	A	A	A	A	A	A	A
52.223–5 Certification Regarding a Drug-Free Workplace	23.505(a)	A	A	A	A	A	A	A	A
52.223–6 Drug-Free Workplace	23.505(b)	A	A	A	A	A	A	A	A
52.223–7 Notice of Radioactive Materials	23.602	A	A	A	A	A	A	A	A
52.224–1 Privacy Act Notification	24.104(a)	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to contracts where the design, development, or operation of a system of records on individuals is required									
52.224–2 Privacy Act	24.104(b)	—	—	—	—	—	—	—	1
Clause not relevant for the same reason as 52.224–1 above									
52.225–1 Buy American Certificate	25.109(a)	—	—	—	—	—	—	—	1
Provision not relevant because it pertains to supply contracts and service contracts that involve the furnishing of supplies									
52.225–2 Waiver of Buy American Act for Civil Aircraft and Related Articles.	25.109(c)	—	—	—	—	—	—	—	1
Provision not relevant because it pertains to the acquisition of civil aircraft and related articles									
52.225–3 Buy American Act—Supplies	25.109(d)	—	—	—	—	—	—	—	1
Clause not relevant for the same reason as 52.255–1 above									
52.225–5 Buy American Act—Construction Materials	25.205	A	A	A	—	—	—	—	
52.225–6 Balance of Payments Program Certificate	25.305(a)	—	—	—	—	—	—	—	1
Provision not relevant because it pertains to supplies or services for use outside the United States									
52.225–7 Balance of Payments Program	25.305(c)	—	—	—	—	—	—	—	1
Clause not relevant for the same reason as 52.225–6 above									
52.225–8 Buy American Act—Trade Agreements Act—Balance of Payments Program Certificate.	25.407(a)(1)	—	—	—	—	—	—	—	1
Provision not relevant because it does not pertain to construction or A/E									
52.225–9 Buy American Act—Trade Agreements Act—Balance of Payments Program.	25.407(a)(2)	—	—	—	—	—	—	—	1
Clause not relevant for the same reason as 52.225–8 above									
52.225–10 Duty Free Entry	25.605(a)	A	A	A	—	—	—	—	
52.225–11 Restrictions on Certain Foreign Purchases	25.704	R	R	R	—	—	—	—	
52.225–14 Inconsistency Between English Version and Translation of Contract.	25.902	—	—	—	—	—	—	—	1
Clause not relevant because translation into another language is not anticipated									
52.226–1 Utilization of Indian Organizations and Indian-Owned Economic Enterprises.	26.104	—	—	—	—	—	—	—	1
This clause is not necessary because Section 900.605 of the Regulation requires that preference be given to Indian organizations and enterprises									
52.227–1 Authorization and Consent	27.201–2(a)	A	A	A	A	A	A	A	
52.227–1 Alternate I	27.201–2(b)	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to R&D									
52.227–1 Alternate II	27.201–2(c)	—	—	—	—	—	—	—	1
Clause not relevant because it only pertains to communication services									
52.227–2 Notice and Assistance Regarding Patent and Copyright Infringement.	27.202–2	A	A	A	—	—	A	A	
52.227–3 Patent Indemnity 27.203–2(a), 27.203–4(a)(2)	27–203–1(b)	—	—	—	—	—	—	—	1
Clause not relevant because it excludes construction									
52.227–3 Alternate I	27–203–2(b)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.227–3 above									
52.227–3 Alternate II	27–203–2(b)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.227–3 above									
52.227–3 Alternate III	27–203–2(c)	—	—	—	—	—	—	—	1
Clause not relevant because it only pertains to communications services									
52.227–4 Patent Indemnity-Construction Contracts	27.203–5	A	A	A	A	A	—	—	

Provision or clause	Prescribed in	FPC PRI	FPC SUB	CRC PRI	DDR PRI	DDR SUB	A/E PRI	A/E SUB	Notes
52.227–4 Alternate I	27.203–5	O	O	O	O	O	—	—	
52.227–5 Waiver of Indemnity	27.203–6	A	A	A	A	A	—	—	
52.227–6 Royalty of Information	27.204–2	A	A	A	A	A	—	—	
52.227–6 Alternate I	27.204–2	—	—	—	—	—	—	—	1
Alternate not relevant because it pertains to communications services and facilities by a common carrier									
52.227–7 Patents—Notice of Government Licensee	27.204–3(c)	A	A	A	—	—	—	—	
52.227–9 Refund of Royalties	27.206–2	A	A	—	—	—	—	—	
52.227–10 Filing of Patent Applications—Classified Subject Matter	27.207–2	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to classified subject matter									
52.227–11 Patent Rights—Retention by the Contractor (Short Form).	27.303(a)(1)	O	O	O	—	—	O	O	
52.227–11 Alternate I	27.303(a)(3)	O	O	O	—	—	O	O	
52.227–11 Alternate II	27.303(a)(3)	O	O	O	—	—	O	O	
52.227–11 Alternate III	27.303(a)(4)	O	O	O	—	—	O	O	
52.227–11 Alternate IV	27.303(a)(5)	O	O	O	—	—	O	O	
52.227–12 Patent Rights—Retention by the Contractor (Long Form) 27.303(b)(1).	—	—	—	—	—	—	—	—	1
Clause not required because patent matters can be addressed using the short form patent rights clause at FAR 52.227–11									
52.227–12 Alternate I	27.303(b)(2)	—	—	—	—	—	—	—	1
Alternate not relevant for the same reason as the basic clause above									
52.227–12 Alternate II	27.303(b)(2)	—	—	—	—	—	—	—	1
Alternative not relevant for the same reason as the basic clause above									
52.227–13 Patent Rights—Acquisition by the Government	27.303(c)(1)	—	—	—	—	—	—	—	1
Clause not required because the clause at FAR 52.227–11 will be available for use, and because the contract work will be performed within the United States									
52.227–13 Alternate I	27.303(c)(3)	—	—	—	—	—	—	—	1
Alternate not relevant for the same reason as the basic clause above									
52.227–13 Alternate II	27.303(c)(3)	—	—	—	—	—	—	—	1
Alternate not relevant for the same reason as the basic clause above									
52.227–14 Rights in Data—General	27.409(a)(1)	—	—	—	—	—	—	—	1
Clause not practically relevant because chance of data being produced, furnished, or acquired under demolition contracts is negligible; and because construction and A/E are covered by the clause at FAR 52.227–17									
52.227–14 Alternate I	27.409(b)	—	—	—	—	—	—	—	1
Alternate not relevant for the same reason as the basic clause above									
52.227–14 Alternate II	27.409 (c) and (g)	—	—	—	—	—	—	—	1
Alternate not relevant for the same reason as the basic clause above									
52.227–14 Alternate III	27.409 (d) and (g)	—	—	—	—	—	—	—	1
Alternate not relevant for the same reason as the basic clause above									
52.227–14 Alternate IV	27.409(e)	—	—	—	—	—	—	—	1
Alternate not relevant for the same reason as the basic clause above									
52.227–14 Alternate V	27.409(f)	—	—	—	—	—	—	—	1
Alternate not relevant for the same reason as the basic clause above									
52.227–15 Representation of Limited Rights Data and Restricted Computer Software.	27.409(g)	—	—	—	—	—	—	—	1
Provision not relevant because only used in conjunction with 52.227–14									
52.227–16 Additional Rights in Data—Special Works	27.409(h)	—	—	—	—	—	—	—	1
Clause not relevant because only pertains to experimental, developmental, research, or demonstration work									
52.227–17 Rights in Data—Special Works	27.409(i)	O	O	O	—	—	O	O	
52.227–18 Rights in Data—Existing Works	27.409(j)	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to audiovisual and similar works									
52.227–19 Commercial Computer Software—Restricted Rights.	27.409(k)	—	—	—	—	—	—	—	1
Clause not relevant because pertains to acquisition of existing computer software									

Provision or clause	Prescribed in	FPC PRI	FPC SUB	CRC PRI	DDR PRI	DDR SUB	A/E PRI	A/E SUB	Notes
52.227–20 Rights in Data—SBIR Program	27.409(l)	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to small business innovation research contracts									
52.227–21 Technical Data Certification, Revision, and Withholding of Payment—Major Systems.	27.409(q)	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to major systems acquisitions									
52.227–22 Major Systems—Minimum Rights	27.409(r)	—	—	—	—	—	—	—	1
Clause not relevant for the same reason as 52.227–21 above									
52.227–23 Rights to Proposal Data (Technical)	27.409(s)	—	O	—	—	—	—	O	
Clause not relevant because it pertains to acquiring unlimited rights in technical data contained in a successful proposal									
52.228–1 Bid Guarantee	28.101–3(b)	—	A	—	—	A	—	—	
52.228–2 Additional Bond Security	28.106–4	A	A	—	A	A	—	—	
52.228–3 Workers' Compensation Insurance (Defense Base Act).	28.309(a)	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to employees working outside the U.S.									
52.228–4 Workers' Compensation and War-Hazard Insurance Overseas.	28.309(b)	—	—	—	—	—	—	—	1
Clause not relevant for the same reason as 52.228–3 above									
52.228–5 Insurance—Work on a Government Installation	28.310	A	A	A	A	A	A	A	A
52.228–6 Insurance—Immunity From Tort Liability	28.311–1	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to R&D work									
52.228–7 Insurance—Liability to Third Persons	28.311–2	—	—	—	—	—	—	—	1
Clause does not apply to construction and A/E contracts									
52.228–7 Alternate I	28.311–2	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.228–7 above									
52.228–7 Alternate II	28.311–2	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.228–7 above									
52.228–8 Liability and Insurance—Leased Motor Vehicles	28.312	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to contracts for the leasing of motor vehicles									
52.228–9 Cargo Insurance	28.313(a)	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to contracts for transportation or transportation-related services									
52.228–10 Vehicular and General Public	28.313(b)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.228–9 above									
52.228–11 Pledges of Assets	28.203–6	A	A	—	A	A	—	—	
52.229–1 State and Local Taxes	29.401–1	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to contracts for leased equipment									
52.229–2 North Carolina State and Local Sales and Use Tax	29.401–2	A	A	A	—	—	—	—	
52.229–2 Alternate I	29.401–2	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to vessel repair contracts									
52.229–3 Federal, State, and Local Taxes	29.401–3	—	A	—	—	A	—	A	
52.229–4 Federal, State, and Local Taxes (Noncompetitive Contr).	29.401–4	A	A	—	A	A	A	A	
52.229–5 Taxes—Contracts Performed in U.S. Possessions of Puerto Rico.	29.401–5	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to contracts performed in U.S. possessions or Puerto Rico									
52.229–6 Taxes—Foreign-Fixed Price Contracts	29.402–1(a)	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to contracts performed in a foreign country									
52.229–7 Taxes—Fixed Price Contracts with Foreign Governments.	29.402–1(b)	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to contracts with a foreign Government									
52.229–8 Taxes—Foreign Cost-Reimbursement Contracts	29.402–2(a)	—	—	—	—	—	—	—	1
Clause not relevant for the same reason as 52.229–6 above									
52.229–9 Taxes—Cost-Reimbursement Contracts with Foreign Governments Reimbursement Contracts.	29.402–2(b)	—	—	—	—	—	—	—	1
Clause not relevant for the same reason as 52.229–6 above									
52.229–10 State of New Mexico Gross Receipts and Compensating Tax.	29.401–6(b)	—	—	—	—	—	—	—	1
Clause is not applicable to prime contracts because the tax does not apply to "638" contracts, and is not applicable to subcontracts because coverage is limited to cost-reimbursement contracts and "638" construction subcontracts will be fixed price									

Provision or clause	Prescribed in	FPC PRI	FPC SUB	CRC PRI	DDR PRI	DDR SUB	A/E PRI	A/E SUB	Notes
52.230–1 Cost Accounting Standards Notices and Certification.	30.201–3	A	A	A	A	A	A	A	
Provision and prescription reflect FAC 90–12 published in the Federal Register as an interim rule on August 31, 1992									
52.230–2 Cost Accounting Standards	30.201–4(a)	A	A	A	A	A	A	A	
Clause and prescription reflect FAC 90–12 published in the Federal Register as an interim rule on August 31, 1992									
52.230–3 Disclosure and Consistency of Cost Accounting Standards.	30.201–4(b)(1)	A	A	A	A	A	A	A	
Same comment as under 52.230–2 above									
52.230–4 Consistency in Cost Accounting Practices	30.201–4(c)	—	—	—	—	—	—	—	1
Same comment as under 52.230–2 above. Clause has no potential application because it pertains to awards to United Kingdom contractors									
52.230–5 Administration of Cost Accounting Standards	30.201–4(d)(1)	A	A	A	A	A	A	A	
Same comment as under 52.230–2 above									
52.230–6 (FAC 90–12 removed this clause)									
52.232–1 Payments	32.111(a)(1)	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to supply, service, or communication services contracts									
52.232–2 Payments Under Fixed-Price Research and Development Contracts.	32.111(a)(2)	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to R&D contracts									
52.232–3 Payments under Personal Services Contracts	32.111(a)(3)	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to personal services contracts									
52.232–4 Payments under Transportation Contracts and Transportation Related Services.	32.111(a)(4)	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to transportation contracts									
52.232–5 Payments under Fixed-Price Construction Contracts	32.111(a)(5)	R	R	—	—	—	—	—	
52.232–6 Payments under Communication Service Contracts with Common Carriers.	32.111(a)(6)	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to regulated communication services by common carrier contractors									
52.232–7 Payments under Time and Materials and Labor-Hour Contracts.	32.111(b)	—	—	—	—	—	—	—	1
Clause not relevant because time and materials and labor hour contracts would not be used									
52.232–7 Alternate I	32.111(b)	—	—	—	—	—	—	—	1
Alternate not relevant for same reason as basic clause above									
52.232–7 Alternate II	32.111(b)	—	—	—	—	—	—	—	1
Alternate not relevant for same reason as basic clause above									
52.232–8 Discounts for Prompt Payment	32.111(c)(1)	—	—	—	A	A	—	—	
52.232–9 Limitation on Withholding of Payments	32.111(c)(2)	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to supply, R&D, service, time and materials, or labor hour contracts									
52.232–10 Payments under Fixed-Price A/E Contracts	32.111(d)(1)	—	—	—	—	—	A	A	
52.232–11 Extras 32.111(d)(2)	—	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to supply, service, or transportation contracts and has no application to the specific types involved here									
52.232–12 Advance Payments	32.412(a)	A	—	A	A	—	A	—	
52.232–12 Alternate I	32.412(b)	A	—	A	A	—	A	—	
52.232–12 Alternate II	32.412(c)	—	—	A	A	—	A	—	
52.232–12 Alternate III	32.412(d)	A	—	A	A	—	A	—	
52.232–12 Alternate IV	32.412(e)	A	—	A	A	—	A	—	
52.232–12 Alternate V	32.412(f)	A	—	A	A	—	A	—	
52.232–13 Notice of Progress Payments	32.502–3(a)	—	—	—	—	—	—	—	1
Provision not relevant because it pertains to contracts where progress payments are based on costs. (Construction and A/E progress payments are based on a percentage or share of completion, and their payments clauses contain the progress payment criteria)									
52.232–14 Notice of Availability of Progress Payments Exclusively for Small Business Concerns.	32.502–3(b)(2)	—	—	—	—	—	—	—	1
Provision not relevant for same reason as 52–232–13 above									
52.232–15 Progress Payments Not Included	32.502–3(c)	—	—	—	—	—	—	—	1
Provision not relevant for same reason as 52–232–13 above									
52.232–16 Progress Payments	32.502–4(a)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52–232–13 above									
52.232–16 Alternate I	32.502–4(b)	—	—	—	—	—	—	—	1
Alternate not relevant for same reason as 52–232–13 above									

Provision or clause	Prescribed in	FPC PRI	FPC SUB	CRC PRI	DDR PRI	DDR SUB	A/E PRI	A/E SUB	Notes
52.232–16 Alternate II	32.502–4(c)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52–232–13 above									
52.232–17 Interest	32.617(a)	—	A	—	—	A	—	A	
52.232–18 Availability of Funds	32.705–1(a)	A	—	A	A	—	A	—	
52.232–19 Availability of Funds for the Next Fiscal Year	32.705(b)	—	—	—	—	—	A	—	
Clause not relevant because it pertains to indefinite delivery or requirement service contracts									
52.232–20 Limitation of Cost	32.705–2(a)	—	—	A	A	—	A	—	
52.232–21 Limitation of Cost (Facilities)	32.705–2(b)	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to consolidated facilities, facilities acquisition, or facilities use contracts									
52.232–22 Limitation of Funds	32.705–2(c)	—	—	—	—	—	—	—	1
While this clause is included for use where applicable, HHSAR 332.702 prohibits incrementally funded construction, A/E, or demolition contracts by HHS at this time									
52.232–23 Assignment of Claims	32.806(a)(1)	A	O	A	A	O	A	O	
52.232–23 Alternate I	32.806(a)(2)	A	O	A	A	O	A	O	
52.232–24 Prohibition of Assignment of Claims	32.806(b)	A	O	A	A	O	A	O	
52.232–25 Prompt Payment	32.908(c)	—	—	—	R	R	A	—	
52.232–26 Prompt Payment for Fixed-Price Architect-Engineer Contracts.	32.908(a)	—	—	—	—	—	A	R	
52.232–27 Prompt Payment for Construction Contracts	32.908(b)	R	R	R	—	—	—	—	
52.232–28 Electronic Funds Transfer Payment Methods	32.908(d)	A	—	A	A	—	A	—	
52.233–1 Disputes	33.215	A	—	A	A	—	A	—	
The FAR clause is not suitable for P.L. 93–638 subcontracts, and P.L. 93–638 prime contractors should prepare and utilize appropriate clauses for the subcontracts									
52.233–1 Alternate I	33.215	A	—	A	A	—	A	—	
Comment above on need for special clause in subcontracts also applies to this alternate									
52.233–2 Service of Protest	33.106(a)	—	—	—	—	—	—	—	1
The FAR provision is not relevant to prime "638" contracts because protests on awardability will be governed by Section 900.801(b) of the Regulation. The FAR provision is not suitable for solicitations for "638" subcontracts, and the prime contractors should prepare and utilize appropriate ones									
52.233–3 Protest After Award	33.106(b)	—	—	—	—	—	—	—	2
The clause is not relevant because post-award protests will not occur under "638"									
52.233–3 Alternate I	33.106(b)	—	—	—	—	—	—	—	2
Alternate not relevant for same reason as basic clause above									
52.236–1 Performance of Work by the Contractor	36.501(b)	A	A	—	—	—	—	—	
52.236–2 Differing Site Conditions	36.502	A	A	—	A A	—	—		
52.236–3 Site Investigation and Conditions Affecting Work	36.503	A	A	—	A	A	—	—	
52.236–4 Physical Data	36.504	A	A	—	—	—	—	—	
52.236–5 Material and Workmanship	36.505	R	R	R	—	—	—	—	
52.236–6 Superintendence by the Contractor	36.506	A	A	—	A	A	—	—	
52.236–7 Permits and Responsibilities	36.507	R	R	R	A	A	—	—	
52.236–8 Other contracts	36.508	A	A	—	A	A	—	—	
52.236–9 Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements.	36.509	A	A	—	A	A	—	—	
52.236–10 Operations & Storage Areas	36.510	A	A	—	A	A	—	—	
52.236–11 Use and Possession Prior to Completion	36.511	A	A	—	—	—	—	—	
52.236–12 Cleaning Up	36.512	A	A	—	A	A	—	—	
52.236–13 Accident Prevention	36.513(a)	A	A	—	A	A	—	—	
52.236–13 Alternate I	36.513(b)	A	A	—	A	A	—	—	
52.236–14 Availability and Use of Utility Services	36.514	A	A	—	A	A	—	—	
52.236–15 Schedules for Construction Contracts	36.515	O	O	—	—	—	—	—	
52.236–16 Quality Surveys	36.516	O	O	—	—	—	—	—	
52.236–16 Alternate I	36.516	O	O	—	—	—	—	—	
52.236–17 Layout of Work	36.517	A	A	—	—	—	—	—	
52.236–18 Work Oversight in Cost Reimbursement Construction Contr..	36.518	—	—	R	—	—	—	—	
52.236–19 Organ. & Direction of the Work	36.519	—	—	R	—	—	—	—	
52.236–21 Specifications and Drawings for Construction	36.521	A	A	—	A	A	—	—	
52.236–21 Alternate I	36.521	A	A	—	A	A	—	—	
52.236–21 Alternate II	36.521	A	A	—	A	A	—	—	
52.236–22 Design Within Funding Limitations	36.609–1(c)	—	—	—	—	—	A	A	
52.236–23 Responsibility of the Architect-Engineer Contractor	36.609–2(b)	—	—	—	—	—	A	A	
52.236–24 Work Oversight in Architect-Engineer Contracts	36.609–3	—	—	—	—	—	A	A	
52.236–25 Requirements for Registration of Designers	36.609–4	—	—	—	—	—	A	A	
52.237–1 Site-Visit	37.110(a)	—	—	—	A	A	A	A	
52.237–2 Protection of Government Bldgs, Equip., Vegetation	37.110(b)	—	—	—	A	A	A	A	

Provision or clause	Prescribed in	FPC PRI	FPC SUB	CRC PRI	DDR PRI	DDR SUB	A/E PRI	A/E SUB	Notes
52.237–3 Continuity of Services	37.110(c)	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to acquisitions where successor contracts are anticipated									
52.237–4 Payment by Government to Contractor	37.304(a)	—	—	—	A	A	—	—	
52.237–4 Alternate I	37.304(a)	—	—	—	A	A	—	—	
52.237–5 Payment by Contractor to Government	37.304(b)	—	—	—	A	A	—	—	
52.237–6 Incremental Payment by Contractor to Government	37.304(c)	—	—	—	A	A	—	—	
52.237–7 Indemnification and Medical Liability Insurance	37.403	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to nonpersonal health care service contracts									
52.237–8 Severance Payments to Foreign Nationals Employed Under a Service Contract Performed Outside US.	37.110(f)	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to contracts for services performed outside the US									
52.242–1 Notice of Intent to Disallow Costs	42.802	—	—	R	A	—	A	—	
52.242–2 Production Progress Reports	42.1107(a)	—	—	—	—	—	A	—	
52.242–10 F.o.b. Origin—Govt Bills of Lading or Prepaid Postage.	42.1404–2(a)	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to using Government bills of lading or prepaid postage (which do not apply here)									
52.242–11 F.o.b. Origin—Govt Bills of Lading or Indicia Mail	42.1404–2(b)	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to using Government bills of lading or indicia mail, which will not be used here									
52.242–12 Report of Shipment (RESHIP)	42.1406–2	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to safety or security needs for advance notice of shipments, or carload or truckload shipments									
52–242–13 Bankruptcy	42.903	A	—	A	A	—	A	—	
52–243–1 Changes—Fixed Price	43.205(a)(1)	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to supply contracts									
52.243–1 Alternate I	43.305(a)(2)	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to service contracts other than A/E or professional services									
52.243–1 Alternate II	43.205(a)(3)	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to service contracts other than A/E, transportation, or R&D									
52.243–1 Alternate III	43.205(a)(4)	—	—	—	—	—	A	A	
52.243–1 Alternate IV	43.205(a)(5)	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to transportation contracts									
43.243–1 Alternate V	43.205(a)(6)	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to R&D contracts									
52.243–2 Changes—Cost Reimbursement	43.205(b)(1)	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to supply contracts									
52.243–2 Alternate I	43.205(b)(2)	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to service contracts									
52.243–2 Alternate II	43.205(b)(3)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52–243–2 above									
52.243–2 Alternate III	43.205(b)(4)	—	—	A	—	—	—	—	
52.243–2 Alternate IV	43.205(b)(5)	—	—	—	—	—	—	—	1
Clause not relevant because pertains to facilities contracts									
52.243–2 Alternate V	43.205(b)(6)	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to R&D contracts									
52.243–3 Changes—Time & Materials or Labor Hours	43.205(c)	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to time and materials and labor hour contracts, which will not be used for construction under P.L. 93–638									
52.243–4 Changes	43.205(d)	A	A	—	A	A	—	—	
52.243–5 Changes and Changed Conditions	43.205(e)	A	A	—	—	—	—	—	
52.243–6 Change Order Acctg	43.205(f)	O	O	O	—	—	—	—	
52.243–7 Notification of Changes	43.107	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to negotiated research and development contracts or those involving the supply of major weapons systems.									
52.244–1 Subcontracts (Fixed-Price Contracts)	44.204(a)(1)	A	A	—	A	A	—	—	
52.244–1 Alternate I	44.204(a)(3)	O	O	—	O	O	—	—	
52.244–2 Subcontracts (Cost Reimbursement and Letter Contracts).	44.204(b)	—	—	A	A	—	A	—	
52.244–2 Alternate I	44.204(b)	—	—	—	—	—	—	—	1
Alternate not relevant because it is only for use by DOD, Coast Guard, or NASA									
52.244–3 Subcontracts (Time & Materials & Labor Hour Contracts).	44.204(c)	—	—	—	—	—	—	—	1

Provision or clause	Prescribed in	FPC PRI	FPC SUB	CRC PRI	DDR PRI	DDR SUB	A/E PRI	A/E SUB	Notes
Clause not relevant because it only applies to time and materials and labor hour contracts, which will not be used for construction under P.L. 93–638									
52.244–4 Subcontractors and Outside Associates and Consultants.	44.204(d)	—	—	—	—	—	A	A	
52.244–5 Competition in Subcontracting	44.204(e)	A	—	A	A	—	A	—	
52.245–1 Property Records	45.106(a)	A	O	A	A	O	A	O	
52.245–2 Govt Property (Fixed Price Contracts)	45.106(b)(1)	A	O	—	A	O	A	O	
52.245–2 Alternate I	45.106(b)(2)	A	O	—	A	O	A	O	
52.245–2 Alternate II	45.106(b)(3)	—	—	—	—	—	—	—	1
Alternate not relevant because it pertains to contracts for basic or applied research									
52.245–3 Identification of Government-Furnished Property	45.106(c)	A	O	—	—	—	—	—	
52.245–4 Govt Furnished Property (Short Form)	45.106(d)	O	O	—	O	O	O	O	
52.245–5 Govt Property (Cost-Reimbursement, Time and Material or Labor-Hour Contracts).	45.106(f)(1)	—	—	A	A	O	A	O	
52.245–5 Alternate I	45.106(f)(2)	—	—	—	—	—	—	—	1
Alternate not relevant because it applies to contracts for basic or applied research									
52.245–6 Liability for Govt Property (Demolition Services Contracts).	45.106(g)	—	—	—	R	R	—	—	
52.245–7 Government Property (Consolid. Facilities)	45.302–6(a)	—	—	—	—	—	—	—	1
Clause not relevant because it applie to consolidated facilities contracts.									
52.245–8 Liability for the Facilities	45.302–6(b)	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to consolidated facilities, facilities acquisition, or facilities use contracts.									
52.245–9 Use and Charges	45.302–6(c)	—	—	—	—	—	—	—	1
Clause not relevant because it applies to consolidated facilities or facilities use contracts, or contracts involving the provision of Government production and research property.									
52.245–10 Government Property (Facilities Acquisition)	45.302–36(d)	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to facilities or facilities use contracts or when Government production and research property is provided.									
52.245–11 Govt Property (Facilities Use)	45.302(e)(1)	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to facilities acquisition contracts.									
52.245–11 Alternate I	45.302(e)(2)	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to basic or applied research contracts.									
52.245–12 Contract Purpose (Nonprofit Educational Institutions).	45.302–7(a)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.245–11 above									
52.245–13 Accountable Facilities (Nonprofit Educational Institutions).	45.302–7(b)	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to facilities contracts									
52.245–14 Use of Govt Facilities	45.302–7(c)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.245–11 above									
52.245–15 Transfer of Title to the Facilities	45.302–7(d)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.245–8 above									
52.245–16 Facilities Equipment Modernization	45.302–7(e)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.245–8 above									
52.245–17 Special Tooling	45.306–5	—	—	—	—	—	—	—	1
Clause not relevant because we do not anticipate contracts that involve special tooling									
52.245–18 Special Test Equipment	45.307–3	—	—	—	—	—	—	—	1
Clause not relevant because we do not anticipate contracts that involve special test equipment									
52.245–19 Govt Property Furnished "As Is."	45.308–2	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to contracts where Government production and research property is furnished									
52.246–1 Contractor Inspection Requirements	46.301	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to supply and service contracts									
52.246–2 Inspection of Supplies Fixed Price	46.302	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to supply contracts or service contracts that involve the furnishing of supplies									
52.246–2 Alternate I	46.302	—	—	—	—	—	—	—	1
Alternate not relevant because it pertains to fixed-price incentive contracts involving the furnishing of supplies									
52.246–2 Alternate II	46.302	—	—	—	—	—	—	—	1

Provision or clause	Prescribed in	FPC PRI	FPC SUB	CRC PRI	DDR PRI	DDR SUB	A/E PRI	A/E SUB	Notes
Alternate not relevant because it pertains to fixed-price with retroactive price redetermination contracts involving the furnishing of supplies									
52.246–3 Inspection of Supplies—Cost Reimbursement	46.303	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to cost-reimbursement contracts involving the furnishing of supplies									
52.246–4 Inspection of Services—Fixed Price	46.304	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to fixed-price service contracts, or supply contracts that involve the furnishing of services									
52.246–5 Inspection Services—Cost Reimbursement	46.305	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to cost-reimbursement service contracts, or supply contracts that involve the furnishing of services									
52.246–6 Inspection—Times and-Material and Labor Hour	46.306	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to time and materials or labor hour contracts that will not be used for construction under P.L. 93–638									
52.246–6 Alternate I	46.306	—	—	—	—	—	—	—	1
Alternate not relevant for same reason as basic clause									
52.246–7 Inspection of Research and Development—Fixed Price.	46.307(a)	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to R&D contracts									
52.246–8 Inspection of Research and Development—Cost Reimbursement.	46.308	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52–246–7 above									
52.246–8 Alternate I	46.308	—	—	—	—	—	—	—	1
52.246–9 Inspection of Research and Development (Short Form).	46.309	—	—	—	—	—	—	—	1
52.246–10 Inspection of Facilities	46.310	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to facilities contracts									
52.246–11 Higher Level Contract Quality Requirement (Govt Specifications).	46.311	—	—	—	—	—	—	—	1
Clause not relevant because P.L. 93–638 construction projects do not meet the appropriate complex or critical item definitions used here									
52.246–12 Inspection of Const.	46.312	A	A	—	—	—	—	—	1
52.246–13 Inspection—Dismantling, Demolition, or Removal of Improvements.	46.313	—	—	—	R	R	—	—	1
52.246–14 Inspection of Transp.	46.314	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to freight transportation contracts									
52.246–15 Certificate of Conformance	46.315	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to supply and services contracts									
52.246–16 Responsibility for Supplies	46.316	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to supply R&D, or service contracts involving the furnishing of supplies									
52.246–17 Warranty of Supplies of a Noncomplex Nature	46.710(a)(1)	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to supply, contracts									
52.246–17 Alternate I	46.710(a)(2)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.246–17 above									
52.246–17 Alternate II	46.710(a)(3)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.246–17 above									
52.246–17 Alternate III	46.710(a)(4)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.246–17 above									
52.246–17 Alternate IV	46.710(a)(5)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.246–17 above									
52.246–17 Alternate V	46.710(a)(6)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.246–17 above									
52.246–18 Warranty of Supplies of a Complex Nature	46.710(b)(1)	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to supply and R&D contracts									
52.246–18 Alternate I	46.710(b)(2)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.246–18 above									
52.246–18 Alternate II	46.710(b)(3)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.246–18 above									
52.246–18 Alternate III	46.710(b)(4)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.246–18 above									
52.246–18 Alternate IV	46.710(b)(5)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.246–18 above									
52.246–19 Warranty of Systems and Equipment under Performance Specs. or Design Criteria.	46.710(c)(1)	—	—	—	—	—	—	—	1

Provision or clause	Prescribed in	FPC PRI	FPC SUB	CRC PRI	DDR PRI	DDR SUB	A/E PRI	A/E SUB	Notes
Clause not relevant because it pertains to systems and equipment contracts									
52.246–19 Alternate I	46.710(c)(2)	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to systems and equipment contracts									
52.246–19 Alternate II	46.710(c)(3)	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to systems and equipment contracts									
52.246–19 Alternate III	46.710(c)(4)	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to systems and equipment contracts									
52.246–20 Warranty of Services	46.710(d)	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to service contracts									
52.246–21 Warranty of Construction	46.710(e)(1)	O	O	—	—	—	—	—	
52.246–21 Alternate I	46.710(e)(2)	O	O	—	—	—	—	—	
52.246–23 Limitation of Liability	46.805	—	—	—	—	—	—	—	1
Clause not applicable to construction or A/E contracts (per FAR Subpart 46.801)									
52.246–24 Limitation of Liability—High Value Items	46.805(a)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.246–23 above									
52.246–24 Alternate I	46.805(a)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.246–23 above									
52.246–25 Limitation of Liability—Services	46.805(a)(4)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.246–23 above									
52.247–1 Commercial Bill of Lading—Notations	47.104–4	O	O	O	O	O	—	—	
52.247–2 Permits, Authorities, or Franchises	47.207–1(a)								1
Clause not relevant because it pertains to contracts for transportation or transportation-related services									
52.247–3 Capability to Perform a Contract for the Relocation of a Federal Office.	47.207–1(b)(1)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.247–2 above									
52.247–3 Alternate I 47.207–1(b)(2)	—	—	—	—	—	—	—	—	1
Alternate not relevant for same reason as 52.247–2 above									
52.247–4 Inspection of Shipping & Receiving Facilities	47.207–1(c)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.247–2 above									
52.247–5 Familiarization with Conditions	47.207–1(d)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.247–2 above									
52.247–6 Financial Statement	47.207–1(e)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.247–2 above									
52.247–7 Freight Excluded	47.207–3(d)(2)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.247–2 above									
52.247–8 Estimated Weights or Quantities Not Guaranteed 47.207–3(e)(2).	—	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.247–2 above									
52.247–9 Agreed Weight—General Freight	47.207–4(a)(1)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.247–2 above									
52.247–10 Net Weight—General Freight	47.207–4(a)(2)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.247–2 above									
52.247–11 Net Weight—Household Goods or Office Furniture	47.207–4(b)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.247–2 above									
52.247–12 Supervision, Labor or Materials	47.207–5(b)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.247–2 above									
52.247–13 Accessorial Services—Moving Contracts	47.207–5(c)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.247–2 above									
52.247–14 Contractor Responsibility for Receipt of Shipment	47.207–5(d)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.247–2 above									
52.247–15 Contractor Responsibility for Loading and Unloading.	47.207–5(e)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.247–2 above									
52.247–16 Contractor Responsibility for Returning Undelivered Freight.	47.207–5(f)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.247–2 above									
52.247–17 Charges	47.207–6(a)(2)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.247–2 above									
52.247–18 Multiple Shipments	47.207–6(c)(5)(i)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.247–2 above									
52.247–19 Stopping in Transit For Partial Unloading	47.207–6(c)(5)(ii)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.247–2 above									
52.247–20 Estimated Quantities or Weights for Evaluation of Offers.	47.207–6(c)(6)	—	—	—	—	—	—	—	1
Provision not relevant for same reason as 52.247–2 above									
52.247–21 Contractor Liability for Personal Injury and/or Property Damage.	47.207–7(c)—	—	—	—	—	—	—	—	1

Provision or clause	Prescribed in	FPC PRI	FPC SUB	CRC PRI	DDR PRI	DDR SUB	A/E PRI	A/E SUB	Notes
Clause not relevant for same reason as 52.247–2 above									
52.247–22 Contractor Liability for Loss of and/or Damage to Freight other than Household Goods.	47.207–7(d)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.247–2 above									
52.247–23 Contractor Liability for Loss of and/or Damage to Household Goods.	47.207–7(e)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.247–2 above									
52.247–24 Advance Notification by the Government	47.207–8(a)(1)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.247–2 above									
52.247–25 Govt-Furnished Equip. with or without Operators	47.207–8(a)(2)(i)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.247–2 above									
52.247–26 Govt Direction and Marking	47.207–8(a)(3)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.247–2 above									
52.247–27 Contract Not Affected by Oral Agreement	47.207–8(b)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.247–2 above									
52.247–28 Contractor's Invoices	47.207–9(c)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.247–2 above									
52.247–29 F.o.b. Origin	47.303–1(c)	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to the application of transportation and traffic management considerations in the acquisition of supplies									
52.247–30 F.o.b. Origin Contractor's Facility	47.303–2(c)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.247–29 above									
52.247–31 F.o.b. Origin, Freight Allowed	47.303–3(c)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.247–29 above									
52.247–32 F.o.b. Origin, Freight Prepaid	47.303–4(c)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.247–29 above									
52.247–33 F.o.b. Origin, with Differentials	47.303–5(c)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.247–29 above									
52.247–34 F.o.b. Destination	47.303–6(c)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.247–29 above									
52.247–35 F.o.b Destination, within Consignee's Premises	47.303–7(c)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.247–29 above									
52.247–36 F.a.s. Vessel Port of Shipment	47.303–8(c)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.247–29 above									
52.247–37 F.o.b. Vessel, Port of Shipment	47.303–9(c)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.247–29 above									
52.247–38 F.o.b. Inland Carrier, Point of Exportation	47.303–10(c)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.247–29 above									
52.247–39 F.o.b. Inland Point, Country of Importation	47.303–11(c)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.247–29 above									
52.247–40 Ex Dock, Pier, or Warehouse, Port of Importation	47.303–12(c)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.247–29 above									
52.247–41 C&f, Destination	47.303–13(c)	—	—	—	—	—	—	—	1
Clause not relevant for the same reason as 52.247–29 above									
52.247–42 C.i.f. Destination	47.303–14(c)	—	—	—	—	—	—	—	1
Clause not relevant for the same reason as 52.247–29 above									
52.247–43 F.o.b. Designated Air Carrier's Terminal, Point of Exportation.	47.303–15(c)	—	—	—	—	—	—	—	1
Clause not relevant for the same reason as 52.247–29 above									
52.247–44 F.o.b. Designated Air Carrier's Terminal, Point of Importation.	47.303–16(c)	—	—	—	—	—	—	—	1
Clause not relevant for the same reason as 52.247–29 above									
52.247–45 F.o.b. Origin and/or F.o.b. Destination Evaluation	47.305–2(b)	—	—	—	—	—	—	—	1
Provision not relevant for the same reason as 52.247–29 above									
52.247–46 Shipping Point(s) Used in Evaluation of F.o.b. Origin Offers.	47.305–3(b)(4)(ii)	—	—	—	—	—	—	—	1
Provision not relevant for the same reason as 52.247–29 above									
52.247–47 Evaluation—F.o.b. Origin	47.305–3(f)(2)	—	—	—	—	—	—	—	1
Provision not relevant for the same reason as 52.247–29 above									
52.247–48 F.o.b. Destination Evidence of Shipment	47.305–4(c)	—	—	—	—	—	—	—	1
Clause not relevant for the same reason as 52.247–29 above									
52.247–49 Destination Unknown	47.305–5(b)(2)	—	—	—	—	—	—	—	1
Provision not relevant for the same reason as 52.247–29 above									
52.247–50 No Evaluation of Transportation Costs	47.305–5(c)(1)	—	—	—	—	—	—	—	1
Provision not relevant for the same reason as 52.247–29 above									
52.247–51 Evaluation of Export Offers	47.305–6(e)	—	—	—	—	—	—	—	1

Provision or clause	Prescribed in	FPC PRI	FPC SUB	CRC PRI	DDR PRI	DDR SUB	A/E PRI	A/E SUB	Notes
Provision not relevant for the same reason as 52.247–29 above									
52.247–51 Alternate I	47.305–6(e)(1)	—	—	—	—	—	—	—	1
Alternate not relevant for the same reason as the basic provision above									
52.247–51 Alternate II	47.305–6(e)(2)	—	—	—	—	—	—	—	1
Alternate not relevant for the same reason as the basic provision above									
52.247–51 Alternate III	47.305–6(e)(3)	—	—	—	—	—	—	—	1
Alternate not relevant for the same reason as the basic provision above									
52.247–52 Clearance and Docum. Requirements Shipments to DOD Air or Water Terminal Transshipment Points.	47.305–6(f)(2)	—	—	—	—	—	—	—	1
Clause not relevant for the same reason as 52.247–29 above									
52.247–53 Freight Classification Description	47.305–9(b)(1)	—	—	—	—	—	—	—	1
Provision not relevant for the same reason as 52.247–29 above									
52.247–54 Diversion of Shipment under F.o.b. Destination Contracts.	47.305–11(b)(2)	—	—	—	—	—	—	—	1
Clause not relevant for the same reason as 52.247–29 above									
52.247–55 F.o.b. Point for Delivery of Govt-Furnished Property.	47.305–12(a)(2)	—	—	—	—	—	—	—	1
Clause not relevant for the same reason as 52.247–29 above									
52.247–56 Transit Arrange	47.305–13(a)(3)(i)	—	—	—	—	—	—	—	1
Provision not relevant for the same reason as 52.247–29 above									
52.247–57 Transportation Transit Privilege Credits	47.305–13(b)(4)	—	—	—	—	—	—	—	1
Clause not relevant for the same reason as 52.247–29 above									
52.247–58 Loading, Blocking, and Bracing of Freight Car Shipments.	47.305–12(a)(2)	—	—	—	—	—	—	—	1
Clause not relevant for the same reason as 52.247–29 above									
52.247–59 F.o.b. Origins—Carload and Truckload Shipments	47.305–16(a)	—	—	—	—	—	—	—	1
Clause not relevant for the same reason as 52.247–29 above									
52.247–60 Guaranteed Shipping Characteristics	47.305–16(b)(1)	—	—	—	—	—	—	—	1
Clause not relevant for the same reason as 52.247–29 above									
52.247–61 F.o.b. Origin—Minimum Size of Shipments	47.305–16(c)	—	—	—	—	—	—	—	1
Clause not relevant for the same reason as 52.247–29 above									
52.247–62 Specific Quantities Unknown	47.305–16(d)(2)	—	—	—	—	—	—	—	1
Clause not relevant for the same reason as 52.247–29 above									
52.247–63 Preferences for U.S.—Flag Air Carriers	47.405	—	—	—	—	—	—	—	1
Clause has no practical relevance to "638" A/E and construction contracts									
52.247–64 Preference for Privately Owned U.S.—Flag Commercial Vessels.	47.507(a)	A	A	A	A	A	—	—	
52.247–64 Alternate I	47.507(b)	A	A	A	A	A	—	—	
52.247–64 Alternate II	47.507(c)	A	A	A	—	—	—	—	
52.248–1 Value Engineering	48.201(b)	—	—	—	A	A	—	—	
52.248–1 Alternate I	48.201(c)	—	—	—	A	A	—	—	
52.248–1 Alternate II	48.201(d)	—	—	—	A	A	—	—	
52.248–1 Alternate III	48.201(e)(1)	—	—	—	A	A	—	—	
52.248–2 Value Engineering Program—Architect Engineer	48.201(f)	—	—	—	—	—	A	A	
52.248–3 Value Engineering—Construction	48.202	A	A	A	—	—	—	—	
52.248–3 Alternate I	48.202	A	A	A	—	—	—	—	
52.249–1 Termination for Convenience of the Govt (Fixed-Price) (Short Form).	49.502(a)(1)	A	A	—	A	A	—	—	
52.249–1 Alternate I	49.502(a)(2)	—	—	—	A	A	—	—	
52.249–2 Termination for Convenience of the Govt (Fixed-Price).	49.502(b)(1)(i)	A	A	—	—	—	—	—	
Note: Clause only used in conjunction with one of the alternatives.									
52.249–2 Alternate I	49.502(b)(1)(ii)	A	A	—	—	—	—	—	
52.249–2 Alternate II	49.502(b)(1)(iii)	—	—	—	—	—	—	—	1
Alternate not relevant because "638" contractors would not be compelled to pay interest on excess termination payments received from the Government.									
52.249–2 Alternate III	49.502(b)(1)(iii)	A	—	—	—	—	—	—	
52.249–3 Termination for Convenience of the Govt (Dismantling, Demolition, or Removal of Improvements).	49.502(b)(2)	—	—	—	A	A	—	—	
52.249–3 Alternate I	49.502(b)(2)	—	—	—	A	—	—	—	
52.249–4 Termination for Convenience of the Government (Services Form).	49.502(c)	—	—	—	—	—	—	—	1
Clause not relevant because pertains to service contracts.									

