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Tuesday
July 18, 1995

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: July 27 at 9:00 am
WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street NW., Washington, DC (3 blocks north of Union Station Metro)
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WHEN: September 12 at 9:00 am
WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street NW., Washington, DC (3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

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Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
Vol. 60, No. 137
Tuesday, July 18, 1995

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 998

[Docket No. FV95–998–1FIR]

Expenses, Assessment Rate, and Indemnification Reserve for Marketing Agreement No. 146 Regulating the Quality of Domestically Produced Peanuts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, with appropriate changes, the provisions of an interim final rule that authorized expenditures for administration and indemnification, established an assessment rate, and authorized continuation of an indemnification reserve under Marketing Agreement 146 (agreement) for the 1995–96 crop year. The rule also increased the administrative assessment rate for the 1994–95 crop year. Authorization of this budget enables the Peanut Administrative Committee (Committee) to incur operating expenses, collect funds to pay those expenses, and settle indemnification claims during the 1994–95 crop year. Authorization of the increase in the administrative assessment rate for the 1994–95 crop year enables the Committee to collect sufficient funds to pay expenses projected for the remainder of that year. Funds to administer this program are derived from assessments on handlers who have signed the agreement.

EFFECTIVE DATE: Section 998.408 is effective July 1, 1995, through June 30, 1996. Section 998.407 was effective July 1, 1994, through June 30, 1995.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or William G. Pimental, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883–2276, telephone 941–299–4770.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement 146 (7 CFR part 998) regulating the quality of domestically produced peanuts. This agreement is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the agreement now in effect, peanut handlers signatory to the agreement are subject to assessments. Funds to administer the peanut agreement program are derived from such assessments. This rule authorizes expenditures and establishes an assessment rate for the Committee for the crop year which began July 1, 1995, and ends June 30, 1996, and increases the administrative assessment rate for the crop year which began July 1, 1994, and ended June 30, 1995. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 47,000 producers of peanuts in the 16 States covered under the agreement, and approximately 76 handlers regulated under the agreement. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. A majority of the producers may be classified as small entities, and some of the handlers covered under the agreement are small entities.

Under the agreement, the assessment rate for a particular crop year applies to all assessable tonnage handled from the beginning of such year (i.e., July 1). An annual budget of expenses is prepared by the Committee and submitted to the Department for approval. The members of the Committee are handlers and producers of peanuts. They are familiar with the Committee's needs and with the costs for goods, services, and personnel for program operations and, thus, are in a position to formulate appropriate budgets. The budgets are formulated and discussed at industry-wide meetings. Thus, all directly affected persons have an opportunity to provide input in recommending the budget, assessment rate, and indemnification reserve. The handlers of peanuts who are directly affected have signed the marketing agreement authorizing the expenses that may be incurred and the imposition of assessments.

The assessment rate recommended by the Committee for the 1995–96 crop year was derived by dividing anticipated expenses by expected receipts and acquisitions of farmers' stock peanuts. It applies to all assessable peanuts received or acquired by handlers from July 1, 1995. Because that rate is applied to actual receipts and acquisitions, it must be established at a rate which will produce sufficient income to pay the Committee's expenses.

The Committee met on March 23, 1995, and unanimously recommended 1995–96 crop year administrative expenses of $1,067,500 and an administrative assessment rate of $0.70 per net ton of assessable farmers' stock peanuts received or acquired by handlers. In comparison, 1994–95 crop year budgeted administrative expenditures were $1,056,000, and the administrative assessment rate was initially recommended and fixed at $0.60 per ton.

Administrative budget items for 1995–96 which have increased compared to those budgeted for 1994–95

(in parentheses) are: Executive salaries, $145,051 ($140,146), clerical salaries, $138,856 ($132,500), field representatives salaries, $304,344 ($290,420), payroll taxes, $44,000 ($43,000), employee benefits, $148,000 ($145,000), insurance and bonds, $9,500 ($8,500), postage and mailing, $13,200 ($12,000), and audit fees, $10,400 ($9,200). Items which have decreased compared to those budgeted for 1994–95 (in parentheses) are: Office rent and parking, $44,360 ($50,000), furniture and equipment, $4,000 ($9,500), and lab data processing, $1,000 ($1,500). All other items are budgeted at last year's amounts. The administrative budget includes $4,789 for contingencies ($14,234 last year).

The Committee also unanimously recommended 1995 crop indemnification claims payments of up to $7,000,000 and an indemnification assessment of $1.00 per net ton of farmers' stock peanuts received or acquired by handlers to continue its indemnification program. For the 1994 crop, indemnification claims payments of up to $9,000,000 and an assessment rate of $2.00 per net ton were established. The decreases for 1995 reflect the Committee's desire to lower indemnification costs.

The costs to carry out indemnification procedures (sampling and testing of 2–AB and 3–AB Subsamples, and crushing supervision, of indemnified peanuts, pursuant to § 998.200(c)), are paid from available indemnification funds. Such costs are not expected to exceed $2,000,000.

The total assessment rate is $1.70 per ton of assessable peanuts ($0.70 for administrative and $1.00 for indemnification). Assessments are due on the 15th of the month following the month in which the farmers' stock peanuts are received or acquired. Application of the recommended rates to the estimated assessable tonnage of 1,525,000 will yield $1,067,500 for program administration and $1,525,000 for indemnification. The indemnification amount, when added to expected cash carry over from 1994–95 indemnification operations of $8,700,000, will provide $10,225,000, which should be adequate for the 1995 fund, and to maintain an adequate reserve.

The 1994–95 budget was published in the **Federal Register** as an interim final rule on May 12, 1994 (59 FR 24633), and finalized on August 3, 1994 (59 FR 39421). The administrative expenses and assessment rate for the 1994–95 crop year were based on an estimated assessable tonnage of 1,760,000. Due to handlers purchasing fewer peanuts than originally projected, the assessable tonnage is expected to be only 1,676,000. In order to have sufficient revenue to cover budgeted expenses of $1,056,000, the Committee unanimously recommended that the 1994–95 crop year administrative assessment be increased from $0.60 to $0.63 per net ton of assessable farmers' stock peanuts.

An interim final rule was published in the **Federal Register** on May 17, 1995 (60 FR 26348). That interim final rule added § 998.408 which authorized expenditures for administration and indemnification, established an assessment rate, and authorized continuation of an indemnification reserve for the Committee. That rule also amended § 998.407, paragraph (c) to increase the administrative assessment rate for the 1994–95 crop year. That rule provided that interested persons could file comments through June 16, 1995. One comment was received from the Assistant Manager of the Peanut Administrative Committee regarding an incorrect indemnification expense figure appearing two places on page 26349 in the interim final rule. The Committee pointed out that in column one in the third full paragraph and in column three in paragraph (b) *Indemnification expenses*, the $500,000 figure should be corrected to read $2,000,000. These two corrections have been made in this finalization of the interim final rule.

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

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1994–95 crop year began on July 1, 1994, and the 1995–96 crop year for the program began on July 1, 1995, and the marketing agreement requires that the rate of assessment for the crop year apply to all assessable peanuts handled during the crop year. In addition, handlers are aware of this action which was recommended by the Committee at a public meeting and published in the **Federal Register** as an interim final rule.

List of Subjects in 7 CFR Part 998

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 998 is amended as follows:

Accordingly, the interim final rule adding § 998.408 and amending § 998.407, which was published at (60 FR 26348) on May 17, 1995, is adopted as a final rule with the following change:

PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

1. The authority citation for 7 CFR Part 998 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 998.408, paragraph (b) is revised to read as follows:

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

§ 998.408 Expenses, assessment rate, and indemnification reserve.

* * * * *

(b) *Indemnification expenses.* Expenses of the Committee not to exceed $7,000,000 for indemnification claims payments and claims expenses, pursuant to the terms and conditions of indemnification applicable to the 1995 crop effective July 1, 1995, are authorized. In addition, indemnification expenses, in an undetermined amount estimated not to exceed $2,000,000, which are incurred by the Committee for sampling and testing fees for 2–AB and 3–AB Subsamples, and fees for the supervision of the crushing of indemnified peanuts are also authorized.

* * * * *

Dated: July 10, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–17533 Filed 7–17–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–AWP–12]

Revocation of Class E Airspace Area; Merced, Castle Air Force Base (AFB), CA, and Amendment of Class E Airspace Areas; Merced Municipal/ MacReady Field, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes the Class E airspace area at Merced, Castle AFB, CA. This action is necessary due to the closure of Castle AFB, CA. This action also amends the Class E2 and E5 airspace areas at Merced Municipal/ MacReady Field, CA.

EFFECTIVE DATE: 0901 UTC, November 9, 1995.

FOR FURTHER INFORMATION CONTACT: Scott Speer, System Management Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 297–0010.

SUPPLEMENTARY INFORMATION:

History

On June 2, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by modifying the Class E airspace areas at Merced, Castle AFB, CA, and Merced Municipal/MacReady Field, CA (60 FR 28764). This action is necessary due to the closure of Castle AFB, CA.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on proposal to the FAA. No comments to the proposal were received. Class E airspace designations are published in paragraph 6000 of FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in this Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) revokes the Class E3 airspace area at Merced, Castle AFB, CA, and amends the Class E2 and E5 airspace areas at Merced Municipal/MacReady Field, CA, by removing Castle AFB, CA, Class E3 airspace area from the Class E airspace descriptions at Merced Municipal/MacReady Field, CA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(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 10034; 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 economic 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 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; 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 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6003 Class E Airspace Areas Designated as an Extension to Class C Surface Area.

* * * * *

AWP CA E3 Merced, Castle AFB, CA [Removed]

* * * * *

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area for an Airport.

* * * * *

AWP CA E2 Merced Municipal/MacReady Field, CA [Revised]

Merced Municipal/MacReady Field, CA (lat. 37°17′05″ N, long. 120°30′50″ W)

Within a 4.3-mile radius of Merced Municipal/MacReady Field. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 feet or More Above the Surface of the Earth.

* * * * *

AWP CA E5 Merced, CA [Revised]

Merced Municipal/MacReady Field, CA (lat. 37°17′05″ N, long. 120°30′50″ W)

El Nido VOR/DME (lat. 37°13′10″ N, long. 120°24′01″ W)

That airspace extending upward from 700 feet above the surface within a 6.1-mile radius of Merced Municipal/MacReady Field and within 1.8 mile each side of the El Nido VOR/DME 141° and 321° radials extending from the Merced Municipal/MacReady Field 6.1-mile radius to 2.6 miles southeast of the El Nido VOR/DME. That airspace extending upward from the 1,200 feet above the surface bounded on the northeast and east by V–459, on the south by V–230, on the west by V–109, and on the north by V–244, excluding the portions within the Fresno, CA, the Stockton, CA, and the Modesto, CA, Class E airspace areas. That airspace extending upward from 7,500 feet MSL northeast of Merced Municipal/MacReady Field bounded on the east by V–165, on the southwest by V–459, and on the north by V–244. That airspace extending upward from 12,000 feet MSL east of Merced Municipal/MacReady Field bounded on the east by long. 119°20′04″ W, on the south by the Fresno, CA, Class E airspace area, on the west by V–165, and on the north by V–244.

* * * * *

Issued in Los Angeles, California, on July 6, 1995.

James H. Snow,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 95–17593 Filed 7–17–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 95

[Docket No. 28270; Amdt. No. 390]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, July 20, 1995.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days. The FAA has determined that this 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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, D.C. on June 2, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows:

PART 95—[AMENDED]

1. The authority citation for part 95 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, and 40120; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49 (b)(2).

2. Part 95 is amended to read as follows:

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 390 effective date, July 20, 1995]

From	To	MEA
§ 95.6225 VOR Federal Airway 225 Is Amended to Read in Part		
La Belle, FL VORTAC *1400—MOCA	Diddy, FL FIX	*2000
§ 95.6381 VOR Federal Airway 381 Is Amended to Read in Part		
Bishop, CA VOR/DME *13000—MCA Nicol FIX, SE BND **12300—MOCA.	*Nicol, CA FIX	**13000

Airway segment		Changeover points	
From	To	Distance	From
§ 95.8003 VOR Federal Airways Changeover Points			
V–97 Is Amended by Adding			
Miami, FL VORTAC	La Belle, FL VORTAC	25	Miami.
V–521 Is Amended by Adding			
Miami, FL VORTAC	La Belle, FL VORTAC	25	Miami.

[FR Doc. 95–17595 Filed 7–17–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 799

General Technology and Software Notes

CFR Correction

In title 15 of the Code of Federal Regulations, parts 300 to 799, revised as of January 1, 1995, on page 661, Supplement No. 2 to § 799.1 was removed and reserved in error. The correct text of the supplement as published in title 15, revised as of January 1, 1994, reads as follows:

§ 799.1 [Corrected]

Supplement No. 2 to § 799.1—General Technology and Software Notes

1. *General Technology Note.* The export of ''technology'' that is ''required'' for the ''development,'' ''production,'' or ''use'' of

products on the Commerce Control List is controlled according to the provisions in each Category.

''Technology'' ''required'' for the ''development,'' ''production,'' or ''use'' of a controlled product remains controlled even when applicable to a product controlled at a lower level.

General License GTDR, without written assurance, is available for ''technology'' that is the minimum necessary for the installation, operation, maintenance (checking), and repair of those products that are eligible for General Licenses or that are exported under a validated export license.

N.B.: This does not allow release under a general license of the repair ''technology'' controlled by 1E02.e, 1E02.f, 7E03, or 8E02.a.

N.B.: The 'minimum necessary' excludes ''development'' or ''production'' technology and permits ''use'' technology only to the extent ''required'' to ensure safe and efficient use of the product. Individual ECCNs may further restrict export of 'minimum necessary' information.

General License GTDA is available for ''technology'' that is publicly available or technology arising during or resulting from fundamental research. See section 779.3 of this subchapter for details on General License GTDA.)

2. *General Software Note.* General License GTDR, without written assurance, is available for release of software that is generally available to the public by being:

a. Sold from stock at retail selling points, without restriction,[1] by means of:

1. Over the counter transactions;

2. Mail order transactions; or

3. Telephone call transactions; and

b. Designed for installation by the user without further substantial support by the supplier.

General License GTDA is available for software that is publicly available.

N.B.; The General Software Note does not apply to exports of ''software'' controlled by other agencies of the U.S. Government (see § 770.10 of this subchapter).

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 892

[Docket No. 94N–0345]

Medical Devices; Classification of Transilluminators (Diaphanoscopes or Lightscanners) for Breast Evaluation

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule to classify the transilluminator (diaphanoscope or lightscanner) for breast evaluation into class III (premarket approval). This action is necessary to require manufacturers of transilluminators to submit a premarket approval application that includes information concerning safety and effectiveness tests for the device. This action is being taken under the Federal Food, Drug, and Cosmetic Act as amended by the Medical Device Amendments of 1976 and the Safe Medical Devices Act of 1990.

EFFECTIVE DATE: August 17, 1995.

FOR FURTHER INFORMATION CONTACT: Robert A. Phillips, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1212.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 13, 1995 (60 FR 3168), FDA issued a proposed rule to classify transilluminators (diaphanoscopes or lightscanners) for breast evaluation into class III. The effect of classifying a device into class III is to require each manufacturer of the device to submit to FDA a premarket approval application that includes information concerning safety and effectiveness tests for the device. A period of 90 days was provided for interested persons to submit written comments to FDA. FDA did not receive any comments on the proposal. Accordingly, the proposed rule is being adopted without change.

Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the agency believes only a small number of firms will be affected by this rule, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

List of Subjects in 21 CFR Part 892

Medical devices, Radiation protection, X-rays.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 892 is amended as follows:

PART 892—RADIOLOGY DEVICES

1. The authority citation for 21 CFR part 892 continues to read as follows:

Authority: Secs. 501, 510, 513, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

2. New § 892.1990 is added to subpart B to read as follows:

§ 892.1990 Transilluminator for breast evaluation.

(a) *Identification.* A transilluminator, also known as a diaphanoscope or lightscanner, is an electrically powered device that uses low intensity emissions of visible light and near-infrared radiation (approximately 700–1050 nanometers (nm)), transmitted through the breast, to visualize translucent tissue for the diagnosis of cancer, other conditions, diseases, or abnormalities.

(b) *Classification.* Class III (premarket approval).

(c) *Date premarket approval (PMA) or notice of completion of a product development protocol (PDP) is required.* The effective date of the requirement for premarket approval has not been established. See § 892.3.

Dated: July 10, 1995.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 95–17640 Filed 7–17–95; 8:45 am]

BILLING CODE 4160–01–F

[1] The phrase ''without restriction'' clarifies that software is not ''generally available to the public'' if it is to be sold only with bundled hardware generally available to the public. Software that is both bundled with hardware and ''generally available to the public'' does qualify for General License GDTR, without written assurance.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1301 and 1306

[DEA No. 109F]

RIN 1117–AA20

Exemption of Agents and Employees; Affiliated Practitioners

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final rule.

SUMMARY: DEA amends its regulations to allow for the exemption of agents and employees of a registered individual practitioner, hospital, or institution from the requirement for individual registration when administering, dispensing, or prescribing controlled substances in the course of their official duties or business. The amendments make the exemption granted to agents and employees of a registrant more consistent with the recent regulatory changes involving Mid-Level Practitioners (MLP) and the fee exemption for practitioners employed by Federal, state and local government hospitals or other institutions. DEA is also amending, without prior notice, its regulations concerning the manner of issuance of prescriptions to make the language of that section consistent with the amended language set forth herein.

EFFECTIVE DATE: September 18, 1995.

FOR FURTHER INFORMATION CONTACT: G. Thomas Gitchel, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION: On June 15, 1994, DEA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (59 FR 30738) proposing to amend the language under 21 CFR 1301.24 regarding the circumstances under which agents or employees of a DEA registrant may administer, dispense, or prescribe controlled substances in the course of their official duties or business without being required to obtain an individual registration.

Specifically, § 1301.24(b) was proposed to be amended to allow that an individual practitioner who acts as an agent or employee of another individual practitioner, other than a mid-level practitioner (MLP), may administer and dispense (other than by prescription) controlled substances in the normal course of his/her official duties or business under the registration of the employer or principal practitioner.

Section 1301.24(c) was also proposed to be amended to allow an individual practitioner who is an agent or employee of a hospital or other institution to administer, dispense, or prescribe controlled substances under the registration of the hospital or other institution in lieu of becoming individually registered. The provisions outlined under § 1301.24 (c)(1) through (c)(6) set forth the procedures under which an individual practitioner may administer, dispense and prescribe controlled substances utilizing the hospital or other institution's registration number.

DEA received two written comments on the proposed amendments.

The first commentor questioned whether the amended regulation would continue to allow hospital or institution residents and non-private practice staff physicians, in the course of inpatient and outpatient treatment of patients, to prescribe controlled substances under that hospital or institution's DEA registration number. The specific concern was with the potential financial impact on the institution if the proposed amendments required individual registration numbers for a hospital or institution's staff.

The intent of the amendments is to expand the existing exemption from the registration requirement to include a greater population of practitioners. The language of § 1301.24(c) deletes the restriction of an individual practitioner ''who is an intern, resident, mid-level practitioner, etc.'' and replaces that language with ''[a]n individual practitioner''. The amendments will not affect the authority of those individual practitioners, i.e., interns, residents, mid-level practitioners, foreign trained physicians, etc., already authorized to dispense controlled substances under a hospital or institution registration number.

The first commentor additionally wished to ensure that prescriptions issued by agents or employees of a registered hospital or institution would be valid at community pharmacies in the event that patients choose not to use the prescribing institution's pharmacy. Prescriptions issued by agents or employees, consistent with the exemption, are legitimate prescriptions that may be filled at any local registered pharmacy. The regulations do not restrict dispensing of prescriptions to the prescribing hospital or institution.

The second commentor raised three separate concerns. The first inquired as to who has the oversight responsibility for determining whether a given agent or employee, while operating in the usual course of his/her duties, is authorized to handle controlled substances in the jurisdiction in which the registrant practices.

The responsibility for determining whether a registrant's agents and/or employees are authorized by state law to handle controlled substances lies with the registrant. As a threshold matter, DEA cannot register an applicant to handle controlled substances unless that individual practitioner, hospital or other institution has the necessary state authorization or permission to engage in such activities. DEA registration does not convey to a practitioner, hospital or institution any specific authority or permission to engage in controlled substances activities beyond such state authority. Title 21 CFR 1307.02 states ''Nothing in parts 1301–1308, 1311, 1312, or 1316 of this chapter shall be construed as authorizing or permitting any person to do any act which such person is not authorized or permitted to do under other Federal laws or obligations under international treaties, conventions or protocols, or under the law of the State in which he desires to do such act nor shall compliance with such parts be construed as compliance with other Federal or State laws unless expressly provided in such other laws.''

DEA registrants are responsible for ensuring that any controlled substance activities carried out pursuant to their DEA registrations are in full compliance with all applicable Federal and State laws governing controlled substances. Section 1301.24(c)(3) spells out the requirement that a hospital or other institution must verify that individual practitioners who will administer, dispense or prescribe controlled substances under the facility's registration, are authorized to do so under state law. If a controlled substances activity is not authorized or permitted under other Federal or State laws, then the registrant may not allow the activity to be carried out under its registration.