Provision or clause	Prescribed in	FPC PRI	FPC SUB	CRC PRI	DDR PRI	DDR SUB	A/E PRI	A/E SUB	Notes
52.249–5 Termination for Convenience of the Govt (Educational and Other Nonprofit Institutions).	49.502(d)	—	—	—	—	—	—	—	1
Clause not relevant because pertains to R&D contracts									
52.249–6 Termination (Cost-Reimbursement)	49.503(a)(1)	—	—	A	—	—	A		
52.249–6 Alternate I	49.503(a)(2)	—	—	A	—	—	—	—	
52.249–6 Alternate II	49.503(a)(3)	—	—	—	—	—	—	—	1
Clause not relevant because other alternatives address construction									
52.249–6 Alternate III	49.503(a)(3)	—	—	A	—	—	—	—	
52.249–6 Alternate IV	49.503(a)(4)	—	—	—	—	—	—	—	1
Clause not relevant because pertains to time and materials and labor hour contracts									
52.249–6 Alternate V	49.503(a)(4)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as Alternate IV above									
52.249–7 Termination (Fixed-Price Architect-Engineer)	49.503(b)	—	—	—	—	—	A	A	
52.249–8 Default (Fixed-Price Supply and Service)	49–504(a)(1)	—	—	—	—	—	—	—	1
Clause not relevant because pertains to supply and service contracts									
52.249–8 Alternate I	49.504(a)(2)	—	—	—	—	—	—	—	1
Clause not relevant because pertains to transportation or transportation-related contracts									
52.249–9 Default (Fixed-Price Research and Development)	49.504(b)	—	—	—	—	—	—	—	1
Clause not relevant because pertains to R&D contracts									
52.249–10 Default (Fixed-Price Construction)	49.504(c)(1)	A	A	—	A	A	—	—	
Note: For DDR, clause only used in conjunction with Alternate I									
52.249–10 Alternate I	49.504(c)(2)	—	—	—	A	A	—	—	
52.249–10 Alternate II	49.504(c)(3)	O	O	—	—	—	—	—	
52.249–10 Alternate III	49.504(c)(3)	—	—	—	O	O	—	—	
52.249–11 Termination of Work (Consolidated Facilities or Facilities Acquisition.).	49.505(a)	—	—	—	—	—	—	—	1
Clause not relevant because pertains to consolidated facilities and facilities acquisition contracts									
52.249–11 Alternate I	49.505(a)	—	—	—	—	—	—	—	1
Clause not relevant for same reason as 52.249–11 above									
52.249–12 Termination (Personal Services)	49.505(b)	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to personal services contracts									
52.249–13 Failure to Perform	49.505(c)	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to facilities contracts									
52.249–14 Excusable Delays	49.505(d)	—	—	—	—	—	—	—	1
Clause not relevant because pertains to cost-reimbursement fee supply services, construction, or R&D contracts, or time and materials, labor-hour, consolidated facilities, and facilities aquisition contracts									
52.250–1 Indemnification Under Public Law 85–804	50.403–3	A	A	A	A	A	A	A	
Clause involves indemnification of contractor against unusually hazardous or nuclear risks, and would seldom be necessary									
52.250–1 Alternate I	50.403–3	—	—	A	A	A	A	A	A
52.251–1 Govt Supply Sources	51.107	A	—	A	A	—	A	—	
52.251–1 Alternate I	51.107	—	—	—	—	—	—	—	1
Clause not relevant because pertains to facilities contracts									
52.251–2 Interagency Fleet Management System (IFMS) Vehicles and Related Services.	51.205	—	—	A	A	—	A	—	
52.252–1 Solicitation Provisions Incorp. by Reference	52.107(a)	A	A	A	A	A	A	A	
52.252–2 Clause Incorp. by Reference	52.107(b)	A	A	A	A	A	A	A	
52.252–3 Alteration in Solicitation	52.107(c)	—	—	—	—	—	—	—	2
Provision is not relevant because it pertains to alterations in solicitations which are not necessary in the non-competitive "638" process									
52.252–4 Alterations in Contract	52.107(d)	—	—	—	—	—	—	—	2
Clause is not relevant because alterations will be bilateral									
52.252–6 Authorized Deviations in Clauses	52.107(f)	A	A	A	A	A	A	A	
52.253–1 Computer Generation of Forms	53.111	A	A	A	A	A	A	A	

Exhibit I–B—Department of the Interior Acquisition Regulation Provisions and Clauses for Department of the Interior Firm Fixed-Price, Cost, or Cost-Sharing Types of Construction Project Contracts

Column Headings and Codes

The column headings and codes used in this Exhibit are identical to those used in Exhibit I–A.

DOI ACQUISITION REGULATION PROVISIONS AND CLAUSES

Provision or clause	Prescribed in	FPC PRI	FPC SUB	CRC PRI	DDR PRI	DDR SUB	A/E PRI	A/E SUB	Notes
1452.204–70 Release of Claims	1404.804–70	R	R	R	R	R	—	—	
1452.204–71 Indian Preference	1404.7003(a)	R	R	R	R	R	R	R	
1452.204–72 Indian Preference Program	1404.7003(b) 1404.7005	R	R	R	R	R	R	R	
1452.210–70 Brand Name or Equal	1410.004–70(c)	R	A	R	—	—	—	—	
1452.215–70 Examination of Records by the Dept. of Interior	1415.413–70	R	A	R	R	A	R	A	
1452.228–70 Liability Insurance	1428.301	A	A	A	A	A	—	—	

Exhibit I–C—Health and Human Services Acquisition Regulation Provisions and Clauses for Department of Health and Human Services Firm Fixed-Price, Cost, or Cost-Sharing Types of P.L. 93–638 Construction Project Contracts

Column Headings and Codes

The column headings and codes used in this Exhibit are identical to those used in Exhibit I–A

HHS ACQUISITION REGULATION PROVISIONS AND CLAUSES

Provision or clause	Prescribed in	FPC PRI	FPC SUB	CRC PRI	DDR PRI	DDR SUB	A/E PRI	A/E SUB	Notes
352.202–1 Definitions	Clause preamble	R	—	R	R	—	R	—	
352.202–1 Alternate I	Clause preamble	—	—	A	A	—	A	—	
352.215–12 Restriction on Discl. and Use of Data	Provision preamble	R	A	R	R	A	R	A	
352.215–72 Pre-Proposal Conference	Provision preamble	—	—	—	—	—	—	—	1
This provision is not relevant because it pertains to a competitive acquisition process									
352.216–70 Negotiated Overhead Rates—Fixed	Clause preamble	—	—	—	—	—	—	—	1
This clause is not relevant because it pertains to contracts with educational institutions and non-profit organizations, and tribal organizations are categorized as state and local governments									
352.216–72 Additional Cost Principles	316.307(j)	—	—	—	—	—	—	—	1
This clause is not relevant for the same reason provided under 352.216–70 above									
352.224–70 Confidentiality of Information	324.7004	—	—	—	—	—	—	—	1
This clause is not relevant because construction project contracts do not involve the type of confidential information on individuals or proprietary information at issue here									
352.228–7 Insurance—Liability to Third Persons	Clause preamble	—	—	R	A	—	A	—	
352.232–9 Withholding of Contract Payments	Clause preamble	R	A	R	R	A	R	A	
352.232–71 Cost Sharing	335.070	—	—	—	—	—	—	—	1
This clause is not relevant because it pertains to R&D contracts									
352.232–73 Method of Payment—Letter of Credit	332.406	—	—	—	—	—	—	—	1
This clause is not relevant because it only applies to advance payments to specific States and State universities listed in the HHSAR									
352.232–74 Estimated Cost and Fixed Fee—Increment Funded Contract.	Clause preamble	—	—	—	—	—	—	—	1
This clause is not relevant because it pertains to incrementally funded contracts, and these types of contracts are not used for A/E or construction within HHS at this time									
352.232–75 Incremental Funding	Provision preamble	—	—	—	—	—	—	—	1
This provision is not relevant because it pertains to incrementally funded contracts, and these types of contracts are not used for A/E or construction within HHS at this time									
352.233–70 Litigation and Claims	Clause preamble	—	—	R	A	—	A	—	
352.237–70 Consulting Services Reporting	337.270	—	—	—	—	—	—	—	1
This clause is not relevant because it pertains to contracts for consulting services									
352.242–71 Final Decisions on Audit Findings	Clause preamble	—	—	R	A	—	A	—	
352.249–14 Excusable Delays	Clause preamble	—	—	—	—	—	—	—	1
This clause is not relevant because our contracts will contain a FAR default clause									
352.270–1 Accessibility of Meetings, Conferences, and Seminars/Persons with Disabilities.	370.102	—	—	—	—	—	—	—	1
This clause is not relevant because our P.L. 93–638 construction project contractors will not be required to conduct meetings, conferences, or seminars									
352.270–2 Indian Preference	370.202(a)	—	A	—	—	A	—	A	1

HHS ACQUISITION REGULATION PROVISIONS AND CLAUSES—Continued

Provision or clause	Prescribed in	FPC PRI	FPC SUB	CRC PRI	DDR PRI	DDR SUB	A/E PRI	A/E SUB	Notes
The clause is not relevant to prime contracts because HHSAR explicitly excludes it for P.L. 93–638 contracts, but it is applicable to subcontracts where the tribe lacks an approved procurement system									
352.270–3 Indian Preference Program	370.202(b)	—	A	—	—	A	—	A	1
See comment under 352.270–2 above									
352.270–4 Pricing of Adjustments	Clause preamble	R	—	—	—	A	—	A	—
352.270–5 Key Personnel	Clause preamble	—	—	R	—	A	—	A	—
352.270–6 Publications and Publicity	Clause preamble	—	—	—	—	—	—	—	1
This clause is not relevant because it is directed at research contracts that may lead to publishable findings									
352.270–7 Paperwork Reduction Act	Clause preamble	R	—	R	R	—	R	—	

Exhibit I–D—Public Health Service Acquisition Regulation Provisions and Clauses for Department of Health and Human Services Firm Fixed-Price, Cost, or Cost-Sharing Types of P.L. 93–638 Construction Project Contracts

Column Headings and Codes

The column headings and codes used in this Exhibit are identical to those used in Exhibit I–A.

PHS ACQUISITION REGULATION PROVISIONS AND CLAUSES

Provision or clause	Prescribed in	FPC PRI	FPC SUB	CRC PRI	DDR PRI	DDR SUB	A/E PRI	A/E SUB	Notes
352.215–10 Late Proposals, Mods, and Withdrawals of Proposals.	315.412	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to competitively acquired R&D services									
352.223–70 Safety and Health	323.7002 and 323.7003	—	—	—	—	—	—	—	1
Clause not relevant because construction covered by Clause 352.223–71 below									
352.223–71 Safety and Health Construction	323.7005	R	R	R	R	R	—	—	
352.232–70 Additional Payment Provision	Clause preamble	R	R	—	—	—	—	—	
352.280–1 Protection of Human Subjects	352.380–4	—	—	—	—	—	—	—	1
Provision not relevant because it pertains to contracts involving the use of human beings as subjects in research activities.									
352–280–2 Care of Laboratory Animals	352.380–4	—	—	—	—	—	—	—	1
Provision not relevant because it pertains to contracts involving the use of live vertebrate animals as subjects in research activities									
352.280–3 Maximum Allowable Cost for Drugs	352.380–4	—	—	—	—	—	—	—	1
Clause not relevant because it pertains to the procurement of drugs									
(The PHSAR clauses under 352.280–4(a) relate to cost-reimbursement contracts)									
352.280–4(a)(1) Definitions	352.380–4	—	—	—	—	—	—	—	1
Clause not relevant because construction project contracts will include the clause at HHSAR 352.202–1									
352.280–4(a)(2) Disputes	352.380–4	—	—	—	—	—	—	—	1
Clause not relevant because construction project contracts will include the clause at FAR 52.233–1, Disputes									
352.280–4(a)(3) Limitation of Cost	352.380–4	—	—	—	—	—	—	—	1
Clause not relevant because construction project contracts will include the clause at FAR 52.232–20, Limitation of Costs									
352.280–4(a)(4) Allowable Cost	352.380–4	—	—	—	—	—	—	—	1
Clause not relevant because subject is covered by Section 900.404 of the Regulation									
352.280–4(a)(5) Negotiated Overhead Rates	352.380–4	—	—	—	—	—	—	—	1
Indirect costs are covered by Sections 900.409 and 900.1004(m) of the Regulation									
352.280–4(a)(6) Payment	352.380–4	—	—	—	—	—	—	—	1
Clause not relevant because payment is covered under Section 900.1007 of the Regulation									
352.280–4(a)(7) Advance Payments	352.380–4	—	—	—	—	—	—	—	1
Clause not relevant because construction project contracts will contain the clause at FAR 52.232–12, Advance Payments									
352.280–4(a)(8) Examination of Records	352.380–4	—	—	—	—	—	—	—	1

PHS Acquisition Regulation Provisions and Clauses

Provision or clause	Prescribed in	FPC PRI	FPC SUB	CRC PRI	DDR PRI	DDR SUB	A/E PRI	A/E SUB	Notes
Clause not relevant because construction project contracts will contain the clause at FAR 52.215–1, Examination of Records by Comptroller General									
352.280–4(a)(9) Inspection and Reports	352.380–4	—	—	—	—	—	—	—	1
Clause not relevant because subject is covered in Section 900.1005 of the Regulation									
352.280–4(a)(10) Subcontracting	352.380–4	—	—	—	—	—	—	—	1
Clause not required because construction project contracts will contain the clause at FAR 52.244–2, Subcontracts (Cost Reimbursement and Letter Contracts)									
352.280–4(a)(11) Accounts, Audit, and Records	352.380–4	—	—	—	—	—	—	—	1
Clause not required because the subject is addressed in Section 900.126 of the Regulation and the clauses at FAR 52.215–1, Examination of Records by Comptroller General, and at FAR 52.215–2, Audit—Negotiations									
352.280–4(a)(12) Govern.-Furnsh. Property	352.380–4	—	—	—	—	—	—	—	1
Clause not relevant because cost-reimbursement contracts for construction projects will contain the clause at FAR 52.245–5, Government Property (Cost-Reimbursement, Time and Material, or Labor-Hour Contracts)									
352.280–4(a)(13) Changes	352.380–4	—	—	—	—	—	—	—	1
Clause not relevant because cost-reimbursement contracts for construction projects will contain the clause at FAR 52.243–2, Changes (Cost Reimbursement)(Alternative III)									
352.280–4(a)(14) Notice to the Government of Delays	352.380–4	—	—	R	A	—	A	—	
This PHSAR clause is more comprehensive than the clause at FAR 52.222–1, which is limited to delays resulting from labor disputes									
352.280–4(a)(15) Retrocession	352.380–4	—	—	—	—	—	—	—	1
Clause not relevant because cost-reimbursement contracts for construction contracts will contain the clause at FAR 52.249–6, Termination (Cost-Reimbursement)									
352.280–4(a)(16) Assumption and Reassumption of Contract Prog.	352.380–4	—	—	—	—	—	—	—	1
Clause not relevant for the same reason provided under 352.280–4(a)(15) above									
352.280–4(a)(17) Key Personnel	352.380–4	—	—	—	—	—	—	—	1
Clause not relevant because cost-reimbursement contracts for construction projects will contain the clause at HHSAR 352.270–5, Key Personnel									
352.280–4(a)(18) Litigation and Claims	352.380–4	—	—	—	—	—	—	—	1
Clause not relevant because construction project contracts will contain the clause at FAR 52.244–2, Subcontracts (Cost-Reimbursement and Letter Contracts)									
352.280–4(a)(19) Indemnity and Insurance	352.380–4	—	—	—	—	—	—	—	1
Clause not relevant because construction project contracts will include the clause at FAR 52.228–5, Insurance—Work on a Government Installation									
352.280–4(a)(20) Overtime	352.380–4	—	—	R	A	—	A	—	
This clause is directed at obtaining prior Contracting Officer approval for overtime, rather than ensuring its proper compensation									
352.280–4(a)(21) Foreign Travel	352.380–4	—	—	—	—	—	—	—	1
Clause not relevant because foreign travel is highly improbable under P.L. 93–638 construction project contracts									
352.280–4(a)(22) Questionnaires and Surveys	352.380–4	—	—	—	—	—	—	—	1
The clause is not relevant because P.L. 93–638 construction project contracts will contain the clause at HHSAR 352.270–7, Paperwork Reduction Act									
352.280–4(a)(23) Printing	352.380–4	—	—	—	—	—	—	—	1
Clause not relevant because printing of 25,000 pages is highly improbable under P.L. 93–638 construction project contracts									
352.280–4(a)(24) Services of Consultants	352.380–4	—	—	—	—	—	—	—	1
This clause is not relevant because it pertains to consultant services									
352.280–4(a)(25) Assignment of Claims	352.380–4	—	—	—	—	—	—	—	1
This clause is not relevant because construction project contracts will contain the clause at FAR 52.232–23, Assignment of Claim									
352.280–4(a)(26) Contract Work Hours and Safety Standard Act—Overtime Comp.	352.380–4	—	—	—	—	—	—	—	1

PHS ACQUISITION REGULATION PROVISIONS AND CLAUSES—Continued

Provision or clause	Prescribed in	FPC PRI	FPC SUB	CRC PRI	DDR PRI	DDR SUB	A/E PRI	A/E SUB	Notes
This clause is not relevant because construction project contracts of a character subject to this Act will contain the clause at FAR 52.222–4									
352.280–4(a)(27) Walsh-Healey Public Contracts Act	352.380–4	—	—	—	—	—	—	—	1
Clause not relevant because subcontracts of a character subject to this Act will be covered by the clause at FAR 52.222–20									
352.280–4(a)(28) Equal Opportunity	352.380–4	—	—	—	—	—	—	—	1
Clause not relevant because the subject is covered by Section 960.120 of the Regulation and the clause at 52.222–26, Equal Opportunity									
352.280–4(a)(29) Indian Pref. in Training	352.380–4	—	—	—	—	—	—	—	1
Clause not relevant because the subject is covered in Subpart A of the Regulation									
352.280–4(a)(30) Cert. of Nonsegregated Facilities	352.380–4	—	—	—	—	—	—	—	1
Clause is not relevant because construction project contracts will contain the clause at FAR 52.222–21, Certification of Non-Segregated Facilities									
352.280–4(a)(31) Convict Labor	352.380–4	—	—	—	—	—	—	—	1
Clause is not relevant because construction project contracts will contain the clause at FAR 52.222–3, Convict Labor									
352.280–4(a)(32) Officials Not To Benefit	352.380–4	—	—	—	—	—	—	—	1
Clause is not relevant because construction project contracts will contain the clause at FAR 52.203–1, Officials Not To Benefit									
352.280–4(a)(33) Buy American Act Sup. & Serv.	352.380–4	—	—	—	—	—	—	—	1
Clause is not relevant because it pertains to supply contracts and service contracts that involve the furnishing of supplies									
352.280–4(a)(34) Anti-Kickback Act	352.380–4	—	—	—	—	—	—	—	1
Clause is not relevant because construction project contracts will contain the clause at FAR 52.302–7, Anti-Kickback Procedures									
352.280–4(a)(35) Use of Indian Business Concerns	352.380–4	—	—	—	—	—	—	—	1
Clause not relevant because subject covered elsewhere in the Regulation									
352.280–4(a)(36) Payment of Interest on Contractor's Claims	352.380–4	—	—	—	—	—	—	—	1
The clause is not relevant because construction project contracts will include the clause at FAR 52.233–1, Disputes									
352.280–4(a)(37) Fair and Equal Treat. of Indian People	352.380–4	—	—	—	—	—	—	—	1
The clause is not relevant because it pertains to contracts for medical services									
352.280–4(a)(38) Price Reduction for Defective Cost or Pricing Data.	352.380–4	—	—	—	—	—	—	—	1
The clause is not relevant because construction project contracts will contain the clauses at FAR 52.215–22 and 52.215–23 on price reductions for defective data									
352.280–4(a)(39) Subcontractor Cost and Pricing Data	352.380–4	—	—	—	—	—	—	—	1
The clause is not relevant because construction project contracts will contain the clauses at FAR 52.215–24 and 52.215–25 on subcontractor cost or pricing data									
352.280–4(a)(40) Penalties	352.380–4	—	—	—	—	—	—	—	1
Clause not relevant because subject covered elsewhere in the Regulation									
352.280–4(a)(41) Effect on Existing Rights	352.380–4	—	—	—	—	—	—	—	1
This subject is covered in Section 900.104 of the Regulation									
352.280–4(a)(42) Gen. Services Admin. Supply Sources	352.380–4	—	—	—	—	—	—	—	1
The clause is not relevant because construction project contracts may contain the clause at FAR 52.251–1, Government Supply Sources									
(The PHSAR clauses under 352.280–4(b) pertain to fixed-price contracts)									
352.280–4(b)(1) Definitions	352.380–4	—	—	—	—	—	—	—	1
Clause not relevant because construction project contracts will include the clause at HHSAR 352.202–1									
352.280–4(b)(2) Disputes	352.380–4	—	—	—	—	—	—	—	1
Clause not relevant because construction project contracts will include the clause at FAR 52.233–1, Disputes									
352.280–4(b)(3) Contract Work Hours and Safety Standard Act—Overtime Comp.	352.380–4	—	—	—	—	—	—	—	1

PHS ACQUISITION REGULATION PROVISIONS AND CLAUSES—Continued

Provision or clause	Prescribed in	FPC PRI	FPC SUB	CRC PRI	DDR PRI	DDR SUB	A/E PRI	A/E SUB	Notes
This clause is not relevant because construction project contracts of a character subject to this Act will contain the clause at FAR 52.222–4									
352.280–4(b)(4) Walsh-Healey Public Contracts Act	352.380–4	—	—	—	—	—	—	—	1
Clause not relevant because subcontracts of a character subject to this Act will be covered by the clause at 52.222–20									
352.280–4(b)(5) Convict Labor	352.380–4	—	—	—	—	—	—	—	1
Clause is not relevant because construction project contracts will contain the clause at FAR 52.222–3, Convict Labor									
352.280–4(b)(6) Notice to the Government of Delays	352.380–4	—	—	—	—	—	—	—	1
The clause is not relevant because fixed-price contracts for construction projects will contain the clause at FAR 52.249–10, Default, (Fixed Price Construction). This FAR clause includes the requirement for notice of delays									
352.280–4(b)(7) Assignment of Claims	352.380–4	—	—	—	—	—	—	—	1
This clause is not relevant because construction project contracts will contain the clause at FAR 52.232–23, Assignment of Claim									
352.280–4(b)(8) Officials Not To Benefit	352.380–4	—	—	—	—	—	—	—	1
Clause is not relevant because construction project contracts will contain the clause at FAR 52.203–1, Officials Not To Benefit									
352.280–4(b)(9) Anti-Kickback Act	352.380–4	—	—	—	—	—	—	—	1
Clause is not relevant because construction project contracts will contain the clause at FAR 52.302–7, Anti-Kickback Procedures									
352.280–4(b)(10) Penalties	352.380–4	—	—	—	—	—	—	—	1
Clause not relevant because subject covered elsewhere in the Regulation									
352.280–4(b)(11) Buy American Act	352.380–4	—	—	—	—	—	—	—	1
Clause is not relevant because it pertains to supply contracts and service contracts that involve the furnishing of supplies									
352.280–4(b)(12) Equal Opportunity	352.380–4	—	—	—	—	—	—	—	1
Clause not relevant because the subject is covered by Section 960.120 of the Regulation and the clause at 52.222–26, Equal Opportunity									
352.280–4(b)(13) Cert. of Nonsegregated Facilities	352.380–4	—	—	—	—	—	—	—	1
Clause is not relevant because construction project contracts will contain the clause at FAR 52.222–21, Certification of Non-Segregated Facilities									
352.280–4(b)(14) Subcontracting	352.380–4	—	—	—	—	—	—	—	1
Clause not required because fixed-price contracts for construction projects will contain the clause at FAR 52.244–1, Subcontracts (Fixed-Price Contracts)									
352.280–4(b)(15) Competition in Subcontracting	352.380–4	—	—	—	—	—	—	—	1
Clause not required because construction project contracts will contain the clause at FAR 42.244–5, Competition in Subcontracting.									
352.280–4(b)(16) Use of Indian Business Concerns	352.380–4	—	—	—	—	—	—	—	1
Clause not relevant because subject covered elsewhere in the Regulation									
352.280–4(b)(17) Indian Pref. in Training	352.380–4	—	—	—	—	—	—	—	1
Clause not relevant because subject covered in Subpart A of the Regulation									
352.280–4(b)(18) Inspection	352.380–4	—	—	—	—	—	—	—	1
The clause is not relevant because construction project contracts will contain the inspection clauses at 52.246–12 and 52.246–13									
352.280–4(b)(19) Changes	352.380–4	—	—	—	—	—	—	—	1
Clause not relevant because fixed-price contracts for construction projects will contain the changes clause at FAR 52.243–1 (Alternate III) or at FAR 52.243–4									
352.280–4(b)(20) Retrocession	352.380–4	—	—	—	—	—	—	—	1
Clause not relevant because fixed-price contracts for construction projects will contain the termination for convenience clause at FAR 52.249–1, –2, –3, or –7, and the termination for default clause at FAR 52.249–10									
352.280–4(b)(21) Assumption and Reassumption of Contract Prog.	352.380–4	—	—	—	—	—	—	—	1
Clause not relevant for same reason provided under 352.280–4(b)(20) above									

PHS ACQUISITION REGULATION PROVISIONS AND CLAUSES—Continued

Provision or clause	Prescribed in	FPC PRI	FPC SUB	CRC PRI	DDR PRI	DDR SUB	A/E PRI	A/E SUB	Notes
352.280–4(b)(22) Payment of Interest on Contractor's Claims The clause is not relevant because construction project contracts will include the clause at FAR 52.233–1, Disputes	352.380–4	—	—	—	—	—	—	—	1
352.280–4(b)(23) Govern.-Furnsh. Property Clause not relevant because fixed-price contracts for construction projects will contain the clause at FAR 52.245–2, Government Property (Fixed-Price Contracts)	352.380–4	—	—	—	—	—	—	—	1
352.280–4(b)(24) Examination of Records by the Comp. General Clause not relevant because construction project contracts will contain the clause at FAR 52.215–1, Examination of Records by Comptroller General	352.380–4	—	—	—	—	—	—	—	1
352.280–4(b)(25) Indemnity and Insurance Clause not relevant because construction project contracts will include the clause at FAR 52.228–5, Insurance—Work on a Government Installation	352.380–4	—	—	—	—	—	—	—	1
352.280–4(b)(26) Fair and Equal Treat. of Indian People The clause is not relevant because it pertains to contracts for health care and similar types of services to individual IHS beneficiaries	352.380–4	—	—	—	—	—	—	—	1
352.280–4(b)(27) Reports to the Indian People and Annual Reports. Clause not relevant because it is covered in the Regulation	352.380–4	—	—	—	—	—	—	—	1
352.280–4(b)(28) Questionnaires and Surveys The clause is not relevant because P.L. 93–638 construction project contracts will contain the clause at HHSAR 352.270–7, Paperwork Reduction Act	352.380–4	—	—	—	—	—	—	—	1
352.280–4(b)(29) Printing Clause not relevant because printing of 25,000 pages is highly improbable under P.L. 93–638 construction project contracts	352.380–4	—	—	—	—	—	—	—	1
352.280–4(b)(30) Price Reduction for Defective Cost or Pricing Data The clause is not relevant because construction project contracts will contain the clauses at FAR 52.215–22 and 52.215–23 on price reductions for defective data	352.380–4	—	—	—	—	—	—	—	1
352.280–4(b)(31) Subcontractor Cost and Pricing Data The clause is not relevant because construction project contracts will contain the clauses at FAR 52.215–24 and 52.215–25 on subcontractor cost or pricing data	352.380–4	—	—	—	—	—	—	—	1
352.280–4(b)(32) Advance Payments Clause not relevant because construction project contracts will contain the clause at FAR 52.232–12, Advance Payments	352.380–4	—	—	—	—	—	—	—	1
352.280–4(b)(33) Effect on Existing Rights This subject is covered in Section 900.104 of the Regulation	352.380–4	—	—	—	—	—	—	—	1
352.280–4(b)(34) Federal, State and Local Taxes Clause not relevant because fixed-price contracts for construction projects will contain the clause at FAR 52.229–3, Federal, State, and Local Taxes *(This clause pertains to both cost-reimbursement and fixed-price contracts)*	352.380–4	—	—	—	—	—	—	—	1
352.280–6 Demurrage Charge Provisions for Reusable Cylinders and Containers Clause not relevant because it pertains to contracts involving the delivery of items in Contractor-furnished reusable gas cylinders or other containers	Clause preamble	—	—	—	—	—	—	—	1
NOTE: It is anticipated that certain provisions and clauses in PHSAR part 352 will be renumbered in order to better align the subject matter with text portions of the FAR HHSAR, and PHSAR.									

Subpart K—Retrocession, Recision, and Reassumption

§ 900.1101 Retrocession.

(a) Prior to the expiration date of the contract, a tribe has a right to return responsibility for the operation of a contract to the Secretary. At the discretion of the Secretary, a portion of the operation of a contract may be retroceded.

(b) When a contractor experiences specific problems with the operation of a contract and the tribe is considering the possibility of retrocession, technical assistance may be offered by the Secretary or a tribe may request such assistance to avoid retrocession.

(1) The request for technical assistance should be made in writing by either the tribe or tribal organization.

(2) In the event of such a request, the Secretary shall:

(i) Meet with the appropriate officials of the tribe and tribal organization to develop a plan for the provision of technical assistance to avoid retrocession; and

(ii) Provide to the extent possible special technical assistance to assist the contractor to operate satisfactorily the program and enable it to avoid retrocession.

(c) Retrocession shall become effective one year from the date of the request for retrocession, or at such date as may be mutually agreed by the Secretary and the tribe, except as provided for in § 900.1102(c).

§ 900.1102 Retrocession procedures.

(a) If a tribe submits a resolution requesting retrocession of a contract, the following procedures shall be followed:

(1) The tribe shall transmit its resolution to the Secretary; and

(2) The Secretary shall meet with the tribe within 15 days of receipt of the request to develop a plan. The plan may include technical assistance in providing for continuation of services. Such assistance may be provided by Federal personnel or by means of a grant pursuant to section 103(d) and (e) of the Act. Such technical assistance may include the special technical assistance as provided in § 900.1101(b), if agreed to by the tribe.

(b) If, after the Secretary has provided technical assistance to avoid retrocession, a tribe continues with its decision to retrocede, the Secretary shall again meet with the authorized representative(s) of the tribe and take the following actions:

(1) Establish a plan for an orderly transfer of responsibilities which may include:

(i) A plan to inventory and account for materials, supplies, and equipment and to assess the condition of facilities and real property;

(ii) An accounting of funds, and an assessment of current and anticipated obligations and cost of operations until assumption of the contract by the Secretary;

(iii) An identification of all records required to be maintained by the tribe or the tribal organization in relation to the contract and to the contracted function(s);

(iv) An assessment of the status of the contract being retroceded; and

(v) A plan for the provision of services pending retrocession including the identification of the assistance to be provided by the Secretary.

(2) On the effective date of retrocession the contractor shall, to the extent provided in § 900.502 (a) and (b), deliver to the Secretary, all unencumbered funds, remaining supplies on hand, and all property, equipment, records and materials identified in paragraph (b)(1)(i) of this section. Any disagreement will be resolved in accordance with § 900.805.

(c) By mutual agreement a tribe may withdraw or modify its request for retrocession by resolution.

§ 900.1103 Procedure in the event of breach of contract by a tribal organization.

(a) In the event of a breach of contract by a tribal organization because of its failure to perform, the tribe may decide to assume direct operation of the program, in which case it shall:

(1) Immediately meet with the tribal organization and follow the procedures set forth to develop a plan for the orderly transition of contract responsibilities to the tribe. Such a plan may include the provisions specified in § 900.1102(b)(1) (i) through (v); except that the tribe may establish a plan for employment of existing staff, or other provisions for hiring of necessary staff.

(2) Prepare and submit a proposal under § 900.206 to contract for all or a portion of the activities of the current contract. If a proposal is approved, the contract may not go into effect before the effective date of the contract termination. If the proposal is declined, the Secretary retains the responsibility for those services formerly provided by the tribal organization to the tribe. As such, the Secretary may make appropriate arrangements to provide the services, including direct operation and contracting for the services from any qualified provider. When the Secretary does not have sufficient resources on hand to immediately perform the work, the Secretary may, for temporary periods of the shortest duration possible, contract with a contractor that is not a tribe or tribal organization. However, in such cases, the advice of the tribe(s) shall be obtained in advance to determine how they desire the services to be rendered.

(3) At the tribe's option, request that the activities in the current contract serving the tribe's members be added to an existing contract, provided that the activities are similar to those carried on under the contract and do not require significantly different expertise in program and financial management. Such a request will be considered a request to modify the contract and shall be processed in accordance with the provisions in § 900.305(c).

(b) On the date the tribe contracts for the operation of the program, the tribal organization shall, to the extent provided in § 900.502 (a) and (b), deliver to the tribe all remaining unencumbered funds, supplies on hand and all property, equipment, records, and materials, identified in § 900.1102 (b)(1)(i).

(c) If the tribe decides to authorize a contract with another tribal organization, the provisions in §§ 900.206 and 900.207 shall apply.

(d) If the tribe decides to request a retrocession, the procedures set forth in §§ 900.1101 and 900.1102 shall be followed.

(e) When the contract is with a tribal organization performing services benefiting more than one tribe, the tribal organization shall inform the tribes involved of its intent to terminate its obligation under the contract. Each tribe shall follow the options as set forth in paragraphs (a), (b) and (c) of this section.

§ 900.1104 Retrocession procedures where a contractor serves multiple tribes.

(a) When one or more, but not all, of the tribes served by a contractor request retrocession, §§ 900.1101 and 900.1102 shall apply to the retroceding tribe(s) and the tribal organization. The contractor shall submit a request for a contract modification covering the changed circumstances including the program description and funding amounts for any remaining portion of the contract. In addition, the Secretary shall:

(1) Assess available resources and capabilities to provide services independently of and in addition to those being provided under the contract.

(2) Meet with the tribes requesting retrocession and explain the level of services that will be available upon retrocession.

(3) Explore with the retroceding tribe(s) the options set forth in § 900.1103(a) (1) and (2).

(b) When a portion of a contracted program is withdrawn from a tribal organization's program (either because the program portion is to be retroceded to the Secretary, operated directly by the retroceding tribes(s), or operated by a different tribal organization) the amount of funds, property, equipment, records and materials remaining in the tribal organization's contract to serve the remaining tribe(s) shall be negotiated and determined pursuant to §§ 900.107 and 900.108.

§ 900.1105 Effect of retrocession.

(a) A tribe's retrocession of a contract shall be without prejudice to:

(1) Any other contract to which it is a party;

(2) Any other contract it may request; and

(3) Any future request by the tribe to contract for the programs or portions

thereof covered by the retroceded contract insofar as the conditions which led to the retrocession are no longer a factor.

(b) The Secretary shall endeavor to provide to the Indian tribe(s) and Indians served by a retroceded program not less than the same level of funding, and the same quantity and quality of services that would have been provided if there had been no retrocession. The Secretary may exercise his/her discretionary authority to determine if services can be best delivered by the Secretary, or can be provided by a contract with another source.

§ 900.1106 Reassumption of programs.

(a) *Non-emergency reassumption.* (1) If the Secretary determines that the performance under a contract involves the violation of the rights, such as those guaranteed under the Indian Civil Rights Act, or endangerment of the health, safety, or welfare of any persons, including endangerment of trust resources; or gross negligence or mismanagement in the handling or use of funds provided to the contractor under the contract, the Secretary shall notify the contractor and the tribe(s) served by the contractor in writing of such deficiencies and request that the contractor take such corrective action as the Secretary may prescribe within a specified period of time, which in no event shall be less than 45 days or may furnish technical advice and assistance to help overcome the deficiencies in the contract performance.

(2) If the Secretary makes a determination that the contractor has not taken action to correct the deficiencies brought to the contractor's attention as provided in paragraph (a)(1) of this section, the Secretary will notify the contractor and the tribe(s) served by the contractor in writing of the determination to reassume the program. The reassumption notification shall set forth the reasons for the determination and shall inform the contractor of its right to request a hearing on the record in accordance with §§ 900.802 and 900.803 within 30 days of receiving the reassumption notice. In the event an appeal is not filed or, if filed, is resolved finally in favor of the Secretary, the Secretary may rescind the contract in whole or in part and reassume control or operation of the program or service.

(b) *Emergency reassumption.* If the Secretary determines that a contractor's performance under a contract poses an immediate threat of imminent harm to safety, the Secretary may immediately rescind the contract in whole or in part and, if deemed appropriate, assume control or operation of the program, activity, or service involved. Upon such reassumption, the Secretary will immediately notify the contractor and the tribe(s) served by the contractor in writing of such action and the basis thereof, including a statement of reasons for the Secretary's determination which supports the finding of an immediate threat, and inform the contractor of its right to request a hearing on the record under §§ 900.802 or 900.803 within 10 days of the reassumption or such later date as the contractor may approve.

(c) Whether or not an appeal is filed, the contractor shall cease all work under the contract upon the effective date of a reassumption under paragraphs (a) and (b) of this section. The contractor may be reimbursed for actual windup costs.

(d) Except as provided in paragraph (b) of this section, on the effective date of the reassumption, the contractor shall, to the extent provided in § 900.502 (a) and (b), deliver to the Secretary all unencumbered funds, supplies, materials, equipment, facilities, and records maintained by the contractor, required under the contract, and needed for continuation of the assumed program. Any disputes will be resolved in accordance with § 900.805.

(e) The Secretary may decline to enter into a new contract with that Indian tribe or tribal organization and may retain control of the program or function until the Secretary is satisfied that the conditions which caused the contract to be rescinded have been corrected.

(f) The Secretary shall endeavor to provide to the Indian tribe(s) and Indians served by a reassumed program not less than the same quantity and quality of services it would have provided if there had been no contract. Resources required to operate a reassumed program will be provided by the Secretary to the extent that they are available for that fiscal year. However, if current resources are not sufficient to maintain the program at its planned level, the program may be reduced until the required resources become available, at which time the program will resume at a level not less than the same quality and quantity that would have been provided if there had been no contract reassumption.

(g) In the event of reassumption of a program from a contractor serving one or more tribes other than the contractor, the Secretary shall explore with such tribes the options to contract program(s) as set forth in § 900.1103(a) (1) and (2).

(h) Nothing in this section shall contravene requirements of the Occupational Safety and Health Act of 1970, as amended 29 U.S.C. 251.

Subpart L—Discretionary Grants

§ 900.1201 Applicability.

(a) The regulations of this Subpart are applicable to discretionary grants awarded pursuant to section 103 of Public Law 93–638, 25 U.S.C. 450h, as amended.

(b) The requirements of this Subpart are not applicable to grants awarded in lieu of contracts as specified by section 102 of the Act. Those grants are subject to the self-determination contract requirements of § 900.206.

(c) In addition to subpart L, the following sections of this part are applicable to grants:

(1) Subpart A, §§ 900.101(a), Purpose and scope, general; 900.102, Definitions; 900.103(a)(2), Policy statements, Congressional policy; 900.104, Effect on existing tribal rights; 900.105, Effect of these regulations; 900.115, Indian preference in training and employment; 900.116, Equal opportunity and civil rights; and 900.117, Penalties;

(2) Subpart I, §§ 900.901, Liability insurance and motor vehicle coverage; 900.902, Medical Related Federal Tort claims; 900.903, Non-medical related Federal Tort Claims Act provisions;

(3) Subpart J, § 900.1004, Davis Bacon Wage and Labor Standards; and

(4) Subpart P, §§ 900.1601, Regulation administration, 900.1603, Participation and presentation, 900.1604, Rulemaking, and 900.1605, Waivers.

(5) In the event of conflict with any other subpart of these regulations the provisions of subpart L will apply.

(6) The use of contract support funds is not applicable to discretionary grant awards made under this subpart. All applicable direct and indirect costs will be included in the award amount.

(7) The provisions of any other Act notwithstanding, any funds made available to a tribe or tribal organization under grants pursuant to section 103 of the Act, 25 U.S.C. 450(h), may be used as matching shares for any other Federal grant programs which contribute to the purposes for which grants under this section are made.

§ 900.1202 Eligibility.

(a) Under section 103(e) of the Act the Secretary is authorized upon the request of any Indian tribe or tribal organization to make grants to any tribal organization for:

(1) Obtaining technical assistance from providers designated by the tribal organization, including tribal organizations that operate mature contracts, for the purposes of program planning and evaluation, including the development of any management systems necessary for contract

management and the development of cost allocation plans for indirect cost rates, and

(2) Planning, designing, monitoring, and evaluating Federal programs serving the tribe, including Federal administrative support functions.

(b) Under section 103(b) of the Act, the Secretary of HHS may make grants to any tribe or tribal organization for:

(1) The development, construction, operation, provision, or maintenance of adequate health facilities or services, including the training of personnel for such work, from funds appropriated to IHS for Indian health services or facilities, or

(2) Projects for planning, training, evaluation, or other activities designed to improve the capacity of a tribal organization to enter into a contract or contracts pursuant to section 102 of the Act, 25 U.S.C. 450(f).

(3) Grant applications for activities in paragraph (b)(1) of this section, which are being performed by IHS, or were performed by IHS and are now administered by a tribe(s) or tribal organization(s) under a grant will be processed as grants in lieu of contracts as specified by section 102 of the Act, 25 U.S.C. 450(f), and are subject to the self-determination contract requirements of this regulation.

(c) Under section 103(a) of the Act the Secretary of DOI is authorized to make grants for:

(1) The strengthening or improvement of tribal government, including, but not limited to: the development, improvement, and administration of planning, financial management, or merit personnel systems; the improvement of tribally funded programs or activities; or the development, construction, improvement, maintenance, preservation, or operation of tribal facilities or resources;

(2) the planning, training, evaluation of other activities designed to improve the capacity of a tribal organization to enter into a contract or contracts pursuant to section 102 of this Act and the additional costs associated with the initial years of operation under such a contract or contracts; or

(3) the acquisition of land in connection with paragraphs (1) and (2) of this section, provided that, in the case of land within reservation boundaries or which adjoins on at least two sides lands held in trust by the United States for the tribe or for individual Indians, the Secretary of the Interior may, upon the request of the tribe, acquire such land in trust for the tribe under this section.

§ 900.1203 Availability of funds and application dates.

(a) Applications will be received and awards made by the officials/offices which the Secretary shall prescribe through notice in the **Federal Register** with copies of such notices to be sent to eligible applicants.

(b) Any priorities for funding which are not based on legislative requirements must be announced in the **Federal Register** with copies of notices to be sent to eligible applicants.

(1) Whenever time permits, agencies shall provide the public an opportunity to comment on intended funding priorities.

(2) This would include such issues as a priority for unique needs or conditions for delineated discretionary grant activities.

(c) The Secretary will publish a notice in the **Federal Register** indicating the allotment of funds and categories of activities for which awards may be made under this subpart and shall send copies of such notices to eligible applicants. The Secretary may revise such allotments and categories and shall promptly publish a notice of such revisions in the **Federal Register** with copies to eligible applicants.

(d) The Secretary shall publish and distribute, at least 60 days prior to the application due date, to all tribes and tribal organizations, the total amount of funding for grants, including minimum and maximum funding levels and portion or portions of funds retained by the Secretary for administrative and other costs.

(1) The Secretary may reduce the number of days of advance notice when adherence to the 60 day notification time frame will adversely impact the Secretary's ability to evaluate applications and award funds in a timely manner.

(2) The rationale for less than the 60 day time frame must be provided to the public.

§ 900.1204 Application.

(a) Forms for applying for grants shall be those approved by the Office of Management and Budget (OMB).

(b) Each application shall include, at a minimum:

(1) A description of the applicant;

(2) A description of the geographic location of the project and the area to be served by the proposed project;

(3) A narrative description of the project, including the need for the project, project goals and objectives and a work and time schedule to accomplish each goal and objective, a description of the population to be served if appropriate, results and benefits anticipated, methodology, and a discussion of the criteria to be used to evaluate the results and success of the project; and

(4) any other narrative and statistical data that may be required in the **Federal Register** announcement.

(c) All applications must contain a copy of the applicable resolutions from each tribe to be served.

(d) In addition, in the following circumstances:

(1) Where an applicant proposes to obtain technical assistance from:

(i) A known third party, the application must contain the name and qualifications, including a resume, of the technical assistance provider, a schedule and description of the services to be provided, and a detailed budget for the services;

(ii) An unknown third party, the application must include a schedule and a detailed description of the services to be done as well as a qualifications and experience statement reflecting the requirements for performing the work and a detailed budget for the work to be performed.

(2) Where the applicant proposes to plan, design, monitor, and/or evaluate Federal programs, describe the program and/or function and the rationale for such an activity.

(e) The following additional assurances also need to be submitted:

(1) That services will be provided in a fair and uniform manner, consistent with need, to all participants.

(2) That a mechanism will be maintained for dealing with complaints regarding the delivery of services or performance of project activities;

(3) Project personnel:

(i) Will hold confidential all information obtained from participants in the project related to their examination, care, and treatment;

(ii) Shall not release such information without the individual's consent except as may be required by law, as may be necessary to provide service to the individual, or as may be necessary to monitor the operations of this program or otherwise protect the public; and

(iii) May disclose information in a form which does not identify particular individuals.

(4) Activities will be conducted with the approval, support, and involvement of the tribe(s) or Indian communities in the area served by the local facility and program; and

(5) The applicant has, or will have, the administrative and managerial capabilities to conduct the proposed project except as otherwise provided by special terms and conditions for the award.

(f) When a cooperative agreement is proposed, the applicant should specify the nature of the Federal involvement requested.

(g) After the initial budget period within a project period, the grantee may submit a noncompetitive application which shall include a standard OMB face page, budget request for the budget period, a report of progress and a description of any change from what was described in the original application.

§ 900.1205 Application review and award.

(a) *Grant award factors.*

The Secretary shall award grants under this subpart for projects which will best promote the purposes of the Act, taking into account at a minimum the following:

(1) The compatibility of the applicant's proposed project with the published Federal program announcement;

(2) the applicant's need for assistance;

(3) the apparent capability of the applicant to carry out the project;

(4) the soundness of the applicant's plan for conducting the project and for assuring effective utilization of grant funds;

(5) the reasonableness of the budget in relation to the scope of the project and available funds; and

(6) for technical assistance grants, the qualifications and experience of the technical assistance provider for the activity proposed.

(b) *Application review.* The Secretary shall review applications in a consistent manner in accordance with agency review requirements.

(c) *Competitive awards.* Awards shall be made on the basis of merit as determined by evaluation of applications against review criteria which have been published in the **Federal Register.** In some instances, competition may be limited and the rationale for such limitation must be published in the **Federal Register.**

(d) *Award.* The Notice of Award must specify how long the Secretary intends to support the project without requiring the applicant to again recompete for funds.

(1) The award period, also called the project period, will usually be for 1 to 3 years, however:

(i) Each grant award will generally be for a one year budget period; and

(ii) decisions regarding continuation of funding and the funding level of such awards will be made after consideration of such factors as the grantee's progress and management practices and the availability of funds.

(2) In all cases, awards require a determination by the Secretary that funding is in the best interests of the Federal Government.

(3) Neither the approval of any application nor the award of any grant commits the Federal Government to make any additional, supplemental, continuation, or other award with respect to any approved application or portion of an approved application.

(4) Cooperative agreement awards shall specify the substantive programmatic involvement on the part of the Federal Government.

§ 900.1206 Use of Project Funds.

(a) A grantee shall spend funds it receives under this subpart according to:

(1) The approved application and budget;

(2) The authorizing legislation;

(3) Specific special terms of the award;

(4) This subpart;

(5) The requirements of 43 CFR part 12 for the DOI; and

(6) For DHHS, 45 CFR part 92 or 74 as appropriate and the PHS Grants Policy Statement.

(b) Unless restricted by appropriation, grantees are authorized to carry over unobligated grant funds remaining at the end of a budget period as additional grant authority under a competing or noncompeting continuation award.

(c) Program income resulting from the operation of programs under this Act may be retained and used for the purposes specified by, and under the conditions of, the grant agreement. There are no Federal requirements governing the disposition of program income earned after the end of the award period.

(d) To the extent they provide special benefits to Indians, grants under this subpart are exempted from the requirements of section 601 of the Civil Rights Act of 1964, 42 U.S.C. 200d, prohibiting discrimination on the basis of race, color, or national origin, by regulation at 45 CFR 80.3(d) which provides, with respect to Indian health services that:

> An individual shall not be deemed subjected to discrimination by reason of his exclusion from the benefits of a program limited by Federal law to individuals of a particular race, color, or national origin different from his.

§ 900.1207 Facilities construction.

This Section applies only to grants for construction awarded by the DHHS, PHS, IHS under authorities granted to the Secretary.

(a) The Secretary shall consider grant applications for construction funds only when submitted in response to a specific grant program announcement for construction activities issued in accordance with § 900.1203.

(b) An applicant for a construction grant must provide the required certifications as set forth in the OMB approved applications.

(c) The plans and specifications for the project will conform to the minimum standards of construction and equipment specified in § 900.1012 and the grant award or in documents specified in the grant award.

(d) Facilities constructed under a grant pursuant to this Subpart may not in any manner be leased back to the Secretary.

(e) Notwithstanding any other authority in this Subpart, construction grantees are subject to the terms and conditions as specified in § 900.1206.

(f) Applicants and recipients must comply with programmatic requirements contained in the specific grant program announcement.

§ 900.1208 Grant appeals.

(a) The DHHS grants awarded under this Subpart are subject to appeal procedures for disputes of certain post award adverse determinations. Those appeal procedures are located at 42 CFR part 50, subpart D and 45 CFR part 16.

(b) For DOI grants, adverse determinations are subject to the Interior appeals provisions in subpart H of these regulations.

§ 900.1209 Reports.

(a) Grantees will submit, as appropriate, Standard Form 269 or 269A to report the status of funds for all non-construction and construction grants.

(1) Grantees will submit annual financial and performance reports which are due 90 days after the end of each grant budget period, and final financial and performance reports which shall be due 90 days after the expiration or termination of each grant.

(2) The Secretary may require quarterly financial and performance reports which shall be due 30 days after the end of each reporting period.

(3) No more frequent reporting may be required without the agreement of the grantee organization.

(b) Performance reports will contain, for each grant, brief information on the following:

(1) A comparison of actual accomplishments to the objectives established for the period.

(2) Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful.

(3) The reasons for slippage if established objectives were not met.

(4) Additional pertinent information including, when appropriate, analysis and explanation of high unit costs.

(c) For construction performance reports the DHHS, IHS will require additional formal performance reports and additional detailed information only when considered necessary and never more frequently than quarterly.

(d) Grantees shall submit reports in response to specific requests for programmatic information which have been approved by OMB.

(e) Events may occur between scheduled performance reporting dates which have significant impact on the grant supported activity. In such cases, the grantee must inform the Federal awarding agency as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award.

(2) This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(3) Favorable developments which enable meeting the time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

(f) Each recipient of Federal financial assistance shall make the above cited reports and information available to the Indian people it serves or represents.

§ 900.1210 Use of Indian organizations and Indian-owned economic enterprises.

To the greatest extent feasible, grantees shall give preference to qualified Indian organizations and Indian-owned economic enterprises regardless of tribal affiliation, in the award of any procurement entered into under the grant, consistent with the efficient performance of such grant. The grantee shall also comply with any Indian preference requirements established by the tribe receiving services under the grant to the extent such requirements are consistent with the purpose and intent of this section.

§ 900.1211 Use of Government personal property.

The Secretary may:

(a) Permit an Indian tribe or tribal organization in carrying out a grant to utilize existing school buildings, hospitals, and other facilities and all equipment therein or appertaining thereto, and other personal property owned by the Government within the Secretary's jurisdiction under such terms and conditions as may be agreed upon for their use and maintenance;

(b) Donate to an Indian tribe or tribal organization the title to any personal property found to be in excess to the needs of the BIA, the IHS, or the GSA, including property and equipment purchased with funds under a grant agreement;

(c) Acquire excess or surplus personal property for donation to an Indian tribe or tribal organization if the Secretary determines the property is appropriate for use by the tribe or tribal organization for a purpose for which a grant agreement is authorized under the Act;

(d) Permit an Indian tribe or tribal organization to utilize the PHS Supply Center at Perry Point, Maryland; the Department of Veterans Affairs supply system for medical supplies and medical equipment; the Department of Defense supply system for medical supplies and medical equipment; and the GSA supply sources for personal property and supplies that are to be used in the performance of the grant project.

Subpart M—Secretarial Reports and Consultation Requirements

§ 900.1301 Secretary's annual report to Congress.

The Secretary shall provide an annual report in writing on or before March 15 of each year to Congress on the implementation of the Act. The report shall be provided to each Indian tribe and tribal organization included in the report no later than the time it is presented to Congress. The report shall include:

(a) An accounting of the total amounts of funds obligated for each program and budget activity for direct contract program costs and contract support costs, which includes any indirect costs, as provided in § 900.108, during the previous fiscal year;

(b) An accounting of any deficiency of funds needed to provide required contract support costs, which includes indirect costs for each contract for the current fiscal year;

(c) The indirect cost rate and type of rate, negotiated lump sum, or other amount of indirect costs, for each contractor negotiated with the appropriate Secretary;

(d) The direct cost base and type of base from which the indirect cost rate is determined for each contractor;

(e) The indirect cost pool amounts, lump sum amounts, and the types of costs included in the indirect cost pools; and

(f) The amount of contract support estimated to be charged directly for each contract negotiated with the Secretary.

§ 900.1302 Secretary's annual report to Indian tribes and tribal organizations.

(a) Within 90 days after the close of each Federal fiscal year, the Secretary shall report in writing to each Indian tribe or tribal organization.

(b) The report shall detail the previous fiscal year's annual obligations for each program operated directly by the Secretary. A comparison of total allocation and total obligations will be estimated:

(1) At the BIA Agency, IHS Service Unit, or other comparable organizational unit, or other field location by tribe;

(2) at the Area Office or other regional office in the aggregate; and

(3) at the Headquarters or national office in the aggregate.

(c) The report shall detail actual and planned current fiscal year staffing levels for each:

(1) BIA Agency, IHS Service Unit, or other comparable organizational unit, or other field location;

(2) Area Office, or regional office; and

(3) Headquarters, or national office.

(d) The report shall include an estimate of the number of Indian people to be served by each program.

Subpart N—Program Standards, Department of Health and Human Services

§ 900.1401 Program standards, data, and quality assurance—policy.

(a) The provision of quality health services is the goal of both the DHHS and tribally operated health programs. Quality assurance programs, which include the collection and reporting of accurate data, are the means by which compliance with standards is measured, problems identified, and corrective action plans are developed and implemented to ensure quality services to the Indian people. The programs include the provision of clinical services to treat and ameliorate acute and chronic diseases and public health services designed to promote health, prevent diseases, and protect the public's health. Program standards, data collection and reporting, and quality assurance are necessary, interrelated, and essential parts of a satisfactory health program.

(b) The Secretary shall establish joint tribal/Federal participation processes to review and advise on departmental program standards, quality assurance programs, and Core Data Set Requirements (CDSR). Modifications to the CDSR will be made to keep them to a minimum consistent with good management practices.

(c) Responsibility for the day-to-day operation of contracted health programs

rests with the tribal contractor in accordance with the assurances set forth in the contract proposal and the resulting contract. This responsibility includes ensuring that appropriate standards, data collection and reporting, and quality assurance programs are in place and maintained.

(d) Nothing in this subpart is intended to create any additional declination or reassumption criteria.

§ 900.1402 Program standards, data and quality assurance—assurances.

The following assurances must be included in proposals, contracts, and contract modifications:

(a) *Assurance on program standards.* This assurance shall consist of either:

(1) An assurance that the contractor will comply with applicable Joint Commission on the Accreditation of Health Care Organizations (JCAHO) or Health Care Finance Administration (HCFA) accreditation standards or conditions of participation. Identification of JCAHO or HCFA standards in the Assurance will be sufficient without further specification in the contract proposal; or

(2) Where JCAHO or HCFA standards are not applicable, the Assurance shall identify what other national, state, professional, agency, or tribal standards the contractor proposes to use for the clinical or public health services to be provided. In such cases, the contractor shall submit with its Assurance a copy of the standards proposed for use or provide sufficient details to enable the proposed standards to be evaluated for their appropriateness and adequacy for the provision of quality health services and the protection of the public's health. The standards must include a process to ensure that incidents of infections or communicable diseases and other public health hazards are reported in a timely manner to appropriate county, state, or federal public health authorities.

(b) *Assurance on data collection and reporting.* The contract proposal shall include an assurance that the contractor will maintain, or establish and maintain, a data collection and reporting system that will provide the data necessary to plan, direct and assure the delivery of quality health care services and provide for the reporting of accurate and complete data compatible with the CDSR of the IHS reporting systems which are applicable to the program or programs to be covered by the contract.

(1) The contract proposal shall indicate whether the contractor will use the IHS data collection and reporting system or the contractor's own manual or automated system.

(2) The contractor is not required to use the IHS data collection and reporting system so long as the contractor's own data collection and reporting system provides for the transmission of accurate and complete data at least quarterly or as otherwise required to meet the CDSR of the applicable IHS information systems.

(3) The contractor's data collection and reporting systems, if automated, must also meet the applicable automated record security requirements of the Computer Security Act of 1987, Public Law 100–275.

(c) *Assurance on quality assurance.* The contract proposal shall include an assurance that the contractor will establish and maintain a quality assurance program which includes evaluation components to assess management and program processes; measure compliance with applicable standards; identify problems which are important to the delivery of adequate health care; and develop and implement corrective action plans.

§ 900.1403 Program standards, data and quality assurance—implementation.

(a) When a tribe or tribal organization wishes to assume management of a program, the Secretary shall make available all program standards, data reporting requirements and quality assurance requirements, including any risk management plans used in the operation of the program or activity proposed for assumption.

(b) Current awards for programs that do not meet the requirements in this section or where the underlying award is silent on program standards, program data or quality assurance must meet the requirements in § 900.1402 in the first request for continuation or annual funding made subsequent to the effective date of these regulations.

(c) The Secretary will provide technical assistance for development and implementation of a quality assurance program.

(d) The CDSR and any changes as a result of § 900.1401(b) are to be published as a general notice in the **Federal Register**.

(e) No additional reporting requirements will be imposed without agreement of the tribal contractor except as may be required by law, such as section 602 of the Indian Health Care Improvement Act or implementing regulations.

(f) The Secretary will provide technical assistance to tribal contractors to enable them to convert their data into the formats and appropriate transmission media required by the IHS information systems.

(g) No distinction will be made between new, current, mature and term contracts or grants relevant to the applicability and implementation of the assurances as provided in accordance with § 900.1402 or § 900.1403.

(h) The program standards provided for in § 900.1402 may not be less than standards which are currently being applied in the program as operated by the Secretary except as required by law or regulation. In carrying out the contract, the tribal contractor may not be required by the Secretary to adhere to any standards higher than those identified in the contract as provided in § 900.1402.

(i) Nothing in this subpart is intended to preclude tribal contractors from modifying health priorities within individual programs or services to better meet the health needs of their beneficiaries, so long as such modifications are compatible with and are covered by assurances set forth in § 900.1402 and, where appropriate because such modifications would represent a significant addition, deletion or change under the current contract, follow the requirements of subpart C for the modification of contracts.

(j) The cost of operations to meet the requirements of this entire section is an allowable cost pursuant to subpart D under a self-determination award, whether it be a contract, grant, or cooperative agreement.

§ 900.1404 Fair and uniform provision of services.

(a) Contractors shall assure the fair and uniform provision of the services and assistance they provide to Indians including access by Indian beneficiaries of the program to be contracted to tribal administrative or judicial bodies empowered to adjudicate complaints, claims and grievances brought by such Indian beneficiaries against the contractor arising out of the performance of the contract. Services provided pursuant to a contract under this subpart shall be provided by the contractor to all beneficiaries under a contract consistent with applicable priorities, policies and regulations and shall make no discriminatory distinctions among beneficiaries. Such discriminatory distinctions include but are not limited to the following:

(1) Denying a beneficiary any service or benefit or availability of a facility;

(2) Providing any service or benefit to a beneficiary which is different, or is provided in a different manner or at a different time from those provided to other beneficiaries under a contract;

subjecting a beneficiary to segregation or separate treatment in any manner related to the receipt of any service; restricting a beneficiary in any way from an advantage or privilege provided to others receiving any service benefit; treating a beneficiary differently from others in determining whether the individual satisfies any admission, enrollment, quota, eligibility membership, or other requirements or conditions which must be met in order to be provided any service or benefit; the assignment of times or places for the provision of services on the basis of discriminatory distinctions which may be made of the beneficiaries to be served.

Subpart O—Department of the Interior Program Standards

§ 900.1501 General program standards.

(a) *Purpose and scope.* (1) This subpart addresses program standards for the Secretary's operation of programs that may be contracted to tribes and authorized tribal organizations pursuant to the authorities found in Public Law 93–638, as amended. The Secretary's standards may be used in evaluating proposals to determine whether to approve or decline a contract.

(2) Where the Secretary determines that the contract proposal as submitted will not produce minimum satisfactory results in accordance with the statutory declination criteria, negotiations as well as technical assistance will be used in an endeavor to avoid declination.

(3) To expedite review and approval of contract proposals, pre-application technical assistance under § 900.203(a)(4) is encouraged where a tribe or tribal organization wishes to select or develop program standards in a proposal which differ from the Secretary's standards in this subpart.

(b) *Program standards.* (1) Except as otherwise provided in these regulations, contractors shall adhere to all program standards to which the Federal agency is subject, subject to the variance procedures in (c), including statutes, regulations, orders, policies, agency manuals, guidelines, industry standards and personnel qualifications, but only to the extent such standards are referenced or set out in the contract or this subpart and have actually been observed by the government in its operation of the particular program.

(2) The standards applicable to a particular program shall be furnished within a reasonable time after the receipt of a request for those applicable standards from a tribe or tribal organization, but in no case shall a contractor be held to a standard not disclosed to the contractor prior to approval of the contract, unless such standard is contained in law or regulations.

(3) Should any statute, regulation, order, policy, manual, guideline or industry standard or other requirement that is listed in this subpart or identified to the contractor prior to contracting be revised, the contractor shall observe the revised standards applicable to other contractors and government employees subject to the variance procedures in (c), unless it satisfies the Federal contracting officer that compliance with the revision would materially increase its cost under the contract and supplemental funding is unavailable.

(4) Should the standards or requirements applicable to Federal employees rely upon State licensure requirements or codes not directly applicable on the tribal reservation, the government and the tribe shall determine comparable standards for contractors on the reservation before approval of the contract.

(5) In the absence of standards the Secretary and the tribe or tribal organization shall negotiate suitable standards for the operation of the program to be contracted.

(6) A standard more rigorous than those met by the Secretary in direct operation of the program may be selected by mutual consent.

(c) *Variance.* The contractor may propose alternative means of meeting performance levels or standards set by regulations, orders, policies, etc., or the industry or profession. The Secretary shall approve such alternatives to promote the purposes of the Act to the extent consistent with applicable law, meeting the trust responsibility to Indians, and assurance of performance of the functions or activities at a level comparable to that of the government.

(1) Requests for variance prior to contract issuance shall be treated under the provisions of § 900.206.

(2) Requests for variance after a contract has been issued shall be considered a contract modification subject to the provisions of § 900.305.

(d) *Coordination of programs.* The Secretary shall coordinate the program(s) or portion(s) thereof carried out by the Secretary, with those carried out by a tribal contractor(s).

(1) A contract proposal shall include an assurance that the Indian tribe or tribal organization will coordinate its programs with the program(s) or portion(s) carried out by the Secretary or by other tribes or tribal organizations.

(2) The proposal shall describe the methods for coordination with other governments and organizations in carrying out the contract.

(i) To provide for the orderly transition in the delivery of programs to individual Indians and Indian tribes, a period of transition or cooperative management may be provided to meet the requirements of the Indian tribe and the Secretary's responsibility.

(ii) This period of transition must be executed within available funds by a cooperative agreement between the Indian tribe and the Secretary.

(e) *Conflicts of interest.* (1) Contractors and subcontractors may elect to utilize and maintain their written code of standards of conduct governing the performance of their officers and employees. Until such written code has been approved by the Secretary, upon certification by the Departmental Ethics Office that it provides adequate protection from conflicts of interest prohibited of governmental trustees, contractors and subcontractors shall ensure that, at a minimum, no officer or employee or agent:

(i) Has a financial or property interest that conflicts substantially with his or her responsibilities in performance of the contract;

(ii) Uses inside information, not available to the general public, obtained through his or her performance of the contract, for private gain for himself or any person other than the tribe;

(iii) Receives or solicits any gratuities, favors or anything of monetary value from anyone other than the contractor in connection with services rendered under the contract; and

(iv) Takes any action to be performed under the contract which:

(A) Might result in use of tribal office, employment or role as an agent for his personal private gain or the gain of his employer;

(B) Gives preferential treatment to any person, except as authorized by applicable law;

(C) He cannot take with independence or impartiality (when required); or

(D) Is outside official channels, which includes channels identified in the contract;

(2) Membership in an Indian tribe, band or pueblo which receives services from the Secretary, or ownership of interests in an Indian Corporation established under the Indian Reorganization Act or Alaska Native Claims Settlement Act, shall not be considered a conflicting interest. Nor shall an interest arising solely from a birthright:

(i) In an Indian tribe, band, nation, community or Alaska Native village corporation;

(ii) In an Indian allotment, the title to which is held in trust by the United States or which is inalienable by the allottee without the consent of the United States; or

(iii) In an Indian claims fund held in trust by the United States, be considered a prohibited financial interest, but no officer or employee shall be permitted to take any action in a particular matter directly involving his allotment or interest in a claims fund.

(3) The code or assurance may except from its prohibitions unsolicited gifts of nominal intrinsic value and provide procedures for employees to divest themselves of such interests, or for reassignment or restriction of duties of employees with conflicts.

(4) The contractor shall give appropriate notice of its code or assurance to contract personnel and require the disclosure of potential conflicts. The contractor shall promptly resolve such conflicts and report to the Secretary, and to the tribal governing body, any conflicts that arise as soon as they become evident and the resolution thereof promptly thereafter.

(5) Such a code or assurance shall provide for penalties, sanctions or other disciplinary actions for violations of the standards and a procedure for hearing of complaints that the code or assurance has been violated.

(f) *Quality assurance.* For programs operated by the Secretary which have existing quality assurance plans, a contract proposal shall include quality assurance plans, subject to the inclusion of funds in the contract award to cover the cost of such plans. The plan shall provide for examination of:

(1) The structure in which the service is provided;

(2) The process of providing the service; and

(3) The outcome expected as the result of delivering that service by including the following:

(i) Self evaluation and assessment of management and program processes;

(ii) Review of internal management operations and procedures;

(iii) Continuing comparison of management and program activity to stated standards; and

(iv) Evaluation and assessment of collected information relating the level of achievement attained in meeting specified standards.

(4) The quality assurance plan shall provide for the preparation and implementation of corrective actions to bring performance to acceptable levels when established standards are not met.

(5) The quality assurance plan shall provide for monitoring of that plan as implemented by the contractor, and any necessary corrective actions.

(6) In lieu of a plan as provided in paragraphs (f) (1) through (5) of this section, the contractor may elect to participate in the Secretary's quality assurance plan covering such program.

(g) *Program data.* A properly maintained program information system is essential in determining program requirements, justifying program funding, providing a base for quality assurance, providing for effective program management, protecting trust assets, and fulfilling statutory requirements.

(1) The Secretary shall make available to an Indian tribe or tribal organization data formats, edit and transmission media requirements, and the program information system used in the Secretary's direct operation of the program.

(2) If a contract proposal includes assumption of responsibility for meeting the requirements of a program information system to support the delivery of services, the proposal must either:

(i) Ensure fulfillment of the program data requirements for the program as operated by the Secretary; or

(ii) Set out an alternative method of providing the Secretary with the data minimally necessary to fulfill statutory requirements and to ensure that the program is properly completed and maintained, services are satisfactory and trust resources, if any, are adequately protected.

(3) A contract proposal may include conversion to the Secretary's data system, hardware, or software, or from a manual to a computerized system, if arrangements are made for the timely transmission of data in a form agreed to by the contractor and the Secretary. The proposal shall provide an assurance that data will be submitted according to a schedule mutually agreed upon.

(4) A contract proposal may provide for a phase-in of the program information system requirements or for a joint management system. In such a situation, funds for maintenance of the system may be divided between the contractor and the agency in accordance with the division of responsibilities.

§ 900.1502 Fair and uniform provision of services.

(a) Contractors shall assure the fair and uniform provision of the services and assistance they provide to beneficiaries of the program to be contracted. Services provided pursuant to a contract under this part shall be provided by the contractor to all beneficiaries consistent with applicable priorities, policies, and regulations and shall make no discriminatory distinction among beneficiaries. Such discriminatory distinctions include but are not limited to the following:

(1) Denying a beneficiary any service or benefit or availability of a facility;

(2) Providing any service or benefit to a beneficiary which is different or is provided in a different manner or at a different time from those provided to other beneficiaries under a contract;

(3) Subjecting a beneficiary to segregation or separate treatment in any manner related to the receipt of any service;

(4) Restricting a beneficiary in any way from an advantage or privilege provided to others receiving any service benefit;

(5) Treating a beneficiary differently from others in determining whether the individual satisfies any admission, enrollment, quota, eligibility membership, or other requirements or condition which must be met in order to be provided any service or benefit.

(b) A beneficiary of a contracted program who believes that the contractor is administering the program in violation of the provisions of this section may file a complaint with an appropriate tribal administrative or judicial body empowered to adjudicate any complaint, claim, or grievance brought by such Indian beneficiary against the contractor arising out of the performance of the contract.

Subpart P—Regulation Administration

§ 900.1601 Authority.

These regulations are prepared, issued, and maintained jointly by the Secretary of HHS and the Secretary of the Interior pursuant to section 107(a) of the Act.

§ 900.1602 Revisions and amendments.

(a) Subject to the authority in § 900.1601, revisions and amendments to these regulations may be made by either Secretary upon notice to and concurrence of the other Secretary in accordance with the requirements of 5 U.S.C. 552 and 553.

(b) Any revision or amendment made to a regulation, OMB circular, or other codified directive referenced in these regulations shall be incorporated into these regulations upon its effective date as published in the **Federal Register**.

(c)(1) Except as noted in paragraph (c)(2) of this section, other revisions or amendments to these regulations shall be subject to the procedures in § 900.1603.

(2) If the Secretary determines that a revision or amendment to these

regulations is administrative or editorial in nature and does not alter the substantive meaning of these regulations, the revision or amendment may be promulgated without regard to the procedures in § 900.1603 pursuant to 5 U.S.C. 553.

§ 900.1603 Participation and presentation.

(a) The Secretary shall, with participation of Indian tribes and before revising or amending these regulations, whether at the Secretary's initiative or upon a request by an Indian tribe or tribal organization take the following actions:

(1) Except as provided in § 900.1602 (b) and (c)(2), the Secretary shall consult with, and solicit the participation of, Indian tribes and tribal organizations in developing any proposed revision or amendment to these regulations at least 60 days prior to presentation of the proposed revision or amendment made in paragraph (b) of this section.

(2) The Secretary shall initially meet with Indian tribes and tribal organizations to obtain their views and to establish regulatory issues.

(3) The Secretary shall then develop a draft regulation or draft regulation specification for any proposed changes to these regulations and submit these to Indian tribes and tribal organizations. Subsequent to, but in no case sooner than 60 days after submission of the draft regulation or draft regulation specification to the Indian tribes and tribal organizations, the Secretary shall develop a notice of proposed rulemaking (NPRM).

(4) To the extent practicable, the Secretary shall consult with appropriate national or regional Indian organizations in the development of the NPRM.

(b) After required clearances, the NPRM shall be submitted to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Select Committee on Indian Affairs of the United States Senate.

§ 900.1604 Rulemaking.

After completion of participation and presentation in accordance with § 900.1603, the Secretary shall publish an NPRM in the **Federal Register**. The NPRM shall provide for at least a 60 day comment period.

§ 900.1605 Waivers.

(a) For the purposes of a specific contract or contracts, the Secretary may, for good cause shown, grant a waiver of any Federal contracting law or regulation that the Secretary determines is inconsistent with the provisions of the Act or is not appropriate for the purposes of the contract(s) involved. In addition, for a specific contract or contracts, the Secretary may, as a matter of administrative discretion, waive for good cause a provision of these regulations if the Secretary finds that a waiver is in the best interests of persons to be served under the contract. In determining whether to grant a waiver for good cause, the Secretary shall consider:

(1) Whether there are unusual circumstances that make the law or regulations to be waived inappropriate for the particular contract involved; or

(2) Whether the waiver will alleviate substantial hardship which could not have been avoided by diligent action of the contractor or which is due to factors beyond the control of the contractor.

(b) Requests for waivers may be initiated by a tribe or tribal organization, and sent to the Contracting Officer for processing in accordance with Departmental procedures.

(c) Waiver requests shall be in writing and shall include at least the following information:

(1) Identification of the Federal contracting law and/or regulation for which a waiver is requested;

(2) Reason for the waiver request, including impact on the tribe or tribal organization if the request is not approved;

(3) The intended effect of the waiver;

(4) The length of time for which it can be anticipated that the waiver will be required; and

(5) Identification of specific contract(s) to which the waiver will apply. If more than one contract is involved, each specific contract shall be identified and a request shall be made for a class waiver for such contracts to alleviate the need for separate, duplicative approvals.

(d) Waiver requests which are contained in a contract proposal may be considered separately from the proposal at the discretion of the Secretary. The declination criteria in § 900.206 do not apply to such requests for waivers. While the Secretary will endeavor to respond to a request for waiver prior to award, failure by the Secretary to act on a request for a waiver shall not be grounds to postpone the contract award pending the Secretary's determination.

(e) Whenever a waiver requested by a tribe or tribal organization is denied, the Secretary will notify the tribe or tribal organization of the reasons for the denial in writing.

(f) The decision of the Secretary with regard to waivers is final for the Department.

§ 900.1606 Information collection.

The following information collection requirements contained in this rule have been approved by the OMB under 44 U.S.C. 3501 et seq. and assigned OMB clearance numbers 1076–0091; 1076–0096; 1076–0090; 0910–0002; 0917–0007; 9017–0010 and 0937–0189. The following information collections required by this rule have not been approved by the OMB under 44 U.S.C. 3501 et seq. and are being sent to the OMB for review: Patient Registration System; Dental Reporting System; Pharmacy System; Environmental Health Activity Reporting and Facility Data System; Mental Health and Social Services Reporting System; Chemical Dependency Management Information System; Community Health Activity Reporting System; Health Education Resource Management System; Nutrition and Dietetics's Program Activities Reporting System; Clinical Laboratory Workload Reporting System and the Fluoridation Reporting System. This information will not be solicited until OMB approval is obtained.

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Thursday
January 20, 1994

Part III

Department of Health and Human Services

Indian Health Service

Core Data Set Requirements; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Core Data Set Requirements

AGENCY: Indian Health Service, HHS.

ACTION: Notice of Indian Health Service Core Data Set Requirements (CDSR).

FOR FURTHER INFORMATION CONTACT: Richard Church, telephone (301) 443–0750 or Anthony D'Angelo, telephone (301) 443–1180. (These are not toll free numbers.) Copies of the forms referenced as being contained in Appendix A may be obtained by contacting Anthony D'Angelo, Indian Health Service, room 6–41, 5600 Fishers Lane, Rockville, Maryland 20857.

SUPPLEMENTARY INFORMATION: The Indian Health Service (IHS) has established a set of core program data elements that all IHS programs and facilities are required to submit for the IHS National data base.

These core data requirements are necessary for good management purposes and to fulfill Congressional and other mandatory reporting requirements. The core data requirements were developed by a joint IHS and Tribal Representative Work Group over a period of seven months. Two meetings were held-December 1988 and June 1989. The participants included 11 IHS personnel, 8 tribal personnel, and 9 persons representing the various IHS information systems. The efforts of the working group were a major step toward reconciling the differences in data priorities between the IHS and providers and ensuring the development of a core data set that has beneficial uses and reasonable costs.

The core data set requirements were published in the **Federal Register** on August 7, 1990, as an IHS proposal with an opportunity to comment. The core data set requirements were revised based on the comments received and published as a final notice in the **Federal Register** of January 22, 1992, 57 FR 2642. The Community Health Representative Information System (CHRIS) reporting requirements as published in 57 FR 2642 were corrected to reflect the latest version of the CHRIS and published in the **Federal Register** of September 15, 1992, 57 FR 42588. This revision has been consolidated with the January 22, 1992 publication and is reprinted in this issue of the **Federal Register** for the convenience of those reviewing the notice of proposed rulemaking for Public Law 93–638, the Indian Self-Determination Act.

The core data requirements are a subset of the data that are already being collected locally by IHS providers in order to manage effective health service programs. The data are used to define current health status (e.g., prevalance of diabetes); to identify problems requiring attention (e.g., high number of facility visits related to accidents); and to evaluate effectiveness of intervention programs (e.g., reduced infant deaths related to increased prenatal care). The core data set is needed for the following purposes:

Quality assurance;
Epidemiology;
Problem identification;
Identification of population in need;
Resource management/allocation;
Budget support and justification;
Facilities and program planning; and
National billing.

Specifically, the elements of the core data set are derived from those elements already embodied within the following IHS information systems:

Patient Registration System
Ambulatory Patient Care (APC) System
Direct Inpatient Care System
Contract Health Services Inpatient System
Contract Health Services Outpatient System
Dental Reporting System
Pharmacy System
Environmental Health Activity Reporting and Facility Data System
Mental Health and Social Services Reporting System
Alcoholism Treatment Guidance System (ATGS)/Chemical Dependency Management Information System (CDMIS)
Community Health Representative Information System (CHRIS)
Community Health Activity Reporting System
Health Education Resource Management System (HERMS)
Nutrition and Dietetic's Program Activities Reporting System
Clinical Laboratory Workload Reporting System
Urban Indian Health Common Reporting
Fluoridation Reporting Data System

Each of the above systems has its own manual. This notice consolidates and summarizes the data submission formats, edits and schedules from these existing information systems. The core data set reduces the total number of data elements required from the IHS health care providers and the frequency of reporting, for certain elements, has been reduced from monthly to quarterly. Moreover, for activities-type reporting, data need only be reported for a sample of the services provided.

The IHS wants to use the social security number (SSN) as the unique patient identifier in the IHS National data base. Patients may voluntarily disclose their SSN to health care providers after being informed of: (1) The purposes of collecting the SSN (for uniquely identifying patient records, reducing duplicative counting of cases of a disease, improving patient and health program management, and third party billing); (2) refusal will not result in denial of services; and (3) the provider must submit the SSN to IHS. If the health care provider is unable to obtain the SSN, then there is no longer a requirement, as indicated in the initial CDSR notice, that it submit a 9-digit substitute SSN for the patient. However, it is still required that the chronological health record number (HRN) be submitted for every patient.

There are some data that need to be reported by IHS providers, contractors, and grantees to IHS headquarters in order to participate in special funds established through federal legislation or Congressional appropriations language. There is no mandate that providers, contractors, or grantees submit such data, but they need to do so to be eligible to receive the funds. Examples of such special programs are the Contract Health Services Catastrophic Health Emergency Fund and Deferred Services.

Information collected in accordance with the core data set requirements, which identifies individual patients provided health care, is included in the IHS system of records titled: 09–17–0001, Health and Medical Records Systems, HHS/IHS/OHP (**Federal Register**, November 22, 1988, pages 47348–47353). These records are to be afforded safeguard protections as required by the Privacy Act of 1974 (5 U.S.C. 552a). These safeguards are described in general terms in the system of records notice for system 09–17–0001. In addition, information supplied by staff of health care facilities established to provide alcohol or drug abuse treatment are to be protected under the safeguard provisions of the Confidentiality of Alcohol and Drug Abuse Patient Records regulations, 42 CFR part 2. These were last published in the **Federal Register**, June 9, 1987, pages 21796–21814.