The second commentor also expressed concern with a perceived inconsistency in the language set forth in § 1301.24(c) introductory text and, by reference, in § 1301.24(c)(5), in that paragraph (c) introductory text permits the individual practitioner to ''administer, dispense or prescribe'' under the hospital registration, but paragraph (c)(5) requires only that the registered hospital authorize such practitioner to ''dispense or prescribe''. The technical definition of dispense, as set forth in 21 U.S.C. 802(10), includes the administration of a controlled substance; therefore, an individual

practitioner authorized to dispense a controlled substance would also be authorized to administer a controlled substance. However, in order to avoid further confusion and to maintain consistency, paragraph (c)(5) will be amended to read ''administer, dispense or prescribe.''

The second commentor additionally requested that DEA provide estimates of any financial or other impact on affected entities, including any increased risk or liability. With regard to this request, it must be noted that the provisions set forth under § 1301.24 are not mandatory. If an individual practitioner, hospital or other institution chooses to use the exemptions, however, it is that registrant's responsibility to assess any potential benefits, as well as any risks or liabilities and determine whether the advantages outweigh the disadvantages in using the exemption provisions.

DEA is also amending the language of § 1306.05(b) without prior notice, in order to make the language of that section consistent with the new language in § 1301.24(c). Section 1306.05(b) relates to the manner of issuance of prescriptions issued by persons exempted from the registration requirement under § 1301.24(c). The language is being amended by deleting the reference to ''An intern, resident, or foreign-trained physician, or physician on the staff of a Veterans Administration facility, * * *'' and inserting ''An individual practitioner * * *''

The Deputy Assistant Administrator, Office of Diversion Control, hereby certifies that this rulemaking will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. This final rule expands an existing exception to the registration requirements to provide regulatory relief to a greater population of practitioners. This final rule is not a significant regulatory action and therefore has not been reviewed by the Office of Management and Budget pursuant to Executive Order 12866.

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

List of Subjects

21 CFR Part 1301

Administrative practice and procedure, Drug traffic control, Security measures.

21 CFR Part 1306

Drug traffic control, Prescription drugs.

For reasons set out above, 21 CFR part 1301 is amended as follows:

PART 1301—[AMENDED]

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

Authority: 21 U.S.C. 821, 822, 823, 824, 871(b), 875, 877.

2. Section 1301.24 is amended by revising paragraphs (b), (c) introductory text and (c)(5) to read as follows:

§ 1301.24 Exemption of agents and employees; affiliated practitioners.

* * * * *

(b) An individual practitioner, as defined in section 1304.02 of this chapter, who is an agent or employee of another individual practitioner (other than a mid-level practitioner) registered to dispense controlled substances may, when acting in the normal course of business or employment, administer or dispense (other than by issuance of prescription) controlled substances if and to the extent that such individual practitioner is authorized or permitted to do so by the jurisdiction in which he or she practices, under the registration of the employer or principal practitioner in lieu of being registered him/herself.

(c) An individual practitioner, as defined in § 1304.02 of this chapter, who is an agent or employee of a hospital or other institution may, when acting in the normal course of business or employment, administer, dispense, or prescribe controlled substances under the registration of the hospital or other institution which is registered in lieu of being registered him/herself, provided that:

* * * * *

(5) The hospital or other institution authorizes the individual practitioner to administer, dispense or prescribe under the hospital registration and designates a specific internal code number for each individual practitioner so authorized. The code number shall consist of numbers, letters, or a combination thereof and shall be a suffix to the institution's DEA registration number, preceded by a hyphen (e.g., AP0123456–10 or AP0123456–A12); and

* * * * *

PART 1306 [AMENDED]

1. The authority citation for part 1306 continues to read as follows:

Authority: 21 U.S.C. 821, 829, 871(b), unless otherwise noted.

2. Section 1306.05 is amended by revising paragraph (b) to read as follows:

§ 1306.05 Manner of issuance of prescriptions.

* * * * *

(b) An individual practitioner exempted from registration under § 1301.24(c) of this chapter shall include on all prescriptions issued by him or her the registration number of the hospital or other institution and the special internal code number assigned to him or her by the hospital or other institution as provided in § 1301.24(c) of this chapter, in lieu of the registration number of the practitioner required by this section. Each written prescription shall have the name of the physician stamped, typed, or handprinted on it, as well as the signature of the physician.

* * * * *

Dated: June 16, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 95–17515 Filed 7–17–95; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Federal Highway Administration

23 CFR Part 1204

RIN 2127–AE90

[NHTSA Docket No. 93–21; Notice 2]

Amendments to Highway Safety Program Guidelines

AGENCY: National Highway Traffic Safety Administration (NHTSA) and Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Revisions to guidelines.

SUMMARY: Section 2002 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Highway Safety Programs, requires that the uniform guidelines for State Highway Safety Programs include six critical programs. This notice amends the contents of existing Part 1204 by adopting guidelines on three of these programs: Speed Control; Occupant Protection and Roadway Safety. This notice also revises six of the existing guidelines to reflect new issues and to emphasize program methodology and approaches that have proven to be successful in these program areas. Finally, this notice removes the guidelines from the Code of Federal

Regulations. The guidelines, as revised here, will be published in a separate document made available to the states.

DATES: The amendments made by this action are effective on August 17, 1995.

FOR FURTHER INFORMATION CONTACT: In NHTSA: Ms. Marlene Markison, Office of State and Community Services, National Highway Traffic Safety Administration, 400 7th Street, S.W., Washington, DC 20590, telephone: (202) 366–2121; or Ms. Heidi L. Coleman, Office of Chief Counsel, National Highway Traffic Safety Administration, telephone: (202) 366–1834. In FHWA: Ms. Mila Plosky, Office of Highway Safety, Federal Highway Administration, telephone: (202) 366–6902.

SUPPLEMENTARY INFORMATION:

Background

The State and Community Highway Safety Grant Program (section 402 program) was established under the Highway Safety Act of 1966, 23 U.S.C. § 402. The Act required the establishment of uniform standards for State highway safety programs to assist States and local communities in organizing their highway safety programs.

Eighteen such standards were established and have been administered at the Federal level by FHWA and NHTSA. NHTSA is responsible for developing and implementing highway safety programs relating to the vehicle and driver; FHWA has similar responsibilities in program areas involving the roadway. FHWA is also responsible for implementing programs relating to commercial motor vehicle safety.

Until 1976, the 402 program was principally directed towards achieving State and local compliance with the 18 Highway Safety Program Standards, which were considered mandatory requirements with financial sanctions for non-compliance. Under the Highway Safety Act of 1976, Congress provided for a more flexible implementation of the program so the Secretary would not have to require State compliance with every uniform standard or with each element of every uniform standard. As a result, the standards became more like guidelines for use by the States, and management of the program shifted from enforcing standards to one of problem identification and countermeasure development and evaluation, using the standards as a framework for State programs.

On April 2, 1987, the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100–17) revised 23 U.S.C. § 402. The legislation provided, among other things, that the standards promulgated under section 402 and codified in 23 CFR Part 1204 be changed to guidelines. The purpose of this amendment was to conform the language of section 402 and Part 1204 to the manner in which the programs were then being implemented.

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) was enacted in December 1991. Section 2002 of ISTEA required that the uniform guidelines for State Highway Safety Programs include programs:

> (1) to reduce injuries and deaths resulting from motor vehicles being driven in excess of the posted speed limits [Speed Control]; (2) to encourage the proper use of occupant protection devices (including the use of safety belts and child restraint systems) by occupants of motor vehicles and to increase public awareness of the benefit of motor vehicles equipped with airbags [Occupant Protection]; (3) to reduce deaths and injuries resulting from persons driving motor vehicles while impaired by alcohol or a controlled substance [Impaired Driving]; (4) to reduce deaths and injuries resulting from crashes involving motor vehicles and motorcycles [Motorcycle Safety]; (5) to reduce injuries and deaths resulting from crashes involving school buses [School Bus Safety]; and (6) to improve law enforcement services in motor vehicle accident prevention, traffic supervision, and post-accident procedures [Police Traffic Services].

Section 2002 also required that the Secretary of Transportation designate these six programs as National Priority program areas or submit a report to Congress explaining the reasons for not so designating these programs.

Four of the six programs identified in section 2002 (Occupant Protection, Impaired Driving, Motorcycle Safety and Police Traffic Services) had already been designated as National Priority program areas, along with four additional programs (Emergency Medical Services, Traffic Records, Pedestrian and Bicycle Safety, and Roadway Safety). In a final rule published in the **Federal Register** on December 13, 1994 (59 FR 64120), the agencies decided to add Speed Control, but not School Bus Safety, to the list of priority programs, bringing the number of programs on the list to nine.

Four of the six programs identified in section 2002 (Alcohol Safety, Motorcycle Safety, School Bus Safety and Police Traffic Services) are specifically addressed by the existing 18 Highway Safety Program Guidelines. The guidelines do not specifically address Speed Control or Occupant Protection.

In a Notice and Request for Comment published in the **Federal Register** on January 14, 1994 (59 FR 2320), the agencies proposed to issue two new guidelines to address these two programs. The notice also proposed to add a new guideline to address Roadway Safety. By adding these three guidelines, there will be a highway safety program guideline associated with each program that has been designated a National Priority program area by the agencies. The notice also proposed to make revisions to the six other guidelines that address National Priority program areas (Motorcycle Safety, Alcohol in Relation to Highway Safety, Traffic Records, Emergency Medical Services, Pedestrian Safety and Police Traffic Services).

Comments Received

The agencies received 35 comments to the docket in response to the notice, including comments from 20 State agencies (with responsibility for transportation/highway safety, law enforcement and health); a municipal law enforcement agency; a county health department; four individuals; one corporation (3M); and eight national organizations.

The national organizations that commented represent highway safety interests (National Association of Governors' Highway Safety Representatives and Advocates for Highway and Auto Safety); law enforcement organizations (International Association of Chiefs of Police and National Sheriffs' Association); pupil transportation interests (National School Transportation Association and National Association of Fleet Administrators); and others (National Emergency Number Association and Institute of Transportation Engineers).

The comments were generally supportive of the agencies' proposal to add new guidelines in the areas of Speed Control, Occupant Protection and Roadway Safety and, in today's notice, NHTSA and FHWA have decided to add these three new guidelines. The comments were also generally supportive of the agencies' proposed revisions to the guidelines pertaining to Motorcycle Safety, Alcohol in Relation to Highway Safety, Traffic Records, Emergency Medical Services, Pedestrian Safety, and Police Traffic Services and, in today's notice, these guidelines have been revised.

The comments recommended some additional revisions to the guidelines. These comments, and any changes to the guidelines that the agencies have made as a result, are discussed below.

General Comments

Two commenters (the Institute of Transportation Engineers and the West Virginia Department of Transportation) noted that ISTEA mandated the use of Safety Management Systems, but the guidelines made little, if any, reference to their use. These commenters recommended that the agencies explain the relationship between the guidelines and Safety Management Systems.

These guidelines are meant to provide direction to state and community highway safety efforts which are supported with Section 402 grant funds. The Section 402 process in every state is an integral part of the state's Safety Management System.

To reduce crashes, ISTEA required that every State implement a *process* for managing highway safety by ensuring that safety improvement opportunities are considered and implemented on all highway systems and during all phases of programs/projects. Although each state has a unique approach to developing and implementing this SMS, the process required is similar to the Section 402 process. It includes problem identification and goal setting; data collection and analysis; identification of performance measures; and selection and evaluation of strategies.

The SMS differs from the 402 process in that its scope is broader. The process brings together new highway safety partners and resources, and provides for coordination among all those involved in highway safety, including engineers, enforcement officers, educators, motor carriers, medical personnel, state officials, and metropolitan planning organizations. It is intended that the process will assist decisionmakers in setting highway safety priorities for all safety elements (human, vehicle, and roadway), and in allocating a broad range of highway safety resources. Safety projects and programs identified through the SMS process may be included for funding in each state's Section 402 plan, Motor Carrier Safety Assistance Program State Enforcement Plan (SEP) and metropolitan and statewide transportation plans and improvement programs, as appropriate.

The Washington State Department of Health applauded the agencies for emphasizing the connection made by traffic safety professionals between traffic safety and good health. Washington State stressed the importance of informing the public about medical care cost savings that could result from safe traffic habits and of forming ''partnerships'' between traffic safety professionals and public health officials, hospitals and EMS/trauma providers. In December 1994, NHTSA completed and distributed to the public a Model for Integrating Injury Control System Elements. The agencies have made a number of changes to the guidelines to incorporate elements of this Injury Control Model, which stress a systematic approach for preventing and controlling injuries on our nation's highways.

The Washington State Department of Health also recommended editorial changes regarding the use of the terms ''crash,'' ''accident,'' ''impaired driving'' and ''drunk and drugged driving.'' Except where it was impracticable, such as when referencing Police Accident Reports or Drunk and Drugged Driving (3D) Awareness Week, these comments have been incorporated in the guidelines.

Addition of Three New Guidelines

Guideline #19: Speed Control

Historically, Speed Control has not been separately identified as a National Priority program area under 23 CFR 1204 or described in a separate guideline. It has, however, been an integral part of the Police Traffic Services program. Speed control initiatives have been supported under the Police Traffic Services priority program, under the guideline, and also through FHWA's Motor Carrier Safety Assistance Program (MCSAP) as part of an overall traffic enforcement program aimed specifically at commercial motor vehicles.

In accordance with ISTEA, on January 14, 1994, the agencies published in the **Federal Register** an NPRM proposing to designate Speed Control as a separate National Priority program area and a notice proposing to add a separate guideline on Speed Control. On December 13, 1994 (59 F.R. 64120), the agencies published a final rule designating Speed Control as a separate National Priority program area. In today's notice, the agencies are adding a separate guideline on Speed Control.

The agencies received 16 comments regarding the addition of new guideline 19. There was strong support from most respondents for establishing speed control as a separate guideline, consistent with the support expressed for its inclusion as a priority program area. Three commenters specifically welcomed the addition of the separate guideline. The Florida Department of Transportation thought the inclusion of the guideline would give uniform direction to the States for building effective programs. The Georgia Department of Public Safety and The Illinois State Police were pleased that the area of speed control would now receive individualized attention.

In contrast, two commenters questioned the need to separate speed control from police traffic services and one commenter questioned the need for a speed control guideline. The Michigan Department of State Police believed that keeping these guidelines combined would lead to a more efficient use of shrinking police resources and better reflect the integrated belts, alcohol, and speed programs undertaken by many States. The West Virginia Division of Highways thought that public acceptance would likely be higher if speed control were part of a ''well-reasoned and balanced'' program, rather than a ''stand-alone'' effort. The California Highway Patrol (CHP) cited several NHTSA and FHWA publications, which it believes contain more useful information and are more widely distributed and easier to update than the guideline. In its view, highway safety personnel have access to numerous studies and publications concerning speed issues that contain more current information than the guideline.

Consistent with the view of most commenters, the agencies have retained the separate guideline. The issuance of the guideline is appropriate and necessary in light of the recent designation of Speed Control as a priority program area. The agencies do not believe that a separate guideline precludes the integration of programs or the efficient use of resources by the State. Nor do we think that it represents a ''stand-alone'' effort subject to public disfavor. Rather, it is one of many guidelines which, taken together, provide guidance to the States in the implementation of a comprehensive program. With respect to CHP's comment, the agencies recognize the existence of other sources of information concerning speed control, and freely encourage their use in addition to the information in the guideline.

The Institute of Transportation Engineers (ITE), the West Virginia Division of Highways, and CHP each stressed the importance of traffic engineering practices in the proper setting of speed limits. Emphasizing that speed limits should be ''reasonable,'' West Virginia thought existing speed limits should be subjected to engineering study prior to funding speed enforcement programs, and recommended that the guideline contain a strong statement to that effect. CHP urged that training for traffic engineers include ''Developing guidelines for setting speed limits; Establishing

appropriate signing policies; [and] Investigating alternative approaches to speed control (signing, stripping, channeling, barriers, speed undulations, etc.).''

The agencies note that the guideline already emphasizes the important contribution of traffic engineering to the setting of speed limits. The sections on Program Management, Setting of Speed Limits, and Legislation stress the role of the ''traffic engineer,'' ''traffic personnel,'' and ''engineering investigations'' in that process. However, we agree that it is appropriate for the Training section to contain a similar emphasis, and have adopted CHP's proposed language. The agencies have not adopted West Virginia's suggestion to include a statement that enforcement funding be preceded by engineering evaluations of existing speed limits. To do so would hinder enforcement efforts, based on a blanket presumption that existing speed limits are not reasonable. The agencies are neither willing to accept that presumption nor to place conditions on enforcement efforts, which we view as a vital tool for effective speed control.

CHP thought the guideline was too detailed, in recommending under the section on Training that law enforcement officers escort and assist traffic engineers and technicians in the deployment of speed measuring equipment. CHP viewed such escort and assistance as an operational courtesy, and inappropriate for inclusion in a Federal guideline. In contrast, the National Sheriff's Association thought that training law enforcement officials in speed measurement was ''critical.'' CHP also commented that ''new'' technology is over-emphasized in the guideline. Citing the introductory paragraph's use of the term ''state-of-the-art equipment'' for setting and enforcing speed limits and a similar ''emphasis'' in other sections, CHP argued that the emphasis should instead be placed on ''appropriate technology,'' whether it is new or traditional, because some new techniques are unproven.

The agencies agree with the National Sheriff's Association that training of law enforcement officials is important. We do not agree with CHP's view of the recommendation that law enforcement officers escort and assist traffic engineers in deploying speed measuring equipment. This is not a courtesy, but rather a training experience to provide officers with a broad-based familiarity with speed measurement devices. Consequently, the guideline retains the recommendation, but the reference to ''escorting'' has been deleted to remove any ambiguity. With respect to CHP's comment about ''new'' technology, the introductory paragraph of the guideline, in fact, urges the use of ''both traditional methods and state-of-the-art equipment.'' Moreover, the section on Technology exhorts the States to use only equipment ''that is approved or recognized as reliable.'' The agencies believe that the guideline affords full flexibility, as written, for the use of technology that is appropriate under the circumstances, while accommodating prospective advances in the state of the art. Consequently, we have not adopted CHP's comment.

CHP urged that the guideline devote more attention to speed variability and traveling at speeds unsafe for conditions. The International Association of Chiefs of Police (IACP) supported efforts to focus on speed variability as a cause of crashes, and endorsed the funding of variable message boards that adjust speed limits to conditions. In contrast, The Washington State Patrol thought that the adoption of variable speed limits would create enforcement problems because of motorist confusion, and the Minnesota Department of Transportation was concerned about liability incident to the posting of variable speed limits for prevailing conditions.

The agencies agree that the issues of speed variance and traveling at speeds unsafe for conditions deserve special attention, particularly from the standpoints of enforcement and education. Consequently, we have added specific references to these problem areas in the sections on Enforcement Program and Public Information and Education. The agencies believe that variable message speed limit signs can provide valuable safety benefits, and field evaluations have not disclosed concerns about liability or motorist confusion. The agencies will cooperate with State highway safety agencies to address any concerns that might arise. We have retained the references to these devices in the guideline, encouraging their use as a viable part of a comprehensive speed control program.

Advocates for Highway and Auto Safety (Advocates) suggested that the term ''vigorous enforcement,'' which appears in the Enforcement Program section, be defined in terms of the qualities and characteristics that might comprise such an effort to better assist jurisdictions in carrying out enforcement campaigns. The agencies believe the term is unambiguous as stated—it conveys a high degree of effort. The qualities and characteristics of a comprehensive speed control program are set forth throughout the guideline.

The New York City Police Department (NYPD) commented that more educational programs should be designed to raise public awareness of the hazards of speeding. The NYPD thought this could be best accomplished by starting with students during their freshman year in high school. The Washington State Department of Health recommended that language concerning bicyclists be included among the issues deserving attention in anti-speeding efforts under the Enforcement Program section. The agencies fully support increased educational efforts in this area, and particularly those directed at an age group that has been traditionally over-represented in highway injuries and fatalities. We believe that the Public Information and Education section of the guideline fully accommodates NYPD's interest in expanding educational efforts concerning the hazards of speeding, and therefore no changes have been made to the guideline. The agencies have adopted Washington's comments concerning bicyclists, and have included a reference in the Enforcement Program section.

The Washington State Patrol commented that the use of photo radar technology and VASCAR, as identified in the Enforcement Program and Technology sections of the guideline, is not approved under current State statutes. Washington identified aerial speed enforcement as a viable alternative to VASCAR. The Minnesota Department of Transportation thought that the Program Management section was too prescriptive. Minnesota did not articulate any reasons for its view, but sought a less ''rigid framework.'' The agencies have made no change to the guideline, because it does not compel the use of a particular technology or framework. States have the flexibility to choose among the different strategies contained in the guideline in implementing speed control programs, according to their needs and particular circumstances.