As required, program reporting requirements will be submitted to OMB for clearance pursuant to the Paperwork Reduction Act. Not all of the program reporting requirements will need to be submitted to OMB for clearance. The following have already received OMB approval:

Contract Health Services Inpatient System (Indian Health Service, Hospital, Dental and Other Contract Health Service Reports, OMB Approval No. 0917–0002)
Contract Health Services Outpatient System (Indian Health Service, Hospital, Dental and Other Contract Health Service Reports, OMB Approval No. 0917–0002)
Community Health Representative Information System (IHS Community Health Representative Activity Reporting Sample, OMB Approval No. 0917–0010)
Urban Indian Health Common Reporting (Common Reporting Requirements for Urban Indian Health Programs, OMB Approval No. 0917–0007)

The following reporting requirements are totally exempt from the OMB approval process because the information collected by them is used to properly treat clinical disorders of patients:

Ambulatory Patient Care System
Direct Inpatient Care System

The remaining program reporting requirements either are not covered or only partially covered by the "clinical" exemption. Therefore, OMB clearance will be sought for the applicable portions, as noted below, of these information systems:

Patient Registration System (portion dealing with third party eligibility status)
Dental Reporting System (portion dealing with non-clinical activities reporting)
Pharmacy System (all)
Environmental Health Activity Reporting and Facility Data System (all)
Mental Health and Social Services Reporting System (all)
Chemical Dependency Management Information System (portion dealing with non-clinical activities reporting)
Community Health Activity Reporting System (all)
Health Education Resource Management System (all)
Nutrition and Dietetic's Program Activities Reporting System (all)
Clinical Laboratory Workload Reporting System (all)
Fluoridation Reporting System (all)

As long as their own data collection and reporting system provides for the timely submission of accurate and complete data meeting the core data set requirements, the IHS contractors and grantees will not be required to use the collection and reporting system used by IHS. The contractor/grantee data system must meet the requirements of the Security Act of 1987, Pub. L. 100–275, which are also applicable to the IHS directly operated programs. The IHS will provide technical assistance to tribal contractors and grantees to convert their data into the formats and appropriate transmission media required for IHS data collection and reporting.

All data will, unless otherwise agreed upon, be sent to the Division of Data Processing Services (DDPS) in Albuquerque through the appropriate Area Office. Each IHS Area will establish its own procedures for reporting data and will monitor compliance with reporting requirements consistent with applicable laws, regulations, policies, and grant and contract instruments. Contractors and grantees are responsible for correcting problems regarding incomplete and inaccurate data.

Contractors and grantees may use IHS forms or collect the required data in any manner consistent with their operations. The submission of these data must meet the format and data requirements of the IHS information systems.

Core Data Set Requirements for the Following IHS Information Systems

A. Patient Registration System

1. Reporting Requirements

a. Data on new patients, or changes to previously registered patients, is submitted at least quarterly through the appropriate Area Office to the Division of Data Processing Services (DDPS) in Albuquerque. Data must be submitted monthly for central billing purposes.

b. Data must be received by the DDPS by the 1st of the month to ensure it being included in the next month's registration reports.

c. The IHS maintains a complete registration data base for each Area on the IHS central computer at DDPS. The types of activity that are reported include:

(1) Registration of new patients.

(2) Changes in any of the required registration fields (i.e. name, residence) for a patient.

(3) Deletion of an entire patient record. (This would only be done when the patient is registered in error, or is registered twice at the same facility under two different health record numbers).

(4) Delete and merge to another health record number. This is done when a patient is registered twice at two different facilities, and you wish to merge the two records together by deleting one and merging the data to the second number indicated.

Normally the last two activities will only be performed by the registration data base administrator at the Area Office.

2. Record Formats

New patient data, or modifications to patient data, are submitted in a 310 character record as shown at the end of this section. Generally data from different facilities will be given different batch numbers to facilitate error correction, since all errors are listed by batch number, but this is not required.

Transactions to delete a patient record entirely, or delete a patient and merge the data into another health record number, require a different format, as shown at the end of this section. For these transactions, a separate batch header is submitted followed by any number of delete/merge transactions. The patient ID number used for these transactions is not the normal health record number, but the unique patient ID used in the centralized registration system. This number consists of three alpha codes indicating the Area, SU and facility followed by six numerics.

The delete/merge transactions must have a different batch number than other transactions, and the individual delete/merge transactions must immediately follow the delete/merge header. However, regular batches and delete/merge batches can be combined on the same tape.

Samples of the IHS patient registration forms are included in Appendix A.

3. Transmission Media

Registration records should be sent by the Area to DDPS on nine track, unlabeled EBCDIC tapes, at 1600 or 6250 bits per inch (BPI). Records should be blocked at 10 records per block. The Area Office and the contractor will need to determine how the data will be transmitted from the contractor to the Area.

4. RPMS Facility Registration System

An ANSI MUMPS facility registration system is available to any covered contractor that wishes to implement it. This system provides the capability of generating the transactions described above automatically, and creating a tape cartridge (or transaction file for transmission by telecommunications) to be sent to DDPS for all new and/or modified patients.

REGISTRATION FORMAT NEW AND/OR MODIFIED TRANSACTIONS

Position	Field	Edits	Required fields
1–4	BATCH NUMBER	Numeric, Right Justified.	
5–10	FACILITY CODE	Area-SU-Facility Code. Must be in IHS Facility Table	X
	5–6 Area Code		
	7–8 Service Unit Code		
	9–10 Facility Code		
11–16	HEALTH RECORD NUMBER	Numeric, Right Justified	X
17–58	PATIENT NAME	See Note 1. Last and First Name. Data must be left justified	X
	17–36 LAST		
	37–47 FIRST		
	48–58 MIDDLE		
59–60	CLASSIFICATION CODE	Numeric, Right Justified. Codes must be in range 01–20	
61–67	DATE OF BIRTH	Must be less than current date. Month not greater than 12, day not greater than 31.	X
	61–62 MONTH		
	63–64 DAY		
	65–67 Year (Last three digits)		
68	SEX	M or 1 for Male; F or 2 for Female	X
69–77	SOCIAL SECURITY NUMBER	Numeric, Right Justified	X
78–80	TRIBE OF MEMBERSHIP CODE	Numeric, Right Justified. Must be valid code in IHS Tribe Table	X
81	BLOOD QUANTUM	Numeric	X
82–113	FATHER'S NAME	See Note 1	
	82–101 LAST		
	102–112 FIRST		
	113 MIDDLE INITIAL		
114–120	COMMUNITY OF RESIDENCE	Community-County-State Code, must be in IHS Community Table.	X
	114–116 COMMUNITY CODE		
	117–118 COUNTY CODE		
	119–120 STATE CODE		
121–176	MAILING ADDRESSES		
	121–150 STREET/BOX NUMBER	Alpha-Numeric. If submitted, town and state also required	
	151–165 TOWN	Alphabetic, left justified. If submitted, state also required	
	166–167 STATE	Alphabetic. Required if town submitted	
	168–176 ZIP	Numeric, right justified	
177–208	MOTHER'S NAME	See Note 1	
209–214	DATE OF DEATH (MM/DD/YY)	Same Edit as Date of Birth	X*
215–235	MEDICARE A	If central billing, all fields required.	X
	215 ELIGIBLE	Y or N (N will delete an authorization previously submitted).	
	216–224 ENROLLMENT NUMBER	Numeric, all digits required	
	225–229 ENROLLMENT SUFFIX	Alphanumeric, left justified. Must be valid code in Medicare suffix table	
	230–235 DATE OF ELIGIBILITY (MM/DD/YY).	Month and Year Required. Standard Date Edit	
236–256	MEDICARE B	Same as Medicare A	X
257–277	MEDICARE AB	Same as Medicare A	X
278–298	MEDICAID	If central billing, all fields required	
	278 ELIGIBLE	Y or N (N will delete an authorization previously submitted)	X
	279–287 ELIGIBILITY NUMBER	No Edit	
	288–292 SUFFIX	No Edit	
	293–298 DATE OF ELIGIBILITY (MM/DD/YY).	Month and Year Required. Standard Date Edit	
299	VETERAN (VA) ELIGIBLE	Y, N or Blank	X
300	BLUE CROSS	Y, N or Blank	
301	OTHER INSURANCE	Y, N or Blank	X
302	CHS ELIGIBILITY	Y, N or Blank	
303	PATIENT ASSIGNMENT/RELEASE SIGNATURE ON FILE.	Y, N or Blank. Required to initiate billing Medicare	
304	ADD/MODIFY CODE	1—New Patient 2—Modification	
305–310	RELEASE DATE (MM/DD/YY)	Standard Date Edit. Required for billing	

Note 1: ALL NAME FIELDS MUST BE ALPHABETIC WITH THE FOLLOWING SPECIAL CHARACTERS ALLOWED:
- ONE SET OF LEFT AND RIGHT PARENTHESES IMBEDDED IN NAME.
- ONE OCCURRENCE OF AN APOSTROPHE.
- TWO OCCURRENCES OF A PERIOD.
- FIVE OCCURRENCES OF A DASH, OR HYPHEN.
- NO LOWER CASE.

*As available.

REGISTRATION FORMAT DELETE/MERGE TRANSACTIONS

[Header Record]

Position	Field	Description	Required
1–3	IDENTIFIER	THREE VERTICAL BARS (HEX "4F"CHARACTERS)	X
4–5	AREA CODE	STANDARD AREA CODE OF THE REGISTRATION DATA BASE.	X
6–11	AREA/SU/FAC CODE	AREA, SERVICE UNIT, FACILITY CODE OF THE SUBMITTING FACILITY.	X
12–17	AREA/SU/FAC OF HEALTH REC NO.	CODE PREFIX FOR HEALTH RECORD NUMBERS BEING USED. NORMALLY DUPLICATE OF POSITIONS 6–11.	X
18	NOT USED.		
19–22	BATCH NUMBER	NUMERIC, RIGHT JUSTIFIED	X
23–25	NO FORMS	NUMBER OF TRANSACTIONS IN THE BATCH	X
26–31	DATE	DATE SUBMITTED (YYMMDD)	X
32–34	INITIALS OF REQUESTOR	OPTIONAL.	
35–60	COMMENTS	OPTIONAL—FOR LOCAL USE.	
61–80	NOT USED.		

REGISTRATION FORMAT DELETE/MERGE TRANSACTIONS

[Transaction Record]

Position	Field	Description	Required
1	IDENTIFIER	A "?" IN POSITION 1	X
2–4	INITIALS & SEX	INITIALS (LAST, FIRST) AND SEX OF PATIENT TO BE DELETED.	X
5–13	PATIENT ID	PATIENT ID TO BE DELETED. (THREE ALPHA AND SIX NUMERICS). THIS IS THE CENTRALIZED REGISTRATION UNIQUE ID NUMBER.	X
14–15	TRANSACTION TYPE	"99"	X
16	NOT USED.		
17–22	DATE	DATE SUBMITTED (YYMMDD)	X
23–25	ASTERISKS	"* * *"	X
26–34	PATIENT ID	PATIENT ID TO WHICH DATA IS TO BE MERGED	X
35	MOVE DEMOGRAPHIC	FLAG TO INDICATE WHETHER TO MOVE DEMOGRAPHIC DATA FROM DELETED RECORD, OR TO RETAIN DEMOGRAPHIC DATA OF THE RECORD TO WHICH MOVED. "1" INDICATES TO RETAIN DEMOGRAPHIC DATA OF DELETED RECORD, "2" TO RETAIN DATA OF RECEIVING RECORD.	X
36–37	FACILITY	FACILITY CODE SUBMITTING FORM	X
38–67	SUBMITTED BY	NAME OF PERSON SUBMITTING FORM	X

TO DELETE A PATIENT, POSITIONS 1–25 ARE REQUIRED. TO DELETE AND MERGE TO A NEW PATIENT, POSITIONS 1–37 ARE REQUIRED.

B. Ambulatory Patient Care System (APC)

1. Reporting Requirement

a. An Ambulatory Patient Care (APC) record is required for an encounter between a patient and health care provider in an organized clinic within an IHS facility (including covered contractors) where service resulting from the encounter is not part of an inpatient stay. The patient or his/her representative (representative only to pick up prescription) must be physically present at the time of service. Also, a note must be written in the medical record by a licensed, credentialled or other provider qualified by the medical staff or facility administrator.

b. Part 4, chapter 3, section 1 of the Indian Health Manual, provides complete definitions and procedures for reporting into the APC system. The definition of an APC visit given in 1a above is somewhat different and supersedes the definition in the IHS Manual. The IHS Manual will be changed to reflect the new definition.

c. Each Area will define procedures for collecting APC data and creating automated records in the format described in the next section. Options include:

(1) Key-entry of forms at the Area.

(2) Key-entry of forms by a contractor.

(3) Key-entry at the local facility with an RPMS ANSI MUMPS data entry system.

d. Records will be consolidated at the Area level and forwarded at least quarterly to the Division of Data Processing Services (DDPS) at Albuquerque by the 15th of the month. Data must be submitted monthly for central billing purposes.

2. Record Formats

a. The APC record contains individual patient encounter information. Each record is 200 characters in length.

b. The format of the APC record is shown at the end of this section.

c. A sample of the IHS APC form is included in Appendix A.

3. Transmission Media

a. APC records for each Area are generally mailed to DDPS on nine track unlabeled, unblocked EBCDIC tape. The Area Office and the contractor will need to determine how the data will be transmitted from the contractor to the Area.

4. RPMS APC Data Entry System

a. There is available an RPMS ANSI MUMPS APC data entry program which allows for records to be keyed locally, transmitted to the Area, and fowarded

from the Area to DDPS by telecommunications.

5. Community Health Aide Program

a. An Ambulatory Patient Care (APC) or equivalent record is required for an encounter between a community health aide and a patient.

b. The format of the required record is shown at the end of this section. A sample of the IHS APC form is included in Appendix A.

c. The Alaska Area Office and the contractor will need to determine how the required data will be collected and transmitted to the Area.

DIRECT OUTPATIENT SYSTEM RECORD [1]

Position	Field	Required
1–2	Record Code. Always "15".	X
3–4	Area Code	X
5–6	Service Unit Code	X
7–8	Service Location Code (Facility Code).	X
9–14	Date of Service (MMDDYY).	X
15	Day of Week (Sunday=1, Saturday=7)	
16–21	Patient Health Record Number.	X
22–30	Social Security Number.	X
31–36	Date of Birth (MMDDYY).	X
37	Sex	X
38–40	Tribe of Membership Code.	X
41–43	Optional Code (Area options)	
44–50	Community of Residence	
	44–46 Community Code.	X
	47–48 County Code.	X
	49–50 State Code.	X
51	Time of Day Code; "1" 8AM-Noon; "2" Noon-5PM; "3" 5PM-10PM; "4" 10PM-8AM	
52–53	Type of Clinic (IHS Table)	
54–61	Service Rendered by (Discipline Code)	
	54–55 Primary Provider Discipline.	X
	56–57 Other Provider Discipline.	
	58–59 Other Provider Discipline.	
	60–61 Other Provider Discipline.	
62–71	Immunizations Given	X
	62 1 for Tetanus Toxin	
	63 2 for DT	
	64 3 for DPT	
	65 4 for Polio	
	66 5 for Measles	
	67 6 for Rubella	
	68 7 for Small Pox	
	69 8 for Mumps	
	70 9 for Influenza	
	71 0 for Other	
72	All Immunizations Current (1 yes; 2 no).	X
73	Immunization Register Update	
74	Skin Test Result "1" PPD 0–4M; "2" PPD 5–9MM; "3" PPD 10–19M; "4" PPD 20+MM; "5" TINE NEG.; "6" TINE POS	
75	Purpose of Skin Test "1" Routine; "2" Contact; "3" Suspect; "4" School	
76	INH Prophylaxis "1" 1 Year Completed; "2" Start "3" Continue; "4" Discontinue	
77–78	Next TB Appointment in months	
79–82	TB Diagnosis	
	79 "1" 1st visit, "2" revisit	
	80–82 Three digit APC code (005–012)	
83–93	Maternal Health and Family Planning	
	83 Marital Status (1 Married; 2 Not Married)	
	84–85 Gravida	
	86–87 Number of Living Children	
	88 Trimester of 1st Prenatal Visit	
	89 "1" 1st visit for prenatal care "2" revisit for prenatal care	
94–96	Not Used	
97–102	IHS Unit No at Parent Facility	
103–107	Accidents (required for 1st visits of APC codes 700–792).	
	103–104 Cause of Accident (01–19).	X[2]
	105–106 Place (01–12)	X[2]
	107 Alcohol related (1 yes; 2 no)	X[2]
108–113	Area optional code	
114–117	APC Codes for Injury	
	114 "1" 1st visit; "2" revisit	
	115–117 APC Code	X[2]
118–121	APC Codes for Other Problems/Clinical Imp	
	118 "1" 1st visit, "2" revisit	
	119–121 APC code	X[2]
122–132	Diagnostic Services Requested	
	122 "0" or blank for none	
	123 "1" for Urinalysis	
	124 "2" for Hematology	
	125 "3" for Chemistry	
	126 "4" for Bacteriology	
	127 "5" for Serology	
	128 "6" for Pap	
	129 "7" for ECG/EKG	
	130 "8" for Other	
	131 "1" for X-Ray-Chest	
	132 "2" for Other X-ray	
133	Minor Surgical Procedures ("1" if yes).	X[2]
134	Disposition Code "1" Return by appointment "2" Return PRN "3" Admit to IHS Hospital "4" Admit to non-IHS Hospital "5" Refer for OP Consultation—IHS "6" Refer for OP Consultation—non-IHS "7" Did not Answer	
135–139	CPT4/HCPCX Code 1.	X[2]
140–144	CPT4/HCPCX Code 2.	X[2]
145–149	CPT4/HCPCX Code 3.	X[2]
150–154	CPT4/HCPCX Code 4.	X[2]
155–159	CPT4/HCPCX Code 5.	X[2]
160–166	Unused	
167–176	Specific provider codes	
177–181	ICD–9–CM Code 1	X[2]
182–186	ICD–9–CM Code 2	X[2]
187	Unused	
188–191	Surgical Procedure (ICD–9–CM Code).	X[2]
192–200	Unused, except for some Area-specific fields	

[1] Not all patient identification data elements will need to be reported on every record in a fully integrated information system.

[2] If appropriate.

C. Direct Inpatient Care System (INP)

1. Reporting Requirement

a. A direct Inpatient Clinical Brief is required for any person who is admitted to an Indian Health Service facility or a facility operated by a covered contractor.

b. Part 4, chapter 3, section 2 of the Indian Health Manual provides complete definition and procedures for reporting into the Direct Inpatient System.

c. Each Area will define procedures for collecting Inpatient data and creating automated records on the format described in the next section. Options include:

(1) Key-entry of forms at the Area.

(2) Key-entry of forms by a contractor.

(3) Key-entry at the local facility with an RPMS ANSI MUMPS data entry system.

d. Records will be consolidated at the Area level and forwarded at least quarterly to the Division of Data Processing Services (DDPS) at Albuquerque by the 15th of the month. Data must be submitted monthly for central billing purposes.

2. Record Formats

a. The record format for the Direct Inpatient Clinical Record Brief, is shown at the end of this section. Each record is 160 characters in length.

b. A sample of the IHS Clinical Record Brief is included in appendix A.

3. Transmission Media

a. Clinical Record Brief for each Area are generally mailed to DDPS on nine-track unlabeled, unblocked EBCDIC tape. The Area Office and the tribal contractor will need to determine how the data will be transmitted from the contractor to the Area.

4. RPMS Data Entry System

a. There is an RPMS ANSI MUMPS facility based Direct Inpatient data entry program which allows for records to be keyed locally, transmitted to the Area, and forwarded from the Area to DDPS by telecommunications.

DIRECT INPATIENT CLINICAL RECORD BRIEF [1]

Position	Field	Required
1–2	Record Code. Always "18".	X
3–8	Patient Health Record Number.	X
9–17	Social Security Number.	X
18–23	Date of Birth (MMDDYY).	X
24	Sex	X
25–27	Tribe of Membership Code.	X
28–30	Optional Code (Area Options).	
31–37	Community of Residence.	
	31–33 Community Code.	X
	34–35 County Code.	X
	36–37 State Code	X
38–39	Classification Code	
40–41	Area Code	X
42–43	Service Unit Code	X
44–45	Facility Code	X
46	Admission Code	X
47–48	Clinical Service Admitted to Code.	
49–54	Admission Date (MMDDYY).	X
55–60	Disposition Date (MMDDYY).	X
61–63	Number Hospital Days.	
64–67	Third Party Payers	
	64 Medicaid.	
	65 Medicare.	
	66 VA.	
	67 Other.	
68	Unused	
69–73	ICD Code 1 (Principal Diagnosis).	X
74	Hospital Acquired "1".	X [2]
75–79	ICD Code 2	X [2]
80	Hospital Acquired "1".	X [2]
81–85	ICD Code 3	X [2]
86	Hospital Acquired "1".	X [2]
87–91	ICD Code 4	X [2]
92	Hospital Acquired "1".	X [2]
93–97	ICD Code 5	X [2]
98	Hospital Acquired "1".	X [2]
99–103	ICD Code 6	X [2]
104	Hospital Acquired "1".	X [2]
105–108	1st ICD Operation Code.	X [2]
109	Diagnosis Number (Appropriate Code).	
110	Infection "1" If checked.	X [2]
111–114	Operating Physician Code.	
115–118	2nd ICD Operation Code.	X [2]
119	Diagnosis Number (Appropriate Code).	
120	Infection "1" If checked.	X [2]
121–124	3rd ICD Operation Code.	X [2]
125	Diagnosis Number (Appropriate Code).	
126	Infection "1" If checked.	X [2]
127	Disposition Code (1–7).	X
128–133	Facility Transferred to Code.	
134–135	Clinical Service Discharged from.	
136–137	Number of Consultations.	
138–141	Accident Code (No Leading "E") (E800–E999).	X [2]
142–143	Accident Place Code.	X [2]
144–148	Cause of Death (ICD Code).	X [2]
149–152	Attending Physician Code.	
153	Nurse-Midwifery Code.	
154–160	Unused	
161–170	Operating Physician EIN.	X [2]
171–180	Attending Physician EIN.	X

[1] Not all patient identification data elements will need to be reported on every record in a fully integrated information system.

[2] If appropriate.

D. Contract Health Services (CHS) Inpatient System (CHI)

1. Reporting Requirement

a. A Contract Health Service Purchase/Delivery Order for Hospital Services Rendered (HRSA–43) is required for all hospital inpatient care provided to Indian and Alaska Native patients in contract community facilities. This includes CHS administered by covered contractors.

b. Part 4, chapter 3, section 3 of the Indian Health Service Manual provides complete definition and procedures for reporting into the Contract Inpatient System.

c. Each Area will define procedures for collecting Contract Inpatient data and creating automated records in the format described in the next section. Options include:

(1) Key-entry forms at the Area.

(2) Key-entry forms by a contractor.

(3) Key-entry at the local facility with an RPMS ANSI MUMPS data entry system.

d. Records will be consolidated at the Area level and forwarded at least quarterly to the Division of Data Processing Services (DDPS) by the 5th of the month.

2. Record Formats

a. There is only one record format for the Contract Health Service Purchase/

Delivery Order for Hospital Services Rendered as shown at the end of this section. Each record is 185 characters in length.

b. A sample of the IHS Contract Health Service Purchase/Delivery Order for Hospital Services Rendered is included in appendix A. Since this is a government purchase order form, it is recommended that a similar form in terms of data elements be developed for use by tribal contractors.

3. Transmission Media

a. Contract Inpatient Authorizations are generally mailed to DDPS on nine-track unlabeled, unblocked EBCDIC tape. The Area Office and the contractor will need to determine how the data will be transmitted from the contractor to the Area.

4. RPMS Data Entry System

a. There is an RPMS ANSI MUMPS Contract Inpatient data entry program which allows for records to be keyed locally, transmitted to the Area and forwarded from the Area to DDPS by telecommunications.

5. Fiscal Intermediary

a. IHS has contracted with a Fiscal Intermediary to perform the management of that portion of the CHS program administered by the IHS.

CONTRACT HEALTH SERVICE PURCHASE/DELIVERY ORDER FOR HOSPITAL SERVICES RENDERED*

[HRSA–43]

Position	Field	Required
1–2	Record Code. Always "19".	X
3–9	Authorization Number.	X
10–15	Patient Health Record Number.	X
16–24	Social Security Number.	X
25–30	Date of Birth (MMDDYY).	X
31	Sex (1=Male, 2=Female).	X
32–34	Tribe Code	X
35–37	Optional Code (Area Options)	
38–44	Community of Residence	
	38–40 Community Code.	X
	41–42 County Code.	X
	43–44 State Code.	X
45–50	Authorizing Facility (Area-Service Unit-Facility).	X

CONTRACT HEALTH SERVICE PURCHASE/DELIVERY ORDER FOR HOSPITAL SERVICES RENDERED*—Continued

[HRSA–43]

Position	Field	Required
51–52	Provider Type	X
53–62	Provider Code (EIN).	X
63–68	Admission Date (MMDDYY).	X
69–74	Discharge Date (MMDDYY).	X
75–77	Total Hospital Days	
78	Disposition	X
79–83	ICD Code 1 (Principal Diagnosis).	X
84–88	ICD Code 2	X[1]
89–93	ICD Code 3	X[1]
94–98	ICD Code 4	X[1]
99–103	ICD Code 5	X[1]
104–107	ICD Operation Code 1.	X[1]
108–111	Unused	
112–115	ICD Operation Code 2.	X[1]
116–119	ICD Operation Code 3.	X[1]
120–124	ICD Newborn Diagnosis	
125	Newborn Death Indicator	
126–129	Attending Physician Code	
130–133	ICD External Cause or Injury.	X[1]
134–135	Place of Injury	X[1]
136–143	Charges—to IHS *only* $ and cents.	X
144	Full/Part Pay (1=Full, 2=Part).	X
145–175	Unused	
176–185	Attending Physician EIN.	X

*Not all patient identification data elements will need to be reported on every record in a fully integrated information system.

[1] If appropriate.

E. Contract Health Services (CHS) Outpatient System (CHO)

1. Reporting Requirement

a. A Purchase Order for Contract Health Service Other Than Hospital Inpatient or Dental (HSA–64) is required for all outpatient services to Indian and Alaska Native patients in contract community facilities. This includes CHS administered by covered contractors.

b. Part 4, chapter 3, section 3 of the Indian Health Service Manual provides complete definition and procedures for reporting into the Contract Outpatient System.

c. Each Area will define procedures for collecting Contracting Outpatient data and creating automated records in the format described in the next section. Options include:

(1) Key-entry forms at the Area.

(2) Key-entry forms by a contractor.

(3) Key-entry at the local facility with an RPMS ANSI MUMPS data entry system.

d. Records will be consolidated at the Area level and forwarded to the Division of Data Processing Services (DDPS) at least quarterly by the 5th of the month.

2. Record Formats

a. There is only one record format for the Purchase Order for Contract Health Service Other Than Hospital Inpatient or Dental as shown at the end of this section. Each record is 110 characters in length.

b. A sample of the Purchase Order for Contract Health Service Other Than Hospital Inpatient or Dental form is included in Appendix A. Since this is a government purchase order form, it is recommended that a similar form in terms of data elements be developed for use by tribal contractors.

3. Transmission Media

a. Contract Outpatient Authorizations are generally mailed to DDPS on nine track unlabeled, unblocked EBCDIC tapes. The Area Office and the contractor will need to determine how the data will be transmitted from the contractor to the Area.

4. RPMS Data Entry System

a. There is an RPMS ANSI MUMPS Contract Outpatient data entry program which allows for records to be keyed locally, transmitted to the Area and forwarded from the Area to DDPS by telecommunications.

5. Fiscal Intermediary

a. IHS has contracted with a Fiscal Intermediary to perform the management of that portion of the CHS program administered by the IHS.

PURCHASE ORDER FOR CONTRACT HEALTH SERVICE OTHER THAN HOSPITAL INPATIENT OR DENTAL*

Position	Field	Required
1–2	Record Code. Always "20".	X
3–9	Authorization Number.	X
10–15	Patient Health Record Number.	X
16–24	Social Security Number.	X

PURCHASE ORDER FOR CONTRACT HEALTH SERVICE OTHER THAN HOSPITAL INPATIENT OR DENTAL*—Continued

Position	Field	Required
25–30	Date of Birth (MMDDYY).	X
31	Sex (1=Male, 2=Female).	X
32–34	Tribe Code	X
35–37	Optional Code (Area Options)	
38–44	Community of Residence	
	38–40 Community Code.	X
	41–42 County Code.	X
	43–44 State Code	X
45–50	Authorizing Facility (Area-Service Unit Facility).	X
51–52	Provider Type	X
53–62	Provider Code (EIN/SSN).	X
63–69	HSA–43 Authorization Number	
70–75	Date of Service (MMDDYY).	X
76	Unused	
77–79	Outpatient Diagnostic Recode 1.	X[1]
80	1st or Revisit Code	
81–83	Outpatient Diagnostic Recode 2.	X[1]
84	1st or Revisit Code	
85–86	Number of Visits	X[1]
87–92	Charges	X
93–94	Immunization 1	X[1]
95–96	Immunization 2	X[1]
97–98	Immunization 3	X[1]
99–100	Immunization 4	X[1]
101–102	Immunization 5	X[1]
103–105	Maternal Health 103–104 Gravida ..	
	105 1st Trimester	
106	Full/Part Pay (1=Full, 2=Part).	X
107–110	Surgical Procedure (ICD–9–CM Code).	X[1]
111–115	CPT4/HCPCX Procedure Code 1.	X[1]
116–120	CPT4/HCPCX Procedure Code 2.	X[1]
121–125	CPT4/HCPCX Procedure Code 3.	X[1]
126–130	CPT4/HCPCX Procedure Code 4.	X[1]
131–135	CPT4/HCPCX Procedure Code 5.	X[1]
136–150	Unused	
151–155	ICD–9–CM Code 1 ..	X[1]
156–160	ICD–9–CM Code 2 ..	X[1]

*Not all patient identification data elements will need to be reported on every record in a fully integrated information system.

[1] If appropriate.

F. Dental Services and Needs Reporting System

1. Reporting Requirement:

a. A description of dental services provided will be submitted for each patient visit to either a (1) direct care facility or a (2) contract provider. In addition, specified data will be submitted on a sample basis from oral exams to provide epidemiologic and needs data for program monitoring or evaluation and for determining resource requirements. Tribal programs will be included in such a sample with no greater frequency than once every three years.

b. Dental treatment provided, as well as a recording of number of patient visits, persons treated, and patients receiving all planned treatment, will be identified using the standard nomenclature of the American Dental Association (see list of codes marked F–1) and include the number of units of each service provided, and for contract dentist, the fee for each service. These codes are revised periodically by the ADA. Updated lists of codes will be provided, as available, to both IHS and Tribal programs.

c. Non-clinical dental health services not reported in the HERMS, CHRIS, or other components of the IHS Generic Activities Reporting System (GARS) should be reported using the data elements and the data record format shown in Figure F–4. This system serves as a supplement for the IHS Dental Data Reporting System to specify a range of public health services which cannot be included in the patient record system. Headquarters requirements can be met with a sampling procedure that uses one full week of activities per month in accordance with the sample reporting week schedule to be specified by IHS Headquarters. There is an RPMS ANSI MUMPS GARS data entry program which allows for records to be submitted to Area for compilation and forwarding from Area to DDPS. The dental non-clinical activities database can be maintained locally or at regional sites at the discretion of program management. Local programs are responsible to provide the Area Dental Office with up-to-date dental activity records after the close of each month. The timing and method of data submission may vary per negotiated arrangements in each Area; however, each Area Office is responsible to transmit all available activity records which have not been previously submitted to the DDPS in Albuquerque as a merged data extract on tape or via telecommunication within 10 working days after the close of each quarter of the Fiscal Year.

d. The procedures for collecting the required data for centralized processing by the IHS Division of Data Processing Services (DDPS) will be defined by each area program. The options available for key-entering the data into a computer are:

1. Weekly submission to a key-entry contractor (IHS or Tribal source) who transmits the data to the IHS.

2. In-house local key entry into RPMS database with submission of extracted data to area office by the end of each month.

3. Local key-entry into non-RPMS database with the submission of formatted records to the DDPS by the end of the month.

e. Oral exam records data will be collected periodically among an adequate number of dental patients of all ages for processing by the IHS to monitor the oral health status and treatment needs of the population being served. The protocol for selecting/sampling of patients and completing examination records is described in Section III of the Oral Health Program Guide (OHPG) published by the IHS. Where variation is noted, the latest version of the OHPG takes precedence over the following instructions. The required data from exams will include:

1. Tooth status: sound, decayed, recurrent decay, missing, filled, filled and decayed, sealed, sealed and decayed, unrestorable and needs extraction (XC, XP, XO, XT (trauma), X (pros.), fractured, replaced, crowned (cast restoration).

2. Periodontal status: Using the Community Periodontal Index of Treatment Needs (C.P.I.T.N.) score by specific mouth sextants (UR, tooth #1–5), UA (#6–11), UL (#12–16), LL (#17–21), LA (#22–27), LR (#28–32).

3. Treatment Needs—reported using ADA or other codes in Section III of the OHPG: all teeth needing restoration by number of surfaces involved, extractions, other surgery, full or partial dentures needed per arch and possession of existing dentures, endodontic needs, fixed bridges needed including number of pontics, orthodontic status (limited, comprehensive, treatment in progress, or completed).

f. Options for collecting and submitting exam data include:

1. Submission of required data directly to the IHS in hard copy using standard forms (as shown in Appendix A).

2. Submission of data in automated record format from RPMS or non-RPMS database.

g. Data input forms used by the IHS are included in Appendix A. Except for the Oral Health Status Form, the use of these forms is not required, but is highly recommended for use as part of the patient's record and for data submission. They include: 1.) Patient

Service Record (HRSA–42–1); 2.) Record, Clinic and Doctor Identification (HSA–42–2); 3.) Services Provided—Dental Progress Notes (HRSA–42–2); 4.) Purchase Order for and Report of Contract Dental Care (HSA–57) (Since this is a government purchase order form, it is recommended that a similar form be developed for use by tribal contractors. The IHS is testing a simplified form which will combine the HSA–57 and HSA–64. The final version of the combined form will be made available to tribal contractors and may be used by tribes also to develop a similar form.); and 5.) Oral Health Status Form.

2. Format of Data Processing Records:

a. The required automated record format for processing dental services data is shown at the end of this section.

b. The automated record for non-clinical dental health services/activities is shown at the end of this section.

c. The automated record for processing oral examination data is shown at the end of this section.

3. Transmission to DDPS

a. Data will be transmitted to DDPS on a periodic basis as defined by area policy on an unlabeled EBCDIC tape, blocked 20 records per block.

b. The cut-off date at DDPS for inclusion in monthly reports is the 5th working day of each month.

c. The Area Office and the contractor will need to determine how the data will be transmitted from the contractor to the Area.

d. Oral health status data will be transmitted and processed separately from dental services data.

4. The data elements for dental epidemiology and services are as follows:

Data element	Required
Health Status:	
Demographics*	X
Health Needs Assessment	X
Dental caries (decay) index	X
Prosthodontic status	X
Periodontal status	X
Orthodontic status	X
Oral pathology status	X
Treatment Required	X
Services Provided:	
Patient demographic information*.	X
Mode of delivery (direct/contract)	X
Date of Visit	X
Provider/Location	X
Cost of Visit (contract only)	X
Services Provided:	
ADA procedure code	X
Units	X
Cost	X

*Not all patient identification data elements will need to be reported on every record in a fully integrated information system.

RECORD LAYOUT FOR PROCESSING DENTAL SERVICES DATA (USED FOR BOTH DIRECT AND CONTRACT SERVICES)

[Input Record Format for Processing Dental Services Data by the IHS Data Center at Albuquerque]

Field position and size	Field name, record identification and (data type)
1	Type of Patient (I-Indian; O-Non-Indian).
2	Type of program (D-Direct; K-Contract).
Provider/Location of encounter	
3–4	Area Code (std. 2-digit numeric).
5–16	Dentist ID (Normally 9-digit numeric SSN, either with hypens or without. If no hyphens, must be left justified).
17–18	Service Unit Code (std. 2-digit numeric).
19–20.	Facility Code (std. 2-digit numeric).
Date of Visit	
21–22	Year (numeric).
23–24	Month (numeric).
25–26	Day (numeric).
Patient Identification	
27–29	Age in years. This field or date of birth field required. (3-digit numeric).
Birthdate/Sex	
30–31	Year (numeric).
32–33	Month (numeric).
34–35	Day (numeric).
36	Sex (M-Male; F-Female).
Social Security Number	
37–39	Blank.
40–48	Social Security Number.
Address	
49–53	Zip Code-Optional (numeric).
54–57	Zip Extension-Optional (numeric).
Third Party Coverage	
58	Medicaid (Y or blank) Optional.
59	Commerce (Y or blank) Optional.
60	Private (Y or blank) Optional.
Total Charge for Visit	
61–65	Dollar amount up to 5-digits (numeric).
66–67	Amount in cents (numeric).
Service #1	
68–71	ADA Procedure Code (from standard set of codes).
72–73	Units (numeric, 1 to 99).
74–78	Fee (dollar amount only, cents not allowed).
Service #2	
79–82	ADA Procedure Code.
83–84	Units.
85–89	Fee.
Service #3	
90–93	ADA Procedure Code.
94–95	Units.
96–100	Fee.
Service #4	
101–104	ADA Procedure Code.
105–106	Units.
107–111	Fee.
Service #5	
112–115	ADA Procedure Code.
116–117	Units.
118–122	Fee.
Service #6	
123–126	ADA Procedure Code.
127–128	Units.
129–133	Fee.
Service #7	
134–137	ADA Procedure Code.
138–139	Units.
140–144	Fee.
Service #8	
145–148	ADA Procedure Code.
149–150	Units.
151–155	Fee.
Service #9	
156–159	ADA Procedure Code.
160–161	Units.
162–166	Fee.
Service #10	
167–170	ADA Procedure Code.
171–172	Units.
173–177	Fee.
Service #11	
178–181	ADA Procedure Code.
182–183	Units.
184–188	Fee.
Service #12	
189–192	ADA Procedure Code.
193–194	Units.
195–199	Fee.
Service #13	
200–203	ADA Procedure Code.
204–205	Units.
206–210	Fee.
Service #14	
211–214	ADA Procedure Code.
215–216	Units.
217–221	Fee.
Service #15	
222–225	ADA Procedure Code.
226–227	Units.
228–232	Fee.

If more than 15 ADA procedure codes are associated with a visit date, then a separate (second) input record must be created for processing purposes.

GARS/DENTAL NON-CLINICAL ACTIVITY REPORTING SYSTEM DATA RECORD FORMAT

Position	Field name	Data type
1–6	REPORTING LOCATION	6-digit Code (from IHS standard table of values).
7–12	DATE OF ACTIVITY	mmddyy.
13–21	PROVIDER ID	9-digit SSN.
22–23	ACTIVITY TYPE	2-digit numeric code from list of accepted values.
24–25	TARGET GROUP	6-digit alpha/numeric code, from list of values, right justified.
26–30	RELATED OBJECTIVE	5-digit alpha code or blank, right justified.
31–33	ACTIVITY TIME	3-digit numeric to represent total minutes (blank accepted).
34–36	TRAVEL TIME	3-digit numeric to represent total minutes (blank accepted).
37–41	ACTIVITY SETTING	3-digit alpha code from list of values or blank.
42–121	NARRATIVE COMMENT	80 character free text entry or blank.

RECORD LAYOUT FOR THE ORAL HEALTH SURVEY DATA

Position	Data field label	Data type specification
1–6	LOCATION CODE	6 NUMERIC (Accepts values from a table).
7–12	EXAM DATE	6 NUMERIC DATE IN FORMAT—mmddyy.
13–18	PATIENT NUMBER	6 NUMERIC RT. JUSTIFY (fill with lead 0's).
19–24	DATE OF BIRTH	6 NUMERIC DATE IN FORMAT—mmddyy.
25	SEX	ALPHA CODE—(m or f).
26	EXAM TYPE	ALPHA CODE—(d g f).
27	USER TYPE	ALPHA CODE—(x r s u).
28	FLUORIDE HISTORY	ALPHA CODE—(x nf y n).
29–33	HEALTH FACTORS	Key x for each factor marked except Tobacco. None, Diabetes, Handicap, Pregnancy, Tobacco (1, 2, or 3), or No info.
34–35	EDENTULISM	Key x for each arch (upper, lower) as marked.
#36–444 and 496–775	TOOTH STATUS DATA	1 or 2-DIGIT A/N CODES IN 1–7 DATA FIELDS FOR EACH OF 28 TEETH and 0–2 A/N CODES FOR 4 ADDITIONAL TEETH (#1, 17, 18, 32) AS FOLLOWS:
36–37	TOOTH #1 TREATMENT DATA	1st A/N 2-DIGIT CODE.
38–39		2nd A/N 2-DIGIT CODE.
40–41	TOOTH #2 mesial (M)	A/N 2-DIGIT CODE (25 possible entries).
42–43	occlusal (O)	A/N 2-DIGIT CODE.
44–45	distal (D)	A/N 2-DIGIT CODE.
46–47	buccal (B)	A/N 2-DIGIT CODE.
48–49	lingual (L)	A/N 2-DIGIT CODE.
50–51	TREATMENT DATA	1st A/N 2-DIGIT CODE (10 possible entries).
52–53		2nd A/N 2-DIGIT CODE.
54–67	TOOTH #3 (In same sequence as tooth #2 format).	
68–82	TOOTH #4 (In same sequence as tooth #2 format).	
83–96	TOOTH #5 (In same sequence as tooth #2 format).	
97–110	TOOTH #6 (In same sequence as tooth #2 format).	
111–124	TOOTH #7 (In same sequence as tooth #2 format).	
125–138	TOOTH #8 (In same sequence as tooth #2 format).	
139–152	TOOTH #9 (In same sequence as tooth #2 format).	
153–166	TOOTH #10 (In same sequence as tooth #2 format).	
167–180	TOOTH #11 (In same sequence as tooth #2 format).	
181–194	TOOTH #12 (In same sequence as tooth #2 format).	
195–208	TOOTH #13 (In same sequence as tooth #2 format).	
209–222	TOOTH #14 (In same sequence as tooth #2 format).	
223–236	TOOTH #15 (In same sequence as tooth #2 format).	
237–240	TOOTH #16 (In same sequence as tooth #1 format).	
241–444	Same format as listed above applies to each tooth in the lower arch numbered: #17 through 32.	
445	ORAL TRAUMA Tooth #7	NUMERIC (0–5) OR x PER TOOTH #.