A number of commenters expressed concerns about the National Maximum Speed limit. One commenter urged the repeal of the National Maximum Speed Limit (NMSL). Another commenter complained that in the guideline's section on Legislation, the NMSL was specifically excluded from those speed limits that need to be ''realistic.'' Yet another commenter urged renewed focus on the NMSL at the national level, because of a perceived erosion in voluntary compliance. The NMSL is governed by statute, and it is not within

the agencies' authority to change or rescind it. The agencies have deleted the parenthetical statement in the Legislation section, which implies unintentionally that the NMSL need not be ''realistic.'' The statement was intended to convey that the NMSL is excluded from those speed limits that States may set, but its existence may lead to confusion and its deletion does not affect the guideline . With respect to the comment urging a renewed national focus, the agencies would point out that speed control has recently been designated as a priority program area, reflecting a strong national focus on the issue and a commitment to full cooperation with the States in this area.

Guideline #20: Occupant Protection

When the original highway safety program standards were established by NHTSA and FHWA, an occupant protection program standard was not included among them.

In 1982, the agencies issued a final rule which identified six National Priority program areas that were considered the most effective in reducing highway deaths and injuries. Occupant Protection was designated as one of the six most effective programs. However, the agencies did not at that time, and have not since, issued a highway safety program standard or guideline on Occupant Protection.

The January 1994 **Federal Register** notice proposed to add a separate guideline on Occupant Protection. In today's notice, the new guideline is adopted.

The agencies received 11 comments regarding new guideline 20, which generally expressed strong support for its addition. The Georgia Department of Public Safety and the Illinois State Police were especially supportive of giving occupant protection individualized attention. The National Sheriff's Association (NSA) stated that strict enforcement of occupant restraint and child safety seat use requirements by all State, county, and municipal law enforcement officers was ''a must.'' NSA also recommended that references to air bags and anti-lock braking systems be included. Advocates for Highway and Auto Safety urged the agencies to specifically endorse the primary enforcement of mandatory safety belt and child restraint use laws as part of the ''vigorous enforcement'' contemplated by the guideline.

The agencies agree with NSA that strict enforcement efforts are a vital component of a successful occupant protection program, and believe that the guideline, as proposed on January 14, 1994, places a strong emphasis on enforcement. The agencies also agree that air bags play an important role in occupant protection. In recognition of this role, references to airbags already appear in the guideline, in the sections on Legislation, Regulation, and Policy; Enforcement Program; and Public Information and Education Program. In response to NSA's comment, we have also added a reference to air bags in the context of trend data collection in the Evaluation Program section. However, the agencies do not agree that references to anti-lock brakes are appropriate in the Occupant Protection guideline, as this issue falls more properly within the ambit of crash avoidance. Consequently, the agencies have not adopted NSA's suggestion to add such references. The agencies agree with Advocates that primary enforcement legislation deserves special emphasis, and have added appropriate language in the section on Legislation, Regulation, and Policy.

The National Association of Fleet Administrators (NAFA) supported all employer programs directing the use of safety belts by employees. NAFA commented, however, that the employer's responsibility should be limited to the adoption of policies and to informing employees of those policies. NAFA voiced its member fleets' concerns that States might pass laws requiring an employer to monitor compliance, raising the specter of unjust liability and penalties. According to NAFA, it would be unfair to hold an employer responsible where an employee willfully disregards the employer's policy. The agencies agree with NAFA about the importance of employer-based programs for the use of safety belts. In fact, through a public/private partnership popularly known as ''NETS'' (Network of Employers for Traffic Safety), the agencies are actively encouraging such programs, because of their demonstrated safety benefits and resulting economic benefits to the employer. Since the guideline proposed on January 14, 1994 does not discuss issues of liability or responsibility associated with employer-based programs, no changes have been made in response to NAFA's comment.

The proposed guideline provided for basic and in-service training in the Enforcement Program section. In connection with that training, The International Association of Chiefs of Police (IACP) commented that NHTSA should not insist on a particular curriculum or dictate the number of hours. In IACP's view, training should be described in terms of learning goals and performance objectives. The guideline presently allows the flexibility IACP seeks, specifying neither the particular curriculum nor the number of hours of training required. Consequently, no changes have been made in response to IACP's comment.

The Washington State Patrol expressed concern that data requested in the Evaluation section of the guideline, such as conviction rates on restraint violations, are not available or easily obtained. Collection of the specific data listed in the guideline (safety restraint citations and convictions) is not required but rather suggested as an aid to the State in fashioning its evaluation program. The agencies are aware that, while data on motor vehicle restraint violations are generally available, conviction rate data may be more difficult to obtain. Where such data are unavailable, States may choose to collect other useful data for evaluation purposes.

The National School Transportation Association (NSTA) recommended that the guideline discuss the issue of ''compartmentalization,'' to educate the public about the safety record of school buses. NSTA also suggested that continued emphasis be placed on school bus drivers wearing safety belts. The agencies have not adopted NSTA's recommendations, because they are more appropriate for consideration in the specific context of school bus safety, and have been addressed elsewhere. For example, NHTSA periodically publishes the ''School bus safety report,'' a widely disseminated document containing useful safety information, including a discussion of the importance of compartmentalization. Additionally, the Highway Safety Program Guideline on Pupil Transportation Safety (not under revision at this time) places an emphasis on the importance of safety belt use by school bus drivers.

3M Corporation commented that the guideline fails to consider the safety of occupants of disabled vehicles, and recommended that conspicuity enhancement, such as reflective license plates and garments for stranded motorists, be considered. The agencies agree that conspicuity can play a role in motorist safety. However, we do not believe that the issue is appropriate for consideration in the context of the occupant protection guideline, which addresses the protection of vehicle occupants during a crash.

The New York City Police Department urged the expansion of programs advocating the use of safety belts to junior high school through the last year of high school. The proposed guideline already recommends that programs for grades kindergarten through 12 include ''highway safety in general and

occupant protection in particular.'' Accordingly, no change in the guideline is necessary.

Guideline #21: Roadway Safety

When the original 18 standards were established, there was not an individual roadway safety program standard. Instead, four standards were published, each of which pertained to some aspect of safety in the roadway environment: Standard 9 on Identification and Surveillance of Accident Locations; Standard 12 on Highway Design, Construction and Maintenance; Standard 13 on Traffic Engineering Services; and Standard 14 on Pedestrian Safety. In 1982, the agencies issued a final rule which identified six National Priority Program Areas that were considered the most effective in reducing highway deaths and injuries. ''Safety Construction and Operational Improvements'' was designated as one of the six most effective programs. In 1987, the agencies changed the ''Safety Construction and Operational Improvements'' priority program to ''Roadway Safety'' to encompass a wider breadth of safety activities related to the roadway environment. However, the agencies have never issued an individual highway safety program standard or guideline to encompass the entire area of either ''Safety Construction and Operational Improvements'' or ''Roadway Safety.''

In the notice published on January 14, 1994, the agencies proposed to more effectively organize and consolidate the roadway safety components from each of the four guidelines that pertain to safety in the roadway environment by creating a new guideline entitled ''Roadway Safety.'' At that time, the agencies contemplated that the four related guidelines would remain unchanged. The agencies received 14 comments regarding the proposed Roadway Safety guideline, supporting the creation of a separate new guideline. Two of the comments recommended that, with the creation of this new guideline, the agencies could eliminate guidelines 9, 12, and 13. The agencies agree with these comments and have decided in this notice to remove these three guidelines. The new Roadway Safety guideline will be numbered Guideline No. 21, and contain additional section headings for ease of reference and conformance with the format of the other guidelines. Guideline Nos. 9, 12 and 13 will be reserved.

The West Virginia Department of Transportation was the only commenter that questioned the issuance of the Roadway Safety guideline, stating that it was almost a verbatim restatement of the requirements imposed on States under the Federal Aid Policy guide (23 CFR 924). The agencies disagree with this comment. The guide to which West Virginia referred deals specifically with the Highway Safety Improvement Program (HSIP). Under this program, specific funding is set aside from the Surface Transportation Program for carrying out the Rail-Highway Crossings and Hazard Elimination programs. While HSIP funds are available for roadway safety construction and hardware improvements, Section 402 funds are not. The Roadway Safety guideline refers specifically to non-construction items which are authorized under Section 402. In addition, the guideline is broader in scope, articulating recommended policies, practices, and procedures.

3M Corporation supported the use of conspicuity treatment on vehicles and clothing for motorcyclists and pedestrians, and recommended data collection and education efforts on the effectiveness of conspicuous materials. The NYPD recommended educating all grades of high school students, through community policing, on safety issues such as the hazards attendant to changing flat tires in traffic lanes. The agencies agree with 3M that use of conspicuous materials has a safety benefit. However, 3M's recommendations are not directly related to this guideline, which concerns safety aspects of roadways. Moreover, the agencies note that conspicuity requirements are already in place for highway construction and maintenance workers, and that the safety benefits associated with enhanced visibility are well-established, obviating the need for data collection and educational efforts in this area. As discussed below, however, we have identified retroreflective materials as important treatments for the improvement of nighttime visibility. The agencies strongly support highway safety education efforts, but note that NYPD's recommendation for education concerning safety hazards to those changing tires is more appropriate for consideration in the context of programs concerning pedestrians or driver education.

The Michigan Department of State Police suggested that new technology, such as high intensity sheeting on signs, might render roadway lighting less cost effective than it has been in the past. Michigan also thought that evaluating the impact of specific traffic control measures on all traffic crashes might be problematic, and that it might be more reasonable for States to evaluate spot improvements. The agencies agree that new technology, such as retroreflective materials, can provide valuable safety benefits at night, and should be considered in addition to traditional lighting applications. Accordingly, we have added a reference to retroreflective materials in the guideline. The agencies also agree that spot evaluations are an effective means of measuring the impacts of specific traffic control measures on traffic crashes. Spot evaluations are currently routine practice, and no change in the guideline is needed to accommodate them.

The ITE recommended that specific minimum education standards and certain registration requirements be established for personnel responsible for traffic engineering and highway safety. ITE believes that the guideline should direct each State to implement such requirements. The agencies share ITE's concerns that personnel involved in traffic engineering and highway safety be properly trained and qualified. However, the agencies believe it is appropriate for the States to set standards in consultation with professionals within their borders and based on particular State circumstances. We would point out, however, that FHWA is developing a series of training courses on the Safety Management System and other roadway safety topics. These courses are specifically designed for those who are involved in safety and traffic engineering, and are offered through the National Highway Institute at locations across the country.

The Washington State Department of Health suggested that the guideline include language recommending the development of an ''open process for frequent roadway users, e.g., EMS/trauma providers, law enforcement, CMV drivers, and commuters to report dangerous roadway sections and/or specific hazards that they encounter.'' Many such processes already exist. For example, the emergency telephone number ''911'' has been in use for many years, and is widely accepted as a means of communicating roadway safety hazards. The Federal Communications Commission recently issued a Notice of Proposed Rulemaking proposing that commercial wireless operations be required to make Enhanced 911 available to customers, and is soliciting comments on how this may be accomplished. In addition to the universal 911 emergency number, some States have provided emergency numbers for motorists to report road hazards. Most law enforcement agencies also monitor channel 9 on citizen's band radio. In Highway Safety Program Guideline 11 (Emergency Medical Services), NHTSA supports these

programs by encouraging states to require a communication system that begins with a universal system access number. In view of the many programs currently in existence, the agencies do not believe that a change in the guideline is necessary.

CHP commented that the guideline should support construction zone safety programs, traffic operations programs, emerging technologies having applications in the roadway safety environment, and public awareness/education programs. CHP also sought consideration of congestion mitigation efforts. Advocates suggested that where the guideline refers to the regulation of traffic in work zones (construction and repair sites and detours), it should clarify that such zones should conform to recognized standards and guidelines, such as the Manual on Uniform Traffic Control Devices. The guideline proposed on January 14, 1994 is sufficiently broad to support most of the activities identified by CHP (construction zone safety programs, traffic operations programs, and emerging technologies), provided they do not involve highway construction, design, or maintenance activities, for which Section 402 funds are not available. Federal-aid funds are available separately under other programs to finance these latter activities. (For example, the Manual on Uniform Traffic Control Devices establishes standards for specific traffic control devices and procedures to be used in work zones. Funding for these devices and activities is available through the regular Federal-aid program.) The agencies agree that the guideline should be expanded to discuss public awareness and congestion mitigation. Consequently, we have highlighted public awareness issues in a new ''Outreach Program'' section and added language concerning congestion mitigation under the section on Highway Design, Construction, and Maintenance. The agencies also agree with Advocates' comment concerning conformance with recognized standards, and have added language identifying the Manual on Uniform Traffic Control Devices in the guideline.

The IACP encouraged a focus on two areas, under Program Management, where it thought the agencies could make a significant impact. IACP suggested that start-up funding be provided for up to 3 years for additional police patrols in connection with the construction of a new stretch of highway and funding of innovative programs bringing together engineering and enforcement professionals at conferences and the like. Funding for police patrols associated with highway construction is authorized under other Federal-aid highway appropriations. Consequently, the agencies have not adopted the recommendation concerning the funding of police patrols with respect to this guideline. The bringing together of engineering and enforcement professionals is already accommodated by the guideline, which specifically encourages a multi-disciplinary approach, including the fostering of dialogue between engineering and enforcement personnel. Consequently, while the agencies agree with the comment, no change in the guideline is necessary.

Revision of Six Existing Guidelines

The highway safety program standards were first issued in the early 1970's, and the contents of most of these standards have not been revised significantly since that time. The highway safety environment, however, has changed dramatically during the past twenty years. Accordingly, in the notice published on January 14, 1994, NHTSA and FHWA proposed to update a number of the guidelines. The agencies proposed to update only those guidelines that correspond to programs currently designated as priority programs.

The National Association of Governors' Highway Safety Representatives (NAGHSR) supported the agencies' proposed changes to the guidelines, but expressed disappointment that the agencies ''did not use this opportunity to propose additional amendments.'' NAGHSR suggested that all of the guidelines should be revised and updated. In particular, NAGHSR recommended that the guidelines should be revised to better address emerging safety issues, such as high risk drivers and rail grade crossing safety, and that the agencies should consider establishing a process under which all the guidelines would be reviewed periodically to ensure they are current and useful to State implementing agencies.

With regard to NAGHSR's specific comment regarding emerging issues, the agencies wish to note that rail grade crossing safety is addressed in the Roadway Safety guideline referenced above, and issues involving impaired drivers are fully addressed in the Impaired Driving guideline referenced below.

With regard to the other issues raised in NAGHSR's comments, the agencies will take them under advisement for future planning purposes. However, the notice published in January 1994 proposed only to add three guidelines and modify six others. As noted above, the creation of a new Roadway Safety guideline has resulted in the removal of former guidelines 9, 12 and 13. Modifications have not been made, however, to any other guidelines. If the agencies decide to make changes to other guidelines, such changes will be made after providing notice in the **Federal Register** and an opportunity to comment.

Revision to Guideline No. 3—Motorcycle Safety

The agencies proposed that the Motorcycle Safety guideline would continue to emphasize the importance of motorcyclists wearing helmets and would be amended to place greater emphasis on improving the knowledge and skills of motorcycle operators through motorcycle rider education and training programs.

The agencies received 10 comments concerning proposed revisions to the Motorcycle Safety Guideline. Four individuals submitted comments opposing the mandatory use of motorcycle helmets. One stated that Illinois, Iowa, and Colorado are consistently among the ten safest motorcycling States, though they lack helmet laws. Another cited data showing that motorcycle fatalities in Minnesota and Wisconsin constitute a small percentage of both vehicular and head trauma fatalities, and stated that fatalities had decreased after Minnesota's rescission of its helmet law. A third cited data showing a large drop in motorcycle fatalities in California since the implementation of a motorcycle safety program in 1987. Three of the four commented that States without mandatory helmet laws show lower rates of fatalities, and urged education and training instead of mandatory use laws. One of these highlighted driving under the influence of alcohol and failing to obtain a motorcycle endorsement as issues associated with motorcycle fatalities, and suggested the need for stiffer penalties.

These individuals raised a number of other points in opposition to mandatory helmet use. One stated that, because motorcyclists are covered by insurance, any argument that helmet use would lower health care costs for everyone held no merit. Another cited claims that helmeted riders ''may be involved in as many as 14 to 16% more accidents than non-helmeted riders'' and that head injuries account for 28.1% of non-helmeted fatalities and 29.4% of helmeted fatalities. According to this commenter, helmets contribute to obstructed vision and hearing and

increased weight, temperature, and fatigue of the rider. This commenter also criticized the DOT helmet tests for failure to ''probe all the effects of a helmet in an actual accident situation.''

The agencies agree with the commenters that education and training should form an important component of a comprehensive motorcycle safety program, and that penalties should be imposed for driving under the influence of alcohol and failing to obtain a motorcycle endorsement. The guideline currently accommodates these concerns. The agencies do not agree, however, that education and training should exist to the exclusion of laws requiring the use of helmets. The arguments raised by these commenters questioning the safety benefits attributable to helmets fail to properly distinguish between fatality rates and absolute numbers of fatalities. The apparently low fatality numbers cited by the commenters follow naturally from the fact that there are relatively few motorcycles on the road, and they travel relatively few miles. Motorcycles make up only 2 percent of all registered vehicles in the United States and account for only 0.5 percent of all vehicle miles traveled. (Notably, most of the States cited by the commenters fall within the bottom of the range with respect to numbers of motorcycles registered and miles traveled, so it is not surprising that their fatality statistics are even lower.) However, on the basis of vehicle miles traveled, motorcyclists are about 20 times more likely to die in a motor vehicle crash than are passenger car occupants. Moreover, though motorcyclists were involved in only 1 percent of all police-reported motor vehicle crashes in 1991, they accounted for 8 percent of all occupant fatalities and almost 7 percent of total traffic fatalities.

Riding a motorcycle is a very high risk form of transportation in the normal traffic environment, and it is even more risky without a helmet. NHTSA estimates that an unhelmeted motorcyclist is 40 percent more likely to incur a fatal head injury and 15 percent more likely to incur a non-fatal head injury than a helmeted motorcyclist when involved in a crash. The level of protection afforded by helmets is borne out by recent statistics in California, one year after implementation of a mandatory motorcycle helmet use law. Statewide fatilities decreased 37.5 percent from 523 fatalities in 1991 to 327 in 1992. An estimated 92 to 122 fatalities were prevented, and head injuries decreased significantly among both fatally-injured and non-fatally-injured motorcyclists.

The agencies do not agree with the comment that, because motorcyclists carry insurance, health care costs are not an issue for consideration. The data show that large numbers of motorcyclists either do not carry insurance or do not carry enough insurance to fully cover expenses. It is notable that the commenter stating this position also cited statistics showing that many riders involved in motorcycle fatalities did not have a motorcycle license. (It is reasonable to assume that these unlicensed riders did not carry insurance.) More importantly, the societal costs have been documented. The General Accounting Office, in a 1991 report reviewing a broad array of published and unpublished effectiveness studies on helmets and helmet laws, highlighted the societal costs, stating that:

> The studies we evaluated showed that nonhelmeted riders were more extensive users of medical services and long-term care, and were more likely to die or lose earning capacity through disability. In one sense, the care of accident victims represents a claim on society's resources regardless of how payment is made. The studies we evaluated also indicated, however, that much of the actual payment for care is made by society through tax-supported programs or insurance premiums.

The agencies do not accept the premise that helmeted riders may be involved in more accidents than non-helmeted riders due to helmet-related factors, such as interference with vision or hearing. Studies confirm that wearing helmets does not restrict the ability to hear horn signals or the likelihood of visually detecting a vehicle in an adjacent lane prior to initiating a lane change. The relatively higher involvement of helmeted riders in crashes, as compared to non-helmeted riders, follows naturally from the fact that, nationwide, more motorcycle riders wear helmets than do not. Indeed, if 100 percent of motorcycle riders wore helmets, 100 percent of the observed fatalities would consist of helmeted victims. The agencies agree with the commenter that the DOT helmet test cannot replicate all aspects of an actual crash situation, but do not accept the conclusion that the test has no value. Among other parameters, the test measures impact attenuation, helmet retention, and resistance to penetration. These parameters are important determinants of the level of crash protection afforded by a helmet.

In contrast to the comments of these four individuals, the majority of commenters generally supported the guideline. Four commenters specifically identified the use of helmets as an important component of the guideline. Advocates recommended that the guideline urge the enactment of motorcycle helmet use laws more directly, rather than parenthetically. The National Association of Governors' Highway Safety Representatives (NAGHSR) thought that more emphasis should be placed on mandatory helmet use laws, because it viewed helmets as the most effective means of reducing motorcycle head injuries. The Minnesota Department of Transportation urged continued emphasis on the importance of wearing motorcycle helmets. 3M Corporation supported mandatory helmet laws from the standpoint of conspicuity, recommending that helmets be made conspicuous for both daytime and nighttime visibility. The agencies agree with all of these comments about the importance of wearing motorcycle helmets. In particular, the agencies agree with Advocates that motorcycle helmet use laws deserve more than parenthetical reference, and have included additional language in the Program Management section. We have also added, under the section on equipment, language clarifying that helmets should meet the Federal Motor Vehicle safety Standard on helmets. The agencies agree with 3M that daytime and nighttime conspicuity of helmets would add to motorcyclist safety, and have included appropriate language in the Conspicuity section of the guideline.