RECORD LAYOUT FOR THE ORAL HEALTH SURVEY DATA—Continued

Position	Data field label	Data type specification
446	ORAL TRAUMA Tooth #8	NUMERIC (0–5) OR x PER TOOTH #.
447	ORAL TRAUMA Tooth #9	NUMERIC (0–5) OR x PER TOOTH #.
448	ORAL TRAUMA Tooth #10	NUMERIC (0–5 OR x) PER TOOTH #.
449	ORAL TRAUMA Tooth #23	NUMERIC (0–5 OR x) PER TOOTH #.
450	ORAL TRAUMA Tooth #24	NUMERIC (0–5 OR x) PER TOOTH #.
451	ORAL TRAUMA Tooth #25	NUMERIC (0–5 OR x) PER TOOTH #.
452	ORAL TRAUMA Tooth #26	NUMERIC (0–5 OR x) PER TOOTH #.
453	FLUOROSIS Group I	NUMERIC (0–4) OR x OR BLANK.
454	FLUOROSIS Group II	NUMERIC (0–4) OR x OR BLANK.
455	CPITN SCORE UR	NUMERIC (0–6) OR X OR BLANK.
456	CPITN SCORE UA	NUMERIC (0–6) OR X OR BLANK.
457	CPITN SCORE UL	NUMERIC (0–6) OR X OR BLANK.
458	CPITN SCORE LR	NUMERIC (0–6) OR X OR BLANK.
459	CPITN SCORE LA	NUMERIC (0–6) OR X OR BLANK.
460	CPITN SCORE LL	NUMERIC (0–6) OR X OR BLANK.
461	LOA SCORE UR	NUMERIC (0, 3–6) OR X OR BLANK.
462	LOA SCORE UA	NUMERIC (0, 3–6) OR X OR BLANK.
463	LOA SCORE UL	NUMERIC (0, 3–6) OR X OR BLANK.
464	LOA SCORE LR	NUMERIC (0, 3–6) OR X OR BLANK.
465	LOA SCORE LA	NUMERIC (0, 3–6) OR X OR BLANK.
466	LOA SCORE LL	NUMERIC (0, 3–6) OR X OR BLANK.
467	PATHOLOGY CODE NONE	BLANK OR LETTER CODE AS MARKED.
468	PATHOLOGY SUP	BLANK OR LETTER CODE AS MARKED.
469	PATHOLOGY BL	BLANK OR LETTER CODE AS MARKED.
470	PATHOLOGY CP	BLANK OR LETTER CODE AS MARKED.
471	PATHOLOGY HV	BLANK OR LETTER CODE AS MARKED.
472	PATHOLOGY TBA	BLANK OR LETTER CODE AS MARKED.
473	PATHOLOGY ST	BLANK OR NUMERIC (1–3) AS CIRCLED.
474	PROS. POSSESSION Upper	BLANK OR ALPHA CODE (N, F or P) IF MARKED.
475	PROS. POSSESSION Lower	BLANK OR ALPHA CODE (N, F or P) IF MARKED.
476	PROS. NEED Upper	BLANK OR A/N CODE IF MARKED (P/F–1, 2, or 3).
477	PROS. NEED Lower	BLANK OR A/N CODE IF MARKED (P/F–1, 2, or 3).
478	ORTHO. STATUS None	BLANK OR X IF MARKED.
479	ORTHO. STATUS Minor	BLANK OR X IF MARKED.
480	ORTHO. STATUS Comp.	BLANK OR D or S AS MARKED.
481	ORTHO. STATUS In tx.	BLANK OR X IF MARKED.
482	ORTHO. STATUS Completed	BLANK OR X IF MARKED.
483–485	SPECIAL USE VARIABLE #1	3 NUMERIC (0–9) OR BLANK.
486–487	SPECIAL USE VARIABLE #2	2 NUMERIC (0–9) OR BLANK.
488–489	SPECIAL USE VARIABLE #3	2 NUMERIC (0–9) OR BLANK.
490	DENTURE QUESTION #1	BLANK OR LETTER CODE (Y N or U).
491	DENTURE QUESTION #2	BLANK OR X AS MARKED IN A CODE BLANK (IHS, TRIBAL, OTHER, or PRIVATE).
492	DENTURE QUESTION #3	BLANK OR a, b, or c AS MARKED.
493	ACCESS QUESTION #1	BLANK OR LETTER CODE (y, n or u) AS MARKED.
494	ACCESS QUESTION #2	BLANK OR NUMERIC (0–60) AS MARKED.
495	ACCESS QUESTION #3	BLANK OR LETTER CODE (y, n or u) AS MARKED.
496–497	TOOTH #4d mesial (M)	A/N 2-DIGIT CODE.
498–499	occlusal (O)	A/N 2-DIGIT CODE.
500–501	distal (D)	A/N 2-DIGIT CODE.
502–503	buccal (B)	A/N 2-DIGIT CODE.
504–505	lingual (L)	A/N 2-DIGIT CODE.
506–507	TREATMENT DATA	1st A/N 2-DIGIT CODE.
508–509		2nd A/N 2-DIGIT CODE.
510–775	TOOTH #5d–20d (in same sequence as tooth #4d format).	

G. Pharmacy System

1. Reporting Requirements

a. *Pharmacy quarterly and cumulative workload report.* This form (HSA–91) is required to be completed by the Chief Pharmacist at each IHS and tribal facility. Raw workload data relating to both inpatient and outpatient pharmacy activities are collected and compiled using this form. Raw data are converted to workload units on this form. These data are entered on the HSA 91 report at the end of each quarter. The report is completed by the 15th day following the end of the quarter at which time it is forwarded to the Area Pharmacy Officer (APO). The APO compiles the Area data and prepares a summary report for submission to the Pharmacy Program at Headquarters within 30 days after the end of the quarter.

The data are used for identifying trends, measuring workload and correlating staffing and space requirements.

b. *Monthly report for narcotics and other controlled substances.* This form (HSA–174) is a record of all Schedule II Controlled Substance usage. It contains a record of the actual physical count of all Schedule II items at the beginning of the month and the end of the month. Records at the facility must correlate with the amount dispensed.

The report is required to be completed monthly and sent to the facility director with a copy to the APO. It is to be completed by the 10th day following the end of the month.

2. Record Formats

a. A copy of the HSA–91 Pharmacy Quarterly and Cumulative Workload Report is included in appendix A.

b. A copy of the HSA–74, Monthly Report for Narcotics and Other Controlled Substances is included in appendix A.

3. Transmission Media

Reports are to be submitted in hardcopy format to the APO.

H. Environmental Health Activity Reporting and Facility Data System

1. Reporting Requirements

a. The Environmental Health Activity Reporting and Facility Data System (EHAR & FDS) Instruction Manual provides complete instructions for reporting into the EHAR & FDS.

b. The EHAR & FDS is a microcomputer based system which combines two previously separate data collection systems. The system is decentralized to the Area level providing maximum flexibility for Area environmental health programs. The EHAR section of the new system is used to collect environmental health activity data. The FDS section is a tracking system for surveys conducted at specific facilities. For the EHAR section, Headquarters requirements can be met with a sampling procedure that uses one full week of activities per month in accordance with the sample reporting week schedule to be specified by IHS Headquarters. The FDS section will not utilize sampling; all surveys conducted at specific facilities will be reported into the system.

c. Each Area, utilizing standard forms and software, will define procedures for collecting the EHAR & FDS data. Key entry of forms will occur at the Area level.

2. Record Formats

a. One form is used to update the EHAR & FDS Area Master File.

b. A sample of the EHAR & FDS form is included in appendix A. Each form consists of 7 records. To eliminate redundant hand coding, data fields for each of these 7 records contained in record positions 1–14 are entered only once per form. If one of these values changes, a new form must be started.

c. Fields in the EHAR & FDS system.

Field	Record position	Required
Area Code	1–2	X
Service Unit	3–4	X
Community Code	5–7	X
Worker Number	8–10	X
Month	11–12	X
Year	13–14	X
Service Code	15–16	X
Category Code	17–18	X
Id Code	19–21	X
Activity Code	22–24	X
Number Activities	25–32	X
Activity Time	33–40	X
Linkage Code	41–49	X
Facility Name	50–79	X

3. Data Transmission

The EHAR & FDS data will be forwarded electronically to the Division of Environmental Health computer bulletin board in Rockville, Maryland, on a quarterly basis.

I. Mental Health and Social Services Reporting System (MH & SS)

1. Reporting Requirements

a. Direct patient care is reported on the appropriate direct care reporting system. The Mental Health and Social Services record is used to report program related activities as a supplement to patient care reporting.

2. Record Formats

a. Mental Health or Social Services direct patient care recording will follow the appropriate procedures noted in prior sections for Ambulatory Patient Care, Direct Inpatient, Contract Health Services Outpatient and Contract Health Services Inpatient.

b. The MH & SS record is used as an activities reporting document to record staff effort. Headquarters requirements can be met with a sampling procedure that uses one full week of activities per month in accordance with the sample reporting week schedule to be specified by IHS Headquarters. The data are to be reported quarterly.

c. The format of the MH & SS record is shown at the end of this section.

d. A sample of the MH & SS Activity Reporting Form, an activity code list, and a problem code list are included in Appendix A. A copy of the instructions for using the MH & SS Activities Reporting Form are available on request from Headquarters, IHS.

3. Transmission Media

a. *Patient care.* Mental Health or Social Services direct patient care recording will follow the appropriate procedures noted in prior sections for Ambulatory Patient Care, Direct Inpatient, Contract Health Services Outpatient and Contract Health Services Inpatient.

b. *Activities reporting.* Activities reports for each Area are submitted to the Division of Data Processing Services by mail on nine track unlabeled, unblocked EBCDIC tape or by other methods arranged between Area and DDPS. Any arrangements between Area and Contractors on how the data will be submitted at that level will have to conform to the methods the Area uses to submit data to DDPS.

c. *RPMS Generic Activities Reporting System (RPMS-GARS).* There is an RPMS ANSI MUMPS GARS data entry program which allows for records to be submitted to Area for compilation and forwarding from Area to DDPS.

MENTAL HEALTH AND SOCIAL SERVICES ACTIVITIES REPORTING

[Input Record Data Fields]

Position	Item	Content/comment	Required
2–3	Area	Standard IHS Codes	X
4–5	Service Unit	Standard IHS Codes	X
6–7	Facility	Standard IHS Codes	X
8–9	Discipline	Program affiliation, MH/SS	X
10–15	Date	Date of Service-Mo/Da/Yr	X
16–18	Provider	Provider identifier	X
19–21	Location	IHS 3-digit code (from St/Co/Comm code list) identifying community where activity took place	X
22–23	Activity	Two digit numeric code. See attached *Activity Codes*	X
24–25	Recipient	Two digit numeric code using Six category field to designate categories of recipients.	
26–27	Primary Purpose	Two digit numeric code. See attached *Problem Codes*	X
28–29	Secondary Purpose	Two digit numeric code. See attached *Problem Codes*	
30–31	Setting Codes	Two digits distinguishing up to ten service settings.	

MENTAL HEALTH AND SOCIAL SERVICES ACTIVITIES REPORTING—Continued

[Input Record Data Fields]

Position	Item	Content/comment	Required
32–34	Number Served	Up to three digits to specify Number of persons served directly by reported activity.	X
35–36	Age	Two digits to show age in years	
37	Sex	M or F	
38–40	Activity Time	Up to three digits showing Time in minutes	X
41–43	Travel Time	Up to three digits to show Time in minutes	
44–45	Refer: From	2-Digit Code distinguishing up to 10 referral sources	
46–47	Refer: To	Same as "Refer From" Codes	
48	Flag 1	Yes/No Field	
49	Flag 2	Yes/No Field	
50	Flag 3	One digit field distinguishing up to five categories of data	
51	Flag 4	One digit field distinguishing up to five categories of data	
52–100	Notes	Narrative (up to 48 alpha characters)	

J. Alcoholism Treatment Guidance System (ATGS)/Chemical Dependency Management Information System (CDMIS)

1. General Reporting Requirements for ATGS and CDMIS

a. All IHS-funded alcohol/substance abuse programs, including Urban Programs, will report their activities on either ATGS or CDMIS. Programs will use ATGS until CDMIS is operational and implemented in their specific program. ATGS will be discontinued upon implementation of CDMIS in a program.

b. CDMIS will be beta-tested in fiscal year (FY) 1991, with implementation beginning in FY 1992 and will be completed as quickly as funding, logistics, and staffing allow.

2. Reporting Requirement for ATGS

a. An Alcoholism Treatment Guidance System (ATGS) record is required for each person treated in an IHS alcoholism and substance abuse treatment program (including covered contractors) until a program is converted to CDMIS. Patients are usually present at the time of a service, but services such as multi-disciplinary staffing and family counseling without the client present are also documented. In addition to completing the computer form, the provider must also note services in the progress notes maintained in the treatment chart. Certified chemical dependency counselors, counselors-in-training, and other providers qualified by the program director may enter information in the client record. In addition to treatment services, prevention services and other staff activities are reported through ATGS.

b. The ATGS Counselor's Resource Manual, October 1983, provides complete definitions and procedures for reporting in the ATGS system and client chart.

3. Record Formats for ATGS

a. The formats of the ATGS records are shown at the end of this section.

b. Samples of ATGS forms are included in appendix A.

4. Transmission Media for ATGS

a. Computer forms are sent by the alcoholism and substance abuse programs to the appropriate IHS Area Office by the 6th day of the month. Forms are then batched and mailed to the keytaping contractor, UNICOR, on or before the 10th of each month. UNICOR key tapes the data and forwards a tape to the IHS Division of Data Processing Services (DDPS) in Albuquerque, New Mexico. DDPS produces reports from the tapes and provides two copies to each IHS Area Office, who in turn distributes one copy to each program that provided data.

5. New System Under Development

a. Current plans call for a gradual phasing out of the ATGS in favor of the new Chemical Dependency Management Information System (CDMIS) beginning in FY 1992 with implementation to proceed as quickly as funds, logistics, and staffing allow. Final beta testing is to take place during the last quarter of FY 1991. Once on CDMIS, a program will discontinue ATGS. There will be two parallel systems operating during the CDMIS implementation period.

b. The Alcoholism PSG (also known as the CDMIS Committee and the ATGS Revision Committee) has examined every item of the ATGS and CDMIS, asking what is the minimum information required by both the Director, IHS, and the Congress. Drafts have been distributed to tribal programs through the Area Alcohol Program Coordinators, with comments carefully considered. Only those items that are being demanded on a regular basis by the Director, IHS, or the Congress, those items required in law, and specific items requested by a majority of the tribal programs have been included in CDMIS.

6. Reporting Requirement for CDMIS

a. The Chemical Dependency Management Information System is an IHS RPMS application that builds on the Patient Registration module. CDMIS consists of two forms. CDMIS–1 is patient-specific and is completed upon initial entry into the program, during treatment, and during a follow-up phase. Preventive activities are also recorded on this form for electronic incorporation into the Generic Activities Reporting System (GARS). CDMIS–2 is an annual staffing, funding, and program report. Either or both forms may be completed for later entry into the computer-based system, or the data may be entered directly into the database. Certified chemical dependency counselors, counselors-in-training, other approved providers, data entry personnel, and others certified as qualified by the program director are to complete the CDMIS forms and/or enter the data into the computer.

b. The CDMIS Program Manual (complete with sub-manuals) scheduled for completion in June 1991, provides the definitions and procedures for reporting on the CDMIS.

c. Staff prevention activities from CDMIS–1 will be reported through GARS. Headquarters requirements can be met with a sampling procedure that uses one full week of activities per month in accordance with the sample reporting week schedule to be specified by IHS Headquarters.

7. Record Formats for ATGS

a. The formats of the CDMIS records are shown at the end of this section.

b. Samples of CDMIS forms are included in Appendix A.

8. Transmission Media

a. Data will be transmitted electronically (or by computer disk in those cases where electronic transmission is unreliable as certified by the Area ISC) to either the servicing Service Unit or Area Office using an approved IHS extract program. This data will be forwarded by the Service Unit to the Area Office electronically. The Area Office will electronically forward the data to the IHS Division of Data Processing Services (DDPS) in Albuquerque, New Mexico. Data will be forwarded to the Area Office quarterly by the 7th day of the month following the end of the quarter. The Area Office will transmit the data to DDPS by the 10th of the month. DDPS produces reports from the data and provides the copy to the ASAPB and two copies to each IHS Area Office, who, in turn, distributes one copy to each program that provided data. DDPS also provides the capability for ASAPB to download data for special reports, graphing reports, etc. Programs may download their data from the Service Unit (or Area Office if serviced by the Area Office) to print local program reports as desired.

b. The Area ISC will, in consultation with the Area Alcohol Program Coordinator, appropriate service unit personnel, and alcohol program director, determine whether the program will be serviced by the Service Unit or by the Area Office.

ATGS KEYTAPING INSTRUCTIONS

	Field Name	Record position	Location on documents or special instructions
	FORM NAME: SHORT TERM NO: A		
	RECORD TYPE	1–2	NUMERIC '00'.
	PROGRAM ID	3–8	NUMERIC.
1.	CASE NUMBER	9–17	9–11 ALPHANUMERIC, 12–17 NUMERIC.
2.	SEX	18	"1" IF M, "2" IF F.
3.	ETHNICITY	19–21	ENTER '1' IF INDIAN, '2' IF ALASKAN, '3' IF OTHER, RIGHT BLANK FILL UNUSED POSITIONS.
4.	TRIBE CODE	22–24	BLANK OF NUMERIC.
5.	EMPLOYED	25	"1" IF Y, "2" IF NO.
6.	DEPENDENTS	26	"1" IF Y, "2" IF NO, OR BLANK.
	NUMBER OF	27–28	BLANK OR LEFT-ZERO FILLED NUMERIC.
7.	CHILD CARE	29	"1" IF Y, "2" IF NO, OR BLANK.
8.	ALC/DRUG TREATMENT	30	"1" IF Y, "2" IF NO, OR BLANK.
9.	COMPONENT CODES	31–32	BLANK OR NUMERIC.
		33–34	BLANK OR NUMERIC.
		35–36	BLANK OR NUMERIC.
10A.	ADMIT/DISCHARGE	37–38	BLANK OR ENTER NUMBERS CIRCLED.
	TOTAL DAYS	39–40	BLANK OR LEFT-ZERO FILLED NUMERIC.
	2ND LINE OF 10A	41–44	—SEE INSTRUCTIONS FROM RECORD POS. 37–40.
	3RD LINE OF 10A	45–48	—SEE INSTRUCTIONS FROM RECORD POS. 37–40.
10B.	SERVICE CODE	49–50	BLANK OR NUMERIC.
	TOTAL HOURS	51–52	BLANK OR LEFT-ZERO FILLED NUMERIC.
	2ND LINE OF 10B	53–56	—SEE INSTRUCTIONS FROM RECORD POS. 49–52.
	3RD LINE OF 10B	57–60	—SEE INSTRUCTIONS FROM RECORD POS. 49–52.
11.	REFERRAL CODES	61–72	BLANK AND/OR NUMERIC, ENTER 2-DIGIT CODES LEFT TO RIGHT, RIGHT BLANK FILL ANY UNUSED POSITIONS.
12.	PRIMARY PROBLEM	73–74	NUMERIC.
	STATE FUNDS CODE	75–76	BLANK OR NUMERIC.
13.	NEW/REOPEN PROGRAM	77	ENTER "1" or "2" FOR BOX CHECKED.
	NEW/REOPEN ATGS	78	ENTER "1" or "2" FOR BOX CHECKED OR BLANK.
14.	DISCHARGE	79	ENTER NUMBER OF BOX CHECKED (1–5) OR BLANK.
15 & 16.		—	DO NOT KEYTAPE.
17.	STATE ID NUMBER	80–88	BLANK OR ALPHANUMERIC.
18.	SERVICE MONTH	89–90	NUMERIC, LEFT ZERO FILLED.
	SERVICE YEAR	91–92	NUMERIC, LEFT ZERO FILLED.
	FORM NAME: INITIAL CONTACT NO: 1		
	RECORD TYPE	1–2	NUMERIC '01'.
	PROGRAM ID	3–8	NUMERIC.
	COMPONENT CODE	9–10	NUMERIC.
	CASE NUMBER	11–19	11–13 ALPHANUMERIC, 14–19 NUMERIC.
	STAFF CODE	20–21	BLANK OR NUMERIC.
	COUNTY CODE	22–24	BLANK OR NUMERIC.
	PRIMARY PROBLEM	25–26	NUMERIC.
	SECONDARY PROBLEM	27–28	BLANK OR NUMERIC.
	STATE FUNDS CODE	29–30	BLANK OR NUMERIC.
	STATE CLIENT ID	31–39	BLANK OR ALPHANUMERIC.
	OPTIONAL CODE C	40–41	BLANK OR NUMERIC.
	OPTIONAL CODE D	42–43	BLANK OR NUMERIC.
1.	SEX	44	"1" IF M, "2" IF F.
2.	REFERRED TO PROGRAM	45–46	NUMERIC.
3.	COURT REFERRAL	47–48	BLANK OR NUMERIC.
4.	ETHNICITY	49–54	ENTER NUMBER CORRESPONDING TO BOX CHECKED, RIGHT-BLANK FILL UNUSED FIELDS, (i.e., IF BOXES 1 & 3 CHECKED ENTER '13').

ATGS KEYTAPING INSTRUCTIONS—Continued

	Field Name	Record position	Location on documents or special instructions
5.	TRIBE CODE	55–57	BLANK OR NUMERIC.
	DEGREE OF BLOOD	58	BLANK OR NUMERIC.
6.	IHS ELIGIBLE	59	"1" IF YES, "2" IF NO, "3" IF NONE AVAILABLE.
7.	MARITAL	60	ENTER NUMBER OF FIRST BOX CHECKED.
8.	EMPLOYED	61	"1" IF YES, "2" IF NO.
	OCCUPATION	62–63	BLANK OR NUMERIC.
	INCOME	64–68	BLANK OR NUMERIC OR ZEROS.
9.	EDUCATION	69–70	ENTER NUMBER CIRCLED, LEFT-ZERO FILLED.
	OTHER	71–72	BLANK OR NUMERIC.
10.	SKILL DEVELOPMENT	73	"1" IF YES, "2" IF NO.
11	HEALTH INSURANCE	74	"1" IF YES, "2" IF NO.
	MEDICARE	75	"1" IF YES, "2" IF NO.
	MEDICAID	76	"1" IF YES, "2" IF NO.
12.	VETERAN	77	"1" IF YES, "2" IF NO.
13.	YEARS DRINKING/DRUG	78–79	LEFT ZERO-FILLED NUMERIC.
	YEARS HEAVY USE	80–81	BLANK OR LEFT ZERO-FILLED NUMERIC.
	PREVIOUS TREATMENT	82	"1" IF YES, "2" IF NO.
	PRIOR TREATMENT-IHS	83	BLANK OR "1" IF YES, "2" IF NO, "3" IF UNKNOWN.
14.	DEPENDENTS	84	"1" IF YES, "2" IF NO.
	HOW MANY	85–86	BLANK OR NUMERIC.
15.	BEEN HOSPITALIZED	87	"1" IF YES, "2" IF NO.
	ALCOHOL RELATED	88	"1" IF YES, "2" IF NO, OR BLANK.
	ARRESTED	89	"1" IF YES, "2" IF NO.
	DWI	90	"1" IF YES, "2" IF NO, OR BLANK.
	USED ALCOHOL	91	"1" IF YES, "2" IF NO.
	NUMBER OF DAYS	92–93	BLANK OR LEFT-ZERO FILLED NUMERIC.
	USED OTHER DRUGS	94	"1" IF YES, "2" IF NO.
	NUMBER OF DAYS	95–96	BLANK OR LEFT-ZERO FILLED NUMERIC.
	TYPE OF DRUGS CODE	97–98	BLANK OR NUMERIC.
16.	ALCOHOL STAGE	99	BLANK OR NUMERIC.
	PHYSICAL STAGE	100	BLANK OR NUMERIC.
	EMOTIONAL STAGE	101	BLANK OR NUMERIC.
	CULTURAL STAGE	102	BLANK OR NUMERIC.
	SPIRITUAL STAGE	103	BLANK OR NUMERIC.
	RECOMMENDED	104	BLANK OR ENTER NUMBER OF FIRST BOX CHECKED
	DIFFERENCE CODE	105–106	BLANK OR NUMERIC.
17	ACTUAL PLACEMENT	107	ENTER NUMBER OF FIRST BOX CHECKED (1–7).
	PLACEMENT TYPE	108	BLANK OR ENTER LETTER OF BOX (A–F).
18.	REFERRAL MADE	109	BLANK OR "1" IF YES, "2" IF NO.
	REFERRAL CODE	110–111	BLANK OR NUMERIC.
	REFERRAL CODE	112–113	BLANK OR NUMERIC.
19.	SPIRITUAL PREFERENCE	114–115	BLANK OR NUMERIC.
	SPIRITUAL PREFERENCE	116–117	BLANK OR NUMERIC.
	PRACTICE	118	"1" IF REGULAR, "2" IF OCCASIONAL, "3" IF NEVER, OR BLANK.
	ORIGINAL CONTACT DATE	119–124	BLANK OR NUMERIC (MMDDYY FORMAT). AS REQUIRED, LEFT-ZERO FILL ANY 2-DIGIT FIELD.
	DATE FORM COMPLETED	125–130	NUMERIC (MMDDYY FORMAT). AS REQUIRED, LEFT-ZERO FILL ANY 2-DIGIT FIELD.

FORM NAME: DISCHARGE REPORT NO: 7

	RECORD TYPE	1–2	NUMERIC '07'
	PROGRAM ID	3–8	NUMERIC.
	COMPONENT CODE	9–10	NUMERIC.
	CASE NUMBER	11–19	11–13 ALPHANUMERIC, 14–19 NUMERIC.
	STAFF CODE	20–21	BLANK OR NUMERIC.
	COUNTY CODE	22–24	BLANK OR NUMERIC.
	PRIMARY PROBLEM	25–26	NUMERIC.
	STATE FUNDS CODE	27–28	BLANK OR NUMERIC.
	STATE CLIENT ID	29–37	BLANK OR ALPHANUMERIC.
	OPTIONAL CODE C	38–39	BLANK OR NUMERIC.
	OPTIONAL CODE D	40–41	BLANK OR NUMERIC.
1.	DATE OF ADMISSION	42–47	NUMERIC (MMDDYY FORMAT) LEFT-ZERO FILLED EACH 2-DIGIT FIELD IF NECESSARY.
2	DATE OF DISCHARGE	48–53	see instructions for 42–47.
3.	DISCHARGE FROM	54	ENTER LETTER OF BOX CHECKED (A–M).
4.	SERVICES USED	55–60	ENTER FIRST 6 LETTERS LEFT TO RIGHT, RIGHT-BLANK FILL ANY REMAINING POSITIONS.
5.	DISCHARGE REASON	61	ENTER LETTER OF FIRST BOX CHECKED.
6.	CLIENT GOALS STATUS	62	ENTER NUMBER OF BOX CHECKED.
7.	ADMISSION STAGES	63–67	BLANKS OR ENTER COLUMN OF NUMBERS UNDER ADMISSION.

ATGS KEYTAPING INSTRUCTIONS—Continued

	Field Name	Record position	Location on documents or special instructions
	DISCHARGE STAGES	68–72	BLANKS OR ENTER COLUMN OF NUMBERS UNDER DISCHARGE.
8.	USING WHAT	73	ENTER "1" IF ALCOHOL CIRCLED, "2" FOR DRUG, "3" FOR SUBSTANCES, "4" IF MORE THAN ONE ITEM CIRCLED.
	USING ALC/DRG/SUB	74	"1" IF YES, "2" IF NO, "3" IF UNKNOWN.
9.	DISCHARGE PLAN NEGOT	75	"1" IF YES, "2" IF NO, OR BLANK.
10.	DISCHARGE TO	76	ENTER LETTER CHECKED IN CR * COLUMN.
		77	ENTER LETTER CHECKED IN CD * COLUMN.
	DATE FORM COMPLETED	78–83	BLANK OR NUMERIC (MMDDYY FORMAT) AS REQUIRED, LEFT ZERO-FILL EACH 2-DIGIT FIELD.
FORM NAME: FOLLOW-UP STATUS NO: 8			
	RECORD TYPE	1–2	NUMERIC '08'.
	PROGRAM ID	3–8	NUMERIC.
	COMPONENT CODE	9–10	BLANK OR NUMERIC.
	CASE NUMBER	11–19	11–13 ALPHANUMERIC, 14–19 NUMERIC.
	STAFF CODE	20–21	BLANK OR NUMERIC.
	COUNTY CODE	22–24	BLANK OR NUMERIC.
	PRIMARY PROBLEM	25–26	NUMERIC.
	STATE FUNDS	27–28	BLANK OR NUMERIC.
	STATE CLIENT ID	29–37	BLANK OR ALPHANUMERIC.
	OPTIONAL CODE C	38–39	BLANK OR NUMERIC.
	OPTIONAL CODE D	40–41	BLANK OR NUMERIC.
1.	TYPE STATUS REPORT	42	ENTER NUMBER OF BOX CHECKED.
2.	MOVED/DIED	43	BLANK OR NUMERIC. IF QUESTION 2 IS CHECKED, SKIP REST OF RECORD AND ENTER DATE ON BOTTOM OF FORM (RECORD POSITION 75–80).
3.	CLIENT STATUS	44	ENTER LETTER OF BOX CHECKED.
4.	CLIENT STAGE	45–49	BLANK OR NUMERIC.
5.	EMPLOYED	50	"1" IF YES, "2" IF NO.
	OCCUPATION	51–52	BLANK OR NUMERIC.
	INCOME	53–57	BLANK OR LEFT-ZERO FILLED NUMERIC.
6.	SKILL DEV./TRNG.	58	"1" IF YES, "2" IF NO.
7.	MARITAL	59	ENTER NUMBER OF BOX CHECKED.
8.	HOSPITALIZED	60	"1" IF YES, "2" IF NO.
	ALCOHOL RELATED	61	"1" IF YES, "2" IF NO, OR BLANK.
	ARRESTED	62	"1" IF YES, "2" IF NO.
	DWI	63	"1" IF YES, "2" IF NO, OR BLANK.
	USED ALCOHOL	64	"1" IF YES, "2" IF NO.
	NUMBER DAYS	65–66	BLANK OR LEFT-ZERO FILLED NUMERIC.
	USED OTHER DRUGS	67	"1" IF YES, "2" IF NO.
	NUMBER DAYS	68–69	BLANK OR LEFT-ZERO FILLED NUMERIC.
	TYPE CODE	70–71	BLANK OR NUMERIC.
9.	DAYS LAST DRINK	72–74	BLANK OR LEFT-ZERO FILLED NUMERIC OR "NA"
	DATE FORM COMPLETED	75–80	NUMERIC (MMDDYY FORMAT). LEFT-ZERO FILL EACH TWO-DIGIT FIELD IF NECESSARY.
FORM NAME: SERVICES REPORT NO: 9			
	RECORD TYPE	1–2	NUMERIC '09'.
	MONTH	3–4	LEFT-ZERO FILLED NUMERIC.
	YEAR	5–6	LEFT-ZERO FILLED NUMERIC.
	PROGRAM ID	7–12	NUMERIC.
	COMPONENT CODE	13–14	NUMERIC
	CASE NUMBER	15–23	15–17 ALPHANUMERIC, 18–23 NUMERIC.
	STAFF CODE	24–25	BLANK OR NUMERIC.
	COUNTY CODE	26–28	BLANK OR NUMERIC.
	PRIMARY PROBLEM	29–30	NUMERIC.
	STATE FUNDS CODE	31–32	BLANK OR NUMERIC.
	STATE CLIENT ID	33–41	BLANK OR ALPHANUMERIC.
	OPTIONAL CODE C	42–43	BLANK OR NUMERIC.
	OPTIONAL CODE D	44–45	BLANK OR NUMERIC.
1.	DAY OF MONTH	46–47	BLANK OR LEFT-ZERO FILLED NUMERIC.
	COMPONENT MONTH	48–49	BLANK OR NUMERIC.
	STAFF CODE	50–51	BLANK OR ALPHANUMERIC.
	SERVICE CODE	52–53	BLANK OR NUMERIC.
	TOTAL HOURS	54–56	54–55 LEFT-ZERO FILLED NUMERIC, NO DECIMAL POINT. 56 NUMERIC, ZERO-FILL TENTH'S POSITION IF ONLY WHOLE NUMBER ENTERED.

ATGS KEYTAPING INSTRUCTIONS—Continued

	Field Name	Record position	Location on documents or special instructions
	14 ADDITIONAL LINES OF DATA, SAME FORMAT AS POSITIONS 46–56.	57–210	ENTER EACH 11-DIGIT FIELD DISREGARDING ANY IMBEDDED BLANK LINE, RIGHT-BLANK FILL UNUSED FIELDS.
2.	TREATMENT PLAN NEG	211	"1" IF YES, "2" IF NO, OR BLANK.
	TREATMENT PLAN PROG	212	"1" IF YES, "2" IF NO, OR BLANK.
3.	ARRIVE AT AGENCY	213	"1" IF YES, "2" IF NO, OR BLANK.
	ACCEPTED FOR SERVICE	214	"1" IF YES, "2" IF NO, OR BLANK.
4.	IHS-NEW/REOPEN/CONT	215	"1, 2 OR 3" FOR NEW, REOPEN OR CONTINUE RESPECTIVELY OR BLANK.
	PROG-NEW/REOPEN/CONT	216	"1, 2 OR 3" FOR NEW, REOPEN OR CONTINUE RESPECTIVELY OR BLANK.
	COMP.-NEW/REOPEN/CONT	217	"1, 2 OR 3" FOR NEW, REOPEN OR CONTINUE RESPECTIVELY OR BLANK.
5.	REFERRALS OUT	218–223	BLANK &/OR NUMERIC, ENTER 2-DIGIT CODES LEFT TO RIGHT, RIGHT BLANK FILL ANY UNUSED POSITIONS.
6.	STATUS	224–226	ENTER NUMBERS CIRCLED OR BLANK.
	COMPONENT CODE	227–228	BLANK OR NUMERIC.
	TOTAL DAYS	229–230	BLANK OR LEFT-ZERO FILLED NUMERIC.
	4 ADDITIONAL LINES OF DATA, SAME FORMAT AS POSITIONS 224–230.	231–258	ENTER EACH 9-DIGIT FIELD DISREGARDING ANY IMBEDDED BLANK LINE, RIGHT-BLANK FILL UNUSED FIELDS.
	DATA FORM COMPLETED	259–264	BLANK OR NUMERIC (MMDDYY FORMAT) AS REQUIRED, LEFT-ZERO FILL ANY 2-DIGIT FIELD.
FORM NAME: SERVICES REPORT—CONTINUATION NO: 9A			
	RECORD TYPE	1–2	CHARACTERS 'OA' (NUMERIC 0).
	PAGE	3	NUMERIC.
	MONTH	4–5	LEFT-ZERO FILLED NUMERIC.
	YEAR	6–7	LEFT-ZERO FILLED NUMERIC.
	PROGRAM ID	8–13	NUMERIC.
	COMPONENT CODE	14–15	NUMERIC.
	CASE NUMBER	16–24	16–18 ALPHANUMERIC, 19–24 NUMERIC.
	STAFF CODE	25–26	BLANK OR NUMERIC.
	COUNTY CODE	27–29	BLANK OR NUMERIC.
	PRIMARY PROBLEM	30–31	NUMERIC.
	STATE FUNDS CODE	32–33	BLANK OR NUMERIC.
	STATE CLIENT CODE	34–42	BLANK OR ALPHANUMERIC.
	OPTIONAL CODE C	43–44	BLANK OR NUMERIC.
	OPTIONAL CODE D	45–46	BLANK OR NUMERIC.
1.	DAY OF MONTH	47–48	LEFT-ZERO FILLED NUMERIC.
	COMPONENT CODE	49–50	NUMERIC.
	STAFF CODE	51–52	BLANK OR ALPHANUMERIC.
	SERVICE CODE	53–54	NUMERIC.
	TOTAL HOURS	55–57	55–56 LEFT-ZERO FILLED NUMERIC, NO DECIMAL POINT. 57 NUMERIC, ZERO-FILL TENTHS POSITION IF ONLY WHOLE NUMBER ENTERED.
	36 ADDITIONAL LINES OF DATA, SAME FORMAT AS POSITIONS 47–57.	58–475	ENTER EACH 11-DIGIT FIELD DISREGARDING ANY IMBEDDED BLANK LINE, RIGHT-BLANK FILL UNUSED FIELDS.
FORM NAME: ACTIVITY REPORT NO: 10			
	RECORD TYPE	1–2	NUMERIC 10.
	MONTH	3–4	LEFT-ZERO FILLED NUMERIC.
	YEAR	5–6	LEFT-ZERO FILLED NUMERIC.
	PROGRAM ID	7–12	NUMERIC.
	COMPONENT CODE	13–14	NUMERIC.
	STAFF CODE	15–16	NUMERIC.
	STAFF TYPE	17	"1, 2, 3 OR 4" FOR REG., CHR, VOLUN., OR CETA, RESPECTIVELY.
	DIRECT SERVICE STAFF	18	"1" IF YES, "2" IF NO.
			UNDER PREVENTION AND COMMUNITY EDUCATION; (ALL ROWS EXCEPT BOTTOM ONE).
	TYPE SESSION	19–21	LEFT-ZERO FILLED NUMERIC.
	TARGET GROUP	22–23	NUMERIC.
	NUMBER OF PEOPLE	24–27	LEFT-ZERO FILLED NUMERIC.
	21 ADDITIONAL LINES OF DATA, SAME FORMAT AS POSITIONS 19–27.	28–216	ENTER EACH 9-DIGIT FIELD DISREGARDING ANY BLANK LINES, RIGHT-BLANK FILL UNUSED FIELDS.
			TOTAL ROW:
	CONFERENCE & WORKSHOPS	217–219	FOR ALL REMAINING FIELDS, BLANK OR LEFT-ZERO.

ATGS KEYTAPING INSTRUCTIONS—Continued

Field Name	Record position	Location on documents or special instructions
INSERVICE TRAINING	220–222	FILLED NUMERIC NO DECIMAL POINTS.
STAFF MEETINGS	223–225	ALL TOTAL FIELDS ARE THREE DIGITS EXCEPT THOSE NOTED BELOW:
LEAVE	226–228	
SUPERVISION OF STAFF	229–231	
REPORT TO TRIBAL CNCL	232–234	
ATGS	235–237	
PLANNING & DEVELOPMENT	238–240	
GENERAL ADMINISTRATION	241–243	
INPATIENT DIRECT HOURS	244–246	
OUTPATIENT DIRECT HOURS	247–249	
PREVENTION-INDIVIDUALS	250–252	
TRAVEL DIRECT-CLIENT	253–255	
TRAVEL INDIRECT	256–258	
OTHER	259–261	
INFORMATION INQUIRIES	262–264	
CONTACTS FOR INFO.	265–268	4 DIGIT FIELD.
SESSION CODE	269–271	BLANK.
TARGET GROUP	272–273	BLANK—2 DIGIT FIELD.
PERSONS IN GROUP	274–277	4 DIGIT FIELD.
HOURS PREPARATION	278–280	
HOURS PRESENTATION	281–283	
TOTAL HOURS	284–286	

FORM NAME: ACTIVITY REPORT—CONTINUATION NO: 10A

RECORD TYPE	1–2	NUMERIC '11'.
	3–286	THIS RECORD IS IDENTICAL TO FORM NO. 10 EXCEPT THE RECORD TYPE CODE.

RECORD FORMAT CONTROL LIST OF FIELDS

[CDMIS Client Demographics]

Field name	Starts	Length	Ends	Fill logic	XS	Length logic
Program	1	6	6	Blanks		Truncate.
Service Date	7	6	12	Blanks		Truncate.
Component	13	4	16	Blanks		Truncate.
Provider	17	5	21	Blanks		Truncate.
Contact	22	2	23	Blanks		Truncate.
Follow-up Months	24	2	25	Blanks		Truncate.
Client ID	26	9	34	Blanks		Truncate.
Client Age RNG	35	1	35	Blanks		Truncate.
Client DOB	36	7	42	Blanks		Truncate.
Client Tribe	43	3	45	Blanks		Truncate.
Client Sex	46	1	46	Blanks		Truncate.
Client Community	47	7	53	Blanks		Truncate.
Primary Problem	54	2	55	Zero/Blank		Truncate.
Secondary Problem	56	2	57	Zero/Blank		Truncate.
In Treatment	58	1	58	Blanks		Truncate.
Alcohol Days	59	3	61	Zero/Blank		Truncate.
Drug Days	62	3	64	Zero/Blank		Truncate.
Drug Combination	65	1	65	Blanks		Truncate.
Drug Type	66	8	73	Blanks		Truncate.
Hospital Days	74	3	76	Zero/Blank		Truncate.
Arrests	77	3	79	Zero/Blank		Truncate.
Alc/Sub Stage	80	1	80	Blanks		Truncate.
Physical Stage	81	1	81	Blanks		Truncate.
Emotional Stage	82	1	82	Blanks		Truncate.
Social Stage	83	1	83	Blanks		Truncate.
Cultural Stage	84	1	84	Blanks		Truncate.
Behavioral Stage	85	1	85	Blanks		Truncate.
Recommended Placement	86	4	89	Blanks		Truncate.
Actual Placement	90	4	93	Blanks		Truncate.
Difference Reason	94	2	95	Blanks		Truncate.
Inpatient Days	96	3	96	Zero/Blank		Truncate.
Goal Attainment	99	1	99	Blanks		Truncate.
TDC Reason	100	2	101	Blanks		Truncate.
Discharge Plan	102	1	102	Blanks		Truncate.

RECORD FORMAT CONTROL LIST OF FIELDS

[CDMIS Client Services]

Field name	Starts	Length	Ends	Fill Logic	XS	Length Logic
Program	1	6	6	Blanks		Truncate.
Service Date	7	6	12	Blanks		Truncate.
Component	13	4	16	Blanks		Truncate.
Provider	17	5	21	Blanks		Truncate.
Contact	22	2	23	Blanks		Truncate.
Client ID	24	9	32	Blanks		Truncate.
Client Age Range	33	1	33	Blanks		Truncate.
Client DOB	34	7	40	Blanks		Truncate.
Client Tribe	41	3	43	Blanks		Truncate.
Client Sex	44	1	44	Blanks		Truncate.
Client Community	45	7	51	Blanks		Truncate.
Record Order	52	2	53	Zeroes		Truncate.
Service 1	54	9	62	Blanks		Truncate.
Service 2	63	9	71	Blanks		Truncate.
Service 3	72	9	80	Blanks		Truncate.
Service 4	81	9	89	Blanks		Truncate.
Service 5	90	9	98	Blanks		Truncate.
Service 6	99	9	107	Blanks		Truncate.
Service 7	106	9	116	Blanks		Truncate.
Service 8	117	9	125	Blanks		Truncate.
Service 9	126	9	134	Blanks		Truncate.
Service 10	135	9	143	Blanks		Truncate.
Service 11	144	9	152	Blanks		Truncate.

RECORD FORMAT CONTROL LIST OF FIELDS

[CDMIS Program]

Field name	Starts	Length	Ends	Fill logic	XS	Length logic
CDMIS Program	1	6	6	Blanks		Truncate.
Fiscal Year	7	2	8	Zero/Blank		Truncate.
Director	9	35	43	Blanks		Truncate.
Fund CAT1	44	3	46	Blanks		Truncate.
Fund CAT2	47	3	49	Blanks		Truncate.
Fund CAT3	50	3	52	Blanks		Truncate.
Fund CAT4	53	3	55	Blanks		Truncate.
Staff Total	56	3	58	Zeroes		Truncate.
IHS Staff	59	3	61	Zeroes		Truncate.
Male Staff	62	3	64	Zeroes		Truncate.
Female Staff	65	3	67	Zeroes		Truncate.
Indian Staff	68	3	70	Zeroes		Truncate.
NON Indian Staff	71	3	73	Zeroes		Truncate.
Salary Average	74	5	78	Zeroes		Truncate.
Salary PCT IHS Funded	79	3	81	Zeroes		Truncate.
IHS Funds Direct	82	10	91	Zeroes		Truncate.
IHS Funds Indirect	92	10	101	Zeroes		Truncate.
IHS Indirect Rate	102	3	104	Zeroes		Truncate.
Outpatients to See	105	5	109	Zeroes		Truncate.
Smoke Free	110	1	110	Zeroes		Truncate.
CAC	111	3	113	Zeroes		Truncate.
NAC	114	3	116	Zeroes		Truncate.
PSY	117	3	119	Zeroes		Truncate.
SW	120	3	122	Zeroes		Truncate.
FT	123	3	125	Zeroes		Truncate.
RT	126	3	128	Zeroes		Truncate.
AT	129	3	131	Zeroes		Truncate.
PHY	132	3	134	Zeroes		Truncate.
NUR	135	3	137	Zeroes		Truncate.
ED	138	3	140	Zeroes		Truncate.
ADM	141	3	143	Zeroes		Truncate.
SPT	144	3	146	Zeroes		Truncate.
OCC	147	3	149	Zeroes		Truncate.
ONC	150	3	152	Zeroes		Truncate.
CON	153	3	155	Zeroes		Truncate.
VOL	156	3	158	Zeroes		Truncate.
STU	159	3	161	Zeroes		Truncate.
OTH–CC	162	3	164	Zeroes		Truncate.
ADC	165	3	167	Zeroes		Truncate.
FT–JD	168	3	170	Zeroes		Truncate.
MH	171	3	173	Zeroes		Truncate.

RECORD FORMAT CONTROL LIST OF FIELDS—Continued

[CDMIS Program]

Field name	Starts	Length	Ends	Fill logic	XS	Length logic
SW–JD	174	3	176	Zeroes		Truncate.
ADE	177	3	179	Zeroes		Truncate.
RT–JD	180	3	182	Zeroes		Truncate.
AT–JD	183	3	185	Zeroes		Truncate.
MED	186	3	188	Zeroes		Truncate.
ED–JD	189	3	191	Zeroes		Truncate.
AFT	192	3	194	Zeroes		Truncate.
OC–JD	195	3	197	Zeroes		Truncate.
ADM–JD	198	3	200	Zeroes		Truncate.
VOL–JD	201	3	203	Zeroes		Truncate.
STU–JD	204	3	206	Zeroes		Truncate.
OTH–JD	207	3	209	Zeroes		Truncate.
NO HS GRAD	210	3	212	Zeroes		Truncate.
HS GRAD	213	3	215	Zeroes		Truncate.
AART	216	3	218	Zeroes		Truncate.
BA/BS	219	3	221	Zeroes		Truncate.
MA/MS	222	3	224	Zeroes		Truncate.
MD/PHD	225	3	227	Zeroes		Truncate.
Other ED LVL	228	3	230	Zeroes		Truncate.
DTX-Type	231	1	231	Blanks		Truncate.
DTX-Fund	232	1	232	Blanks		Truncate.
DTX-Beds	233	2	234	Zero/Blank		Truncate.
OTX–OCC	235	3	237	Zero/Blank		Truncate.
DTX–IHS	238	3	240	Zero/Blank		Truncate.
DTX–TOT	241	3	243	Zero/Blank		Truncate.
PRT-Type	244	1	244	Blanks		Truncate.
PRT-Fund	245	1	245	Blanks		Truncate.
PRT-Beds	246	2	247	Zero/Blank		Truncate.
PRT–OCC	248	3	250	Zero/Blank		Truncate.
PRT–IHS	251	3	253	Zero/Blank		Truncate.
PRT–TOT	254	3	256	Zero/Blank		Truncate.
HWH-Type	257	1	257	Blanks		Truncate.
HWH-Fund	258	1	258	Blanks		Truncate.
HWH-Beds	259	2	260	Zero/Blank		Truncate.
HWH–OCC	261	3	263	Zero/Blank		Truncate.
HWH–IHS	264	3	266	Zero/Blank		Truncate.
HWH–TOT	267	3	269	Zero/Blank		Truncate.
TLC-Type	270	1	270	Blanks		Truncate.
TLC-Fund	271	1	271	Blanks		Truncate.
TLC-Beds	271	2	273	Blanks		Truncate.
TLC–OCC	274	3	276	Zero/Blank		Truncate.
TLC–IHS	277	3	279	Zero/Blank		Truncate.
TLC–TOT	280	3	282	Zero/Blank		Truncate.
GRH-Type	283	1	283	Blanks		Truncate.
GRH-Fund	284	1	284	Blanks		Truncate.
GRH-Beds	285	2	286	Zero/Blank		Truncate.
GRH–OCC	287	3	289	Zero/Blank		Truncate.
GRH–IHS	290	3	292	Zero/Blank		Truncate.
GRH–TOT	293	3	295	Zero/Blank		Truncate.
FGH-Type	296	1	296	Blanks		Truncate.
FGH-Fund	297	1	297	Blanks		Truncate.
FGH-Beds	298	2	299	Zero/Blank		Truncate.
FGH–OCC	300	3	302	Zero/Blank		Truncate.
FGH–IHS	303	3	305	Zero/Blank		Truncate.
FGH–TOT	306	3	308	Zero/Blank		Truncate.
TFH-Type	309	1	309	Blanks		Truncate.
TFH-Fund	310	1	310	Blanks		Truncate.
TFH-Beds	311	2	312	Zero/Blank		Truncate.
TFH–OCC	313	3	315	Zero/Blank		Truncate.
TFH–IHS	316	3	318	Zero/Blank		Truncate.
TFH–TOT	319	3	321	Zero/Blank		Truncate.
DIC-Type	322	1	322	Blanks		Truncate.
DIC-Fund	323	1	323	Blanks		Truncate.
DIC-Beds	324	2	325	Zero/Blank		Truncate.
DIC–OCC	326	3	328	Zero/Blank		Truncate.
DIC–IHS	329	3	331	Zero/Blank		Truncate.
DIC–TOT	332	3	334	Zero/Blank		Truncate.
OPT-Type	335	1	335	Blanks		Truncate.
OPT-Fund	336	1	336	Blanks		Truncate.
OPT–OCC	337	3	339	Zero/Blank		Truncate.
OPT–IHS	340	3	342	Zero/Blank		Truncate.

RECORD FORMAT CONTROL LIST OF FIELDS—Continued

[CDMIS Program]

Field name	Starts	Length	Ends	Fill logic	XS	Length logic
OPT–TOT	343	3	345	Zero/Blank		Truncate.
AFT-Type	346	1	346	Blanks		Truncate.
AFT-Fund	347	1	347	Blanks		Truncate.
AFT–OCC	348	3	350	Zero/Blank		Truncate.
AFT–IHS	351	3	353	Zero/Blank		Truncate.
AFT–TOT	354	3	356	Zero/Blank		Truncate.
DIA-Type	357	1	357	Blanks		Truncate.
DIA-Fund	358	1	358	Blanks		Truncate.
DIA–OCC	359	3	361	Zero/Blank		Truncate.
DIA–IHS	362	3	364	Zero/Blank		Truncate.
DIA–TOT	365	3	367	Zero/Blank		Truncate.
DIB-Type	368	1	368	Blanks		Truncate.
DIB-Fund	369	1	369	Blanks		Truncate.
DIB–OCC	370	3	372	Zero/Blank		Truncate.
DIB–IHS	373	3	375	Zero/Blank		Truncate.
DIB–TOT	376	3	378	Zero/Blank		Truncate.
PRV-Type	379	1	379	Blanks		Truncate.
PRV-Fund	380	1	380	Blanks		Truncate.
PRV–OCC	381	3	383	Zero/Blank		Truncate.
PRV–IHS	384	3	386	Zero/Blank		Truncate.
PRV–TOT	387	3	389	Zero/Blank		Truncate.
Address	390	70	459	Blanks		Truncate.
City	460	30	489	Blanks		Truncate.
State	490	2	491	Blanks		Truncate.
ZIP	492	11	502	Blanks		Truncate.
Phone	503	12	514	Blanks		Truncate.

K. Community Health Representative Information System (CHRIS)

1. Reporting Requirement

a. A one line entry is required to be completed on a Community Health Representative (CHR) Activities Report form for each CHR service that was provided on the day to which the form applies. If more services are performed on one day than can be reported on one CHR Activities form, an additional form(s) should be used and appropriately numbered. CHR Activities forms are completed during one sample week (a 7-day week) per month in accordance with the CHR sample reporting week schedule specified by the IHS Headquarters Director of the CHR Program.

b. The CHR Activities Report User Manual provides complete definitions and procedures for reporting into the Community Health Representative Information System (CHRIS).

c. Each CHR Program, in cooperation with their respective IHS Area Office CHR Coordinator, determines procedures for collecting CHR Activities data and creating automated records in the format described in the next section. Key-entry of forms options include:

(1) At the CHR Program/Tribal level.

(2) At the Area level.

(3) At the service unit.

(4) By a contractor.

d. CHR Activity forms or automated records are batched by the Area CHR staff and forwarded to the national CHR Program's data processing contractor no later than two weeks after the last day of each sample reporting week. The data processing contractor key enters hard copy data and consolidates the data with automated records submitted through the Area Offices. At a future date, automated records will be consolidated at the Area level and forward to the Division of Data Processing Services (DDPS) at Albuquerque no later than two weeks after the last day of each sample reporting week.

2. Record Formats

a. The CHR Activities record contains individual patient encounter and/or group encounter information. Each record is 61 characters in length.

b. The proposed format of the CHR Activities record is shown at the end of this section.

c. A CHR Activities Report form is included in Appendix A.

3. Transmission Media

a. CHR Automated Activities records for each Area are maintained by the national CHR Program's data processing contractor. In the future, these data will be generated at the local CHR office, on RPMS Generic Activity Reporting System (GARS), and will be electronically transmitted to the Area which will electronically transmit the data to DDPS.

4. RPMS CHR Data Entry System

a. RPMS ANSI MUMPS CHR data entry program, known as the Generic Activity Reporting System (GARS) is under development to allow records to be keyed locally, transmitted to the Area, and forwarded from the Area to DDPS by telecommunications.

CHR ACTIVITIES RECORD

[Note: All Fields are Required Reporting Fields. The record Format for Local Automated Data Entry Is]

Position	Field	Required
	A. Header Information	
1–4	CHR Provider (Last 4 digits of each CHR's Social Security Number unless otherwise instructed by the CHR's supervisor. If more than one CHR in the same CHR program have the same last four Social Security Number digits, a different 4-digit number may be given by the CHR supervisor to use.).	All
5	Blank	
6–13	Program.	
6–7	Area Code.	
8–9	Service Unit Code.	
10–12	Tribe/Community Code.	
13	Blank.	
14–22	Date.	
14–15	Month (01–12).	
15	Blank.	
17–18	Day (01–31).	
19	Blank.	
20–21	Year (last 2 digits of year).	
22	Blank.	
23–25	Page.	
23	Specific Report Page.	
24	Total Reporting Pages for that day ("Page _____ of _____" is used to distinguish between forms when one CHR provides more services than can be reported on one reporting form.).	
25	Blank.	
	B. Service Data	
	Note: One line is used for each service provided on the day to which the form applies. If more services are performed on one day than can be reported on one CHR Activities form, an additional form(s) should be used and numbered as described above. All spaces should be filled in with information. If an item does not apply to a particular service, enter a dash "—", not a zero. For additional reporting instructions consult the CHR Activities Report User Manual.	
26–28	Line Number (01–20 corresponding to the line on the reporting form)	All
28	Blank.	
29–31	Service Code.	
29–30	Code.	
31	Blank.	
	01 Health Education.	
	02 Case Find/Screen.	
	03 Case Management—Coordinate.	
	04 Monitor Patient.	
	05 Emergency Care.	
	06 Patient Care.	
	07 Homemaker Services.	
	08 Transport.	
	09 Interpret/Translate.	
	10 Other Patient Services.	
	11 Environmental Services.	
	12 Administration/Management.	
	13 Obtain Training.	
	99 Leave Time.	
32–34	Health Area.	
32–33	Code.	
34	Blank.	
	01 Diabetes.	
	02 Cancer.	
	03 Hypertension/Cardio.	
	04 HIV/ARC/AIDS.	
	05 Communicable Disease.	
	06 Alcohol/Substance Abuse.	
	07 Community Injury Control.	
	08 Health Promotion/Disease Prevention.	
	91 Other General Medical.	
	92 Dental.	
	93 Gerontological.	
	94 Maternal/Child Health.	
	95 Mental Health.	
	96 Non-Specific.	
35–36	Setting.	
	01 Home.	
	02 CHR Office.	

CHR ACTIVITIES RECORD—Continued

[Note: All Fields are Required Reporting Fields. The record Format for Local Automated Data Entry Is]

Position	Field	Required
	03 Community.	
	04 Hospital/Clinic.	
	05 Radio/Telephone.	
37–40	Number Served (Leading zero fill)	All
	When a group service is provided, the number of participants receiving direct service is to be recorded here. If there is only one main client, enter a "1". A breast feeding class is an example of services provided for more than one person. Enter a dash "—" in the box for a service in which people are not provided for directly, e.g. Adm/Mgmt service.	
41–44	Minutes Used—Service (Leading zero fill).	
45–48	Minutes used—Travel (Leading zero fill).	
49	Blank.	
50–52	Age.	
	Two digits for age. If the recipient is less than 1 year of age use a zero, "0." If no personal service is given or a group is served, enter a dash, "—.".	
53	Blank.	
54–56	Sex.	
54	Blank.	
55	1 Male 2 Female.	
56	Blank.	
	Where service for both males and females is provided or no direct client service is involved, enter a dash, "—.".	
57–59	Referral From.	
57–58	Code.	
59	Blank.	
60–61	Referral To.	
	Referral Codes.	
	— None.	
	01 Medical.	
	02 Nursing.	
	03 Dental.	
	04 Eye.	
	05 Social Worker.	
	06 Substance Abuse Professional.	
	07 Other Professional.	
	08 Technician.	
	09 Agency/Program.	
	10 Family/Self/Community.	
	11 CHR.	

L. Community Health Activity Reporting System

1. Reporting Requirement

a. A Community Health Activity record is required for all activities performed by each Public Health Nurse (PHN). These are to include both direct and indirect patient care contacts and all administrative and training activities. A CHA record must be completed on each discrete activity according to the time required for the activity. Each daily activity sheet should include records to account for the total time during the day that the PHN was on duty.

b. All reporting requirements and procedures are outlined in the CHA Reporting System Guide.

c. Each Area will define procedures for getting the data from each reporting site. All data from each Area will be sent at least quarterly to the designated UNICORP data entry point.

d. Headquarters requirements can be met with a sampling procedure that uses one full week of activities per month in accordance with the sample reporting week schedule to be specified by IHS Headquarters. There is an RPMS ANSI MUMPS Generic Activities Reporting System (GARS) data entry program which allows for records to be submitted to Area for compilation and forwarded from Area to DDPS.

2. Record Formats

a. The CHA record contains data on each discrete activity performed by a Public Health Nurse. Each record is 82 characters in length.

b. The format of the CHA record is shown at the end of this section.

c. A sample of the IHS CHA form is included in Appendix A.

3. Transmission Media

a. The CHA records are mailed to DDPS by UNICORP on nine track unlabeled, unblocked EBCDIC tape.

4. CHA Data Entry System

a. Currently all data is entered onto a data entry sheet. These are consolidated at the Area level and transmitted to UNICORP for data entry.

b. A MUMPS based Generic Activities Reporting System is being developed which will allow service units, contractors and/or Area Offices to do their own data entry and transmit the data via 9 track disks or data cartridges to the data center.

COMMUNITY HEALTH ACTIVITY RECORD FORMAT

Position	Field	Required
1–2	Record Code (Always "14")	
3–8	Area/Service Unit/Facility Code.	X
9–10	Position Code	X
11–16	Date (MMDDYY)	X
17–19	Community	X
20–21	Activity	X
22–24	Primary Purpose Code	X

COMMUNITY HEALTH ACTIVITY RECORD FORMAT—Continued

Position	Field	Required
25	First Visit	
26	Nursing Diagnosis	
27–29	Secondary Purpose Code	
30	First Visit	
31	Nursing Diagnosis	
32	Time for Activity (Hour(s)).	X
33–34	Time for Activity (Minutes).	X
35–37	Number Counseled in Clinic/Number Contacted in Group Session	
38–43	Health Record Number (Required for patient contacts)	
44–45	Date of Birth (Month)	X
46–47	Date of Birth (Day)	X
48–49	Date of Birth (Year)	X
50	Sex	X
51	Family Status	X
52	Travel Time (Hour(s))	
53–54	Travel Time (Minutes)	
55–56	Total Time (Hours)	
57–58	Total Time (Minutes)	
59–60	Leave Taken (Annual—Hours)	
61–62	Leave Taken (Annual—Minutes)	
63–64	Leave Taken (Sick—Hours)	
65–66	Leave Taken (Sick—Minutes)	
67–68	Leave Taken (Compensatory—Hours)	
69–70	Leave Taken (Compensatory—Minutes)	
71–72	Leave Taken (Station—Hours)	
73–74	Leave Taken (Station—Minutes)	
75–76	Leave Taken (Other—Hours)	
77–78	Leave Taken (Other—Minutes)	
79–80	Overtime Worked—Hours	

COMMUNITY HEALTH ACTIVITY RECORD FORMAT—Continued

Position	Field	Required
81–82	Overtime Worked—Minutes	
83–91	Social Security Number (Required for patient contacts).	X

M. Health Education Resources Management System (HERMS)

1. Reporting Requirements

a. The Indian Health Service Health Education Program developed a new data system—the Health Education Resources Management System (HERMS) over three years ago. This system has undergone several field tests, and all data during these tests have been generated manually by the field health education staff.

The HERMS includes a daily record encounter and this record system is required for service unit health education staff. This includes covered contractors.

b. HERMS forms are due in the Area Health Education Office. Specific collection procedures will be determined by the Area Health Education Branch Chief. The Area Office will collect and key-enter all data. The Area Health Education Office will be required to submit a quarterly report to the field staff and IHS Headquarters Director of the Health Education Program.

c. Part 3, Chapter 12 of the Indian Health Service Manual (Health Education) is currently being revised and will require the HERMS.

d. The HERMS forms are to be completed during one sample week (a 7 day week) per month in accordance with the HERMS reporting week schedule to be specified by the IHS Headquarters Director of the Health Education Program.

2. Record Format

a. The format of the HERMS form is shown at the end of this section.

b. A sample of the IHS HERMS form is included in Appendix A.

3. Reports

The following reports will be generated from the Health Education Resources Management System (HERMS) to be provided to Headquarters, Areas, and service unit/tribal health education personnel as required.

Reports To Be Provided:

Report I: Quarterly Summary
Report II: Annual Summary
Report III: Quarterly Cost of Activities by Provider

4. RPMS MUMPS Data Entry System

There is an RPMS ANSI MUMPS Generic Activities Reporting System (GARS) data entry program which allows for records to be submitted to Area for compilation and forwarding from Area to the Division of Data Processing Services.

5. Additional Benefits

This new data system will enable the IHS and tribal programs to have the ability to collect and generate statistical data to address the efficiency and effectiveness of health education services, RAM issues relevant to staff productivity and cost benefit, reporting for Area and Headquarters requirements, justification and tracking system for staffing, etc.

Improved control, communication, coordination, and up-to-date reporting for categorical activities for the Chief, Health Education Branch, and Chief, Health Education Section, Indian Health Service, is also anticipated.

6. HERMS Manual

A complete instruction manual for the HERMS is available from the Area Health Education Office.

HERMS RECORD REPORTING INSTRUCTIONS

Position	Field		Required
To Be Determined	Ia.	*Area Coding* is to be numbered according to the *IHS Standard Code Book*	X
	Ib.	*Service Unit/Tribal Program Coding* is to be numbered according to the *IHS Standard Code Book.*	X
	Ic.	*PROVIDER NO.*: This number is assigned by the Area Branch Chief	X
	Id.	*FACILITY NO.*: Assigned in *IHS Standard Code Book.* Facility is where the Health Education staff member completes H.E.R.M.S. forms.	X
	Ie.	*MONTH*: Enter the Month that reports are being submitted for workload activities. *01–12*	X
	If.	*FISCAL YEAR*: Enter the last two digits of the fiscal year	X
	Ig.	*PAGE*: Enter the number of forms submitted for the reporting period, example: page 1 of 3 pages, page 2 of 3, page 3 of 3	
	Box I	*DATE*: List each day's date	X

HERMS RECORD REPORTING INSTRUCTIONS—Continued

Position	Field		Required
	Box II	*TASK MATRIX*: The purpose of this column is to identify those direct services which are provided in the course of health education activities. The following tasks are to be utilized in the task matrix categories: 100 series, Identification of Health Problems and Needs; 200 series, Design Educational Objectives and Develop Methodology; 300 series, Implementation/Teaching; 400 series, Health Education Program Evaluation; 500 series, Support Services; and 600 series, Professional Training. Use one line per task.	X
	Box III	*HEALTH EDUCATION PROGRAM CODES*: See back side of form—Box III	X
	Box IV	*NUMBER OF PEOPLE SERVED*: List the number of individuals reached in the appropriate box.	
	Box V	*AGE CATEGORIES: Only list for "300" activities*	X
		Box V is to be used to indicate the age categories of individuals reached during "direct 300 level" health education activities. Select one age category that best represents the majority of the group. *1*=0–2 Infant *2*=3–5 Pre-school *3*=6–13 Elementary *4*=14–18 High School *5*=19–25 College/Young Adult *6*=26–55 Adult *7*=56+ Sr. Citizen *8*=All Ages, Mixed	
	Box VI	*TOTAL NUMBER OF PEOPLE REACHED*	X
	Box VII	*TASK/ACTIVITY HOURS*: Box 7 is to be used to code the number of service hours required for accomplishing the health education activity or task.	X
		Must be marked for each activity. Mark, to the nearest half hour, the time spent in carrying out the task. Example: an activity taking seven hours and 35 minutes, code as 07.5; five hours and 12 minutes, code as 05.0	
	Box VIII	*TRAVEL TIME*: Travel will be handled as an activity and therefore this box will be eliminated ..	
		Time is heavily influenced by such variables as distance, climate, number of Indian communities, etc. Box 8 is to be used when travel is required to carry out a health education activity. Includes the physical act of moving between one's usual work site (office) to other locations where client/patient services are to be rendered or performed. Include travel time for follow-up, evaluation, data collections. Mark to the nearest half hour. Example: travel time of 2 and ½ hours would be coded as 02.5.	
	Box IX	*LOCATION*: Box 9 is to be used to identify the specific location of the program and educational activity. Utilize the following location codes to identify the specific location. Use a location code for each task.	X
		Location Codes (i.e., settings where services are being provided) 901 *Home* 902 *School* 903 *Clinic* 904 *Hospital* 905 *Tribal/Comm Bldg* 906 *Tribal Worksite* 907 *Recreational Facility* 908 *Street/Highway (Roadside)* 909 *Health Education Office* 910 *Other*	
	Box X	*COMMUNITY CODE*: The health educator is to identify the specific community where the service or activity was provided. *See the IHS Standard Code Book for the specific community code.* Available from the Health Education Area Office. *See Appendix A–111 for sample, pg 12.*	X

*(*905*—i.e., Services Center, Facility Building, Chapter House, Church, etc.)

HERMS RECORD TASK MATRIX

Code	Task
101	Needs Assessment.
102	Data Collection.
103	Analyze Data.
104	Summarize Data.
201	Educational Diagnosis.
202	Information Gathering/Obtaining Resources.
203	Develop Program Objectives.
204	Establish Approach & Sequence of Events.

HERMS RECORD TASK MATRIX—Continued

Code	Task
205	Materials Development & Design.
206	Publicizing & Promoting.
301	Staff In-Service Training.
302	Presentation & Discussion.
303	Staff Support w/ Education Activities.
304	Patient Education.
401	Process Evaluation.

HERMS RECORD TASK MATRIX—Continued

Code	Task
402	Evaluation of Knowledge, Attitudes and Beliefs.
403	Outcome Evaluation.
404	Quality Assurance.
405	Reports.
406	Debriefing.
501	General Program Admin.
502	Special Admin. Assignment (within Health Education).

HERMS RECORD TASK MATRIX—Continued

Code	Task
503	Special Admin. Assignment (outside Health Education).
504	Staff Meetings.
505	Maintenance of Resource Center/Audiovisual Library.
506	Clerical Tasks.
601	Professional Training.
602	Self-Development. Travel.

N. Nutrition and Dietetics Program Activities Reporting System (NDPARS)

1. Reporting Requirement

a. A one line entry is required to be completed on a Nutrition and Dietetics Program Activity Reporting System (NDPARS) form for each nutrition/dietetics activity. NDPARS forms are to be completed daily.

b. The NDPARS Users Manual provides complete definitions and procedures for completing the forms.

c. Each nutrition/dietetics staff member completes the forms and sends the forms to the Area Nutrition/Dietetics Branch Chief monthly. The Area sends the forms to Headquarters for entry into the computer.

d. Headquarters requirements can be met with a sampling procedure that uses one full week of activities per month in accordance with the sample reporting week schedule to be specified by IHS Headquarters. There is an RPMS ANSI MUMPS Generic Activities Reporting System (GARS) data entry program which allows for records to the submitted to Area for compilation and forwarding from Area to DDPS.

2. Record Format

a. The NDPARS record contains individual patient encounters and/or group encounter information. Additionally, the record contains program management, technical assistance, and training information.

b. The format of the NDPARS record is shown at the end of this section.

c. A NDPARS form is included in Appendix A.

3. Transmission Media

NDPARS records are mailed to Area Office and then Headquarters for data entry.

4. RPMS NDPARS Data Entry System

There is available an RPMS ANSI MUMPS NDPARS data entry program which allows for records to be keyed locally, transmitted to the Area, and forwarded from the Area to DDPS by telecommunications.

NDPARS RECORD

Position	Field	Required
This is a Fileman global and no export and merge programs are available at this time.	Header Information	
	NAME	X
	SERVICE UNIT	X
	DATE	X
	Service Data	
	NOTE: One line is used for each service provided. All spaces should be filled in with codes. For additional reporting instruction consult the NDPARS User Manual.	
	Function Code:	X
	01 Clinical Nutrition Services	
	02 Hospital Foodservice Systems Management	
	03 Community Nutrition Program Management	
	04 Routine Nutritional Care	
	05 Nutrition Education Service	
	06 N&D Program Coordination, Consultation & Technical Assistance	
	07 N&D Program Administration	
	08 Continuing Education	
	09 Continuing Training	
	10 Conducting Research/Writing for Professional publication	
	11 Leave	
	99 Other	
	PRIMARY PURPOSE CODE:.	X
	101 Alcohol Related	
	102 Anemia	
	103 Calcium Controlled	
	104 Cancer	
	105 Clear Liquid	
	106 Diabetes	
	107 Dumping Syndrome	

NDPARS RECORD—Continued

Position	Field	Required
	108 Elimination	
	109 Fat Controlled	
	110 Full Liquid	
	111 Gestational Diabetes	
	112 Gluten Free	
	113 High Protein	
	114 Hypoglycemia	
	115 Increased Fiber	
	116 Lactose Restricted	
	117 Low caffeine	
	118 Low Residue	
	119 Normal Nutrition	
	120 Potassium Controlled	
	121 Prenatal	
	122 Purine Restricted	
	123 Renal	
	124 Sodium Controlled	
	125 Tonsillectomy	
	126 Tube Feeding	
	127 Undernutrition	
	128 Vegetation	
	129 Weight Control	
	130 Other Clinical Diets	
	131 Other Clinical Diets	
	201 Consultation/Technical Assistance	
	202 Administrative/Management	
	203 Educational Materials Review/Development	
	204 Chart Review and/or Quality Assurance	
	205 Staff Meetings	
	206 Employee Supervision/Counseling	
	301 Travel	
	401 Not Nutrition/Dietetics Related	
	999 Other	
	ENCOUNTER CODE:.	X
	1 First Visit	
	2 Follow-up Visit	
	3 Limited Series	
	4 Ongoing	
	9 Other	
	RECIPIENT CODE:	X
	01 Patient	
	02 Community	
	03 CHR	
	04 Health Team	
	05 Tribal Staff	
	06 Dietary Staff	
	07 WIC Client	
	08 WIC Staff	
	09 Commodity Foods Client	
	10 Commodity Foods Staff	

NDPARS RECORD—Continued

Position	Field	Required
	11 Headstart/ Daycare Client	
	12 Headstart/ Daycare Staff	
	13 Elderly Nutrition Program Client	
	14 Elderly Nutrition Program Staff	
	15 Alcohol/Substance Abuse Program Staff	
	16 Alcohol/Substance Abuse Program Staff	
	17 Schools, Student	
	18 Schools, Staff	
	19 Government Agency Staff	
	98 No Recipient	
	99 Other	
	RECIPIENT AGE CODE:.	X
	1 Infant	
	2 Child	
	3 Adolescent	
	4 Adult	
	5 Elderly	
	6 All Ages	
	9 No Recipient Type	
	RECIPIENT TYPE CODE:.	X
	1 Individual	
	2 Group	
	9 No Recipient Type	
	DELIVERY SETTING CODE:.	X
	1 Hospital In-Patient	
	2 Clinic	
	3 Home	
	4 Community	
	5 Hospital Dietary Department	
	6 Public Health Nutrition Department	
	7 Administrative	
	9 Other	
	NUMBER REACHED:.	X
	Record actual number of people reached	
	Write NA if no personal contacts were involved	
	Record zero (0) for missed appointments and meetings where no one came	
	SERVICE TIME:	X
	Record actual time spent in the activity (in hours and minutes)	

O. Clinical Laboratory Workload Reporting System

1. Reporting Requirement

a. The workload recording system for IHS laboratories is contracted with the College of American Pathologists (CAP) national computerized workload system. Raw data are required to be collected monthly by the individual lab. CAP or a similar workload reporting system is recommended for contractors.

b. Workload data and productivity rates are computed, comparisons with other labs are included, and the report is sent back to the individual lab. Summary reports are sent by CAP to IHS Headquarters. Summary workload reports on a quarterly basis are the only time requirement of IHS Headquarters.

c. The CAP Instruction Manual for Computer Assisted Workload Program describes the reporting system.

2. Record Formats

a. CAP forms are tailored for a specific lab, although the basic data element collected (shown in Figure O–1) are the same. Each portion of the lab completes its own form. If it is desired to electronically generate the CAP data, then CAP needs to be contacted for instructions.

b. A sample of the CAP form is included in Appendix A.

3. Transmission Media

Data is to be sent either by mail or electronic communication to the CAP computer center.

CLINICAL LABORATORY WORKLOAD REPORTING SYSTEM

Data elements	Required for cap
1. Name of Lab	X
2. Month/Year	X
3. Procedure Name	X
4. CAP Code No.	X
5. Unit Value Per Procedure	X
6. Lab Section	X
7. Procedure Designation—IP/OP/QCSTD/REP.	X
8. Number of Procedures	X

From the above we get: Total Unit Value, Worked Productivity, Paid Productivity, Comparisons with other labs.

How we use it: For Determining Staffing, Scheduling, Space, Instrument and Equipment Requirements.

P. Urban Indian Health Common Reporting

1. Reporting Requirement

a. Urban Indian Projects are required to collect and report information from patient records as well as administrative and financial records. There is a facesheet (which must be included each time any table is submitted) and a series of 8 tables which need to be submitted on a semi-annual or annual basis. Some portions of the tables do not apply to some urban Indian health programs. The tables must be submitted by all organizations directly receiving Federal funds under title V of the 1976 Indian Health Care Improvement Act, Public Law 94–437 as amended.

b. The Urban Indian Health Programs Instruction Manual for Common Reporting Requirements provides complete definitions and procedures for reporting. Organizations must report on their entire health program activity even though it may be supported only in part by the IHS grant(s) or contract(s).

c. The semi-annual reporting period ends 26 weeks after the start of the fiscal year (FY) and the annual reporting period ends the last day of the FY. The reports are due into the IHS Area Offices 4 weeks after the end of the reporting period. IHS Area Officers review and send reports to the IHS Headquarters Office 5 weeks after the end of the reporting period. The IHS Office reviews and sends reports to the contractors for data entry and to the technical assistance contractor 6 weeks after the end of the reporting period.

2. Record Formats

a. A description of the facesheet and the 8 tables follows.

(1) Face sheet. Identifies the project, location, project director, etc.

(2) Table 1. Identifies the user population by age and sex.

(3) Table 2. Identifies the user population by type of provider and by Indian versus non-Indian status.

(4) Table 3. Collects information by health occupational group—also called functional cost center (number of full-time equivalent staff and number of encounters).

(5) Table 4. Provides hospital inpatient admissions and hospital inpatient encounters by type of service provider.

(6) Table 5. Provides information on the adherence to established treatment goals for the provision of follow-up activities (pap smear, hypertension, and diabetes), immunizations appropriate for age, family planning counseling, and anemia screening.

(7) Table 6. Provides financial information by various health care functions.

(8) Table 7. Provides financial information on monies the urban project receives from non-IHS sources.

(9) Table 8. Provides information on total receipts from all sources and total expenditures for each project.

b. Copies of the face sheet and the 8 tables are included in Appendix A.

3. Transmission Media

a. The face sheet and tables are to be submitted in hardcopy format. Two (2) copies are to be submitted to the appropriate Project Officer or IHS Area Urban Coordinator.

Q. Fluoridation Reporting Data System

1. Reporting Requirements

a. Fluoride ion analysis records and fluoridator maintenance and repair records for community water systems will be maintained and submitted for centralized processing as described in the IHS Fluoridation Policy Issuance dated August 1981, and any subsequent updates. Each water system must be identified by its assigned EPA/Sanitary Facility Code and include the date of the activity. The general surveillance procedures are described in Table Q–1.

b. In most cases, local programs will report the required data on a weekly or monthly basis using any of several options:

(1) Submission of completed data forms directly to the IHS Area Office or IHS key entry contractor, or

(2) Submission of formatted records from data entered into local RPMS database, or

(3) Submission of formatted records from a local non-RPMS database.

The frequency schedule for submission of each type of fluoridation tracking data is shown on Table Q–2.

If the required data for water systems are maintained in an Area database, the data must be submitted for central processing to the IHS Division of Data Processing Services by the last day of each month.

2. Record Formats

a. The basic data elements for community fluoridation reporting are shown at the end of this section.

b. The keytape record format specifications for fluoride ion test results is shown at the end of this section (formatted records can be extracted from existing RPMS software).

c. An example of the standard input form for reporting the results of fluoride ion analysis is shown in Appendix A. The use of this form is not required, but is highly recommended when data are not keyed into a computer locally.

The form for adding or deleting water systems for data reporting purposes is shown in Appendix A. Use of this form is *required* when the status of a water system is to be changed.

Table Q–1: Fluoridation Surveillance Procedures

1. Control Limits for Fluoridated Water Systems

The fluoride level in fluoridated water systems should be maintained as close to the recommended concentration as possible, and in no case above or below the ranges noted below.

Annual average of maximum daily air temperatures (OF)	Recommended fluoride concentrations		Allowable range of fluoride concentrations	
	Community (ppm)	School (ppm)	Community (ppm)	School (ppm)
50.0–53.7	1.2	5.4	1.1–1.7	4.3–6.5
53.8–58.3	1.1	5.0	1.0–1.6	4.0–6.0
58.4–63.8	1.0	4.5	0.9–1.5	3.6–5.4
63.9–70.6	0.9	4.1	0.8–1.4	3.3–4.9
70.7–79.2	0.8	3.6	0.7–1.3	2.9–4.3
79.3–90.5	0.7	3.2	0.6–1.2	1.6–3.8

2. Sample Collection and Analysis

a. Samples for analysis should be obtained from a convenient tap on a main line of water system that is representative of the water throughout the system. In some systems with multiple sources, more than one sample may be required.

b. Samples for fluoridation analysis should be collected and analyzed as follows:

- Weekly intervals w/split sample every fourth week.
- Anytime equipment failure or malfunction is suspected.
- Immediately following repair of equipment.

c. All fluoride monitoring instruments should have their measurement results verified by split sampling of the last sample collected each month. The split sample should be analyzed at a recognized laboratory, preferably an EPA or State approved facility.

3. Reporting

a. Analytical Results: Analytical results of all samples for each water system should be recorded on the Fluoride Analysis Report Form (HSA–T) and submitted to the address indicated on the form for data processing. Normally, this should be done by the system operator.

Table Q–2: Recommended Frequency Schedule for Submitting Fluoridation Data

Submission of Forms

The following tabulation indicates the forms and submission schedules that are required in order to develop meaningful data reports:

Input form	Frequency of input	Reports generated	Frequency of reports	Prime responsibility for inputting form
Sanitary Facility Data System Form Parts A & B.	Annually (data as of Oct. 1).	Sanitation Facility Data System Summary by Area/SU and replica of data input form.	Annually and upon request.	Area OEH designee.
Fluoride Analysis Report Form	At least weekly is recommended.	Fluoride Analysis Report	Monthly	Person doing fluoride concentration analysis.
Fluoride System Add/Delete Form	As Fluoridators are added to or deleted from community water system.	No specific report—system will be added/deleted from the Fluoride Analysis Report or M&R Report as appropriate.	N/A	Area OEH Fluoridation coordinator.