Several commenters made recommendations concerning training, education, or licensing issues. Minnesota stressed the need for emphasis on improving the knowledge and skills of operators. Advocates noted that, even with school certification, adolescent motorcycle operators suffered a disproportionate number of fatalities. Consequently, Advocates believed that the guideline should not encourage newly licensed and younger drivers to seek motorcycle license endorsement. Instead, Advocates believed that training should be limited to those with motorcycle licenses, and should not be conducted in schools, youth groups, or the like, where it might serve to encourage motorcycle riding by the young.

The Hawaii DOT recommended the deletion of the entire Rider Education and Training section, reasoning that ''government should not care *how* a rider is educated, only *that* he is educated,'' and concluding that motorcycle riding criteria should be performance oriented (i.e., government should set criteria for the licensing test, but not for the training). Citing NHTSA's five-year study of driver

education in DeKalb County, Georgia, which showed only a short-term benefit, Hawaii also suggested amendment of the introductory paragraph of the guideline to remove training from the list of ''effective'' programs. According to Hawaii, enforcement, rather than training, is the proper role of government. Hawaii also asked for more specificity in the guideline's recommendations concerning licensing. For example, Hawaii asked for the identification of medical criteria specific to motorcycle (rather than car) licensing. With respect to license renewal, Hawaii asked whether a knowledge test would be sufficient or whether a skills test should also be required. Finally, Hawaii asked what time frame the guideline contemplated by recommending the issuance of a learner's permit only twice per applicant.

The agencies believe that training and education are an important part of a comprehensive motorcycle safety program. Consequently, we agree with Minnesota's comment concerning the need for emphasis on the knowledge and skills of operators, and this is already reflected in the guideline proposed on January 14, 1994. However, the appropriate age for motorcycle licensing is properly a matter of State concern and, for this reason, the agencies decline to recommend actions, as urged by Advocates, that would restrict the availability of training for adolescents. The agencies do not believe that motorcycle training and education should be withheld from any segment of the population that has reached the age set by the State for obtaining a motorcycle license. Similarly, the agencies disagree with Hawaii's comment that the guideline should concern itself with testing, but not with training. A well balanced program should focus on both aspects, as currently reflected in the guideline.

The identification of specific medical criteria relevant to motorcycle licensing decisions and the nature of testing required for license renewal are also matters properly left to the discretion of the State. Consequently, the agencies have not adopted Hawaii's recommendation to provide further specifics in the guideline concerning these areas. In response to Hawaii's question regarding the issuance of learner's permits only twice per applicant, the agencies have broadened the language in the guideline to indicate that States should limit the number or frequency of learner's permits issued to any one individual.

Hawaii also disagreed with the guideline's emphasis on impaired motorcyclists. Instead, Hawaii thought it would be more cost-effective to take a generic approach to the issue of DUI. The agencies agree that DUI is a dangerous problem regardless of the type of vehicle being operated, but believe it is important to include specific consideration of impaired motorcyclists in this guideline. The problem of impaired motorcyclists is commonly overlooked in most impaired driving enforcement programs. Focus testing conducted by NHTSA has shown that DUI messages directed at motorcyclists (a subgroup overrepresented in DUI statistics), need to be different than those directed at other motorists in order to produce the desired awareness. Consequently, it is especially important that DUI programs and activities be referenced separately in this guideline, and that they be tailored to the motorcyclist audience.

The Texas Motorcycle Safety Bureau thought that the funding source advocated by the guideline under the Program Management section should be sufficient to fund all program needs and secured from use by other state agencies. Texas noted that much additional funding would be needed to implement the all-encompassing program addressed in the guideline. Texas also recommended that the requirement for data collection be more specific, but cautioned that if it included crash data, it would fall within the responsibility of another State entity and not be allowed. Finally, Texas expressed confusion about the provision, under the section on Motorcycle Rider Education and Training, advocating ''permission to spend money in other motorcycle safety program areas as deemed appropriate.''

The agencies agree with Texas that the funding source sought under the guideline should be secured from use for other purposes, but believe that this is implicit in the guideline as written. With respect to the concern about the need for additional funds, we are optimistic that Texas will strive to implement comprehensive motorcycle safety programs, making the best use of the funds available. The agencies decline to further articulate the data collection requirement. States are encouraged to collect data which they determine is useful in contributing to motorcycle safety activities. The guideline does not specify responsibilities for collecting data, so Texas need not be concerned about conflicting duties among State agencies. The agencies agree with Texas' comment that the provision about spending money in other program areas is confusing, and have deleted it from the guideline.

Revision to Guideline No. 8—Alcohol in Relation to Highway Safety

The agencies proposed that the guideline entitled ''Alcohol in Relation to Highway Safety'' would be renamed ''Impaired Driving,'' and would be amended to encourage use of a comprehensive, community-based approach. Its goals would include preventing people from being killed and injured in the short-term through general deterrence programs, and permanently reducing the number of drivers impaired by alcohol or other drugs through long-term prevention and intervention measures.

The agencies received eleven comments regarding the proposed changes to Guideline 8. The National Sheriffs' Association and the New York Police Department agreed with the proposed changes to this guideline. The International Association of Chiefs of Police (IACP) supported the proposed revisions, particularly those portions that encourage the adoption of programs that emphasize the likelihood of officer-violator contact. Both the IACP and the Illinois State Police emphasized the importance of police visibility in the community.

Illinois and the Minnesota Department of Transportation strongly supported the guideline for recommending use of long-term prevention and intervention programs, such as DARE, and expressed confidence that such programs would reduce DUI/DWI levels significantly in the future.

Advocates stated that it favored the general approach and most of the details included in the proposed amendments to Guideline 8, but suggested that the agencies consider recommending that States adopt 0.05 BAC as the legal limit for the general driving public and administrative license revocation or suspension sanctions as a means to reduce impaired driving.

The agencies have not amended the guideline in response to this comment. The agencies believe administrative license revocation or suspension sanctions are already addressed sufficiently in the guideline. Section II.A recommends that States should ''permit a broad range of administrative and judicial penalties and actions'' and it includes in its list of ''effective penalties'' for impaired driving offenses the ''prompt and certain administrative license revocation or suspension of at least 90 days for persons determined by chemical test to violate the State's BAC limit.''

The agencies disagree that the legal limit should be lowered to 0.05 BAC for the general driving public. The agencies recommended that States adopt 0.08 BAC for many of the reasons set forth in NHTSA's Report to Congress on Alcohol Limits, Driving Under The Influence, in October 1992. As the agency explained in the report:

> A BAC level below 0.08 would have safety benefits if it could be implemented effectively. However, a lower BAC might strain judicial and enforcement resources and possibly result in public backlash if these lower limits are viewed as unreasonable.

The Florida Department of Transportation stated that use of preliminary breath test (PBT) devices has created confusion and resulted in findings of not guilty in DUI cases in the State of Florida, and recommended deleting from the guideline any reference to PBTs and emphasizing instead use of the Standardized Field Sobriety Test (SFST), with updated guidelines and training programs.

The agencies support the use of SFST and will continue to recommend its use in Guideline 8. The agencies have not, however, deleted references to PBTs from the guideline. PBTs are used widely in many States. The agencies believe PBTs are extremely useful as law enforcement tools, when used properly. In fact, the Illinois State Police Department stated in its comments that ''the availability of PBT devices is essential to enhanced DUI/DWI patrol, especially if .08 [BAC] is established as the per se [level for] alcohol impairment.''

The Michigan Department of State Police recommended that the guideline be amended to include a reference to party host responsibilities. The agencies agree that social host responsibilities should be addressed in the guideline and have amended the Responsible Alcohol Service section of Guideline 8 in response to this comment.

The Washington State Department of Health suggested that the agencies make a number of specific changes to Guideline 8. The agencies have adopted one of these suggestions. The agencies have not amended section I.B on School Programs to promote the fact that underage drinking is illegal in every State. This section recommends the type of school programs that States should conduct, not the content of the programs. Moreover, the guideline recognizes elsewhere (in sections I.D and II.A) that it is illegal for persons under 21 years of age to drink.

Section II.A recommends that States should ''provide effective penalties for [certain] offenses.'' Washington recommended that the guideline clarify that penalties should apply whether the offenses are motor vehicle-related or not. The agencies have not amended the guideline to make this change. We believe it is unnecessary, particularly since the guideline lists, as an example, a mandatory driver's license suspension for any violation of law involving the use or possession of alcohol or other drugs by a person under the age of 21, an offense that is not necessarily motor vehicle-related.

Washington suggested that Guideline 8 be amended to recommend tiered sentencing of hard core, repeat and high BAC drivers. The agencies have not amended the guideline in response to this comment. The guideline already recommends ''increasingly more severe penalties for repeat offenders.'' The agencies do not currently have a position on whether more severe penalties should be placed on high BAC drivers.

Finally, Washington recommended that public information and education (PI&E) programs for deterrence should include information about the risk of injury and/or death as well as legal, medical and other costs. The agencies have amended the guideline to recommend that this information be included in PI&E efforts. We have added this recommendation to the prevention rather than the deterrence PI&E section, however, where we believe it will have a greater impact.

The Hawaii Department of Transportation raised a number of issues, most of which question the recommended use of sanctions that shift responsibility away from individuals that drink and drive. Hawaii objected, for example, to the recommended use by employers of treatment programs, laws that impose liability on alcohol servers, and driver licensing sanctions against license holders convicted of offenses that do not involve the use of a motor vehicle.

The agencies wish to stress that most of the sanctions recommended in Guideline 8 emphasize personal responsibility on the part of individuals who drink and drive (such as administrative license suspension, imprisonment, or impoundment or confiscation of license plates or vehicles), as these sanctions are considered to be among the most effective. However, there has been considerable success using some of these other methods. Driver licensing sanctions against persons under the age of 21 who purchase or possess alcohol illegally, whether or not such persons are operating a motor vehicle at the time, have been particularly effective. Accordingly, the agencies will continue to include these recommendations in the guideline.

Hawaii raised several other issues, with respect to which the agencies wish to provide clarification. Hawaii questioned the guideline's recommendation that States implement K–12 traffic safety education that includes an emphasis on impaired driving. Hawaii asks whether the agencies believe children in grades K–3 should be educated about this subject. The agencies believe students should be educated about impaired driving well before they are old enough to obtain a driver's license. We defer to educators to determine the appropriate age at which to begin such education.

Hawaii objected to the recommendation in Guideline 8 that States require the use of a victim impact statement prior to sentencing in certain DWI cases. Hawaii argued that ''these statements may be subjecting victims to additional misery without providing any profit.'' The agencies wish to explain that this recommendation is intended to require that statements be used, if given by victims. It is not intended to require that victims give statements if they do not wish to do so.

Finally, Hawaii suggested that the guideline be changed to recommend that ''happy hours'' be controlled rather than eliminated. The agencies have amended the guideline, in response to this comment, to clarify that the guideline does not recommend that all ''happy hours'' be eliminated, only those ''that include free or reduced-price alcoholic beverages.''

Revisions to Guideline No. 10—Traffic Records

The agencies proposed that the Traffic Records guideline would be amended to recommend methods for establishing comprehensive traffic records systems that would enable states to use data to identify emerging traffic safety problems, develop appropriate countermeasures and evaluate program performance.

The agencies received ten comments regarding the proposed changes to Guideline 10.

The National Sheriffs' Association concurred with the agencies' proposal. The Illinois State Police applauded the proposed changes, particularly those relating to the development of a shared traffic data base and improved linkage of data. The California Highway Patrol (CHP) supported the creation of a linked traffic records system, but cautioned that a great deal of time, effort and funding will be required to accomplish

such a system. CHP stated that it had no suggestions to improve the guideline.

NAGHSR recommended that the guidelines be revised to more accurately reflect the role of traffic records as ''an essential, integral part of every highway safety countermeasure [and] part of a state's highway safety infrastructure.'' According to NAGHSR, the new Safety Management System (SMS) requirements place additional importance on traffic records, and the guidelines should be adjusted accordingly. The agencies agree with NAGHSR's assessment regarding the importance of traffic records in support of other highway safety countermeasures and the new Safety Management System. In response to this comment, the agencies have amended section III and the opening paragraph of the Traffic Records Guideline to recognize these uses of traffic records.

The International Association of Chiefs of Police (IACP) advised increased support for use of citation/violation data and the Institute of Transportation Engineers (ITE) commented that data should be available for use by all State and local agencies with highway safety responsibilities. The agencies agree that data should be available to and used by State and local agencies. The agencies have supported States and local agencies in their efforts to link data, such as under the Crash Outcome Data Evaluation System (CODES) project.

ITE commented also that ''audits'' or ''surveys'' should be conducted by States to determine such things as crash costs. The agencies do not agree with this comment. ''Audits'' and ''surveys'' are extremely labor-intensive procedures and the agencies believe it is not practicable for all States to conduct them. Individual States may choose to conduct these procedures, but the agencies have not amended the guideline to recommend that all States do so.

The National School Transportation Association (NSTA) recommended that the Federal government take a leadership role in the development of better and more uniform data on school bus accidents and problem drivers. The agencies are taking steps to improve these data. Currently, pursuant to section 2002(a) of ISTEA, the Department is in the process of soliciting comments from the highway safety community on issues of data uniformity and reporting criteria for deaths and injuries resulting from school bus crashes, as well as deaths and injuries involving other circumstances.

The State of Kansas advised that the agencies postpone making any final revisions to this Guideline until after it completed its Traffic Records Assessments. The Kansas Traffic Records Assessment was completed in August 1994. However, the Kansas comment raises the broader question whether this Guideline should be revised while any State Traffic Record Assessments are pending. The agencies strongly believe the revision should not be delayed on this basis. Assessments are being conducted in the Traffic Records and in other highway safety areas, on a State-by-State basis. The purpose of these assessments is to assist States as they review their highway safety programs, and note program strengths and accomplishments as well as opportunities for improvement. The agencies see no reason to postpone the revision of these Highway Safety Program Guidelines until after all assessments have been conducted. In fact, one of the reasons for revising the guidelines is so that they can be used in future assessments.

3M recommended that Guideline 10 be modified to provide for the collection of data on the conspicuity of clothing worn by pedestrians, bicyclists and motorcyclists involved in crashes, and Advocates recommended that the text regarding the Roadway File element of the guideline be augmented by including a partial listing of relevant design characteristics of a roadway that directly affect safety. The agencies believe this level of specificity in the guideline is unnecessary. The elements contained in the guideline are sufficiently broad to encompass these details, without the need to list them individually.

Advocates also recommended that Guideline 10 should encourage States to cross-reference motor carrier information files. The agencies agree with this comment, and have amended the guideline to clarify this point.

Revisions to Guideline No. 11—Emergency Medical Services

The notice proposed that the Emergency Medical Services (EMS) guideline would be amended to expand its focus, by recommending improvements to the entire EMS and trauma care system for highway-injured patients.

The agencies received seven comments regarding the proposed changes to Guideline 11. The New York City Police Department and the National Sheriffs' Association had no objections to the guideline, as proposed.

The Illinois State Police applauded the proposed changes, particularly those relating to improved linkage of data and the focus on first responder training. Advocates also supported the proposed amendments to Guideline 11. Advocates recognized that there ''have been vast improvements in safety due to developments in EMS response capability * * * [which] greatly improves the chance for survival of crash victims'' and stated that the ''proposed guideline will assist states in that endeavor.''

The National Emergency Number Association (NENA) strongly supported the proposed revisions to Guideline 11, particularly those relating to use of a common phone number (e.g. 911) for quick public access to emergency medical care, training and certification criteria. NENA suggested that the guideline be further modified to recommend the deployment of 911 (rather than other common phone number) systems, to urge rapid upgrade to enhanced 911 services and to refer persons interested in accomplishing these objectives to NENA for assistance.

The agencies have modified the guideline in response to NENA's recommendations regarding the deployment of 911 and the rapid upgrade to enhanced 911 services. NENA's third recommendation, however, has not been accepted. It would be inappropriate for the agencies to appear to endorse private organizations.

3M recommended that Guideline 11 be modified to recommend that first responders and prehospital providers receive training on proper procedures for roadway situations and use of clothing that enhances conspicuity, as well as the proper care of clothing to reduce hazards associated with blood-borne pathogens and other soils.

The National Standard Curricula for First Responders and the Emergency Medical Technician (EMT) Basic, which were developed by NHTSA, both address issues relating to safety at the scene of a crash. The specifics concerning the types of clothing to wear and how to care for such clothing are best addressed in training courses conducted using these curricula. They need not be included in the Highway Safety Program Guideline.

The Washington State Department of Health suggested changes to the guideline that would clarify its emphasis on injury and trauma prevention. The agencies agree with Washington State's comments, and have changed the guideline accordingly.

Revisions to Guideline No. 14—Pedestrian Safety

When the original highway safety program standards were established by NHTSA and FHWA, Guideline 14 addressed pedestrian safety issues, but there was no guideline that addressed bicycle safety. In 1991, NHTSA and FHWA designated Pedestrian and Bicycle Safety as a National Priority program area. Accordingly, in the notice published in January 1994, the agencies proposed to expand Guideline 14 to address bicycle safety as well as pedestrian safety issues.

The agencies received eight comments regarding the proposed changes to Guideline 14. The New York City Police Department supported the combination of bicycle and pedestrian safety.

The National Sheriffs' Association concurred with the proposed guideline, but noted that safety towns, children's villages and safety farm/rural towns (Life Safety Programs) should be addressed. These Life Safety Programs are examples of public information and education and school-based programs conducted by States and communities for children that fall within the scope of Sections VI and IX of the guideline. The agencies support their use, but do not believe these programs need to be mentioned specifically in the guideline.

The Minnesota Department of Transportation supported having pedestrian and bicycle safety principles and rules included in all driver training and licensing examinations. 3M Corporation recommended that the guideline be modified to emphasize the use of highly visible clothing to improve conspicuity for pedestrians and bicyclists.

The agencies believe these issues were covered sufficiently in the guideline, as proposed. Section IX of the proposed guideline recommended that each State ''should address pedestrian and bicycle issues in State driver education and licensing programs [and that] pedestrian and bicycle safety principles and rules should be included in all driver training and licensing examinations.'' Section VI of the proposed guideline recommended that State and community programs should address ''being visible in the traffic system (conspicuity).'' These portions of the guideline have not been changed.

3M also recommended that the guideline emphasize the use of retro-reflective signing. Section V of the proposed guideline recommended the application of appropriate traffic engineering measures, including the use of signs. These signs are required to be constructed using retroreflective materials, in accordance with the Manual on Uniform Traffic Control Devices. The agencies note that Section V of the proposed guideline referenced pedestrian but not bicycle signals, signs and markings. The agencies have amended the guideline to correct this omission.

The International Association of Chiefs of Police (IACP) objected to the guideline's emphasis on planning and designing sidewalks and bicycle facilities. IACP argued that experienced bicycle riders find these facilities to be more dangerous than operating a bicycle in a conspicuous fashion on the roadway and asserted that measures, such as bicyclist and motorist training plus improved conspicuity, would be more effective at improving bicycle safety.

The proposed guideline advised States to provide ''a safe environment for pedestrians and bicyclists'' and indicated that States may use measures, such as sidewalks and bicycle facilities, for those who wish to use them. The proposed guideline also recognized, in Section V, that ''balancing the needs of pedestrians and those of vehicular traffic (including bicycle) must always be considered.'' The agencies agree that other measures, such as training and improved conspicuity, are also important. Proposed Guideline 14 recognized that ''a comprehensive highway safety system is the most effective means of producing consistent, long-term changes.'' The agencies do not believe any changes are necessary in response to this comment.

The Washington State Department of Health recommended that the guideline be amended to clarify that public information and education should cover not only proper selection and use but also fit, and should address both bicycle helmets and bicycles. The agencies agree, and have amended the guideline accordingly.

Advocates supported the proposed changes to the guideline, but recommended that the guideline include ''a more detailed presentation of regulatory and legislative policies and countermeasures.'' In response to this comment, the agencies have decided to include in Section III of the guideline a specific example of legislation that we support. The guideline has been amended to recommend that States should enact and enforce bicycle helmet use laws.

The National School Transportation Association (NSTA) recommended that a training program be developed for monitors who help load and unload children riding on school buses. In addition, NSTA suggested that children who walk to and from school should be educated about the dangers school buses pose to pedestrians. NSTA cautioned, however, against including this information in a general pedestrian safety program.

In the final rule published in the **Federal Register** on December 13, 1994 (59 FR 64120), in which the agencies decided not to add School Bus Safety to the list of National Priority program areas, the agencies recognized that nearly one-third of all persons who die in school bus-related crashes are non-occupants (i.e., pedestrians and bicyclists). The agencies also identified steps currently underway to address this problem, including the development of a separate school bus/pedestrian safety educational program for children in grades K–6, and indicated that:

> States are able to address * * * school bus-related fatalities, which occur while children are boarding or exiting * * * under the Pedestrian and Bicycle Safety program.

In today's notice, the agencies have modified Guideline No. 14 to address loading and unloading of children who ride school buses and other school bus-related issues that affect the safety of pedestrians and bicyclists.

Revisions to Guideline No. 15—Police Traffic Services

The agencies explained in the January 14, 1994 notice that the proliferation of highway safety legislation in recent years, such as tougher DWI laws, child restraint and seat belt use laws, and commercial motor vehicle safety laws, combined with an increased demand for other law enforcement services, has placed a strain on police agencies during a time of reduced budgets, manpower and resources. The notice proposed to revise Guideline 15 to assist law enforcement agencies by addressing how to do more with less.

The agencies received five comments regarding the proposed changes to Guideline 15. The New York City Police Department supported the agencies' approach and stated that the changes would further enhance safety. The International Association of Chiefs of Police (IACP) concurred with the proposed changes to the guideline, particularly with regard to enforcement actions where officers ''look beyond the traffic ticket,'' the use of problem identification (such as Problem-Oriented Policing, or POP, strategies) and the need to provide traffic enforcement training. The Illinois State Police supported the agencies' proposal, and stated that it ''provides a thorough framework for fine tuning of the services performed by law enforcment.'' Illinois

cautioned, however, that significant progress will be difficult to achieve without additional funding.

The National Sheriffs' Association (NSA) suggested a number of changes to the proposed guideline. NSA observed that the proposed guideline mentions Police Departments, but not Sheriff's Offices, and recommended that Sheriff's Offices should be mentioned specifically and that State Police Officer Standards and Training (POST) should be changed to read Peace Officer Standards and Training (POST). NSA also recommended that the guideline address waterway patrol (for which many Sheriff's Offices have responsibility) and drugs that impair driving.

By referring to ''State and local law enforcement agencies'' and ''State Police Officer Standards and Training'' in Guideline 15, the agencies did not intend to exclude County law enforcement agencies or Sheriff's Offices. The guideline has been amended to clarify that State, county and local law enforcement agencies are all covered and that POST can refer to either police or peace officers.

The agencies have not amended the guideline in response to the other recommendations in NSA's comments. Waterway patrol activities are beyond the scope of what is authorized under the Section 402 Highway Safety Program. Their inclusion in this Section 402 guideline would therefore be inappropriate.

The guideline has not been amended to further address drugs that impair driving. The agencies believe the guideline already addresses this issue adequately. The introductory paragraph of Guideline 15, for example, provides that ''Traffic law enforcement plays an important role in deterring impaired driving involving alcohol or other drugs.'' The guideline also recommends that law enforcement agencies develop and implement enforcement plans that include impaired driving involving alcohol or other drugs, and that they address impaired driving involving alcohol or other drugs in their public information and education activities.

The California Highway Patrol (CHP) commented that the guideline should not mandate the provision of specialized commercial motor vehicle in-service training to traffic enforcement officers. The agencies recognize that CHP has officers who have been trained and who enforce commercial motor vehicle requirements. This recommendation in the guideline was intended to address the need for training in those States that do not have these specialized resources available to them. By providing specialized training, law enforcement agencies would be able to augment ongoing inspection activities with the resources already available in their current law enforcement program. Moreover, the guideline represents recommendations to the States, not mandates. The agencies have not changed the guideline in response to this comment.

Other Guidelines Remain Unchanged

The agencies proposed that all other guidelines contained in part 1204 would remain intact and unchanged by this proposal. As discussed above, commenters supported the agencies' proposal to add a new Roadway Safety guideline, and suggested that guidelines 9, 12 and 13 would then become duplicative and should be removed. The agencies have adopted this suggestion. All other guidelines remain unchanged. The following guidelines remain unchanged by this proposal:

Guideline No. 1 Periodic Motor Vehicle Inspection
Guideline No. 2 Motor Vehicle Registration
Guideline No. 4 Driver Education
Guideline No. 5 Driver Licensing
Guideline No. 6 Codes and Laws
Guideline No. 7 Traffic Courts
Guideline No. 16 Debris Hazard Control and Cleanup
Guideline No. 17 Pupil Transportation Safety (Rev. 4/91)
Guideline No. 18 Accident Investigation and Reporting

It should be noted that the guidelines are not binding on the States. A State's decision not to adopt a portion of a guideline, for example, would not entail penalties for the State. Nonetheless, the agencies encourage the use of the recommendations contained in these guidelines to optimize the effectiveness of highway safety programs conducted at the State and local level.

All Guidelines Removed From Code of Federal Regulations

As discussed above, with the passage of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100–17), Congress gave statutory recognition to the treatment of the guidelines as information the States could draw upon to build the framework of their highway safety programs. With the shift in focus from mandatory standards to advisory guidelines, this information need no longer appear in the Code of Federal Regulations (CFR). For these reasons, and consistent with streamlining efforts under the President's regulatory reform initiative, this action simultaneously removes all guidelines from the 23 CFR part 1204. The existing guidelines, as amended by today's action, and the new guidelines introduced by today's action, will be published in a separate document which will be made available to the States in the near future. For reference until that time, the guidelines affected by today's action are set forth below in an appendix.

Economic and Other Effects

The agencies have considered the impacts that are associated with this action, and determined that it is not significant within the meaning of Executive Order 12866 or the Department of Transportation Regulatory Policies and Procedures. The guidelines contained in Part 1204 are advisory, not mandatory. Accordingly, a full regulatory evaluation is not necessary.

Since this matter relates to grants, the notice and comment requirements established in the Administrative Procedure Act, 5 U.S.C. 553, are not applicable. Because the agencies were not required to publish a notice of proposed rulemaking regarding this action, the agencies are not required to analyze the effect of this action on small entities, in accordance with the Regulatory Flexibility Act. The agencies have nonetheless evaluated the effects of this notice on small entities. Based on the evaluation, we certify that this notice will not have a significant economic impact on a substantial number of small entities. Accordingly, the preparation of a Regulatory Flexibility Analysis is unnecessary.

Environmental Impacts

The agencies have also analyzed this action for the purpose of the National Environmental Policy Act. The agencies have determined that this action will not have a significant effect on the human environment.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that it has no federalism implication that warrants the preparation of a federalism assessment.

List of Subjects in 23 CFR Part 1204

Grant programs, Highway safety.

PART 1204—[REMOVED AND RESERVED]

In consideration of the foregoing, and under the authority of 23 U.S.C. 402, 23 CFR part 1204 is removed and reserved.

Rodney E. Slater,

Administrator, Federal Highway Administration.

Ricardo Martinez,

Administrator, National Highway Traffic Safety Administration.

Issued on: July 11, 1995.

Appendix—Highway Safety Program Guideline No. 3, Motorcycle Safety

Each State, in cooperation with its political subdivisions, should have a comprehensive program to promote motorcycle safety and prevent motorcycle-related injuries. To be effective in reducing the number of motorcycle crash deaths and injuries, State programs should address the use of helmets and other protective gear, proper licensing, impaired riding, rider training, conspicuity, and motorist awareness. This Motorcycle Safety Program Guideline will assist States and local communities in the development and implementation of effective motorcycle safety programs.

I. Program Management

Each State should identify the nature and extent of its motorcycle safety problems, establish goals and objectives for the State's motorcycle safety program, and implement projects to reach the goals and objectives. State motorcycle safety plans should:

- Designate a lead agency for motorcycle safety;
- Develop funding sources;
- Collect and analyze data on motorcycle safety;
- Identify the State's motorcycle safety problem areas;
- Develop programs (with specific projects) to address problems;
- Coordinate motorcycle projects with those for the general motoring public;
- Integrate motorcycle safety into community/corridor traffic safety and other injury control programs; and
- Include passage and enforcement of mandatory motorcycle helmet legislation.

II. Motorcycle Personal Protective Equipment

Each State should encourage motorcycle operators and passengers to use the following protective equipment:

- Motorcycle helmets that meet the Federal helmet standard (their use should be required by law);
- Proper clothing, including gloves, boots, long pants, and a durable long-sleeved jacket; and
- Eye (which should be required by law) and face protection.

Additionally, each passenger should be provided a seat and footrest.

III. Motorcycle Operator Licensing

States should require every person who operates a motorcycle on public roadways to pass an examination designed especially for motorcycle operation and to hold a license endorsement specifically authorizing motorcycle operation. Each State should have a motorcycle licensing system that requires:

- Motorcycle operator's manual;
- Motorcycle license examination, including knowledge and skill tests, and State licensing medical criteria;
- License examiner training;
- Motorcycle license endorsement;
- Motorcycle license renewal requirements;
- Learner's permit issued for a period of 90 days and limits on the number or frequency of learner's permits issued per applicant; and
- Penalties for violation of motorcycle licensing requirements.

IV. Motorcycle Rider Education and Training

Safe motorcycle operation requires specialized training by qualified instructors. Each State should establish a State Motorcycle Rider Education Program that provides for:

- Source of program funding;
- State organization to administer the program;
- Use of Motorcycle Safety Foundation curriculum or equivalent State-approved curriculum;
- Reasonable availability of rider education courses for all interested residents of legal riding age;
- Instructor training and certification;
- Incentives for successful course completion such as licensing skills test exemption;
- Quality control of the program;
- Ability to purchase insurance for the program;
- State guidelines for conduct of the program; and
- Program evaluation.

V. Motorcycle Operation While Impaired by Alcohol or Other Drugs

Each State should ensure that programs addressing impaired driving include a focus on motorcycles. The following programs should include an emphasis on impaired motorcyclists:

- Community/corridor traffic safety and other injury control programs;
- Public information and education campaigns;
- Youth impaired driving programs;
- Law enforcement programs;
- Judge and prosecutor training programs;
- Anti-impaired driving organizations; and
- College and school programs.

VI. Motorcycle Conspicuity and Motorist Awareness Programs

State motorcycle safety programs should emphasize the issues of rider conspicuity and motorist awareness of motorcycles. These programs should address:

- Daytime use of motorcycle lights;
- Brightly colored clothing and reflective materials for motorcycle riders and motorcycle helmets with high daytime and nighttime conspicuity;
- Lane positioning of motorcycles to increase vehicle visibility;
- Reasons why motorists do not see motorcycles; and
- Ways that other motorists can increase their awareness of motorcyclists.

HIGHWAY SAFETY PROGRAM GUIDELINE NO. 8—IMPAIRED DRIVING

Each State, in cooperation with its political subdivisions, should have a comprehensive program to combat impaired driving. This guideline describes the areas that each State's program should address. Throughout this guideline, ''impaired driving'' means operating any motor vehicle while one's faculties are affected by alcohol or other drugs, medications, or other substances. ''Impaired driving'' includes, but is not limited to, impairment as defined in State statutes.

I. Prevention

Each State should have prevention programs to reduce impaired driving through approaches commonly associated with public health—altering social norms, changing risky or dangerous behaviors, and creating protective environments. Prevention and public health programs promote activities to educate the public on the effects of alcohol and other drugs, limit alcohol and drug availability, and prevent those impaired by alcohol and drugs from driving. Prevention programs are typically carried out in schools, work sites, medical and health care facilities, and community groups. Each State should implement a system of impaired driving prevention activities and work with the traffic safety, health and medical communities to foster health and reduce traffic-related injuries and their resulting costs.

A. Public Information and Education for Prevention

States should develop and implement public information and education (PI&E) programs directed at impaired driving, and reducing the risk of injury or death and their resulting medical, legal and other costs. Programs should start at the State level and extend to communities through State assistance, model programs, and public encouragement. States should:

- Have a statewide plan, program, and coordinator for all impaired driving PI&E activities;
- Develop their own PI&E campaigns and materials, either by adapting materials from the Federal government or other States, or by creating new campaigns and materials;
- Encourage and support communities to implement awareness programs at the local level;
- Encourage businesses and private organizations to participate in impaired driving PI&E campaigns; and
- Encourage media to support impaired driving highway safety issues by reporting on programs, activities (including enforcement campaigns), alcohol-related arrests, and alcohol-related crashes.

B. School Programs

Student programs, including kindergarten through college and trade school, play a critical role in preventing impaired driving. States should:

- Implement K–12 traffic safety education, with appropriate emphasis on impaired

driving, as part of a comprehensive health education program;

- Establish and support student safety clubs and activities and create a statewide network linking these groups;
- Establish liaisons with higher education institutions to encourage policies to reduce alcohol, other drug, and traffic safety problems on college campuses;
- Promote alcohol- and drug-free events throughout the school year, with particular emphasis on high-risk times such as prom, spring break, and graduation;
- Coordinate closely with anti-drug education efforts and programs;
- Develop working relationships with school health personnel as a means of providing information to students about a variety of traffic safety and health behaviors; and
- Make effective use of criminal justice, medical, or other professionals through presentations in the classroom or assembly programs.

C. Employer Programs

States should provide information and technical assistance to all employers, encouraging them to offer programs to reduce impaired driving by employees and their families. These programs should include:

- Model policies for impaired driving and other traffic safety issues, including safety belt use and speeding;
- Management training to recognize and address alcohol and drug impairment;
- Education and treatment programs for employees; and
- Employee awareness activities.

States should especially encourage companies and businesses to provide impaired driving programs to their youthful employees. The States should also be familiar with FHWA's drug and alcohol requirements for employers of commercial motor vehicle (CMV) drivers.

D. Responsible Alcohol Service

States should promote responsible alcohol service policies and practices through social host programs and well-publicized and enforced laws, regulations, policies and education in the retail alcohol service industry (including package stores, restaurants, and taverns). States should:

- Implement and enforce programs to eliminate the sale or service of alcoholic beverages to those under 21 years of age;
- Promote alcohol server and service programs, including assessments, written policies, and training;
- Ensure adequate alcohol control regulations dealing with issues such as service to visibly intoxicated patrons and the elimination of ''happy hours'' during which free or reduced-price alcoholic beverages are offered (food and non-alcoholic beverages may be offered instead during such times);
- Provide adequate resources (including budget, staff, and training) to enforce alcohol beverage control regulations;
- Promote the display of responsible alcohol use and drinking and driving information in alcohol sales and service establishments;
- Promote participation in designated driver, safe rides, and other alternative transportation programs; and
- Provide that commercial establishments may be held responsible for damages caused by any patron who was served alcohol when visibly intoxicated.

E. Transportation Alternatives

States should promote alternative transportation programs that enable drinkers to reach their destinations without driving. Alternative transportation programs include:

- Designated drivers; and
- Safe rides.

II. Deterrence

Each State should have a deterrence program to reduce impaired driving through activities to create the maximum possible perception of detection, arrest and punishment among persons who might be tempted to drive under the influence of alcohol or other drugs, including CMV drivers. Close coordination with law enforcement agencies on the municipal, county, and state levels is needed to create and sustain the perceived risk of being detected and arrested. Specialized traffic enforcement efforts, such as the Motor Carrier Safety Assistance Program (MCSAP), also serve as a core element in the detection of impaired drivers. Equally close coordination with courts and the motor vehicle licensing and registration agency is needed to enhance the fear of punishment. Effective use of all available media is essential to create and maintain a strong public awareness of impaired driving enforcement and sanctions.

Each State should implement a system of activities to deter impaired driving. The deterrence system should include legislation, public information and education, enforcement, prosecution, adjudication, criminal sanctions, driver licensing, and vehicle registration activities. The goal should be to increase the perception and probability of arrest for violators and the imposition of swift and sure sanctions.

A. Laws To Deter Impaired Driving

States should enact laws that define and prohibit impaired driving in broad and readily enforceable terms, facilitate the acquisition of evidence against impaired drivers, and permit a broad range of administrative and judicial penalties and actions. These laws should:

Define impaired driving offenses—

- Establish .08 Blood Alcohol Concentration (BAC) as the blood alcohol level at or above which it is illegal to operate a motor vehicle (''illegal per se'');
- Establish .04 BAC as the illegal per se blood alcohol level for commercial truck and bus operators, as provided by commercial driver license regulations;
- Establish that it is illegal per se for persons under the age of 21 (the legal drinking age) to drive with any measurable amount of alcohol in their blood, breath, or urine;
- Establish that driving under the influence of other drugs (whether illegal, prescription, or over-the-counter) is unlawful and is treated similarly to driving under the influence of alcohol;
- Establish vehicular homicide or causing personal injury while under the influence of alcohol as a separate offense; and
- Prohibit open alcohol containers and consumption of alcohol in motor vehicles.

Provide for effective enforcement of these laws—

- Authorize police to conduct checkpoints, in which vehicles are stopped on a nondiscriminatory basis to determine whether or not the operators are driving under the influence of alcohol or drugs;
- Authorize police to use a preliminary breath test for a vehicle operator stopped for a suspected impaired driving offense;
- Authorize police to test for impairing drugs other than alcohol;
- Include implied consent provisions that permit the use of chemical tests and that allow the arresting officer to require more than one test of a vehicle operator stopped for a suspected impaired driving offense;
- Require prompt and certain license revocation or suspension for persons who refuse to take a chemical test to determine whether they were driving while intoxicated (''implied consent''); and
- Require mandatory blood alcohol concentration testing whenever a law enforcement officer has probable cause to believe that a driver has committed an alcohol-related offense.

Provide effective penalties for these offenses—

- Require prompt and certain administrative license revocation or suspension of at least 90 days for persons determined by chemical test to violate the State's BAC limit;
- Provide for increasingly more severe penalties for repeat offenders, including lengthy license revocation, substantial criminal fines, jail, and/or impoundment or confiscation of license plates or vehicles registered by the offender;
- Provide for more stringent criminal penalties for those convicted of more serious offenses, such as vehicular homicide;
- Contain special provisions for youth under the age of 21 that mandate driver's license suspension for any violations of laws regarding the use or possession of alcohol or other drugs; and
- Establish victim assistance and victim restitution programs and require the use of a victim impact statement prior to sentencing in all impaired driving cases where death or serious injury occurred.

B. Public Information and Education for Deterrence

States should implement public information and education (PI&E) programs to maximize public perception of the risks of being caught and punished for impaired driving. Public information programs should be:

- Comprehensive;
- Seasonally focused; and
- Sustained.

C. Enforcement

States should implement comprehensive enforcement programs to maximize the

likelihood of detecting, investigating, arresting, and convicting impaired drivers. These programs should:

- Secure a commitment to rigorous impaired driving enforcement from the top levels of police management and State and local government;
- Provide state-of-the-art training for police officers, including Standardized Field Sobriety Testing (SFST) and Drug Evaluation and Classification (DEC);
- Provide adequate equipment and facilities, including preliminary and evidentiary breath test equipment;
- Deploy patrol resources effectively, using cooperative efforts of various State and local police agencies as appropriate;
- Maximize the likelihood of violator-officer contact;
- Make regular use of sobriety checkpoints;
- Facilitate the arrest process;
- Implement state-of-the-art post-arrest investigation of apprehended impaired drivers;
- Emphasize enforcement of youth impaired driving and drinking age laws; and
- Emphasize enforcement of laws regulating alcohol or drug impairment by CMV drivers.

D. Prosecution

States should implement a comprehensive program for visible and aggressive prosecution of impaired driving cases. These programs should:

- Give impaired driving cases high priority for prosecution;
- Provide sufficient resources to prosecute cases presented by law enforcement efforts;
- Facilitate uniformity and consistency in prosecution of impaired driving cases;
- Provide training for prosecutors so they can obtain high rates of conviction and seek appropriate sanctions for offenders;
- Prohibit plea bargaining in impaired driving cases, through appropriate legislation;
- Encourage vigorous prosecution of alcohol-related fatality and injury cases under both impaired driving and general criminal statutes; and
- Ensure that prosecutors are knowledgeable and prepared to prosecute youthful offenders appropriately.

E. Adjudication

The effectiveness of prosecution and enforcement efforts is lost without support and strength in adjudication. States should implement a comprehensive impaired driving adjudication program to:

- Provide sufficient resources to adjudicate cases and manage the dockets brought before them;
- Facilitate uniformity and consistency in adjudication of impaired driving cases;
- Give judges the skills necessary to appropriately adjudicate impaired driving cases;
- Provide similar training to administrative hearing officers who hear administrative license revocation appeals;
- Inform the judiciary about technical evidence presented in impaired driving cases, including SFST and DEC testimony;
- Educate the judiciary in appropriate and aggressive sanctions for offenders including violators of commercial motor vehicle safety regulations; and
- Ensure that judges are knowledgeable and prepared to adjudicate youthful offenders cases in an appropriate and aggressive manner.

F. Licensing

Driver licensing actions can be an effective means for preventing, deterring, and monitoring impaired driving. In addition to the license sanctions for impaired driving offenses discussed earlier, States should:

- Implement a graduated licensing system for novice drivers;
- Provide for license suspension for drivers under age 21 who drive with a BAC exceeding .02 (or some other low BAC value);
- Issue distinctive licenses to drivers under the age of 21;
- Monitor licensing records to identify high risk drivers for referral to education or remediation programs;
- Ensure the accurate and timely reporting of alcohol and drug violations as prescribed by the Commercial Drivers License (CDL) regulations;
- Assure that all licensing records are used to help assess whether a driver requires alcohol or drug treatment; and
- Actively participate in the Driver License Compact to facilitate the exchange of driver license information between jurisdictions.