COMMUNITY WATER FLUORIDATION REPORTING

[Fluoride Test Results]

Data element	Required
Sanitary facility code	X
Person conducting test	X
Fluoride test instrument	X
Fluoride test result	X

FLUORIDE TEST RESULTS RECORD LAYOUT:

DENTAL FLUORIDE RECORD FORMATS

RECORD: DENTAL FLUORIDE SURVEILLANCE KEYTAPE TRANSACTION

RECORD LENGTH: 128
RECORD FORM: FIX-BLK
BLKSIZE: 2560
BLKFACT: 20
OUTPUT SOURCE: FROM KEYTAPEING
MEDIA: MAGTAPE
INTERNAL NAME: N/A
DATA SET NAME: UNLABLED
INPUT SOURCE: TO MRSDENQO
MEDIA: MAGTAPE
INTERNAL NAME: MRSTAPE
DATA SET NAME: UNLABLED

Position	Leng	Field name	Contents
1–2	2	RECORD CODE	"21".
3	1		BLANK.
4–9	6	REPORT DATE	DATE SAMPLES TAKEN—MMDDYY.
10	1	INSTRUMENT USED #1	"C", "I", "S", "T" OR "X".
11–17	7	EPA SANITARY FACILITY CODE #1	VALID EPA–SFC (SYSTEM) CODE.
18–20	3	TEST RESULTS IN PPM #1	NUMERIC WITH 1 ASSUMED DECIMAL.
21	1	INSTRUMENT USED #2	"C", "I", "S", "T" OR "X".
22–28	7	EPA SANITARY FACILITY CODE #2	VALID EPA–SFC (SYSTEM) CODE.
29–31	3	TEST RESULTS IN PPM #2	NUMERIC WITH 1 ASSUMED DECIMAL.
32	1	INSTRUMENT USED #3	"C", "I", "S", "T" OR "X".
33–39	7	EPA SANITARY FACILITY CODE #3	VALID EPA–SFC (SYSTEM) CODE.
40–42	3	TEST RESULTS IN PPM #3	NUMERIC WITH 1 ASSUMED DECIMAL.
43	1	INSTRUMENT USED #4	"C", "I", "S", "T" OR "X".
44–50	7	EPA SANITARY FACILITY CODE #4	VALID EPA–SFC (SYSTEM) CODE.
51–53	3	TEST RESULTS IN PPM #4	NUMERIC WITH 1 ASSUMED DECIMAL.
54	1	INSTRUMENT USED #5	"C", "I", "S", "T" OR "X".
55–61	7	EPA SANITARY FACILITY CODE #5	VALID EPA–SFC (SYSTEM) CODE.
62–64	3	TEST RESULTS IN PPM #5	NUMERIC WITH 1 ASSUMED DECIMAL.
65	1	INSTRUMENT USED #6	"C", "I", "S", "T" OR "X".
66–72	7	EPA SANITARY FACILITY CODE #6	VALID EPA–SFC (SYSTEM) CODE.
73–75	3	TEST RESULTS IN PPM #6	NUMERIC WITH 1 ASSUMED DECIMAL.
76	1	INSTRUMENT USED #7	"C", "I", "S", "T" OR "X".
77–83	7	EPA SANITARY FACILITY CODE #7	VALID EPA–SFC (SYSTEM) CODE.
84–86	3	TEST RESULTS IN PPM #7	NUMERIC WITH 1 ASSUMED DECIMAL.
87	1	INSTRUMENT USED #8	"C", "I", "S", "T" OR "X".
88–94	7	EPA SANITARY FACILITY CODE #8	VALID EPA–SFC (SYSTEM) CODE.
95–97	3	TEST RESULTS IN PPM #8	NUMERIC WITH 1 ASSUMED DECIMAL.
98	1	INSTRUMENT USED #9	"C", "I", "S", "T" OR "X".
99–105	7	EPA SANITARY FACILITY CODE #9	VALID EPA–SFC (SYSTEM) CODE.
106–108	3	TEST RESULTS IN PPM #9	NUMERIC WITH 1 ASSUMED DECIMAL.
109	1	INSTRUMENT USED #10	"C", "I", "S", "T" OR "X".
110–116	7	EPA SANITARY FACILITY CODE #10	VALID EPA–SFC (SYSTEM) CODE.
117–119	3	TEST RESULTS IN PPM #10	NUMERIC WITH 1 ASSUMED DECIMAL.
120–128	9	ANALYST I.D.	ALPHA NUMERIC.

Dated: March 12, 1993.

Michel E. Lincoln,

Acting Director.

[FR Doc. 94–1082 Filed 1–19–93; 8:45 am]

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federal register

Thursday
January 20, 1994

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing–Federal Housing Commissioner

NOFA for Federally Assisted Low Income Housing Drug Elimination Grants—FY–1994; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing–Federal Housing Commissioner

[Docket No. N–94–3696; FR–3576–N–01]

NOFA for Federally Assisted Low Income Housing Drug Elimination Grants—FY–1994

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of Funding Availability (NOFA) for Fiscal Year (FY) 1994.

SUMMARY: This NOFA announces HUD's FY 1994 funding of $12,306,000 for Federally Assisted Low Income Housing Drug Elimination Grants.

(**Note:** This NOFA does not apply to the funding available under the statute for Public and Indian Housing.)

In the body of this document is information concerning the purpose of the NOFA, applicant eligibility, available amounts, selection criteria, financial requirements, management, and application processing, including how to apply, how selections will be made, and how applicants will be notified of results.

DATES: No applications will be accepted after 4 p.m. (local time) by the HUD Regional Office on March 7, 1994. This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. A "FAX" will not constitute delivery.

ADDRESSES: *(a) Application Form.* An application form may be obtained from the HUD Regional Office having jurisdiction over the location of the applicant project. The Regional Office will be available to provide technical assistance on the preparation of applications during the application period.

(b) Application Submission. Applications (original and one copy) must be received by the deadline at the appropriate HUD Regional Office with jurisdiction over the applicant project, Attention: Director of Housing Management. It is not sufficient for the application to bear a postage date within the submission time period. Applications submitted by facsimile are not acceptable. Applications received after the deadline will not be considered.

FOR FURTHER INFORMATION CONTACT: For application material and project-specific guidance, please contact the Office of the Director of Housing in the HUD Regional Office having jurisdiction over the project(s) in question. These are listed as follows:

Region I, Boston, Kenneth Salk (617) 565–5101.
Region II, New York, Edwin Sprenger, (212) 264–4771.
Region III, Philadelphia, Sidney Severe, (215) 597–2645.
Region IV, Atlanta, Kenneth Williams, (404) 331–4127.
Region V, Chicago, Michael Kulick, (312) 353–6950.
Region VI, Fort Worth, Robert Creech, (817) 885–5531.
Region VII, Gary Hayes, (913) 236–3812.
Region VIII, Denver, Ronald Bailey, (303) 844–4959.
Region IX, San Francisco, Keith Axtell, (415) 556–0796.
Region X, Seattle, Diana Goodwin Shavey, (206) 553–4373.

Policy questions of a general nature may be referred to Lessley Wiles, Office of Multifamily Housing Management, Department of Housing and Urban Development, room 6166, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 708–0216. TDD number (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this final rule have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control number 2502–0476.

I. Purpose and Substantive Description

(a) Authority

These grants are authorized under Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 *et seq.*), as amended by Section 581 of the National Affordable Housing Act of 1990 (NAHA), approved November 28, 1990, Pub. L. 101–625, and Section 161 of the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102–550, approved October 28, 1992).

(b) Allocation Amounts

(1) *Federal fiscal year 1994 funding.* The amount available for funding under this NOFA is $12,306,000. Section 581 of NAHA expanded the Drug Elimination Program to include federally assisted, low-income housing. The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1994, (approved October 28, 1993, Pub. L. 103–124), (94 App. Act) appropriated $265 million for the Drug Elimination Program and made not more than $13,250,000 of the total Drug Elimination Program appropriation available for federally assisted, low-income housing. Of the total $265 million appropriated, $233,814,000 will fund the Public and Indian Housing Drug Elimination Program; $13,250,000 will fund the Youth Sports Program; $5 million will fund drug elimination technical assistance and training; and $630,000 will fund drug information clearinghouse services. The remaining $12,306,000 is being made available under this NOFA.

HUD is distributing grant funds under this NOFA to each of its 10 Regional Offices on the basis of a formula allocation. This formula allocation is based upon the relationship of the number of eligible federally assisted low-income housing units per Region and the level of drug-related crime within each Region, based on statistics compiled by the U.S. Department of Justice, Federal Bureau of Investigation ("Uniform Crime Reports for Drug Abuse Violations—1990").

(2) *Maximum grant award amounts.* The maximum grant award amount is limited to $175,000 per project.

(3) *Reallocation.* Any grant funds under this NOFA that are allocated to a Region, but that are not reserved for grantees, must be released to HUD Headquarters for reallocation. HUD reserves the right to fund portions of full applications. If the Regional Office determines that an application cannot be partially funded and there are insufficient funds to fund the application fully, any remaining funds after all other applications have been selected will be released to HUD Headquarters for reallocation. Amounts that may become available due to deobligation will also be reallocated to Headquarters.

All reallocated funds will be awarded on a nationwide basis in the following manner: HUD Regional Offices will submit to Headquarters the applications that would have been funded had there been sufficient funds in the Regional allocation to do so. Headquarters will select applications from those submitted by the Regional Offices, using the ranking factors identified in section I.(d), below, of this NOFA, and make

awards from any available reallocated funds.

(4) *Reduction of requested grant amounts.* HUD may award an amount less than requested where:

(i) HUD determines the amount requested for an eligible activity is unreasonable;

(ii) Insufficient amounts remain under the allocation to fund the full amount requested by the applicant and HUD determines that partial funding is a viable option;

(iii) HUD determines that some elements of the proposed plan are suitable for funding and others are not; or

(iv) For any other reason where good cause exists.

(5) *Distribution of funds.* HUD is distributing grant funds under this NOFA to its 10 Regional Offices, in accordance with the following schedule:

HUD region	Allocation
Region I	$627,600
Region II	$922,900
Region III	$1,501,300
Region IV	$2,498,100
Region V	$3,002,600
Region VI	$1,218,200
Region VII	$590,600
Region VIII	$295,300
Region IX	$1,427,900
Region X	$221,500
Total	$12,306,000

(c) Eligibility

Following is a listing of eligible activities, ineligible activities, eligible applicants, and general grant requirements under this NOFA:

(1) *Eligible activities.* Please note that the maximum term of the grant is 12 months.

It is the goal and intent of the Federally Assisted Low-Income Housing Drug Elimination Grant Program to foster a sense of community in dealing with the issues of drug-related criminal activity. Programs which foster interrelationships between the tenants, the housing owner and management, the local law enforcement agencies, and other community groups impacting on the housing are greatly desired and encouraged. Tenant participation in the determination of programs and activities to be undertaken is critical to the success of all aspects of the program. Working jointly with community groups, the neighborhood law enforcement precinct, tenants of adjacent properties and the community as a whole can enhance and magnify the effect of specific program activities and should be the goal of all applicants.

(i) Physical improvements to enhance security. Physical improvements that are specifically designed to enhance security are eligible for funding under this program. The improvements may include (but are not limited to) systems designed to limit building access to project residents, the installation of barriers, lighting systems, fences, bolts, locks; the landscaping or reconfiguration of common areas to discourage drug-related crime; and other physical improvements designed to enhance security and discourage drug-related activities. In particular, the Department is seeking plans that provide successful, proven and cost effective drug crime deterrents designed to address the realities of low-income assisted housing environments. All physical improvements must also be accessible to persons with disabilities. For example, some types of locks, buzzer systems, etc., are not accessible to persons with limited strength, mobility, or to persons who are hearing impaired. All physical improvements must meet the accessibility requirements of 24 CFR part 8.

(ii) Programs to reduce the use of drugs. Programs designed to reduce the use of drugs in and around federally-assisted low-income housing projects including drug-abuse prevention, intervention, referral, and treatment programs are eligible for funding under this program. The program should facilitate drug prevention, intervention and treatment efforts, to include outreach to community resources and youth activities, and facilitate bringing these resources onto the premises, or provide resident referrals to treatment programs or transportation to out-patient treatment programs away from the premises. Funding is permitted for reasonable, necessary and justified leasing of vehicles for resident youth and adult education and training activities directly related to "Programs to reduce the use of drugs" under this section. Alcohol-related activities/programs are not eligible for funding under this NOFA.

(A) Drug Prevention. Drug prevention programs that will be considered for funding under this NOFA must provide a comprehensive drug prevention approach for residents that will address the individual resident and his or her relationship to family, peers, and the community. Prevention programs must include activities designed to identify and change the factors present in federally assisted low-income housing that lead to drug-related problems, and thereby lower the risk of drug usage. Many components of a comprehensive approach, such as refusal and restraint skills training programs or drug-related family counseling, may already be available in the community of the applicant's housing projects, and the applicant must act to bring those available program components onto the premises. Activities that should be included in these programs are:

(*1*) Drug Education Opportunities for residents. The causes and effects of illegal drug usage must be discussed in a formal setting to provide both young people and adults the working knowledge and skills they need to make informed decisions to confront the potential and immediate dangers of illegal drugs. Grantees may contract (in accordance with 24 CFR part 85.36) with drug education professionals to provide appropriate training or workshops. The drug education professionals contracted to provide these services shall be required to base their services upon the program plan of the grantee. These educational opportunities may be a part of resident meetings, youth activities, or other gatherings of residents.

(*2*) Family and Other Support Services. Drug prevention programs must demonstrate that they will provide directly or otherwise make available services designed to distribute drug education information, to foster effective parenting skills, and to provide referrals for treatment and other available support services in the project or the community for federally-assisted low-income housing families.

(*3*) Youth Services. Drug prevention programs must demonstrate that they have included groups composed of young people as a part of their prevention programs. These groups must be coordinated by adults with the active participation of youth to organize youth leadership, sports, recreational, cultural and other activities involving housing youth. The dissemination of drug education information, the development of peer leadership skills and other drug prevention activities must be a component of youth services. Activities or services funded under this program may not also be funded under the Youth Sports Program.

(*4*) Economic/Educational Opportunities for residents and youth. Drug prevention programs should demonstrate a capacity to provide residents the opportunity for referral to established higher education or vocational institutions with the goal of developing or building on the residents' skills to pursue educational, vocational and economic goals. The program must also demonstrate the ability to provide residents the opportunity to interact with private sector businesses in their immediate community for the same desired goals.

(B) Intervention. The aim of intervention is to identify federally-assisted low-income housing resident drug users and assist them in modifying their behavior and in obtaining early treatment, if necessary. The applicant must establish a program with the goal of preventing drug problems from continuing once detected.

(C) Drug Treatment.

(*1*) Treatment funded under this program shall be in or around the premises of the federally-assisted low-income housing projects proposed for funding.

(*2*) Funds awarded under this program shall be targeted towards the development and implementation of new drug referral treatment services and/or aftercare, or the improvement of, or expansion of such program services for residents.

(*3*) Each proposed drug treatment program should address the following goals:

(*i*) Increase resident accessibility to drug treatment services;

(*ii*) Decrease criminal activity in and around federally-assisted low-income housing projects by reducing illicit drug use among residents; and

(*iii*) Provide services designed for youth and/or maternal drug abusers, e.g., prenatal/postpartum care, specialized counseling in women's issues, parenting classes, or other drug supportive services.

(*4*) Approaches that have proven effective with similar populations will be considered for funding. Programs should meet the following criteria:

(*i*) Applicants may provide the service of formal referral arrangements to other treatment programs not in or around the project when the resident is able to obtain treatment costs from sources other than this program. Applicants may also provide transportation for residents to out-patient treatment and/or support programs.

(*ii*) Provide family/collateral counseling.

(*iii*) Provide linkages to educational/vocational counseling.

(*iv*) Provide coordination of services to appropriate local drug agencies, HIV-related service agencies, and mental health and public health programs.

(*v*) Applicants must demonstrate a working partnership with the Single State Agency or State license provider or authority with drug program coordination responsibilities to coordinate, develop and implement the drug treatment proposal. In particular, applicants must review and determine with the Single State Agency or State license provider or authority with drug program coordination responsibilities whether:

(*A*) The drug treatment provider(s) has provided drug treatment services to similar populations, identified in the application, for two prior years; and

(*B*) The drug treatment proposal is consistent with the State treatment plan and the treatment service meets all State licensing requirements.

(*vi*) Funding is not permitted for treatment of residents at any in-patient medical treatment programs/facilities.

(*vii*) Funding is not permitted for detoxification procedures, short term or long term, designed to reduce or eliminate the presence of toxic substances in the body tissues of a patient.

(*viii*) Funding is not permitted for maintenance drug programs. Maintenance drugs are medications that are prescribed regularly for a long period of supportive therapy (e.g. methadone maintenance), rather than for immediate control of a disorder.

(iii) *Resident Councils (RCs).* Providing funding to resident councils to strengthen their role in developing programs of eligible activities involving site residents is eligible for funding under this program.

(2) *Ineligible activities.* Funding is not permitted for any activities listed below:

(i) Any activity or improvement that is normally funded from project operating revenues for routine maintenance or repairs, or those activities or improvements that may be funded through reasonable and affordable rent increases;

(ii) The acquisition of real property or physical improvements that involve the demolition of any units in the project or displacement of tenants.

(iii) Costs incurred prior to the effective date of the grant agreement, including, but not limited to, consultant fees for surveys related to the application or its preparation;

(iv) Reimbursement of local law enforcement agencies for additional security and protective services;

(v) The employment of one or more individuals—

(A) to investigate drug-related crime on or about the real property comprising any federally-assisted low-income project; and

(B) to provide evidence relating to such crime in any administrative or judicial proceeding; and

(vi) The provision of training, communications equipment and other related equipment for use by voluntary tenant patrols acting in cooperation with local law enforcement officials.

(3) *Eligible Applicants.* The applicant must be the owner of a federally assisted low-income housing project under:

(i) Section 221(d)(3), section 221(d)(4) or 236 of the National Housing Act. (Note however, section 221(d)(4) and section 221(d)(3) market rate projects without project-based assistance contracts are not considered federally assisted low-income housing. Therefore, section 221(d)(4) and section 221(d)(3) market rate projects with tenant-based assistance contracts are not considered federally assisted low-income housing and are not eligible for funding.)

(ii) Section 101 of the Housing and Urban Development Act of 1965, or

(iii) Section 8 of the United States Housing Act of 1937.

(4) *General Grant Requirements.* The following requirements apply to all activities, programs, or functions used to plan, budget and evaluate the work funded under this program.

(i) After applications have been ranked and selected, HUD and the applicant shall enter into a grant agreement setting forth the amount of the grant, the physical improvements or other eligible activities to be undertaken, financial controls, and special conditions, including sanctions for violation of the agreement.

(ii) The policies, guidelines and requirements of this NOFA, 48 CFR part 31, other applicable OMB cost principles, HUD program regulations, HUD Handbooks, and the terms of grant/special conditions and subgrant agreements apply to the acceptance and use of assistance by grantees and will be followed in determining the reasonableness and allocability of costs. All costs must be reasonable and necessary.

(iii) The term of funded activities may not exceed 12 months.

(iv) Owners must ensure that any funds received under this program are not commingled with other HUD or project operating funds.

(v) To avoid duplicate funding owners must establish controls to assure that any funds from other sources, such as Reserve for Replacement, Rent Increases, etc., are not used to fund the physical improvements to be undertaken under this program.

(vi) Employment preference. A grantee under this program shall give preference to the employment of residents, and comply with section 3 of the Housing and Urban Development Act of 1968 and 24 CFR Part 135, to carry out any of the eligible activities under this part, so long as such residents have comparable qualifications and training as non-housing resident applicants.

(vii) Termination of funding. HUD may terminate funding if the grantee fails to undertake the approved program

activities on a timely basis in accordance with the grant agreement; adhere to grant agreement requirements or special conditions; or submit timely and accurate reports.

(viii) Subgrants (subcontracting).

(A) A grantee may directly undertake any of the eligible activities under this NOFA or it may contract with a qualified third party, including incorporated Resident Councils (RCs). Resident groups that are not incorporated RCs may share with the grantee in the implementation of the program, but may not receive funds as subgrantees.

(B) Subgrants or cash contributions to incorporated RCs may be made only under a written agreement executed between the grantee and the RC. The agreement must include a program budget that is acceptable to the grantee, and that is otherwise consistent with the grant application budget. The agreement must obligate the incorporated RC to permit the grantee to inspect and audit the RC financial records related to the agreement, and to account to the grantee on the use of grant funds, and on the implementation of program activities. In addition, the agreement must describe the nature of the activities to be undertaken by the subgrantee, and the scope of the subgrantee's authority; and the amount of insurance to be obtained by the grantee and the subgrantee to protect their respective interests.

(C) The grantee shall be responsible for monitoring, and for providing technical assistance to, any subgrantee to ensure compliance with HUD program requirements, including OMB Circular Nos. A–110 and A–122, which apply to the acceptance and use of assistance by private nonprofit organizations. The procurement requirements of Attachment O of Circular A–110 apply to RCs. The grantee must also ensure that subgrantees have appropriate insurance liability coverage.

(d) Selection Criteria and Ranking Factors

HUD will review each application to determine that it meets the requirements of this NOFA and to assign points in accordance with the selection criteria. A total of 200 points is the maximum score available under the selection criteria. An application must receive a score of at least 131 points out of the maximum of 200 points that may be awarded under this competition to be eligible for funding. After assigning points to each application, HUD will rank the applications in order by Region. HUD will select the highest ranking applications whose eligible activities can be fully funded within each Region. Grants under this program are categorically excluded from review under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321). However, prior to the award of grant funds under the program, HUD will perform an environmental review to the extent required under the provisions of 24 CFR 50.4. Each application submitted will be evaluated on the basis of the following selection criteria:

(1) *The quality of the plan to address the problem (maximum points: 70).*

In assessing this criterion, HUD will consider the following factors:

(i) The quality of the applicant's plan to address the drug-related crime problem, and the problems associated with drug-related crime, in the projects proposed for funding, and how well the activities proposed for funding fit in with the plan. (points: 20)

(ii) The anticipated effectiveness of the plan and the proposed activities in reducing or eliminating drug related crime problems over an extended period. (points: 20)

(iii) How the activities identified in the plan will affect and address the problem of drug related crime in adjacent properties. (points: 20)

(iii) Evidence that the proposed activities have been found successful in similar circumstances in terms of controlling drug-related crime. (points: 10)

(2) *The support of local government/ law enforcement agencies. (Maximum Points: 20).*

In assessing this criterion, HUD will consider the following factors:

(i) Evidence that the project owner has sought assistance in deterring drug-related crime problems and the extent to which the owner has participated in programs that are available from local governments or law enforcement agencies; (points: 10) and

(ii) The level of support by the local government or law enforcement agency for the applicant's proposed activities. (points: 10)

(3) *The extent of the drug-related crime problem in the housing project proposed for assistance (maximum points: 70).*

In assessing this criterion, HUD will consider the degree of severity of the drug-related crime problem in the project proposed for funding, as demonstrated by the information required to be submitted under section III.(h) of this NOFA.

(4) *The support of residents in planning and implementing the proposed activities (maximum points: 20).*

In assessing this criterion, HUD will consider the following factors:

(i) Evidence that comments and suggestions have been sought from residents to the proposed plan for this program and evidence that the owner carefully considered the comments of residents and incorporated their suggestions in the plan, when practical. (points: 10)

(ii) Evidence of resident support for the proposed plan. (points: 10)

(5) *Capacity of owner and management to undertake the proposed activities: (maximum points: 20).*

In assessing this criterion, HUD will consider the following:

(i) The most recent Management Review completed by the HUD Office.

(Note: The HUD Field Office will conduct another management review after application submission if the most recent management review is more than nine months old). (points: 10)

(ii) Submission of evidence that project owners have initiated other efforts to reduce drug-related crime by working with tenant/law enforcement groups (e.g. establishment of "Tenant Watches" or similar efforts). (points: 5)

(iii) Submission of evidence that project management carefully screens applicants for units and takes appropriate steps to deal with known or suspected tenants exhibiting drug-related criminal behavior. (points: 5)

II. Application Process

(a) Application Form

An application form may be obtained from the HUD Field Office having jurisdiction over the location of the applicant project. The Field Office will be available to provide technical assistance on the preparation of applications during the application period.

(b) Application Submission

A separate application must be submitted for each project. An application (original and one copy) must be received by the deadline at the appropriate HUD Regional Office with jurisdiction over the applicant project, Attention: Director of Housing. It is not sufficient for the application to bear a postage date within the submission time period. Applications submitted by facsimile ("FAX") are not acceptable and will not be considered. Applications received after the deadline will not be considered. No applications will be accepted after 4 p.m. (local time) for the Regional Office on March 7, 1994. This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the

Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

(c) Application Notification

HUD will notify all applicants whether or not they were selected for funding.

III. Checklist of Application Submission Requirements

To qualify for a grant under this program, an applicant must submit an application to HUD that contains the following:

(a) Application for Federal Assistance form (Standard Form SF–424 and SF–424A). The form must be signed by the applicant.

(b) A description of the applicant's plan for addressing the problem of drug related crime in the projects for which funding is sought, which should include the activities to be funded under this program along with all other initiatives being undertaken by the applicant. The description should also include a discussion of:

(1) The anticipated effectiveness of the plan and the proposed activities in reducing or eliminating drug related crime problems over an extended period.

(2) How the activities identified in the plan will affect and address the problem of drug related crime in adjacent properties.

(3) Other efforts that project owners have initiated to reduce drug-related crime by working with tenant/law enforcement groups (e.g. establishment of "Tenant Watches" or similar efforts).

(4) Procedures that project management uses to screen applicants for units and steps taken to deal with known or suspected tenants exhibiting drug-related criminal behavior.

(c) Each applicant for funding for physical improvements must submit a written plan fully describing the physical improvements to be undertaken with per unit dollar costs for each item. This plan must be signed by the owner.

(d) Each applicant must submit a letter from the local government or police (law enforcement) agency that describes the type of drug-related crime in the project proposed for grant funding and its immediate environs, and expresses a commitment to assist the owner in taking steps to reduce or eliminate the drug-related crime problems of the project.

(e) A description of the procedure used to involve residents in the development of the plan and written summaries of any comments and suggestions received from residents on the proposed plan, along with evidence that the owner carefully considered the comments of residents and incorporated their suggestions in the plan, when practical.

(f) A description of the support of residents for the proposed activities and their willingness to assist the owner in implementing the plan. Letters of support from tenants may be used.

(g) A copy of the most recent management review performed by HUD and evidence supporting the capacity of the owner and management to undertake the proposed activities.

(h) Detailed information, such as local government and police reports, evidencing the degree of drug-related crime in the project and adjacent properties to demonstrate the degree of severity of the drug-related crime problem. This information may consist of:

(1) Objective data. The best available objective data on the nature, source, and extent of the problem of drug-related crime, and the problems associated with drug-related crime. These data may include (but not necessarily be limited to) crime statistics from Federal, State, tribal or local law enforcement agencies, or information from the applicant's records on the types and sources of drug-related crime in the project proposed for assistance; descriptive data as to the types of offenders committing drug-related crime in the applicant's project (e.g., age, residence, etc.); the number of lease terminations or evictions for drug-related criminal activity; the number of emergency room admissions for drug use or drug-related crime; the number of police calls for drug-related criminal activity; the number of residents placed in treatment for substance abuse; and the school drop-out rate and level of absenteeism for youth. If crime statistics are not available at the project or precinct level, the applicant may use other reliable, objective data including those derived from the owner's records or those of private groups that collect such data. The crime statistics should be reported both in real numbers, and as a percentage of the residents in each project (e.g., 20 arrests for distribution of heroin in a project with 100 residents reflects a 20% occurrence rate). The data should cover the past three-year period and, to the extent feasible, should indicate whether these data reflect a percentage increase or decrease in drug-related crime over the past several years. Applicants must address in their assessment how these crimes have affected the project, and how the applicant's overall plan and strategy is specifically tailored to address these drug-related crime problems.

(2) Other data on the extent of drug-related crime. To the extent that objective data as described under paragraph (1)(i) of this section may not be available, or to complement that data, the assessment may use relevant information from other sources that have a direct bearing on drug-related crime problems in the project proposed for assistance. However, if other relevant information is to be used in place of, rather than to complement, objective data, the application must indicate the reason(s) why objective data could not be obtained and what efforts were made to obtain it. Examples of other data include: Resident/staff surveys on drug-related issues or on-site reviews to determine drug activity; the use of local government or scholarly studies or other research conducted in the past year that analyze drug activity in the targeted project; vandalism costs and related vacancies attributable to drug-related crime; information from schools, health service providers, residents and police; and the opinions and observations of individuals having direct knowledge of drug-related crime problems concerning the nature and extent of those problems in the project proposed for assistance. (These individuals may include law enforcement officials, resident or community leaders, school officials, community medical officials, drug treatment or counseling professionals, or other social service providers.)

(i) If applying for drug treatment program funding, a certification that the applicant has notified and consulted with the relevant Single State Agency or other local authority with drug program coordination responsibilities concerning its application; and that the proposed drug treatment program has been reviewed by the relevant Single State Agency or other local authority and that it is consistent with the State treatment plan; and that the relevant Single State Agency or other local authority has determined that the drug treatment provider(s) has provided drug treatment services to similar populations, identified in the application, for two prior years.

(j) Drug-free workplace. The certification with regard to the drug-free workplace required by 24 CFR part 24, subpart F and appendix C.

(k) Disclosure of Lobbying Activities. If the amount applied for is greater than $100,000, the certification with regard to lobbying required by 24 CFR part 87 must be included. See section VI.(g), below, of this NOFA. If the amount applied for is greater than $100,000 and the applicant has made or has agreed to make any payment using nonappropriated funds for lobbying activity, as described in 24 CFR part 87, the submission must also include the Disclosure of Lobbying Activities Form (SF–LLL).

(l) Form HUD–2880, Applicant/Recipient Disclosure/Update Report.

IV. Corrections to Deficient Applications

HUD will notify the applicant within ten (10) working days of the receipt of the application if there are any curable technical deficiencies in the application. Curable technical deficiencies relate to minimum eligibility requirements (such as certifications, signatures, etc.) that are necessary for funding approval but that do not relate to the quality of the applicant's program proposal under the selection criteria. The owner must submit corrections in accordance with the information provided by HUD within 14 calendar days of the date of the HUD notification.

VI. Other Matters

(a) Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying from 7:30 to 5:30 weekdays in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

(b) Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the provisions of this NOFA do not have "federalism implications" within the meaning of the Order. The NOFA announces the availability of funds and provides the application requirements for federally Assisted Low Income Housing Drug Elimination Grants focusing on activities designed to deter drug-related crime. Deterring drug-related crime is a recognized goal of general benefit without direct implications on the relationship between the national government and the states or on the distribution of power and responsibilities among various levels of government.

(c) Family Impact

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that the policies announced in this Notice would not have a significant impact on the formation, maintenance, and general well-being of families except indirectly to the extent of the social and other benefits expected from this program of assistance.

(d) Section 102 HUD Reform Act Applicant/Recipient Disclosures

Accountability in the Provision of HUD Assistance

HUD has promulgated a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act). The final rule is codified at 24 CFR part 12. Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published at 57 FR 1942 additional information that gave the public (including applicants for, and recipients of, HUD assistance) further information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

Documentation and public access. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

(e) Section 103 HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4. Applicants who have general questions about what information may be discussed with them during the selection may contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.)

(f) Section 112 HUD Reform Act

Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

(g) Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (The "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance. Indian Housing Authorities (IHAs) established by an Indian tribe as a result of the exercise of their sovereign power are excluded from coverage, but IHAs established under State law are not excluded from coverage.

Authority: 42 U.S.C. 11901 et seq.

Dated: January 6, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 94–1309 Filed 1–19–94; 8:45 am]

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federal register

Thursday
January 1994

Part V

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 67
Preparation of a Roll of Independent Seminole Indians of Florida; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 67

RIN 1076–AC48

Preparation of a Roll of Independent Seminole Indians of Florida

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs (BIA) is adding a new part 67 to title 25 of the Code of Federal Regulations to provide procedures to govern the preparation, certification and approval of a descendancy roll of Independent Seminole Indians of Florida. The descendancy roll of Independent Seminole Indians of Florida will be used as the basis for compiling a list of persons eligible for a per capita distribution of a portion of the Seminole judgment funds.

EFFECTIVE DATE: January 20, 1994.

FOR FURTHER INFORMATION CONTACT: Bill D. Ott, Area Director, Bureau of Indian Affairs, Eastern Area Office, 3701 North Fairfax Drive, Mailstop 260, Virginia Square Plaza, Arlington, Virginia 22201, telephone number: (703) 235–3006.

SUPPLEMENTARY INFORMATION: This final rule is published in exercise of the authority delegated by the Secretary of the Interior (Secretary) to the Assistant Secretary-Indian Affairs in the Departmental Manual at 209 DM 8.

Section 7 of the Act of April 30, 1990, (Act) Public Law 101–277, 104 Stat. 143, which provides for the use and distribution of funds awarded the Seminole Indians in Dockets 73, 151, and 73–A of the Indian Claims Commission, directs the Secretary to compile a roll of certain individuals of Seminole Indian descent under regulations prescribed by the Secretary. To be eligible for enrollment, Seminole Indian descendants must have been living on April 30, 1990, must be listed on or be lineal descendants of persons listed on the annotated Florida Seminole Agency Census of 1957 as independent Seminoles, and must not be members of a federally-recognized tribe.

To establish eligibility for enrollment, the final rule requires persons to file or have filed on their behalf an application form with the Superintendent, Seminole Agency, Bureau of Indian Affairs, by the deadline specified in proposed § 67.4(b). The deadline is 150 days from the date of publication of the final rule in the **Federal Register**. An application filed more than 150 days after the date of publication of the final rule will be rejected for failure to file on time regardless of whether the applicant otherwise meets the qualifications for enrollment.

Section 7(d) of the Act provides that except for persons who apply for enrollment and are determined eligible and who apply for and accept a per capita share of the payment, "distribution of the award in accordance with this Act shall not be construed to impair, diminish or affect in any manner any rights and claims of the independent Seminole Indians, either as a group or individually, to any lands or natural resources in the State." Because acceptance of a per capita share of the judgment funds may impair, diminish or affect the claims of the Independent Seminole Indians to lands or natural resources in the State of Florida, the BIA has determined that individual applicants must be made aware of this before accepting a per capita share of the judgment funds.

The final rule provides for the applicant to make an election on the application form as to whether he or she wishes to share in the per capita payment. In other words, individuals will not only be applying to establish that they qualify for enrollment, but will also be electing whether they wish to receive a per capita payment of the judgment funds if they are determined to meet the qualifications for enrollment.

Because of the serious potential impact of such an election, the final rule restricts the making of the election to accept the per capita payment to adult applicants or to legal guardians of incompetent adults or, in the case of minors, such election is restricted to the parents or legal guardians. Therefore, those who fail to elect to share in the payment will not be eligible to share in the payment even though they have qualified for enrollment.

In most cases where the BIA is preparing a roll of Indians, general public notice and actual notice to potentially eligible individual beneficiaries is provided. Actual notice to potentially eligible individuals is possible because of the existence, in most cases, of a previously prepared roll or a tribal membership roll. In this instance, there exists no previously prepared or tribal membership roll because the Independent Seminole Indians of Florida have not been affiliated with any other group or tribe of Indians.

The census roll prepared in 1957 does not show addresses for the persons named on the roll. Even if there were addresses shown, after the elapse of more than 30 years, the addresses would be so out-of-date that it would be impractical to use them. Consequently, no general mailings of notices to potentially eligible beneficiaries is anticipated. Reasonable effort will be made to place notices for public display in community buildings, tribal buildings and Indian centers as well as publishing notices in newspapers in appropriate localities throughout the State of Florida. It is also anticipated that public meetings will be held in appropriate localities in the State of Florida to explain the provisions of the Act and the need to apply for enrollment by the deadline specified.

The information collection requirement contained in this final rule does not require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The Department of the Interior (Department) has determined that this is not a major rule under Executive Order (E.O.) 12291 because only a limited number of individuals will be affected. Those individuals who are enrolled will be eligible to participate in the distribution of a portion of a relatively small judgment award granted the Seminole Indians.

Comments and Changes

A proposed rule to add a new part 67 to title 25 of the CFR was published for public comment in the **Federal Register** on Wednesday, September 30, 1992, (57 FR 45252). Interested persons were invited to submit comments by October 30, 1992. The period for comment on proposed part 67 to title 25 of the CFR to provide procedures to govern the preparation, certification, and approval of a descendancy roll of Independent Seminole Indians of Florida, closed on October 30, 1992. No timely written comments were received.

The Department has certified to the Office of Management and Budget that these final regulations meet the applicable standards provided in sections 2(a) and 2(b) (2) of E.O. 12778.

The Department has determined that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

In accordance with E.O. 12630, the Department has determined that this rule does not have significant takings implications.

The Department has determined that this rule does not have significant federalism effects.

The Department has determined that this rule is not a major Federal action

significantly affecting the quality of the human environment and that neither an environmental assessment nor an environmental impact statement is required pursuant to the National Environmental Policy Act of 1969.

List of Subjects in 25 CFR Part 67

Indians—claims, Indians—enrollment.

For the reasons set out in the preamble, a new part 67 of title 25, chapter I of the Code of Federal Regulations is added as set forth below.

PART 67—PREPARATION OF A ROLL OF INDEPENDENT SEMINOLE INDIANS OF FLORIDA

Authority: 5 U.S.C. 301; 25 U.S.C. 2 and 9; and Pub.L. 101–277, 104 Stat. 143.

§ 67.1 Definitions.

As used in this part:

Act means the Act of Congress approved April 30, 1990, Public Law 101–277, 104 Stat. 143, which authorizes the use and distribution of funds awarded the Seminole Indians in Dockets 73, 151, and 73–A of the Indian Claims Commission.

Adopted person means a person whose natural parents' parental rights have been terminated by court order and persons other than the natural parents have exercised or do exercise parental rights with regard to the adopted person.

Applicant means a person who is making application for inclusion on the roll prepared by the Secretary pursuant to the Act of April 30, 1990, by either personally filing an application or by having a sponsor complete and file an application on his or her behalf.

Assistant Secretary means the Assistant Secretary for Indian Affairs or authorized representative.

BIA means the Bureau of Indian Affairs, Department of the Interior.

Commissioner means the Commissioner of Indian Affairs or authorized representative.

Director means the Area Director, Eastern Area Office, Bureau of Indian Affairs or authorized representative.

Lineal descendant(s) means those persons who are the issue of the ancestor through whom enrollment rights are claimed; namely, the children, grandchildren, etc. It does not include collateral relatives such as brothers, sisters, nieces, nephews, cousins, etc., or adopted children, adopted grandchildren, etc.

Living means born on or before and alive on the date specified.

Secretary means the Secretary of the Interior or authorized representative.

Sponsor means any person who files an application for enrollment or an appeal on behalf of another person.

Superintendent means the Superintendent, Seminole Agency, Bureau of Indian Affairs or authorized representative.

§ 67.2 Purpose.

The regulations in this part govern the compilation of a roll of persons who meet the requirements specified in section 7 of the Act who will be eligible to share in the distribution of a portion of the judgment funds awarded the Seminole Indians in Dockets 73, 151, and 73–A of the Indian Claims Commission.

§ 67.3 Information collection.

The information collection requirement contained in this part does not require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

§ 67.4 Qualifications for enrollment and the deadline for filing application forms.

(a) The roll shall contain the names of persons of Seminole Indian descent who:

(1) Were born on or before, and living on April 30, 1990;

(2) Are listed on or who are lineal descendants of persons listed on the annotated Seminole Agency Census of 1957 as Independent Seminoles; and

(3) Are not members of an Indian tribe recognized by the Secretary on the most recent list of such Indian tribes published in the **Federal Register**.

(b) To qualify for enrollment, all persons must file application forms with the Superintendent, Seminole Agency, Bureau of Indian Affairs, 6075 Stirling Road, Hollywood, Florida 33024 by June 19, 1994. An application filed after June 19, 1994 will be rejected for failure to file on time regardless of whether the applicant otherwise meets the qualifications for enrollment.

§ 67.5 Notices.

(a) The Director shall give notice to all Area Directors of the BIA and all Superintendents within the jurisdiction of the Director of the preparation of the roll for public display in BIA field offices. Notices shall be placed for public display in community buildings, tribal buildings and Indian centers.

(b) The Superintendent shall, on the basis of available residence data, publish, and republish when advisable, notices of the preparation of the roll in appropriate localities utilizing media suitable to the circumstances.

(c) Notices shall advise of the preparation of the roll and the relevant procedures to be followed, including the qualifications for enrollment and the deadline for filing application forms to be eligible for enrollment. The notices shall also state how and where application forms may be obtained, as well as the name, address, and telephone number of a person who may be contacted for further information.

§ 67.6 Application forms.

(a) Application forms to be filed by or for applicants for enrollment shall be furnished by the Area Director, Superintendent, or other designated persons upon written or oral request. Each person furnishing application forms shall keep a record of the names of individuals to whom forms are given, as well as the control numbers of the forms and the date furnished. Instructions for completing and filing application forms shall be furnished with each form. The form shall indicate prominently the deadline date for filing application forms.

(b) Among other information, each application form shall contain:

(1) Certification as to whether the application form is for a natural child or an adopted child of the parent through whom eligibility is claimed.

(2) If the application form is filed by a sponsor, the name and address of the sponsor and the sponsor's relationship to the applicant.

(3) A control number for the purpose of keeping a record of forms furnished to interested individuals.

(4) Certification that the information given on the application form is true to the best of the knowledge and belief of the person filing the application. Criminal penalties are provided by statute for knowingly filing false information in such applications (18 U.S.C. 1001).

(5) An election by the applicant as to whether the applicant, if determined to meet the qualifications for enrollment, wishes to share in the per capita payment.

(c) Sponsors may file application forms on behalf of other persons, but may not file elections to share in the per capita payment.

(1) The election to share in the per capita payment shall be made as follows:

(i) If the applicant is a competent adult, the election shall be made by the applicant.

(ii) If the applicant is not a competent adult, the election shall be made by the applicant's legal guardian.

(iii) If the applicant is a minor, the election shall be made by the applicant's parent or legal guardian.

(2) When an application is filed by a sponsor, the Superintendent shall:

(i) Furnish the sponsor a copy of the application for forwarding to the applicant or his/her guardian for completion of the election to share in the per capita payment; and

(ii) Make a reasonable effort to furnish a copy of the application directly to the applicant or his/her guardian for completion of the election to share in the per capita payment.

(d) Every applicant or sponsor shall furnish the applicant's mailing address on the application form. Thereafter, the applicant or sponsor shall promptly notify the Superintendent of any change in address, giving appropriate identification of the applicant. Otherwise, the mailing address as stated on the application form shall be accepted as the address of record for all purposes under the regulations in this part.

§ 67.7 Filing of application forms.

(a) Application forms filed by mail must be postmarked no later than midnight on the deadline date specified in § 67.4(b). Where there is no postmark date showing on the envelope or the postmark date is illegible, application forms mailed from within the United States, including Alaska and Hawaii, received more than 15 days after the specified deadline, and application forms mailed from outside of the United States received more than 30 days after the specified deadline in the office of the Superintendent, will be rejected for failure to file in time.

(b) Application forms filed by personal delivery must be received in the office of the Superintendent no later than close of business on the deadline date specified in § 67.4(b).

(c) If the deadline date for filing application forms falls on a Saturday, Sunday, legal holiday, or other nonbusiness day, the deadline will be the next working day thereafter.

§ 67.8 Burden of proof.