III. Treatment and Rehabilitation

Many first-time impaired driving offenders and most repeat offenders have substantial substance abuse problems that affect their entire lives, not just their driving. They have been neither prevented nor deterred from impaired driving. Each State should implement a system to identify and refer these drivers to appropriate substance abuse treatment programs to change their dangerous behavior.

A. Diagnosis and Screening

States should have a systematic program to evaluate persons who have been convicted of an impaired driving offense to determine if they have an alcohol or drug abuse problem. This evaluation should:

- Be required by law;
- Be conducted by qualified personnel prior to sentencing; and
- Be used to decide whether a substance abuse treatment program should be part of the sanctions imposed.

B. Treatment and Rehabilitation

States should establish and maintain programs to treat alcohol and other drug dependent persons referred through traffic courts and other sources. These programs should:

- Ensure that those referred for impaired driving offenses are not permitted to drive again until their substance abuse problems are under control;
- Be conducted in addition to, not as a substitute for, license restrictions and other sanctions; and
- Be conducted separately for youth.

IV. Program Management

Good program management produces effective programs. Planning and coordination are especially important for impaired driving activities, since many different parties are involved. Each State's impaired driving program management system should have an established process for managing its planning (including problem identification), program control, and evaluation activities. The system should provide for community traffic safety programs (CTSPs), State and local task forces, data analysis, and funding. It also should include planning and coordination of activities with other agencies involved in impaired driving programs, such as MCSAP, and expansion of existing partnerships, such as with the health and medical communities.

A. State Program Planning

States should develop and implement an overall plan for all impaired driving activities. The plan should:

- Be based on careful problem definition that makes use of crash and driver record data; and
- Direct State and community resources toward effective measures that address the State's impaired driving issues.

B. Program Control

States should establish procedures to ensure that program activities are implemented as intended. The procedures should provide for systematic monitoring and review of ongoing programs to:

- Detect and correct problems quickly;
- Measure progress in achieving established goals and objectives; and
- Ensure that appropriate data are collected for evaluation.

C. State and Local Task Forces and Community Traffic Safety and Other Injury Control Programs

States should encourage the development of State and community impaired driving task forces and community traffic safety and other injury control programs. States should:

- Use these groups to bring a wide variety of interests and resources to bear on impaired driving issues;
- Ensure that Federal, State, and local organizations coordinate impaired driving activities, so that the activities complement rather than compete with each other; and
- Ensure that these groups include traditional and non-traditional partners, such as law enforcement, local government, business, education, community groups, health, medicine, prosecutors and judges.

D. Data and Records

States should establish and maintain records systems for accidents, arrests, dispositions, driver licenses, and vehicle registrations. Especially important are tracking systems which can provide information on every driver arrested for DWI to determine the disposition of the case and compliance with sanctions. These records systems should be:

- Accurate;
- Timely;
- Able to be linked to each other; and
- Readily accessible to police, courts, and planners.

E. Evaluation

States should evaluate all impaired driving system activities regularly to ensure that programs are effective and scarce resources are allocated appropriately. Evaluation should be:

- Designed to use available traffic records and other injury control data systems effectively;
- Included in initial program planning to ensure that appropriate data are available and that adequate resources are allocated; and
- Conducted regularly.

Evaluation results should be:

- Reported regularly to project and program managers; and
- Used to guide further program activities.

F. Funding

States should allocate funding to impaired driving programs that is:

- Adequate for program needs;
- Steady—from dedicated sources; and
- To the extent possible, paid by the impaired drivers themselves. The programs should work toward being self-sufficient.

HIGHWAY SAFETY PROGRAM GUIDELINE NO. 10—TRAFFIC RECORDS

Each State, in cooperation with its political subdivisions, should establish and implement a complete and comprehensive traffic records program. The Statewide program should include, or provide for, data for the entire State. A complete and comprehensive traffic records program is essential for the development and operation of a viable Safety Management System and effective traffic-related injury control efforts. It is also essential for the performance of planning, problem identification, operational management and control, tracking of safety trends, and the implementation and evaluation of highway safety countermeasures and activities. It is the key ingredient to safety effectiveness and management.

I. Traffic Records System

To provide a complete and useful records system for safety program management at both the State and local level, the State should have a data base consisting of the following:

- A Crash File with data on the time, environment, and circumstances of a crash; identification of the vehicles, drivers, cyclists, occupants, and pedestrians involved; and documentation of crash consequences (fatalities, injuries, property damage and violations charged) with the data tied to a location reference system;
- A Driver File or driver history record of licensed drivers in the State, with data on personal identification and driver license number, type of license, license status (suspended or revoked), driver restrictions, driver convictions for traffic violations, crash history, driver control or improvement actions, and safety education data;
- A Vehicle File with information on identification, ownership and taxation, and vehicle inspection (where applicable);
- A Roadway File with information about roadway location, identification, and classification as well as a description of a road's total physical characteristics, which are tied to a location reference system. This file should also contain data for normalizing purposes, such as miles of roadway and average daily traffic (ADT);
- A Commercial Motor Vehicle Crash File which uses uniform data definitions and collects information on the vehicle configuration, cargo body type, hazardous materials, information to identify the motor carrier, as well as information on the crash (States are encouraged to use available information systems to cross-reference commercial vehicle citations for violations of Federal and State commercial vehicle safety regulations);
- A Citation/Conviction File which identifies the type of citation and the time, date, and location of the violation; the violator, vehicle and the enforcement agency; and adjudication action and results, including court of jurisdiction (an Enforcement/ Citation File could be maintained separate from a Judicial/ Conviction File) and fines assessed and collected;
- An Emergency Medical Services (EMS) file with emergency care and victim outcome information about ambulance responses to crashes, e.g., emergency care unit, care given, injury data, and times of EMS notification and arrival; information on emergency facility and hospital care, including Trauma Registry data; and medical outcome data relative to crash victims receiving rehabilitation and for those who died as the result of the crash; and
- Provisions for file linkage through common data elements between the files or through other consistent means; performance level data as part of the traffic records system; demographic data to normalize or adjust for exposure when analyzing the various data in the files; and provisions for the use of cost data relative to amounts spent on countermeasure programs and the costs of fatalities, injuries and property damage.

II. Data Characteristics

Traffic records programs should meet basic requirements for the most effective use of the data by program managers. Accordingly, each State should emphasize the following characteristics:

- An accurate identification of the crash location;
- Timely, accurate, and complete data collection and input to all files, and especially to the Crash and Driver Files, to assure maximum utilization and confidence in the traffic records system. Each state is encouraged to join and fully participate in the driver license compact to ensure that complete data are available from other states;
- Data uniformity, providing for uniform coding and definition of data elements to allow a State to compare its crash problems to other States, regions and the nation; and the use of uniform coding of violations and convictions for the efficient exchange of driver information between States;
- Data consistency within a State over time to provide for multi-year analysis of data to detect trends and for identification of emerging problems, as well as to determine beneficial effects of highway safety programs; and
- Timely, accurate, and complete data output to ensure that highway safety program managers will have records that are accessible, understandable, and effective.

III. Use of Traffic Records

The measure of a good records system is the degree to which it is used by those it was designed to serve. Each State will develop and operate a Safety Management System and must use traffic records as part of that System. In addition, each State should establish a process for the effective use of traffic records by highway safety management and other injury control professionals both Statewide and for political subdivisions, when conducting the following activities:

- Performing planning, problem identification, program management or control, tracking, implementation and evaluation, pursuant to a management process developed by the State which addresses the role or use of traffic records data;
- Developing a problem identification strategy that specifies the necessary data, assures that accurate and timely data are available, defines the analyses conducted (including the variables used, statistical tests applied, and trends examined), and describes how results are reported and used;
- Conducting analyses and presenting results so that they are clearly understood and usable by managers, including the use of problem reports which describe the magnitude of the problems, and appropriate graphs, tables and charts to support the conclusions reached; and
- Performing program evaluation, beginning at the planning stage and carrying through implementation and final evaluation, essentially using the same types of data that were used in developing the programs implemented.

IV. Managing Traffic Records

Each State should have an organizational structure in place for effective administration of its traffic records program, at a minimum consisting of the following components:

- A permanent Traffic Records Committee, representing the principal users and custodians of the data in the State, that provides administrative and technical guidance. The Committee should be responsible for adopting requirements for file structure and linkage, assessing capabilities and resources, establishing goals for improving the traffic records program, evaluating the program, continuously developing cooperation and support from State and local agencies as well as the private sector, and ensuring that high quality and timely data are available to authorized persons or agencies for appropriate use;
- A single state agency with responsibility for coordinating the traffic safety-related data aspects of the various State information systems. This would include ensuring that the necessary data were available for use in safety and analyses; and
- Professional staff with analytical expertise to perform data analysis for program planning and evaluation, including a basic understanding of data processing as

it relates to the use of personal computers (PCs) and the ability to use PC software application packages to perform problem identification and program evaluation tasks.

HIGHWAY SAFETY PROGRAM GUIDELINE, NO. 11—EMERGENCY MEDICAL SERVICES

Each State, in cooperation with its political subdivisions, should ensure that persons incurring traffic injuries (or other trauma) receive prompt emergency medical care under the range of emergency conditions encountered. Each of the component parts of a system should be equally committed to its role in the system and ultimately to the care of the patient. At a minimum, the EMS program should be made up of the components detailed in this chapter.

I. Regulation and Policy

Each State should embody comprehensive enabling legislation, regulations, and operational policies and procedures to provide an effective system of emergency medical and trauma care. This legal framework should:

- Establish the program and designate a lead agency;
- Outline the lead agency's basic responsibilities, including licensure and certification;
- Require comprehensive planning and coordination;
- Designate EMS and trauma system funding sources;
- Require data collection and evaluation;
- Provide authority to establish minimum standards and identify penalties for noncompliance; and
- Provide for an injury/trauma prevention and public education program.

All of these components, which are discussed in different sections of this guideline, are critical to the effectiveness of legislation that is the legal foundation for a statewide EMS system.

II. Resource Management

Each State should establish a central lead agency at the State level to identify, categorize, and coordinate resources necessary for overall system implementation and operation. The lead agency should:

- Maintain a coordinated response and ensure that resources are used appropriately throughout the State;
- Provide equal access to basic emergency care for all victims of medical or traumatic emergencies;
- Provide adequate triage and transport of all victims by appropriately certified personnel (at a minimum, trained to the emergency medical technician [EMT] basic level) in properly licensed, equipped, and maintained ambulances;
- Provide transport to a facility that is appropriately equipped, staffed, and ready to administer to the needs of the patient (section 4: Transportation); and
- Appoint an advisory council to provide a forum for cooperative action and maximum use of resources.

III. Human Resources and Training

Each State should ensure that its EMS system has essential trained persons to perform required tasks. These personnel include: first responders (e.g., police and fire), prehospital providers (e.g., emergency medical technicians and paramedics), communications specialists, physicians, nurses, hospital administrators, and planners.

Each State should provide a comprehensive statewide plan for stable and consistent EMS training programs with effective local and regional support. The State agency should:

- Ensure sufficient availability of adequately trained EMS personnel;
- Establish EMT-Basic as the State minimum level of training for all transporting EMS personnel;
- Routinely monitor training programs to ensure uniformity and quality control;
- Use standardized curricula throughout the State;
- Ensure availability of continuing education programs;
- Require instructors to meet State requirements;
- Develop and enforce certification criteria for first responders and prehospital providers; and
- Require EMS operating organizations to collect data to evaluate emergency care in terms of the frequency, category, and severity of conditions treated and the appropriateness of care provided.

IV. Transportation

Each State should require safe, reliable ambulance transportation, which is critical to an effective EMS system. States should:

- Develop statewide transportation plans, including the identification of specific service areas;
- Implement regulations that provide for the systematic delivery of patients to appropriate facilities;
- Develop routine, standardized methods for inspection and licensing of all emergency medical transport vehicles;
- Establish a minimum number of providers at the desired level of certification on each response;
- Coordinate all emergency transports within the EMS system, including public, private, or specialty (air and ground) transport; and
- Develop regulations to ensure ambulance drivers are properly trained and licensed.

V. Facilities

It is imperative that the seriously injured patient be delivered in a timely manner to the closest appropriate facility. Each State should ensure that:

- Both stabilization and definitive care needs of the patient are considered;
- The determination is free of non-medical considerations and the capabilities of the facilities are clearly understood by prehospital personnel;
- Hospital resource capabilities are known in advance, so that appropriate primary and secondary transport decisions can be made; and
- Agreements are made between facilities to ensure that patients receive treatment at the closest, most appropriate facility, including facilities in other States or counties.

VI. Communications

An effective communications system is essential to EMS operations and provides the means by which emergency resources can be accessed, mobilized, managed, and coordinated. Each State should require a communication system to:

- Begin with the universal system access number 911;
- Strive for quick implementation of enhanced 911 services which make possible, among other features, the automatic identification of the caller's physical location;
- Provide for prioritized dispatch (dispatch-to-ambulance, ambulance-to-ambulance, ambulance-to-hospital, and hospital-to-hospital communication);
- Ensure that the receiving facility is ready and able to accept the patient; and
- Provide for dispatcher training and certification standards.

Each State should develop a statewide communications plan that defines State government roles in EMS system communications.

VII. Trauma Systems

Each State should maintain a fully functional trauma system to provide a high quality, effective patient care system. States should implement legislation requiring the development of a trauma system, including:

- Trauma center designation, using American College of Surgeons Committee on Trauma guidelines as a minimum;
- Triage and transfer standards for trauma patients;
- Data collection and trauma registry definitions for quality assurance;
- Mandatory autopsies to determine preventable deaths; and
- Systems management and quality assurance.

VIII. Public Information and Education

Public awareness and education about the EMS system are essential to a high quality system. Each State should implement a public information and education (PI&E) plan to address:

- The components and capabilities of an EMS system;
- The public's role in the system;
- The public's ability to access the system;
- What to do in an emergency (e.g., bystander care training);
- Education on prevention issues (e.g., alcohol or other drugs, occupant protection, speeding, motorcycle and bicycle safety);
- The EMS providers' role in injury prevention and control; and
- The need for dedicated staff and resources for PI&E programming.

IX. Medical Direction

Physician involvement in all aspects of the patient care system is critical for effective EMS operations. EMS is a medical care system in which physicians delegate responsibilities to non-physician providers who manage patient care outside the traditional confines of the office or hospital. States should require physicians to be involved in all aspects of the patient care system, including:

- Planning and protocols;

- On-line and off-line medical direction and consultation; and
- Audit and evaluation of patient care.

X. Evaluation

Each State should implement a comprehensive evaluation program to effectively assess and improve a statewide EMS system. EMS system managers should:

- Evaluate the effectiveness of services provided to victims of medical or trauma-related emergencies;
- Define the impact of patient care on the system;
- Evaluate resource utilization, scope of service, patient outcome, and effectiveness of operational policies, procedures, and protocols;
- Develop a data-gathering mechanism that provides for the linkage of data from different data sources through the use of common data elements; and
- Evaluate both process and impact measures on injury prevention, and public information and education programs.

HIGHWAY SAFETY PROGRAM GUIDELINE NO. 14—PEDESTRIAN AND BICYCLE SAFETY

Each State, in cooperation with its political subdivisions, should have a comprehensive pedestrian and bicycle safety program that educates and motivates its citizens to follow safe pedestrian and bicycle practices. A combination of legislation, regulations, policy, enforcement, public information, education, incentives, and engineering is necessary to achieve significant, lasting improvements in pedestrian and bicycle crash rates, and to reduce resulting deaths and injuries.

Each State should recognize that its pedestrians and bicyclists—citizens of all ages who are virtually unprotected from the forces of a crash—face major safety problems and are a valid traffic safety concern. Because of the diverse nature of these issues, education, enforcement, and engineering are critical components to any strategies devised to reduce these problems. In formulating policy, the State should promote these specific issues:

- The provision of early pedestrian and bicycle safety education and training for preschool children;
- The inclusion of pedestrian and bicyclist safety in health and safety education curricula;
- The inclusion of pedestrian and bicyclist safety in driver training programs and driver licensing activities;
- The provision of a safe environment for pedestrians and bicyclists through such measures as sidewalks and bicycle facilities, in the planning and design of all highway projects;
- The use of bicycle helmets as a primary measure to reduce death and injury among bicyclists;
- An awareness of the role of alcohol in crashes involving adult pedestrians;
- The safeguarding of older citizens from crashes involving pedestrians; and
- The establishment and support of Community/Corridor Traffic Safety Programs and other injury prevention programs at the local level.

A comprehensive highway safety system is the most effective means of producing consistent, long-term changes in knowledge and behavior necessary to improve pedestrian and bicycle safety. The following components create a structure for identifying problem areas; implementing, measuring, and evaluating the problem areas; and directing the results back into system improvements. We believe these elements will effectively address the problem.

I. Program Management

Each State should have centralized program planning, initiation, and coordination to promote pedestrian and bicycle safety program issues as part of a comprehensive highway safety program. Evaluation is also important for determining progress and ultimate success of pedestrian and bicycle safety programs and for providing those results to revise existing programs and to develop new programs. The State should have program staff trained in pedestrian and bicyclist safety so that this program can:

- Conduct regular problem identification activities to identify fatality and injury crash trends for pedestrians and bicyclists and to provide guidance in development of countermeasures;
- Provide leadership, training, and technical assistance to other State agencies and local pedestrian and bicycle safety programs and projects;
- Convene a pedestrian and bicycle safety advisory task force or coalition to organize, integrate with other involved groups, and generate broad-based support for programs;
- Integrate pedestrian and bicycle safety programs into Community/Corridor Traffic Safety Programs, injury prevention programs, and transportation plans; and
- Evaluate the effectiveness of its pedestrian and bicycle safety program.

II. Multi-Disciplinary Involvement

Pedestrian and bicyclist safety goes beyond the confines of any single State or local agency (engineering, education or enforcement) and requires the combined support and coordinated attention of multiple agencies, representing a variety of disciplines, at the State and local level. At a minimum, the following kinds of agencies should be involved:

- Law Enforcement
- Education
- Health and Medicine
- Driver Education and Licensing
- Transportation—Engineering, Planning
- Public Communications

III. Legislation and Regulations

Each State should enact and enforce pedestrian and bicyclist-related traffic laws and regulations, including laws that require the use of bicycle helmets. Specific policies should be developed to encourage coordination with Federal agencies (including NHTSA and FHWA), in the development of regulations and laws to promote pedestrian and bicyclist safety.

IV. Law Enforcement

Each State should ensure that State and community pedestrian and bicycle programs include a law enforcement component. Each State should strongly emphasize the role played by law enforcement personnel in pedestrian and bicyclist safety. Essential components of that role include:

- Developing knowledge of pedestrian and bicyclist crash situations, investigating crashes, and maintaining a report system that supports problem identification and evaluation activities;
- Providing public information and education support;
- Providing training to law enforcement personnel in matters of pedestrian and bicycle safety;
- Establishing agency policies; and
- Coordinating with and supporting education and engineering components.

V. Highway Engineering

Traffic engineering is a critical element of any crash reduction program. This is true not only for the development of programs to reduce an existing crash problem, but also to design transportation facilities that provide for the safe movement of pedestrians, bicyclists, and all motor vehicles. Balancing the needs of pedestrians and those of vehicular traffic (including bicycle) must always be considered. Therefore, each State should ensure that State and community pedestrian and bicycle programs include a traffic engineering component. Traffic engineering efforts should be coordinated with enforcement and educational efforts. This effort should improve the protection of pedestrians and bicyclists by application of appropriate traffic engineering measures in design, construction, operation, and maintenance. These measures should include but not be limited to the following:

- Pedestrian, bicycle and school bus loading zone signals, signs, and markings
- Parking regulations
- Sidewalk design
- Pedestrian pathways
- On-road facilities (signed routes, marked lanes, wide curb lanes, and paved shoulders)
- Off-road bicycle facilities (trails and paths)

VI. Public Information and Education

Each State should ensure that State and community pedestrian and bicycle programs contain a public information and education component. This component should address school-based education programs, coordination with traffic engineering and law enforcement components, public information and awareness campaigns, and other targeted educational programs such as those for the elderly. These programs should address issues such as:

- Being visible in the traffic system (conspicuity)
- Use of facilities and accommodations
- Law enforcement initiatives
- Proper street crossing behavior
- Safe practices near school buses, including loading and unloading practices
- The nature and extent of the problem
- Driver training with regard to pedestrian and bicycle safety
- Rules of the road
- Proper selection, use and fit of bicycles and bicycle helmets

- Skills training for bicyclists
- Proper use of bicycle equipment
- Sharing the road

The State should enlist the support of a variety of media, including mass media, to improve public awareness of pedestrian and bicyclist crash problems and programs directed at preventing them.

VII. Outreach Program

Each State should encourage extensive community involvement in pedestrian and bicycle safety education by involving individuals and organizations outside the traditional highway safety community. Community involvement broadens public support for the State's programs and can increase a State's ability to deliver highway safety education programs. To encourage community involvement, States should:

- Establish a coalition or task force of individuals and organizations to actively promote safe pedestrian and bicycle safety practices (see Program Management Component);
- Create an effective communications network among coalition members to keep members informed; and
- Provide materials and resources necessary to promote pedestrian and bicycle safety education programs.