The burden of proof rests upon the applicant to establish eligibility for enrollment. Documentary evidence such as birth certificates, death certificates, baptismal records, copies of probate findings, or affidavits may be used to support claims of eligibility for enrollment. Records of the BIA may be used to establish eligibility.

§ 67.9 Action by Superintendent.

(a) The Superintendent shall notify each individual applicant or sponsor, as applicable, upon receipt of an application. The Superintendent shall consider each application and all documentation. Upon determining an individual's eligibility, the Superintendent shall notify the individual; the parent or guardian having legal custody of a minor or incompetent adult; or the sponsor, as applicable.

(1) Written notification of the Superintendent's decision shall be sent to the applicant by certified mail, for receipt by the addressee only, return receipt requested.

(2) If a decision by the Superintendent is sent out of the United States, registered mail will be used. If a certified or registered notice is returned as "Unclaimed," the Superintendent shall remail the notice by regular mail together with an acknowledgment of receipt form to be completed by the addressee and returned to the Superintendent. If the acknowledgment of receipt is not returned, computation of the period specified for changes in election and for appeals shall begin on the date the notice was remailed. A certified or registered notice returned for any reason other than "Unclaimed" need not be remailed.

(3) If an individual files an application on behalf of more than one person, one notice of eligibility or adverse action may be addressed to the person who filed the applications. However, the notice must list the name of each person to whom the notice is applicable. Where an individual is represented by a sponsor, notification to the sponsor of eligibility or adverse action shall be considered notification to the individual.

(b) On the basis of an applicant's election with regard to whether he or she wishes to share in the per capita payment, the Superintendent's decision shall also state whether the applicant's name will be included on the per capita payment roll. If no election has been made by the applicant, parent, or legal guardian on the application form, the individual applicant's name will not be included on the per capita payment roll.

(1) The eligible individual will have 30 days from notification of his or her eligibility in which to request a change in the election of whether to share in the per capita payment. Computation of the 30-day period will be in accordance with § 67.9(a)(2) and § 67.9(d). Upon written request received within the 30-day period, to avoid hardship or gross injustice, the Superintendent may grant an applicant additional time, not to exceed 30 days, in which to submit a request for a change in election.

(2) A change in the election of whether to share in the per capita payment can only be made by competent adult applicants; by the legal guardian of an incompetent adult; or, in the case of a minor, by the minor's parent or legal guardian.

(c) If the Superintendent determines that an applicant is not eligible for enrollment as an Independent Seminole Indian of Florida, the Superintendent shall notify the applicant of the decision and shall fully explain the reasons for the adverse action and explain the rejected applicant's right to appeal to the Area Director. The decision of the Area Director shall be final and conclusive.

(d) Except as provided in paragraph (a)(2) of this section, a notice of adverse action concerning an individual's enrollment eligibility or the inclusion or exclusion of an individual's name on the per capita payment roll is considered to have been made, and computation of the period for appeal shall begin on the earliest of the following dates:

(1) Delivery date indicated on the return receipt;

(2) Date of acknowledgment of receipt;

(3) Date of personal delivery; or

(4) Date of return by the post office of an undelivered certified or registered letter.

(e) To avoid hardship or gross injustice, the Area Director or the Superintendent may waive technical deficiencies in application forms or other submittals. Failure to file by the deadline date does not constitute a technical deficiency.

§ 67.10 Appeals.

(a) Appeals from or on behalf of applicants who have been rejected for enrollment must be in writing and must be filed pursuant to part 62 of this chapter. When the appeal is on behalf of more than one person, the name of each person must be listed in the appeal.

(b) A copy of part 62 of this chapter shall be furnished with each notice of adverse action. All sections of part 62

shall be applicable to appeals filed under this part except §§ 62.10, 62.11 and 62.12.

§ 67.11 Decision of the Area Director on appeals.

(a) The Area Director will consider the record as presented, together with such additional information as may be considered pertinent. Any additional information relied upon shall be specifically identified in the decision.

(b) The decision of the Area Director on an appeal shall be final and conclusive, and written notice, which shall state that the decision is final and conclusive, shall be given to the individual applicant, parent, legal guardian, or sponsor, as applicable.

(c) If an individual files an appeal on behalf of more than one applicant, one notice of the Area Director's decision may be addressed to the person who filed the appeal. The Area Director's decision must list the name of each person to whom the decision is applicable. Where an individual applicant is represented by a sponsor, notification to the sponsor of the Area Director's decision is sufficient.

(d) Written notice of the Area Director's decision on the appeal shall be sent to the applicant by certified mail, to be received by the addressee only, return receipt requested.

(1) On the basis of the individual's election with regard to whether he or she wishes to share in the per capita payment, the Area Director's decision shall also state whether the individual's name will be included on the per capita payment roll. If no election is made by the individual applicant, parent, or legal guardian, the individual's name will not be included on the per capita payment roll.

(2) The eligible individual will have 30 days from notification of his or her eligibility in which to request a change in the election of whether to share in the per capita payment. Computation of the 30-day period will be in accordance with § 67.9(a)(2) and § 67.9(d). Upon written request received within the 30-day period, to avoid hardship or gross injustice, the Area Director may grant additional time, not to exceed 30 days, in which to submit a request for a change in election.

(3) The change in the election of whether to share in the per capita payment can only be made by adult applicants, or by the legal guardian of an incompetent adult, or in the case of minors, by the parents or legal guardian of such minors.

§ 67.12 Exhaustion of administrative remedies.

The decision of the Area Director on appeal, which shall be final for the Department, is subject to judicial review under 5 U.S.C. 704.

§ 67.13 Preparation, certification and approval of the roll.

(a) The Superintendent shall prepare a minimum of three (3) copies of the roll of those persons determined to be qualified for enrollment as an Independent Seminole Indian of Florida. The roll shall contain for each person a roll number or identification number, name, address, sex, date of birth, date of death (when applicable), and the name and relationship of the ancestor on the annotated Seminole Agency Census of 1957 through whom eligibility for enrollment was established.

(b) A certificate shall be attached to the roll by the Superintendent certifying that to the best of his or her knowledge and belief, the roll contains only the names of those persons who were determined to meet the qualifications for enrollment.

(c) The Area Director shall approve the roll.

§ 67.14 Preparation of a per capita payment roll.

(a) The Superintendent shall, based on the roll approved under § 67.12(c), prepare a per capita payment roll. The payment roll shall be comprised of those persons whose names appear on the approved roll and who have elected to share in the per capita payment.

(b) The per capita payment roll shall contain for each person a roll number or identification number, name, and address.

(c) The Area Director shall authorize the distribution of the judgment funds to those persons named on the per capita payment roll.

§ 67.15 Special instructions.

To facilitate the work of the Superintendent and Area Director, the Assistant Secretary may issue special instructions not inconsistent with the regulations in this part.

Dated: November 19, 1993.

Ada E. Deer,

Assistant Secretary, Indian Affairs.

[FR Doc. 94–1275 Filed 1–19–94; 8:45 am]

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Thursday
January 20, 1994

Part VI

Department of Housing and Urban Development

Office of Assistant Secretary for Housing–Federal Housing Commissioner

Notice of Fund Availability for Section 8 Assistance Under the Loan Management Set-Aside Program

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing–Federal Housing Commissioner

[Docket No. N–94–3694; FR–3599–N–01]

Fund Availability for Section 8 Assistance Under the Loan Management Set-Aside (LMSA) Program.

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of fund availability for Fiscal Year 1994.

SUMMARY: This Notice of Fund Availability (NOFA) announces HUD's funding for new units of section 8 Loan Management Set-Aside (LMSA) assistance. In the body of this document is information concerning the following:

(a) The purpose of the NOFA and information regarding eligibility, available LMSA assistance, and selection criteria;

(b) Application processing, including how to apply and how selections will be made; and

(c) A checklist of steps and exhibits involved in the application process.

DATES: Applications for consideration under the General LMSA Funding procedures are due on or before March 7, 1994. If submitted on the application deadline date, the completed application package must be received by 4:00 PM (local time) in the HUD Field Office having jurisdiction over the applicant project. The above-stated application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline, except for applications made under Emergency procedures described below. Applicants should recognize this practice and submit materials early to avoid loss of eligibility brought about by unanticipated delays or other delivery-related problems. It is not sufficient for the application to bear a postage date within the submission time period. Applications must be submitted in an envelope, package, or binding which includes all parts of the application in their entirety as they are described in the Application Checklist Section of this NOFA. Applications submitted by facsimile are not acceptable.

FOR FURTHER INFORMATION CONTACT: The Loan Management Branch in the local HUD Field Office having jurisdiction over the project(s) in question for application materials and project-specific guidance. Policy questions of a general nature may be referred to the Director of the Office of Housing in the HUD Regional Office having jurisdiction over the project in question. These are listed as follows:

Region I, Boston, Ken Salk, (617) 565–5102
Region II, New York, Edwin Sprenger, (212) 264–4771
Region III, Philadelphia, Sidney Severe, (215) 597–2654
Region IV, Atlanta, Kenneth Williams, (404) 331–4127
Region V, Chicago, Michael Kulick, (312) 353–6950
Region VI, Ft. Worth, Robert Creech, (817) 885–5531
Region VII, Kansas City, Gerald F. Hayes, Jr. (913) 551–5504
Region VIII, Denver, Ronald Bailey, (303) 844–4959
Region IX, San Francisco, Keith Axtell, (415) 556–0796
Region X, Seattle, Diana Goodwin Shavey, (206) 220–5200

SUPPLEMENTARY INFORMATION:

Information Collection Requirements

The Office of Management and Budget has approved the Loan Management Set-Aside Program under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) and has assigned it OMB control number 2502–0407.

I. Purpose and Substantive Description

(a) Authority

The Loan Management Set-Aside ("LMSA") program provides special allocations of Housing Assistance Payments ("HAP") under Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437f. Title 24 of the Code of Federal Regulations, Part 886, Subpart A sets forth rules for administration of the LMSA program. Matters addressed in the LMSA regulation include:

(1) Application contents (§ 886.105);

(2) Requirements for HUD approval of applications (§ 886.107);

(3) Owner responsibilities under the program (§ 886.119); and

(4) Rules governing Federal preferences in the selection of tenants (§ 886.132).

(b) Purpose

The primary purpose of the LMSA program is to reduce claims on the Department's insurance fund by aiding those FHA-insured or Secretary-held projects with presently or potentially serious financial difficulties. First priority is given to insured projects with presently or potentially serious financial problems which are likely to result in a claim on the insurance fund in the near future. To the extent that resources remain available, assistance also may be provided to HUD-Held and section 202 projects with present or potentially serious financial problems which, on the basis of financial and/or management analysis, appear to have a high probability of producing within approximately the next five years either a claim on the insurance fund or a loss of direct loan investment in the case of a section 202 loan.

(c) Allocation Amounts

This Notice of Funding Availability (NOFA) announces availability of up to $104 million from Fiscal Year 1994 section 8 LMSA program funds for purposes of avoiding claims on the Department's insurance fund. HUD is distributing funds under this NOFA to its ten Regional Offices on the basis of a formula allocation. The formula takes into consideration recent requests for assistance, assignments, and potentially eligible projects in each Region.

LMSA funds available under this NOFA are distributed as denoted below.

HUD region	Allocation
Region I	$8,835,060
Region II	4,507,491
Region III	21,603,346
Region IV	21,282,394
Region V	20,462,492
Region VI	9,137,675
Region VII	3,522,971
Region VIII	1,537,367
Region IX	12,071,082
Region X	971,126

The Regional Offices will make awards under this NOFA in accordance with the selection criteria and procedures described herein.

Pursuant to this Notice, HUD is accepting applications for assistance under the LMSA program from owners of FHA-insured or Secretary-held multifamily projects with presently or potentially serious financial difficulties. All LMSA assistance awarded from these Fiscal Year 1994 program funds will have a term of five years, with no contractual provision for renewal of the contract at the end of the five-year term. This NOFA does not govern non-competitive assistance awards under the section 8 LMSA program pursuant to specific regulatory authority (e.g., LMSA assistance as a prepayment plan of action incentive under § 248.231(e) or such assistance under § 219.325(b)(4) to alleviate the effect of rent increases resulting from debt service on capital improvement loans).

(d) Eligibility

Projects eligible for LMSA assistance include: (1) Any existing subsidized or

unsubsidized multifamily residential project subject to a mortgage insured under any section of the National Housing Act; (2) any such project subject to a mortgage that has been assigned to the Secretary; (3) any such mortgage acquired by the Secretary and thereafter sold under a Secretary-held purchase money mortgage; and (4) a project for the elderly financed under section 202 of the Housing Act of 1959 (except projects receiving assistance under 24 CFR part 885 or part 889). References to HUD-Held or Secretary-Held projects throughout this Notice include any project which meets one of the descriptions in (2)–(4) above.

Owners meeting these criteria who applied for assistance in a prior year but did not receive the desired number of units are eligible to reapply under this NOFA. The FY 1994 application must contain current information and conform to all requirements outlined in this notice.

(e) Selection Criteria/Ranking Factors

(1) *Application Review:* Each application for assistance under the LMSA program will be reviewed by the HUD Field Office having jurisdiction over the project in question. Within 10 days of receipt of each application involving more than 12 units, the HUD Field Office will notify the chief executive of the unit of general local government in which the project is located and provide the opportunity for non-binding comments on the application (see 24 CFR 886.106 and 24 CFR part 791). These comments will be considered by the Field Office in determining whether the application meets regulatory approval requirements in section 886.107 and described in detail in HUD Handbook 4350.2 REV–1. The Field Office's review of the application will be based on the following determinations:

(i) HUD's Fair Housing requirements (24 CFR 886.107(a) and 886.114) are met;

(ii) The HUD-approved unit rents are approvable within the limitations described in § 886.110, which are based on HUD's Fair Market Rents;

(iii) The residential units meet the housing quality standards set forth in § 886.113, except for such variations as HUD may approve;

(iv) A significant number of residents, or potential residents in the case of projects having a vacancy rate over 10 percent, are eligible for and in need of section 8 assistance;

(v) The proposed section 8 assistance would not affect other HUD-related multifamily housing within the same neighborhood in a substantially adverse manner. Examples of such adverse effects are substantial move-outs from nearby HUD-related multifamily housing, or substantial diversion of prospective applicants from such projects to the subject project;

(vi) The project has serious current financial problems, which are likely to result in a claim on the insurance fund in the near future, or the project has potentially serious financial problems which, on the basis of financial and/or management analysis, appear to have a high probability of producing a claim on the insurance fund within approximately the next five years. Current audited financial statements will be utilized in the determination of project financial position. Project owners who have not submitted audited annual financial statements within 60 days of the end of the project fiscal year or by the deadline of the extension (if one has been granted) are not in compliance with the Regulatory Agreement. Since the assignment to a priority category, as well as scoring and ranking (if required within priority category), cannot be properly performed without current financial data, a project will be rejected on this basis. The only exception to this procedure is one in which the Field Office has granted an indefinite extension due to the inability of the project to cover the expense of the preparation of the audited statements. Required data must be available from Field Office sources prior to scoring and ranking.

(vii) The proposed section 8 assistance for the project would solve an identifiable problem and provide a reasonable assurance of long-term project viability. A determination of long-term viability must be based on the following findings:

(A) The project is not subject to any serious problems that are non-economic in nature. Examples of such problems are poor location, structural deficiencies or disinterested ownership;

(B) The owner is in substantial compliance with the Regulatory Agreement. Owners have not or are not diverting project funds for personal use. No dividends have been paid during any period of financial difficulty;

(C) The current management agent has been approved by HUD and is in substantial compliance with the management agreement. Financial records are adequately kept. Occupancy requirements are being met. Marketing and maintenance programs are being carried out in an adequate manner, based upon available financial resources;

(D) The project's problems are primarily the result of factors beyond the control of the present ownership and management;

(E) The major problems are traceable to an inadequate cash flow;

(F) The proposed Section 8 assistance would solve the cash flow problem by:

(*1*) Making it possible to grant needed rent increases; and

(*2*) Reducing turnover, vacancies and collection losses;

(G) The owner's plan for remedying any deferred maintenance, financial problems, or other problems is realistic and achievable; there is positive evidence that the owner will carry out the plan. Examples of such evidence are the owner's past performance in correcting problems and, in the case of profit-motivated owners, any cash contributions made to correct project problems.

(viii) For projects with a history of financial default, financial difficulties or deferred maintenance, any plan for remedying defaulted or deferred obligations submitted pursuant to § 886.105(d) must be adequate in HUD's determination.

In its review of an application, the HUD Field Office will consider recent physical inspections, management reviews, and tenant complaints and comments. If there is no report of a detailed HUD physical inspection conducted by either the mortgagee, HUD, or a third-party contractor of HUD dated within one year of the date an application for LMSA assistance is received in the reviewing office and containing a description and estimated cost of required repairs, the HUD Field Office will schedule a physical inspection and Housing Quality Standards (HQS) inspection in conjunction with its review and approval of the application for LMSA assistance. Execution of a subsidy contract in such case will be contingent upon satisfactory modification of the owner's plan to include solutions for all additional problems discovered in the scheduled review(s).

After HUD Field Offices have determined which applications meet LMSA program requirements, the projects which are both eligible for, and in need of, new or additional LMSA assistance shall be reported to the appropriate Regional Office for further consideration under the competitive selection procedures outlined in this Notice. Projects awarded subsidy from Fiscal Year 1994 LMSA program funds shall be selected in accordance with "general" or "emergency" procedures as described below. If an application can be approved only on certain conditions, the HUD Field Office will notify the owner of the conditions and specify a

time limit by which those conditions must be met. A project recommended for a conditional approval may be reported to the Regional Office by the HUD Field Office for further processing under procedures set forth below; however, execution of an LMSA contract for any units which may be allocated to the project in the Regional process, will be contingent upon the owner's compliance with the approval conditions. If the HUD Field Office concludes that an application will not meet LMSA program requirements, processing of the application is discontinued, and the applicant will be notified by the Field Office as soon as possible of the reasons for disapproval.

(2) *General LMSA Funding Round:*

(i) *Annual needs survey:*

Fiscal Year 1994 general funding awards will be made from projects recommended by HUD Field Offices to their Regional Offices in response to the Fiscal Year 1994 Annual Needs Survey. The Field Offices' needs survey responses will be forwarded to Regional Offices after the due date announced in this Notice for program applications. HUD Field Office staff shall determine and report the minimum number of LMSA units needed to cure each project's vacancy and cash flow problems, subject to limitations as described below.

(ii) *Limitations on Units:*

(A) An allocation may not exceed the difference between total units in the project and the number of units already assisted under project-based tenant subsidy contracts (project-based section 8 subprograms, Rent Supplement and Rental Assistance Payments).

(B) Total project-based section 8 assistance for projects with unsubsidized mortgages is limited to 40 percent of total units in the project. If the respective HUD Field Office determines that a project with an unsubsidized mortgage needs section 8 assistance above the 40 percent level, or if the project was developed as a retirement service center, a recommendation by the Field Office will be subject to further review by the Regional Office in a process similar to the review of applications submitted under the emergency procedures described in paragraph (3) below. In all such cases, the Field Office's justification for LMSA units must document that project management has an aggressive and workable plan in place for leasing the market rate units in the project. A project is considered unsubsidized for the purpose of LMSA funding selections if the HUD mortgage is unsubsidized. The definition of subsidized project for purposes of section 203 of the Housing and Community Development Amendments of 1978, which includes projects with over 50 percent of total units assisted under certain section 8 subprograms, pertains to management and disposition of projects which have been acquired by HUD and is not applicable to projects eligible for LMSA assistance.

(iii) *Determination of Priority Category:*

HUD Field Offices will include in their needs survey reports, data needed by the Regional Offices to classify approved projects into six priority categories and to establish a funding score for each project.

Fiscal Year 1994 LMSA funds will be allocated in the following order of priority:

(A) Insured projects with presently serious financial problems likely to result in a mortgage insurance claim in the near future;

(B) Insured projects with potentially serious financial problems which appear to have a high probability of producing a mortgage insurance claim within approximately the next five years;

(C) HUD-held and section 202 projects with presently serious financial problems likely to result in a loss of loan investment within the near future; and

(D) HUD-held and section 202 projects with potentially serious financial problems which appear to have a high probability of producing a loss of loan investment within approximately the next five years.

The Department of Housing and Urban Development never intended to provide relief in the form of Loan Management Set Aside assistance for Retirement Service Centers (RESC) or formerly coinsured projects. However, it is recognized that if LMSA assistance could be made available for those types of projects some additional claims on the FHA Fund might be avoided. Accordingly, the following priority categories of eligible projects are included, once again, in FY 1994:

(E) Insured Retirement Service Centers and insured formerly coinsured projects (i.e., projects whose mortgages have been converted from coinsurance to full insurance), with presently serious financial problems likely to result in a mortgage insurance claim in the near future.

(F) HUD-held Retirement Service Centers and HUD-held formerly coinsured projects with presently serious financial problems.

(iv) Determining the "presently serious" classification:

For purposes of determining classification, HUD will consider a project to have "presently serious financial problems" if both of the following two financial ratios are less than zero:

Income/Expense Ratio, defined as follows:

(Net Income or Loss Before Depreciation LESS Annual Debt Service and Reserve Payments) Times 100 Divided by: Total Annual Cost of Operating the Project

and,

Ratio of Surplus Cash (or Deficiency) to Monthly Mortgage Payment, defined as follows:

Total Cash LESS Total Current Obligations Divided by: Total Monthly Mortgage Payment

A negative income/expense ratio occurs when there was a net loss during the period or when net income before depreciation was less than annual debt service plus reserve payments. The project did not generate sufficient cash flow from operations in the previous year to cover its cash requirements, suggesting cash flow difficulties which were possibly severe and, if left unresolved, are likely to result in financial problems in the current year. Comparison to the total cost of operating the project provides an indication of the seriousness of any negative cash flow, since the size of the problem generally varies directly with the absolute value of the ratio.

The second ratio approximates the project's Mortgage Payment Coverage Ratio and is negative when there is a cash deficiency, i.e., the surplus cash calculation is less than zero. A cash deficiency means that cash available to the project at the end of the period, including any subsidy vouchers due for the period, is less than the amount needed to cover current obligations. A cash deficiency points to a severe liquidity problem since the project cannot even meet its past obligations without some form of relief. Calculation of the ratio of surplus cash (deficiency) to the total mortgage payment provides an indication of the project's ability to make the next mortgage payment after past obligations are met, without depending upon the next month's rent collections.

The two ratios defined above will be calculated using financial data contained in the project's most recent annual audited financial statement submitted to the Field Office in accordance with the Regulatory Agreement (see par. (e)(1)(vi.), in conjunction with monthly accounting reports. A result of zero or less on the

two ratios suggests that the project has a current financial problem. These ratios were selected because they provide a straightforward means of identifying projects with cash flow difficulties. Projects with either ratio in the positive range may be added to Category A for insured projects or Category C for HUD-held projects based on written justifications by HUD Field Offices documenting appropriate circumstances. For example, a substantial increase in vacancies in recent months may warrant elevating the project's priority category. The justifications will be reviewed by the Regional Housing Director, who will resolve any issues with the respective Field Offices and approve, or disapprove, the change in priority.

(v) Determination of Ranking Within Priority Category

The number of projects which can be funded from Fiscal Year 1994 resources will depend upon the units and budget authority designated in Field Office recommendations. If LMSA program funds are available to fund some, but not all of the projects in a given priority category (after funding all projects in higher priority categories), any project selections from the given category will follow from a ranking of projects within that category using a funding score. A maximum score of 115 points (110 points for HUD-held projects) may be accumulated on the basis of the following project characteristics and maximum point potentials:

(A) Occupancy—25 points.

Calculation: No. of occupied units Divided by Total units in the project. Lower values yield higher points.

(B) Owner advances or contributions since October 1, 1990— 25 points.

Calculation: Total of owner advances or contributions during the period Divided by Total Units in the project. Larger values yield higher points.

(C) Tenants paying in excess of 40 percent of their income for rent—15 points.

Calculation: No. of units occupied by tenants paying over 40 percent of their income for rent Divided by Total units in the project. Larger values yield higher points.

(D) Income/Expense Ratio—15 points.

Calculation: As defined above. Smaller values yield higher points.

(E) Ratio of Surplus Cash (Deficiency) to Total Monthly Mortgage Payment—15 points.

Calculation: As defined above. Smaller values yield higher points.

(F) For HUD-insured projects only, Mortgage balance per dollar of additional subsidy—5 points.

Calculation: Mortgage principal balance Divided By Proposed LMSA annual contract authority. Larger values yield higher points.

(G) Resident Initiatives—15 points.

Evidence in the form of a contract, or other written commitment, to transfer title to the property to a resident organization, cooperative association, non-profit entity, public body including an instrumentality thereof, public housing agency or Indian Housing Authority, for the purpose of resident ownership or management of the project.

(vi) LMSA/Flexible Subsidy Program Coordination

Pursuant to section 405(f) of the Housing and Community Development Act of 1992 (Pub. L. 102–550), assistance under this NOFA will be coordinated with assistance made available under the NOFA for the Flexible Subsidy Program. Projects seeking assistance under both programs will be reviewed to evaluate the effect on cash flow and ability to fund repair items from the increased operating income. By taking into account all funding sources, HUD can determine whether the infusion of Flexible Subsidy assistance together with the LMSA represents the appropriate solution for project stabilization.

(vii) Funding for Selected Projects

If the Regional Office confirms that all program requirements have been met and selects the project for funding, notification of a general funding award will be made through the HUD Field Office. If an application can be approved only on certain conditions, HUD will notify the owner of the conditions and specify a time limit by which those conditions must be met. Disapproved applicants will also be notified with a statement of the grounds for disapproval.

(3) Emergency LMSA Funding

Up to five percent of the LMSA funds announced in this Notice may be made available to fund projects recommended by the respective HUD Field Office *subsequent to the Annual Needs Survey reporting deadline for the general funding round.* After this deadline, only emergency requests will be accepted. In all cases governed by these emergency procedures, consideration will be given to the extent that sufficient resources are available.

To qualify for emergency LMSA assistance, the project must be *Insured with presently serious financial problems* (as described in paragraph (2)(iii) above), and must meet one of the conditions listed below:

(i) The applications (or corrections to the applications) were received too late by the Field Office to be included in the Annual Needs Survey.

(ii) Projects were recommended by the Field Office during this general funding round, but were not approved by the Regional Office or did not score a sufficient number of points in the ranking process.

All application and Field Office review procedures pertaining to the LMSA program will be followed for emergency recommendations. In addition, an emergency recommendation must have a full written justification signed by the Field Office Manager. HUD Field Offices are required to demonstrate that provision of the proposed LMSA units is likely to avert a mortgage default or assignment in the near future, and the request to the Regional Office will explain why funds are needed on an emergency basis. The Region will not consider any emergency funding request which does not have written justification signed by the Manager.

The Region will review Field Office justifications and will determine whether provision of LMSA units is an appropriate response to the circumstances documented by HUD Field staff. If an emergency request is approved, notification of the subsidy award will be made through the HUD Field Office.

II. Application Process

(a) Completed applications must be submitted to the HUD Field Office having jurisdiction over the multifamily property for which assistance is requested. Application kits containing copies of required HUD forms and Notices are available from HUD Field Offices.

(b) For consideration under the General LMSA Funding procedures set forth previously in this Notice, a completed LMSA application must be received in the Field Office on or before 4 p.m. March 7, 1994. Applications received after this deadline will be considered for LMSA assistance only if the Secretary determines that such assistance is needed immediately in response to emergency circumstances and only to the extent that sufficient Fiscal Year 1994 LMSA budget authority remains to satisfy the subsidy requirement.

III. Checklist of Application Submission Requirements

(a) LMSA applications must meet the requirements set forth in section

886.105 of the LMSA regulations and HUD Handbook 4350.2 REV-1 (6/92). All requirements have been incorporated into form HUD-52530, Application for Loan Management Set-Aside, Section 8 Program, and the ancillary forms cited therein. The application form can be reproduced from appendix 1 of Handbook 4350.2. Regulatory requirements are cited below.

(1) Information on gross income, family size and amount of rent paid to the project by families currently in residence;

(2) Information on vacancies and turnover;

(3) Total number of units by unit size (by bedroom count) for which section 8 assistance is requested;

(4) Affirmative Fair Housing Marketing Plan on Form HUD-935.2.

(5) Estimate of effect of the availability of the requested section 8 LMSA assistance on marketability of units in the project;

(6) For projects having a history of financial default, financial difficulties or deferred maintenance, a plan and a schedule for remedying such defaulted or deferred obligations. To be credible, the owner must clearly state each problem being addressed and enumerate proposed actions for curing each problem. Proposed actions must be presented in trackable form, with the specific dates that each action would begin and end if the requested LMSA subsidy were awarded.

(7) A Statement of the Sources and Uses of all financial resources needed to complete the plan, including any cash contributions from the owner. Please note: If Low Income Housing Tax Credits have been or are planned for this project, a special Sources and Uses format is required. See Item 11 below.

(8) Since HUD's approval must be based in part on evidence that the plan will be carried out, certification by the owner that the plan will be executed as presented and that sources of funds identified in the plan, other than the LMSA assistance applied for, will be available by the scheduled dates (any conditions must be stated, e.g. "subject to HUD approval of Flexible Subsidy").

(9) Certification by the owner that every effort has been made to secure funding from all possible funding sources; supporting documentation of those efforts must be attached.

(10) Certification by the owner that he/she agrees to modify the plan, prior to execution of an LMSA contract, for the purpose of including any changes which the HUD Field Office determines are necessary to address problems not identified or inadequately addressed in the plan, as indicated by recent HUD physical inspections, management reviews or records of tenant complaints and comments, or by HUD physical inspections and/or management reviews which may be scheduled in conjunction with review of the LMSA application. Changes required by HUD may also include requirements for carrying out Resident Initiatives activities where it is determined that it could be beneficial to the management of the project.

(11) All documentation needed to conduct a subsidy layering review as required by HUD Notice 90-17, "Combining Low-Income Housing Tax Credits (LIHTC) with HUD Programs", and by the Notice of administrative guidelines to be applied to assistance programs of the Office of Housing published on April 9, 1991 (56 FR 14436). The Department is obligated by law to reduce the amount of assistance it will provide if the review discloses a certain level of excess. These may include the Sources and Uses Statement which can be reproduced from appendix F of HUD Handbook 4350.1, REV-1, Insured Project Servicing; evidence of issuance of tax credits from the State Housing Finance Agency; the terms and conditions for all mortgages (interest rates, etc.), and Income and Expense Statement (Statement of Profit/Loss Form HUD-92410).

(12) Form HUD-2880, Applicant/Recipient Disclosure/Update Report, as required under subpart C of 24 CFR part 12, Accountability in the Provision of HUD Assistance.

(13) Disclosures and verification requirements for Social Security and Employer Identification Numbers, as required by 24 CFR part 750.

(14) Certification and disclosure according to HUD Notice H-90-27 entitled "OMB's Guidance on New Government-wide Restrictions on Lobbying" issued April 13, 1990.

(15) Form HUD-2530, Previous Participation Certificate(s) for all principals (including management agents) requiring clearance under those procedures.

(16) A certification stating that the owner will comply with the provisions of the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Executive Orders 11063 and 11246, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, section 3 of the Housing and Urban Development Act of 1968, as well as with all regulations issued pursuant to these authorities.

(17) Certification that the applicant will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (URA), implementing regulations at 49 CFR part 24, and HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition.

(18) Anti-lobbying Certification for contracts, grants, loans and cooperative agreements for grants exceeding $100,000; and Disclosure of Lobbying Activities (SF-LLL), if applicable. Standard Form-LLL is required if funds other than federally appropriated funds will be or have been used to lobby the Executive or Legislative branches of the Federal government regarding specific contracts, grants, loans or cooperative agreements.

IV. Corrections to Deficient Applications

(a) After the submission date for applications, no owner-initiated changes to application documents will be accepted, except for correction of curable technical deficiencies which do not alter the substance of the application materials. Curable technical deficiencies are items that are not necessary for HUD review under the selection criteria (e.g., failure to submit a required certification). Applicants may not submit items that would improve the substantive quality of the application after the application deadline.

(b) HUD will notify an applicant in writing, shortly after the application response deadline, of any curable technical deficiencies in the application. The applicant must submit corrections to the Field Office within 14 calendar days from the date of HUD's letter notifying the applicant of any such deficiency. The applicant must submit the corrected document(s) with a separate written summary of all changes from the original submission.

V. Other Matters

(a) HUD regulations in 24 CFR part 50, implementing section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities, and programs specified in § 50.20. Since the activities set forth in this Notice are within the exclusion set forth in § 50.20(d), no environmental assessment is required, and no environmental finding has been prepared.

(b) *Executive Order 12612, Federalism.* The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA does not have "federalism implications" because it does not have substantial direct effects on the States (including their

political subdivisions), or on the distribution of power and responsibilities among the various levels of government.

(c) *Executive Order 12606, the Family.* The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this NOFA does not have potential significant impact on family formation, maintenance, and general well-being.

(d) Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule at 24 CFR part 86, particularly the examples contained in appendix A of the rule.

Any questions regarding the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708–3815; TDD: (202) 708–1112. (These are not toll-free numbers.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

(e) *Section 103 of the HUD Reform Act.* HUD's regulation implementing Section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

(f) *Accountability in the Provision of HUD Assistance—Section 102 of the HUD Reform Act.* HUD has promulgated a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) The final rule is codified at 24 CFR part 12. Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, HUD published at 57 FR 1942, additional information that gave the public including applicants for, and recipients of, HUD assistance) further information on the implementation, public access, and disclosure requirements of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

(1) Documentation and public access. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

(2) Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

(3) Subsidy-layering determinations. 24 CFR 12.52 requires HUD to certify that the amount of HUD assistance is not more than is necessary to make the assisted activity feasible after taking account of other government assistance. HUD will make the decision with respect to each certification available to the public free of charge, for a three-year period. (See the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942) for further information on requesting these decisions.) Additional information about applications, HUD certifications, and assistance adjustments, both before assistance is provided or subsequently, are to be made under the Freedom of Information Act (24 CFR part 15).

(g) *The Byrd Amendment.* Prohibition Against Lobbying Activities. The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of Section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the Federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

Required Reporting

A *certification* is required at the time application for funds is made that Federally appropriated funds are not

being or have not been used in violation of section 319 and that disclosure will be made of payments for lobbying with other than Federally appropriated funds. Also there is a standard disclosure form, SF–LLL, "Disclosure Form to Report Lobbying", which must be used to disclose lobbying with other than Federally appropriated funds.

Authority: Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437f.

Dated: January 10, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 94–1307 Filed 1–19–94; 8:45 am]

BILLING CODE 4210–27–P

federal register

Thursday
January 20, 1994

Part VII

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

January 1, 1994.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) requires a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to Congress.

This report gives the status of 37 rescission proposals and 12 deferrals contained in three special messages for FY 1994. These messages were transmitted to Congress on October 13, November 1, and November 19, 1993.

Rescissions (Attachments A and C)

As of January 1, 1994, 37 rescission proposals totaling $1,946.1 million had been transmitted to the Congress. Attachment C shows the status of the FY 1994 rescission proposals.

Deferrals (Attachments B and D)

As of January 1, 1994, $5,991.2 million in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 1994.

Information From Special Messages

The special messages containing information on the rescission proposals and deferrals that are covered by this cumulative report are printed in the **Federal Registers** cited below:

58 FR 54256, Wednesday, October 20, 1993

58 FR 59517, Tuesday, November 9, 1993

58 FR 63264, Tuesday, November 30, 1993

Leon E. Panetta,

Director.

BILLING CODE 3110–01–M

ATTACHMENT A

STATUS OF FY 1994 RESCISSIONS

	Amounts (In millions of dollars)
Rescissions proposed by the President.....	1,946.1
Rejected by the Congress.....	---
Currently before the Congress.....	1,946.1

ATTACHMENT B

STATUS OF FY 1994 DEFERRALS

	Amounts (In millions of dollars)
Deferrals proposed by the President.....	8,548.7
Routine Executive releases through January 1, 1994	-2,557.5
Overturned by the Congress.....	---
Currently before the Congress.....	5,991.2

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of January 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
FUNDS APPROPRIATED TO THE PRESIDENT								
International Security Assistance								
Foreign military financing grants	R94-1	40,000		11-1-93				
Economic support fund	R94-2	90,000		11-1-93	*			
Agency for International Development								
Development assistance fund	R94-3	160,000		11-1-93	*			
DEPARTMENT OF AGRICULTURE								
Agricultural Research Service								
Agricultural Research Service	R94-4	16,233		11-1-93				
Buildings and facilities	R94-5	8,460		11-1-93				
Cooperative State Research Service								
Cooperative State Research Service	R94-6	30,002		11-1-93				
Buildings and facilities	R94-7	34,000		11-1-93				
Agricultural Stabilization and Conservation Service								
Salaries and expenses	R94-8	12,167		11-1-93				
Soil Conservation Service								
Conservation operations	R94-9	12,167		11-1-93				
Farmers Home Administration								
Salaries and expenses	R94-10	12,167		11-1-93				
Rural Electification Administration								
Rural electrification and telephone loans program account	R94-11	6,445		11-1-93				

* Funds were never withheld from obligation.

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of January 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
Food and Nutrition Service								
Commodity supplemental food program	R94-12	12,600		11-1-93				
DEPARTMENT OF COMMERCE								
National Oceanic and Atmospheric Administration								
Operations, research, and facilities	R94-13	6,000		11-1-93				
Construction	R94-14	4,000		11-1-93				
International Trade Administration								
Operations and administration	R94-15	2,000		11-1-93				
DEPARTMENT OF DEFENSE								
Military Construction								
Military construction, Army	R94-16	116,134		11-1-93				
Military construction, Air Force	R94-17	85,094		11-1-93				
Military construction, Army Reserve	R94-18	19,807		11-1-93				
Military construction, Naval Reserve	R94-19	4,438		11-1-93				
Military construction, Air Force Reserve	R94-20	18,759		11-1-93				
Military construction, Army National Guard	R94-21	251,854		11-1-93				
Military construction, Air National Guard	R94-22	105,138		11-1-93				
DEPARTMENT OF THE ARMY-CIVIL								
Army Corps of Engineers								
General investigations	R94-23	24,970		11-1-93				
Construction, general	R94-24	97,319		11-1-93				
DEPARTMENT OF ENERGY								
Energy Programs								
Energy supply, research and development activities	R94-25	97,300		11-1-93				

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of January 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
Uranium supply and enrichment activities	R94-25	42,000		11-1-93				
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Housing Programs								
Annual contributions for assisted housing	R94-26	180,000		11-1-93				
DEPARTMENT OF INTERIOR								
Bureau of Reclamation								
Construction	R94-27	16,000		11-1-93				
DEPARTMENT OF STATE								
Administration of Foreign Affairs								
Salaries and expenses	R94-28	600		11-1-93				
DEPARTMENT OF TRANSPORTATION								
Federal Aviation Administration								
Operations	R94-29	2,750		11-1-93				
Facilities and equipment	R94-30	40,257		11-1-93				
Federal Transit Administration								
Discretionary grants	R94-31	52,037		11-1-93				
Federal Highway Administration								
Highway demonstration projects	R94-32	187,827		11-1-93				
GENERAL SERVICES ADMINISTRATION								
Public Buildings Service								
Federal buildings fund	R94-33	126,022		11-1-93				

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of January 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
SMALL BUSINESS ADMINISTRATION								
Salaries and expenses	R94-34	13,100		11-1-93				
OTHER INDEPENDENT AGENCIES								
State Justice Institute								
Salaries and expenses	R94-35	6,775		11-1-93	*			
United States Information Agency								
Salaries and expenses	R94-36	3,000		11-1-93				
North/South Center	R94-37	8,700		11-1-93				
TOTAL RESCISSIONS		1,946,122	0		0		0	

* Funds were never withheld from obligation.

ATTACHMENT D
Status of FY 1994 Deferrals - As of January 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congres-sionally Required	Congres-sional Action	Cumulative Adjust-ments (+)	Amount Deferred as of 1-1-94
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund	D94-1	394,175		10-13-93					
	D94-1A		1,164,562	11-19-93	84,357				1,474,380
Foreign military financing grants	D94-9	3,137,279		11-19-93	1,800,000				1,337,279
Foreign military financing program account	D94-10	46,530		11-19-93					46,530
Agency for International Development									
Demobilization and transition fund	D94-2	8,000		10-13-93					8,000
International disaster assistance, executive	D94-11	118,059		11-19-93					118,059
DEPARTMENT OF AGRICULTURE									
Forest Service									
Cooperative work	D94-3	461,639		10-13-93					461,639
Expenses, brush disposal	D94-4	40,195		10-13-93					40,195
Timber salvage sales	D94-5	256,897		10-13-93					256,897
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense	D94-6	1,852		10-13-93					1,852
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration									
Limitation on administrative expenses	D94-7	7,317		10-13-93					7,317

ATTACHMENT D
Status of FY 1994 Deferrals - As of January 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 1-1-94
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund	D94-8	27,100		10-13-93					
	D94-8A		49,261	11-19-93	20,061				56,300
GENERAL SERVICES ADMINISTRATION									
Public Buildings Service									
Public buildings fund	D94-12	2,835,860		11-19-93	653,049				2,182,811
TOTAL, DEFERRALS		**7,334,903**	**1,213,823**		**2,557,467**	**0**		**0**	**5,991,259**

[FR Doc. 94–1297 Filed 1–19–94; 8:45 am]
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Federal Register

Vol. 59, No. 13

Thursday, January 20, 1994

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FEDERAL REGISTER PAGES AND DATES, JANUARY

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At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Note: The list of Public Laws for the first session of the 103d Congress has been completed and will resume when bills are enacted into law during the second session of the 103d Congress, which convenes on January 25, 1994.

A cumulative list of Public Laws for the first session of the 103d Congress was published in Part IV of the **Federal Register** on January 3, 1994.

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