VIII. School-Based Program

Each State should incorporate pedestrian and bicycle safety education into school curricula. Safe walking and bicycle-riding practices to and from school and school-related events are good health habits and, like other health habits, must be taught at an early age and reinforced until the habit is well established. The State Department of Education and the State Highway Safety Agency should:

- Ensure that highway safety in general, and pedestrian and bicycle safety in particular, are included in the State-approved K–12 health and safety education curricula and textbooks;
- Establish and enforce written policies requiring safe walking and bicycling practices to and from school, including use of bicycle helmets on school property; and
- Encourage active promotion of safe walking and bicycling practices (including helmet usage and safe walking and riding practices near school buses) through classroom and extra-curricular activities.

IX. Driver Education and Licensing

- Each State should address pedestrian and bicycle issues in State driver education and licensing programs. Pedestrian and bicycle safety principles and rules should be included in all driver training and licensing examinations.

X. Evaluation Program

Both problem identification and evaluation require good record keeping by the State and its political subdivisions. The State should identify the types and frequency of pedestrian and bicyclist crash problems in terms that are relevant to both the selection and evaluation of appropriate countermeasure programs.

The State should promote effective evaluation of programs by:

- Supporting the continuing analysis of police accident reports (PARs) of pedestrian and bicyclist crashes for both problem identification and program evaluation activities;
- Encouraging, supporting, and training localities in impact and process evaluations of local programs;
- Conducting and publicizing statewide surveys of public knowledge and attitudes about pedestrian and bicyclist safety;
- Maintaining awareness of trends in pedestrian and bicyclist crashes at the national level and how this might influence activities statewide;
- Evaluating the use of program resources and the effectiveness of existing general public and target population countermeasure programs.
- Ensuring that evaluation results are an integral part of new program planning and problem identification.

HIGHWAY SAFETY PROGRAM GUIDELINE NO. 15—POLICE TRAFFIC SERVICES

Each State, in cooperation with its political subdivisions, should have an efficient and effective police traffic services (PTS) program to enforce traffic laws, prevent crashes and their resulting deaths and injuries, assist the injured, document specific details of individual crashes, supervise crash clean-up, and restore safe and orderly movement of traffic. PTS is critical to the success of most traffic safety countermeasures and to the prevention of traffic-related injuries. Traffic law enforcement plays an important role in deterring impaired driving involving alcohol or other drugs, achieving safety belt use, encouraging compliance with speed laws, and reducing other unsafe driving actions. Experience has shown that a combination of highly visible enforcement, public information, education, and training is necessary to achieve a significant and lasting impact in reducing crashes, injuries, and fatalities. At a minimum, a well-balanced statewide PTS program should be made up of the components detailed below.

I. Program Management

A. Planning and Coordination

Centralized program planning, implementation, and coordination are essential for achieving and sustaining effective PTS programs. The State Highway Safety Agency (SHSA), in conjunction with State, county and local law enforcement agencies, should ensure that these planning and coordinating functions are performed with regard to the State's traffic safety program, since law enforcement is in most instances a principle component of that program. In carrying out its responsibility of centralized program planning and coordination, the State should:

- Provide leadership, training, and technical assistance to State, county and local law enforcement agencies;
- Coordinate PTS and other traffic safety program areas including Commercial Motor Vehicle (CMV) safety activities such as the Motor Carrier Safety Assistance Program;
- Develop and implement a comprehensive plan for all PTS activities, in cooperation with law enforcement leaders;
- Generate broad-based support for enforcement programs; and
- Integrate PTS into community/corridor traffic safety and other injury prevention programs.

B. Program Elements

State, county and local law enforcement agencies, in conjunction with the SHSA, should establish PTS as a priority within their total enforcement program. A PTS program should be built on a foundation of commitment, coordination, planning, monitoring, and evaluation within the agency's enforcement program. State, county and local law enforcement agencies should:

- Provide the public with a high quality, effective PTS system and have enabling legislation and regulations in place to implement PTS functions;
- Develop and implement a comprehensive enforcement plan for impaired driving involving alcohol or other drugs, safety belt use and child passenger safety laws, speeding, and other hazardous moving violations. The plan should initiate action to look beyond the issuance of traffic tickets to include enforcement of laws that cover the more significant portions of the safety problem and that address drivers of all types of vehicles, including trucks, automobiles, and motorcycles;
- Develop a cooperative working relationship with other local, county, and State governmental agencies and community organizations on traffic safety issues;
- Issue and enforce policies on roadside sobriety checkpoints, safety belt use, pursuit driving, crash investigating and reporting, speed enforcement, and serious traffic violations; and
- Develop performance measures for PTS that are both qualitative and quantitative.

II. Resource Management

States should encourage law enforcement agencies to develop and maintain a comprehensive resource management plan to identify and deploy resources needed to effectively support enforcement programs. The resource management plan should include a specific component on traffic enforcement and safety, integrating traffic enforcement and safety initiatives into a total agency enforcement program. Law enforcement agencies should:

- Conduct periodic assessments of service demands and resources to meet identified needs;
- Develop a comprehensive resource management plan, including a specific traffic enforcement and safety component;
- Define the plan in terms of budget requirements and services to be provided; and
- Develop and implement operational policies for the deployment of resources to address program demands and to meet agency goals.

III. Traffic Law Enforcement

The enforcement of traffic laws and ordinances is a basic responsibility shared by all law enforcement agencies. The primary objective of this function is to encourage motorists and pedestrians to comply voluntarily with the laws. Administrators

should apply their enforcement resources in ways that ensure the greatest safety impact. Traffic law enforcement programs should be based on:

- Accurate problem identification;
- Countermeasures designed to address specific problems;
- Enforcement actions applied at appropriate times and places, coupled with a public information effort designed to make the motoring public aware of the problem and the planned enforcement action; and
- A system to document and publicize results.

IV. Public Information and Education

A. Necessity of Public Information and Education

Public awareness and knowledge about traffic enforcement are essential for sustaining increased compliance with all traffic laws. This requires a well-organized, effectively-managed public information and education program. The SHSA, in cooperation with law enforcement agencies, should develop a statewide public information and education campaign that:

- Identifies and targets specific audiences;
- Addresses enforcement of safety belt use and child passenger safety, impaired driving involving alcohol or other drugs, speed, and other serious traffic laws;
- Capitalizes on special events, such as Operation C.A.R.E., Child Passenger Safety Awareness, Buckle Up, America! and Drunk and Drugged Driving Awareness campaigns;
- Identifies and supports the efforts of traffic safety activist groups and the health and medical community to gain increased support of and attention to traffic safety and enforcement;
- Uses national themes, events, and materials; and
- Motivates the public to support increased enforcement of traffic laws.

The task of public information can be divided into two interconnected areas: external and internal information. Both areas, properly administered, will benefit the agency and work in concert to accomplish the goal of establishing and maintaining a positive police-public relationship.

B. Development of Public Information and Education Functions by Law Enforcement Agencies

External

- Educate and remind the public about traffic laws and safe driving behavior;
- Disseminate information to the public about agency activities and accomplishments;
- Enhance relationships with news media and the health and medical community;
- Provide safety education and community services;
- Provide legislative and judicial information and support; and
- Increase the public's understanding of the enforcement agency's role in traffic safety.

Internal

- Disseminate information about internal activities to sworn and civilian members of the agency;
- Enhance the agency's safety enforcement role and increase employee understanding and support; and
- Recognize employee achievements.

V. Data Collection and Analysis

The availability of valid data is critical to any approach intended to increase the level of highway safety. An effective records program provides fast and accurate information to field personnel who are performing primary traffic functions and to management for decision-making. Data are usually collected from crash reports, daily officer activity reports that contain workload and citation information, highway department records (e.g., traffic volume), citizen complaints, and officer observations. An effective records program should:

- Provide information rapidly and accurately;
- Provide routine compilations of data for management use in the decision making process;
- Provide data for operational planning and execution;
- Interface with a variety of data systems, including statewide traffic safety records system; and
- Be accessible to enforcement, planners, and management.

VI. Training

Training is one of the most important activities in a law enforcement agency, and it is essential to support the special requirements of traffic law enforcement and safety. It is essential for operational personnel to be prepared to effectively perform their duties. Traffic enforcement training can be conducted by the agency, the State POST (Police, or Peace, Officer Standards and Training) agency, or a commercial trainer.

A. Purpose and Goals of Training

Training accomplishes a wide variety of important and necessary goals. Proper training should:

- Prepare officers to act decisively and correctly;
- Increase compliance with agency enforcement goals;
- Assist in meeting priorities;
- Improve compliance with established policies;
- Result in greater productivity and effectiveness;
- Foster cooperation and unity of purpose;
- Help offset liability actions; and
- Motivate and enhance officer professionalism.

B. State, County and Local Law Enforcement Agencies Should:

- Periodically assess enforcement activities to determine training needs;
- Require traffic enforcement knowledge and skills in all recruits;
- Provide traffic enforcement in-service training to experienced officers;
- Provide specialized CMV in-service training to traffic enforcement officers;
- Conduct training to implement specialized traffic enforcement skills, techniques, or programs; and
- Train instructors, to increase agency capabilities and to ensure continuity of specialized enforcement skills and techniques.

VII. Evaluation

The SHSA, in conjunction with State, county and local law enforcement agencies, should develop a comprehensive evaluation program to measure progress toward established project goals and objectives; effectively plan and implement statewide, county and local PTS programs; optimize the allocation of limited resources; measure the impact of traffic enforcement on reducing crime and traffic crashes, injuries, and deaths; and compare costs of criminal activity to costs of traffic crashes. Law enforcement managers should:

- Include evaluation in initial program planning efforts to ensure that data will be available and that sufficient resources will be allocated;
- Report results regularly to project and program managers, to police field commanders and officers, and to the public and private sectors;
- Use results to guide future activities and to assist in justifying resources to legislative bodies;
- Conduct a variety of surveys to assist in determining program effectiveness, such as roadside sobriety surveys, speed surveys, license checks, belt use surveys, and surveys measuring public knowledge and attitudes about traffic enforcement programs;
- Evaluate the effectiveness of services provided in support of priority traffic safety areas; and
- Maintain and report traffic data to the International Association of Chiefs of Police *Traffic Data Report* and other appropriate repositories, such as the FBI *Uniform Crime Report,* FHWA's SAFETYNET system, and annual statewide reports.

HIGHWAY SAFETY PROGRAM GUIDELINE NO. 19—SPEED CONTROL

Each State, in cooperation with its political subdivisions, should have, as part of a comprehensive highway safety program, an effective speed control program that encourages its citizens to voluntarily comply with speed limits. The program should stress systematic and rational establishment of speed limits, a law enforcement commitment to controlling speed on all public roads, a commitment to utilize both traditional methods and state-of-the art equipment in setting and enforcing speed limits, and a strong public information and education program aimed at increasing driver compliance with speed limits.

I. Program Management

State and local law enforcement agencies, transportation departments, and the State Highway Safety Agency (SHSA) should establish speed control as a priority within their total highway safety program. The speed control program should contain the following elements: program management, procedures for establishing reasonable speed limits, coordinated enforcement efforts, public information and education, identification and utilization of new technology, legislative coordination and

commitment, training, and evaluation. When planning and developing a program to address speed control, the issue of speed should be examined in light of the empirical data available, current methods for setting speed limits, and the current public perception of speed compliance. Added to these elements is the law enforcement response, including the resources available to enforcement agencies. Only after these components have been examined and defined can the goals of a speed control program be formulated. In carrying out its responsibility of centralized program planning and coordination, the State should:

- Develop and implement a comprehensive speed control plan in cooperation with law enforcement leaders, traffic engineers, educators, injury control professionals, and leaders of the community;
- Provide leadership, training, and technical assistance to State and local law enforcement agencies and highway/traffic agencies;
- Generate broad based support for speed control programs through education on the scope and severity of the problem; and
- Integrate speed control into the overall traffic enforcement and engineering program.

II. Enforcement Program

Each State should strongly emphasize speed enforcement as part of its overall traffic enforcement program. The speed enforcement program should include enforcement strategies and other components of a comprehensive approach to address the speed issue. The plan should address the following concepts:

- Including public information and education components along with vigorous enforcement in State and local anti-speeding programs;
- Collecting data to help in problem identification and evaluation;
- Identifying high risk crash locations where speed or speed variance is a contributing factor in crashes;
- Integrating speed control programs into related highway safety activities such as drunk driving prevention, safety belt and safety programs for young people and other injury control activities;
- Targeting anti-speeding programs to address specific audiences and situations: young drivers, males, nighttime, adverse weather and traffic conditions (i.e., travel at speeds unsafe for conditions), drunk driving, commercial motor vehicle (CMV) drivers, school zones, construction and maintenance work zones, and roads and streets with major potential conflicts in traffic and with pedestrians and bicyclists;
- Using speed measuring devices that are both efficient and cost effective, including new speed measurement technology such as laser (LIDAR) speed measuring devices, electronic signing and photo-radar; and
- Training officers in the proper use of equipment and educating other members of the criminal justice system, such as judges and prosecutors, on the principles of devices using new technology.

III. Setting of Speed Limits

States and local governments should undertake comprehensive efforts to identify rational criteria for establishing speed limits and should include strategies to address the speed issue. These efforts should include:

- Identification of criteria used to establish speed limits, including the recognition of unique operational characteristics of CMV's;
- Use of state-of-the art technology to collect data to establish speed limits;
- Use of variable message speed limit signs to reinforce the appropriate speed limit for prevailing conditions;
- Identification of high hazard locations where speeding is a contributing factor;
- Coordination of an effort with enforcement agencies, educators, and community leaders to provide information on setting of speed limits; and
- Training of traffic and enforcement personnel in the proper techniques for establishing safe and reasonable speed limits and in the use and deployment of speed monitoring equipment.

IV. Public Information and Education

Focused public information and education campaigns are an essential part of a comprehensive speed control program. Research shows that compliance with and support for traffic laws can be increased through aggressive, targeted enforcement combined with an effective public information and education campaign. The SHSA, in cooperation with law enforcement and transportation agencies, should develop a Statewide public information and education campaign that:

- Identifies and targets specific audiences;
- Addresses criteria for setting speed limits and enforcement of speed limits particularly for locations experiencing excessive speed, speed variance, travel at speeds unsafe for conditions, or speed related crashes;
- Capitalizes on special events (cooperative, multi-jurisdictional enforcement efforts) and special holiday enforcement programs;
- Identifies and supports the efforts of traffic safety activist groups and members of the health and medical communities to gain increased support of and attention to speed control, traffic safety, and injury control issues;
- Uses national themes, events, and materials; and
- Motivates the public to support speed control by pointing out the public health issues of injury, death, and medical and other economic costs of speed related crashes.

V. Technology

New and updated technology for speed measurement is needed to determine appropriate speed limits for a variety of conditions and to achieve maximum enforcement activity with fewer available resources. Current technology for measuring speed, such as loop detectors, should be used not only to establish viable speed limits but also to vary speed limits to conform to existing conditions. For enforcement activities, State and local governments should only utilize speed measurement equipment that is approved or recognized as reliable and accurate. All law enforcement agencies should use the International Association of Chiefs of Police (IACP) regional testing laboratories to ensure that equipment used to measure speeds meets minimum standards. For CMV enforcement purposes, the FHWA will provide MCSAP funding only for those items of speed control equipment approved by the IACP or which meet other suitable standards. The SHSA, in conjunction with law enforcement and traffic/highway agencies, should support programs providing for:

- Collection of operational speed data to determine appropriate speed limits and for use of these data in conjunction with variable message signs;
- Police Radar and Laser (LIDAR) Model Minimum Specifications—NHTSA, in cooperation with the IACP and the National Institute of Standards and Technology (NIST), has developed model specifications and testing protocols for speed control devices. Using these model specifications, IACP in cooperation with manufacturers and NHTSA, has established a program to test speed control devices that are available for purchase by law enforcement agencies. Reports of the testing were published by IACP along with a Consumer Products List which provides law enforcement agencies with the names of devices conforming with the model performance specifications.
- Police Radar and Laser (LIDAR) Testing Program—To ensure that law enforcement agencies can continue to purchase and operate accurate speed control devices, IACP, in cooperation with manufacturers and NHTSA, has established an ongoing process of performance testing for newly developed devices and for maintaining existing equipment. Testing laboratories have been established at five universities. These laboratories will continue the testing program and will provide services to the law enforcement community.
- Model Performance Specifications and Test Protocols—NIST, Law Enforcement Standards Laboratory, is developing model minimum performance and testing protocols for automated speed enforcement (ASE) devices, including photo-radar devices;
- Basic Training Program in VASCAR Speed Measurement—NHTSA has developed a training course for the VASCAR (Visual Average Speed Computer and Recorder) time-distance speed measurement devices. This course was developed specifically for use by law enforcement officers; and
- Basic Training Program in Radar Speed Measurement—NHTSA has developed a basic training course which teaches the correct procedures for law enforcement's use of police radar and also the proper instructional techniques for those teaching the course.

VI. Legislation

To encourage voluntary compliance by drivers, speed limits must be safe, reasonable, and uniform to the greatest extent possible. Realistic speed limits on roadways should:

- Be based upon traffic and engineering investigations;
- Encourage drivers to comply with the posted limits and allow enforcement agencies to better target speeders;

- Be accompanied by sanctions, including court and administrative penalties, which are set by law;
- Be as consistent as possible with the physical and operational characteristics (actual and perceived) of the roadway; and
- Take into account the needs and safety of all highway users, motorists and non-motorists alike.

Legislative components of an effective speed control program should:

- Encourage the highway safety community to develop laws, rules, and regulations that will provide for reasonable and safe speed limits;
- Provide appropriate legislation to allow the establishment of regulatory variable speed limits, such as the provisions of Chapter 11, Article VIII of the Uniform Vehicle Code;
- Provide for public information and education programs to explain how speed limits are established and to convince drivers that speed limits are realistic, reasonable, and include sanctions; and
- Establish sanctions for speeding violations that are reasonable, uniform, and effective as a deterrent.

New devices and technology are available for use in determining appropriate speed limits and in law enforcement actions to measure the speed of vehicles. Transportation and law enforcement agencies should work closely with the SHSA to make certain new technologies can be used under existing legislation. As necessary, these groups should work together in ensuring development and adoption of legislation allowing use of new technologies.

VII. Training

NHTSA fully supports and encourages training for law enforcement officers in the use of speed measurement devices, model speed enforcement strategies, combined enforcement projects, and planning and implementing public information and education programs.

In support of law enforcement training, NHTSA will continue to publish and widely distribute training programs. These courses are related to established as well as new and emerging techniques of speed measurement and enforcement. The training courses are recommended for officers in law enforcement agencies using speed measuring devices. FHWA also provides training programs on CMV traffic enforcement.

Training for law enforcement officers involved in speed enforcement should include:

- Proper use of devices used to measure speed;
- How to use data and analysis to define the speed problem, to target enforcement activities, and to evaluate the results of countermeasures;
- How to relate speed enforcement to public safety;
- How to plan and implement a PI&E program on speed enforcement;
- Model speed enforcement strategies including examples of combined enforcement programs; and
- Assisting traffic engineers and technicians in deployment and use of speed measuring equipment.

Training for traffic engineers and technicians should include:

- Proper use and development of speed measurement equipment;
- Developing guidelines for setting speed limits;
- Establishing appropriate signing policies;
- Investigating alternative approaches to speed control (e.g., signing, stripping, channeling, barriers, speed undulations); and
- Interpreting geometric, operational and environmental data for their impact on roadway safety and user performance.

VIII. Evaluation

The SHSA, in conjunction with State and local law enforcement and transportation agencies should develop a comprehensive evaluation program to measure progress toward established project goals and objectives. The evaluation should measure the impact of speed control programs on traffic crashes, injuries, and deaths; and provide information for revised improved program planning. These agencies should:

- Include evaluation in initial program planning efforts to ensure that data will be available and that sufficient resources will be allocated;
- Report results regularly to project and program managers, to police field commanders and officers, to transportation engineers, to members of the highway safety and health and medical communities, and to the public and private sectors;
- Use results to verify problem identification, guide future speed control activities, and assist in justifying resources to legislative bodies;
- Conduct a variety of surveys to assist in determining program effectiveness, such as speed surveys and surveys measuring public knowledge and attitude about speed control programs;
- Analyze speed compliance and speed-related crashes in areas with actual hazards to the public;
- Evaluate the effectiveness of speed control activities provided in support of other priority traffic safety areas; and
- Maintain and report traffic data to the SHSA, *IACP Traffic Data Report* and other appropriate repositories, such as the FBI *Uniform Crime Reports* FHWA's SAFETYNET system, and annual statewide reports.

HIGHWAY SAFETY PROGRAM GUIDELINE NO. 20—OCCUPANT PROTECTION

Each State, in cooperation with its political subdivisions, should have a comprehensive occupant protection program that educates and motivates its citizens to use available motor vehicle occupant protection systems. A combination of use requirements, enforcement, public information, education, and incentives is necessary to achieve significant, lasting increases in safety belt usage, which will prevent fatalities and control the number and severity of injuries. Therefore, a well-balanced State occupant protection program should include the components described below.

I. Program Management

Each State should have centralized program planning, implementation and coordination to achieve and sustain high rates of safety belt use. Evaluation is also important for determining progress and ultimate success of occupant protection programs. The State Highway Safety Agency (SHSA) should:

- Provide leadership, training, and technical assistance to other state agencies and local occupant protection programs and projects;
- Convene an occupant protection advisory task force or coalition to organize and generate broad-based support for programs;
- Integrate occupant protection programs into community/corridor traffic safety and other injury prevention programs; and
- Evaluate the effectiveness of its occupant protection program.

II. Legislation, Regulation, and Policy

Each State should enact and enforce occupant protection use laws, regulations, and policies to provide clear guidance to the motoring public concerning motor vehicle occupant protection systems. This legal framework should include:

- Legislation, permitting primary enforcement, requiring all motor vehicle occupants to use the systems provided by the vehicle manufacturer and educational programs to explain their benefits and the correct way to use them;
- Legislation, permitting primary enforcement, requiring children up to 40 pounds (or five years old if weight cannot be determined) to ride in a safety device certified by the manufacturer to meet all applicable Federal performance standards;
- Regulations requiring employees of all levels of government to wear safety belts when traveling on official business;
- Official policy requiring that organizations receiving Federal highway safety program grant funds have and enforce an employee safety belt use policy; and
- Encouragement for automobile insurers to offer economic incentives for policy holders to wear safety belts, to secure small children in child safety seats, and to purchase cars equipped with air bags.

III. Enforcement Program

Each State should have a strong law enforcement program, coupled with public information and education, to increase safety belt and child safety seat use. Essential components of a law enforcement program include:

- Written, enforced belt use policies for law enforcement agencies with sanctions for noncompliance to protect law enforcement officers from harm and for officers to serve as role models for the motoring public;
- Vigorous enforcement of public safety belt use and child safety seat laws, including citations and warnings;
- Accurate reporting of occupant protection system information on accident report forms, including use or non-use of belts or child safety seats, type of belt, and presence of and deployment of air bag;
- Public information and education (PI&E) campaigns to inform the public about occupant protection laws and related enforcement activities;

- Routine monitoring of citation rates for non-use of safety belts and child safety seats; and
- Certification of an occupant protection training course for both basic and in-service training by the Police (or Peace) Officer Standards and Training (POST) board.

IV. Public Information and Education Program

As part of each State's public information and education program, the State should enlist the support of a variety of media, including mass media, to improve public awareness and knowledge about safety belts, air bags, and child safety seats. To sustain or increase rates of safety belt and child safety seat use, a well-organized, effectively managed public information program should:

- Identify and target specific audiences, (e.g., low-use, high risk motorists) and develop messages appropriate for these audiences;
- Address the enforcement of the State's belt use and child passenger safety laws; the safety benefits of regular, correct safety belt (both manual and automatic) and child safety seat use; and the additional protection provided by air bags;
- Capitalize on special events, such as nationally recognized safety and injury prevention weeks and local enforcement campaigns;
- Coordinate different materials and media campaigns where practicable, (e.g., by using a common theme and logo);
- Use national themes and materials to the fullest extent possible;
- Publicize belt-use surveys and other relevant statistics;
- Encourage news media to report belt use and non-use in motor vehicle crashes;
- Involve media representatives in planning and disseminating public information campaigns;
- Encourage private sector groups to incorporate belt-use messages into their media campaigns;
- Take advantage of all media outlets: television, radio, print, signs, billboards, theaters, sports events, health fairs; and
- Evaluate all media campaign efforts.

V. Health/Medical Program

Each State should integrate occupant protection into health programs. The failure of drivers and passengers to use occupant protection systems is a major public health problem that must be recognized by the medical and health care communities. The SHSA, the State Health Department, and other State or local medical organizations should collaborate in developing programs that:

- Integrate occupant protection into professional health training curricula and comprehensive public health planning;
- Promote occupant protection systems as a health promotion/injury prevention measure;
- Require public health and medical personnel to use available motor vehicle occupant protection systems when on the job;
- Provide technical assistance and education about the importance of motor vehicle occupant protection to primary caregivers (e.g., doctors, nurses, clinic staff);
- Include questions about safety belt use in health risk appraisals;
- Utilize health care providers as visible public spokespersons for belt use and child safety seat use;
- Provide information about availability of child safety seats through maternity hospitals and other pre-natal and natal care centers (see Program Component VI: Child Passenger Safety Program); and
- Collect, analyze, and publicize data on additional injuries and medical expenses resulting from non-use of occupant protection devices.

VI. Child Passenger Safety Program

Each State should vigorously promote the use of child safety seats. States should require every child up to 40 pounds to ride correctly secured in a child safety seat that meets Federal Motor Vehicle Safety Standards (see Program Component II: Legislation, Regulation, and Policy). State and community child passenger safety programs that will help to achieve that objective should be established to:

- Educate parents, pediatricians, hospitals, law enforcement, EMS and the general public about the safety risks to small children, the benefits of child safety seats, and their responsibilities for compliance with child passenger safety laws;
- Encourage child safety seat retailers and auto dealers to provide information about child seat and vehicle compatibility, as well as correct use;
- Require safe child transportation policies for certification of pre-school and day care providers;
- Require hospitals to ensure that newborn and other small children are correctly secured in an approved child safety seat or safety belt upon discharge;
- Make child safety seats available at affordable cost to low-income families, with appropriate education on how to use them; and
- Encourage local law enforcement to vigorously enforce child passenger safety laws, including safety belt use laws as they apply to children.

VII. School-Based Program

Each State should incorporate occupant protection education in school curricula. Buckling up is a good health habit and, like other health habits, must be taught at an early age and reinforced until the habit is well established. The State Department of Education and the State Highway Safety Agency should:

- Ensure that highway safety and traffic-related injury control in general, and occupant protection in particular, are included in the State-approved K–12 health and safety education curricula and textbooks;
- Establish and enforce written policies requiring that school employees operating a motor vehicle on the job use safety belts; and
- Encourage active promotion of regular safety belt use through classroom and extra-curricular activities as well as in the school-based health clinics.

VIII. Worksite Program

Each State should encourage all employers to require safety belt use on the job as a condition of employment. The Federal government has already taken that step for its employees. Private sector employers should follow the lead of Federal and State government employers and comply with all applicable FHWA Federal Motor Carrier Safety Regulations or Occupational Health and Safety (OSHA) regulations requiring private business employees to use safety belts on the job. All employers should:

- Establish and enforce a safety belt use policy with sanctions; and
- Conduct occupant protection education programs for employees on their belt use policies and the safety benefits of motor vehicle occupant protection.

IX. Outreach Program

Each State should encourage extensive community involvement in occupant protection education by involving individuals and organizations outside the traditional highway safety community. Community involvement broadens public support for the State's programs and can increase a State's ability to deliver highway safety education programs. To encourage community involvement, States should:

- Establish a coalition or task force of individuals and organizations to actively promote use of occupant protection systems;
- Create an effective communications network among coalition members to keep members informed; and
- Provide materials and resources necessary to conduct occupant protection education programs, especially directed toward young people, in local settings.

X. Evaluation Program

Each State should conduct several different types of evaluation to effectively measure progress and to plan and implement new program strategies. Program management should:

- Conduct and publicize at least one statewide observational survey of safety belt and child safety seat use annually, making every effort to ensure that it meets applicable federal guidelines;
- Maintain trend data on child safety seat use, safety belt use, and air bag deployment in fatal crashes;
- Identify target populations through observational surveys and crash statistics;
- Conduct and publicize statewide surveys of public knowledge and attitudes about occupant protection laws and systems;
- Obtain monthly or quarterly data from law enforcement agencies on the number of safety belt and child passenger safety citations and convictions;
- Evaluate the use of program resources and the effectiveness of existing general public and target population education programs;
- Obtain data on morbidity as well as the estimated cost of crashes, compare on the basis of safety belt usage and non-usage; and
- Ensure that evaluation results are an integral part of new program planning and problem identification.

HIGHWAY SAFETY PROGRAM GUIDELINE NO. 21—ROADWAY SAFETY

Each State, in cooperation with its political subdivisions, should have a comprehensive roadway safety program that is directed toward reducing the number and severity of traffic crashes. Roadway Safety applies to highway safety activities related to the roadway environment. (Section 402 funds may not be used for highway construction, maintenance, or design activities, but they may be used to develop and implement systems and procedures for carrying out safety construction and operation improvements.)

I. Program Management

The Federal Highway Administration (FHWA) provides administrative oversight for the Roadway Safety portion of the Section 402 highway safety program in close coordination with the State Highway Safety Agency (SHSA) and the State Highway Agency (SHA). An effective Roadway Safety program is based on sound analyses of roadway-related crash information and applies engineering principles in identifying highway design or operational improvements that will address the crash problem. The SHSA should:

- Assign program staff to work directly with the FHWA division safety engineer on roadway-related safety programs;
- Work in close harmony with the SHA, particularly with SHA staff who are responsible for traffic engineering, pedestrian and bicycle programs, commercial motor vehicle (CMV) safety, rail-highway crossing safety issues, work zone safety, design and operational improvements, and hazardous roadway locations;
- Foster an ongoing dialogue among all disciplines with a vested interest in highway safety, including engineers, enforcement personnel, traffic safety specialists, driver licensing administrators, CMV safety specialists, and data specialists;
- Promote a multi-disciplinary approach to addressing highway safety issues which focuses on comprehensive solutions to identified problems (e.g., a Community/ Corridor Traffic Safety Program (C/CTSP));
- Become familiar with the various highway-safety related categories of Federal-aid highway funds—in addition to Section 402—in order to maximize the safety benefits of the entire program;
- Become familiar with the State's traffic records system and play a role in the system's ongoing operation, maintenance and enhancement;
- Become familiar with the Motor Carrier Safety Assistance Program (MCSAP) and coordinate MCSAP and section 402 program activities; and
- Assist community leaders in managing and/or coordinating roadway safety issues which fall under the jurisdiction of local communities.

II. Identification and Surveillance of Crash Locations

Each state, in cooperation with county and other local governments, should have a program for identifying crash locations and for maintaining surveillance of those locations having high crash rates or losses. A model program should have the following characteristics:

- Procedures for accurate identification of crash locations on all roads and streets which identify crash experience on specific sections of the road and street system.
- An inventory of high crash locations and locations experiencing sharp increases in crashes and design and operational features with which high crash frequencies or severities are associated.
- Appropriate measures for reducing crashes and evaluating the effectiveness of safety improvements on any specific section of the road or street system.
- A systematically organized method to ensure continuing surveillance of the roadway network for potentially high crash locations and to develop methods for their correction.

III. Highway Design, Construction and Maintenance

Every state, in cooperation with county and local governments, should have a program of highway design, construction, and maintenance to improve highway safety. A model program should have the following characteristics:

- Design guidelines relating to safety features such as sight distances, horizontal and vertical curvature, spacing of decision points, width of lanes, etc., for all new construction or reconstruction on expressways, major streets and highways, and through-streets and highways.
- Street systems that are designated to provide a safe traffic environment for all roadway users when subdivisions and residential areas are developed or redeveloped.
- Efforts to ensure that roadway lighting or new technology, such as retroreflective materials, is provided or upgraded on a priority basis at expressways and other major arteries in urban areas, junctions of major highways in rural areas, locations or sections of streets and highways which have high ratios of night-to-day motor vehicle and/or pedestrian crashes, and tunnels and long underpasses.
- Guidelines for pavement design and construction with specific provisions for high skid resistance qualities.
- A program for resurfacing or other surface treatment with emphasis on correction of locations or sections of streets and highways with low skid resistance and high or potentially high crash rates susceptible to reduction by providing improved surfaces.
- Efforts to ensure that there is guidance, warning and regulation of traffic approaching and traveling over construction or repair sites and detours, in conformance with the Manual on Uniform Traffic Control Devices.
- A method for systematic identification and tabulation of all rail-highway grade crossings and a plan for the elimination of hazards and dangerous crossings.
- Projects which provide for the safe and efficient movement of traffic by ensuring that roadways and the roadsides are maintained consistent with the design guidelines which are followed in construction.
- Procedures to identify and correct hazards within the highway right-of-way.
- Procedures for incident management and congestion mitigation.
- Wherever possible for crash prevention and crash survivability, efforts to include at least the following highway design and construction features:

—roadsides which are clear of obstacles, with clear distance determined on the basis of traffic volumes, prevailing speeds, and the nature of development along the street or highway;
—supports for traffic control devices and lighting that are designed to yield or break away under impact wherever appropriate;
—protective devices that afford maximum protection to the occupants of vehicles where fixed objects cannot be reasonably removed or designed to yield;
—bridge railings and parapets which are designed to minimize severity of impact, redirect the vehicle so that it will move parallel to the roadway, and minimize danger to traffic below;
—guardrails, and other design features which protect people from out-of-control vehicles at locations of special hazard such as playgrounds, schoolyards and commercial areas.

- A post-crash program that includes at least the following:

—signs at freeway interchanges directing motorists to hospitals which have emergency care capabilities;
—maintenance personnel who are trained in procedures for summoning aid, protecting others from hazards at crash sites, and removing debris;
—provisions for access for emergency vehicles to and from freeway sections, where travel time would be reduced without reducing the safety benefits of access control.

IV. Traffic Engineering Services

Each State, in cooperation with its political subdivisions and with each Federal department or agency which controls highways open to public travel or supervises traffic operations, should have a program for applying traffic engineering measures and techniques, including the use of traffic control devices which are in conformance with the Manual on Uniform Traffic Control Devices, to reduce the number and severity of traffic crashes.

A model program should have the following characteristics:

- A comprehensive resource development plan to provide the necessary traffic engineering capability, including:

—provisions for supplying traffic engineering assistance to those jurisdictions that are unable to justify a full-time traffic engineering staff;
—provisions for upgrading the skills of practicing traffic engineers and for providing basic instruction in traffic engineering techniques to other professionals and technicians.

- Use of traffic engineering principles and expertise in the planning of public roadways, and in the application of traffic control devices.

• A traffic control device plan which includes:

—an inventory of all traffic control devices;
—periodic review of existing traffic control devices, including a systematic upgrading of substandard devices to conform with standards contained in the Manual on Uniform Traffic Control Devices;
—a maintenance schedule adequate to insure proper operation and timely repair of control devices, including daytime and nighttime inspections; and
—where appropriate, the application and evaluation of new ideas and concepts in applying control devices and in the modification of existing devices to improve their effectiveness through controlled experimentation.

• An implementation schedule which utilizes traffic engineering resources to:

—review road projects during the planning, design, and construction stages to detect and correct features that may lead to operational safety difficulties;
—install safety-related improvements as part of routine maintenance and/or repair activities;
—correct conditions noted during routine operational surveillance of the roadway system to rapidly adjust for the changes in traffic and road characteristics as a means of reducing the frequency and severity of crashes;
—conduct traffic engineering analyses of all high crash locations and develop corrective measures;
—analyze potentially hazardous locations—such as sharp curves, steep grades, and railroad grade crossings—and develop appropriate countermeasures;
—identify traffic control needs and determine short- and long-range requirements;
—evaluate the effectiveness of specific traffic control measures in reducing the frequency and severity of traffic crashes; and
—conduct traffic engineering studies to establish traffic regulations, such as fixed or variable speed limits.

Companion Highway Safety Program Manuals (February, 1974), which supplement this guideline, are available from the Federal Highway Administration's Office of Highway Safety. These supplements provide additional information to assist State and local agencies in implementing their roadway safety programs.

V. Outreach Program

While considerable progress has been made in reducing the highway death rate, forecasts of increased highway travel place new demands on the highway system. By necessity, roadways are being reconstructed while open to traffic, which places additional demands on motorists and construction workers. Increasing awareness of roadway-related safety issues will enhance highway safety in construction zones. A proactive roadway safety outreach program will provide critical information to the public on roadway safety issues, explain existing roadway safety features, and establish communication channels among engineers, planners, enforcement personnel, highway safety advocacy groups, and the motoring public. To encourage outreach in the roadway safety area, States should:

• Identify those groups or individuals that may have an interest in promoting roadway safety, including roadway safety advocacy groups, law enforcement, community advocacy, the medical community, and create an effective communication network among the groups to keep members informed;

• Target specific areas in which the public needs roadway safety information and develop appropriate public information and education materials on various roadway safety issues.

VI. Evaluation

Roadway Safety programs should be periodically evaluated by the State, or appropriate Federal department or agency where applicable, and the Federal Highway Administration should be provided with an evaluation summary. Evaluations should include measures of effectiveness in terms of crash reduction.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 950

[Docket No. R–95–1742; FR–3646–C–03]

RIN 2577–AB43

Indian Housing Program: Amendments; Final Rule; Technical Corrections

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule; technical corrections.

SUMMARY: On April 10, 1995, HUD published a final rule amending the Indian Housing consolidated regulations and moving these regulations from part 905 to a new part 950. This document corrects several minor and inadvertent omissions from that final rule.

EFFECTIVE DATE: The effective date of this correction is July 18, 1995.

FOR FURTHER INFORMATION CONTACT: Dominic Nessi, Deputy Assistant Secretary for Native American Programs, Public and Indian Housing, Room B–133, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410, telephone (202) 755–0032. Hearing- or speech-impaired persons may use the TDD number (202) 708–0850. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: On April 10, 1995, HUD published a final rule amending the Indian Housing consolidated regulations and moving these regulations from part 905 to a new part 950 (60 FR 18174). These amendments were necessary to simplify program processes, reduce the number of regulatory requirements, and provide more flexibility to local tribal and Indian housing authority officials in the administration of the Indian Housing program.

This document corrects several minor and inadvertent omissions from that final rule. First, this document reinstates the amendments to the definition of annual income that were made by HUD's Combined Income and Rent interim rule, published in the **Federal Register** on April 5, 1995 (60 FR 17388). The Indian Housing final rule and the Combined Income and Rent interim rule were in the final stages of departmental review at the same time. While HUD intended the Indian Housing final rule to be comprehensive, it did not intend to supplant the necessary changes that were made by the Combined Income and Rent interim rule.

Second, this document corrects the section of the Indian Housing final rule regarding the establishment of Indian Housing Authorities (IHAs) by tribal ordinance. The language of the section appears to provide that an IHA, and not the tribe, would enact such an ordinance. Such an interpretation would clearly be incorrect; therefore, this document clarifies that section to reflect that the tribe would enact the ordinance.

Third, this document inserts a provision clarifying that HUD's one-time approval of an IHA's Indian preference methods would continue to apply under the new regulations. This ''grandfather'' provision was inadvertently omitted from the Indian Housing final rule. HUD intended that those IHAs whose preference methods were already approved under previous requirements would not have to seek approval again under HUD's new, less prescriptive requirements.

Fourth, this document corrects language in the provisions of the Indian Housing final rule regarding the conversion of projects in the Mutual Help Homeownership Opportunity program and the Turnkey III Program. In the Indian Housing final rule, HUD simplified these provisions by eliminating the formal application process. This document will remove the references to that process that are now obsolete but that HUD inadvertently left in the rule.

Fifth, this document reinstates, in subpart H of the Indian Housing final

rule (Lead-Based Paint Poisoning Prevention), a reference that was inadvertently omitted to the Lead-Based Paint Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing. As the preamble to the Indian Housing final rule states (60 FR 18183), HUD did not intend to make changes to the Lead-Based Paint (LBP) provisions in this rule,[1] but only intended to republish them in order to present a consolidated set of regulations. HUD also takes the opportunity in this document to conform the LBP provisions to **Federal Register** requirements by informing the public that they can request a copy of the guidelines from HUD's Office of Lead-Based Paint Abatement and Poisoning Prevention.

Accordingly, FR Doc. 95–8346, a final rule published in the **Federal Register** on April 10, 1995 (60 FR 18174) is corrected as follows:

1. On page 18188, beginning in column three, and ending on page 18190, in column one, § 950.102 is corrected by revising the definition of ''Annual income'' to read as follows:

§ 950.102 Definitions.

* * * * *

Annual income. Annual income is the anticipated total income from all sources received by the family head and spouse (even if temporarily absent) and by each additional member of the family, including all net income derived from assets, for the 12-month period following the effective date of the initial determination or reexamination of income, exclusive of certain types of income as provided in paragraph (2) of this definition.

(1) Annual income includes, but is not limited to:

(i) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;

(ii) The net income from operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;

(iii) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (1)(ii) of this definition. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of $5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate as determined by HUD;

(iv) The full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum payment for the delayed start of a periodic payment (but see paragraph (2)(xiv) of this definition);

(v) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay (but see paragraph (2)(iii) of this definition);

(vi) *Welfare assistance.* If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:

(A) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus

(B) The maximum amount that the welfare assistance agency could, in fact, allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under paragraph (1)(vi)(B) of this definition shall be the amount resulting from one application of the percentage;

(vii) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from persons not residing in the dwelling; and

(viii) All regular pay, special pay, and allowances of a member of the Armed Forces (but see paragraph (2)(vii) of this definition).

(2) Annual income does not include the following:

(i) Income from employment of children (including foster children) under the age of 18 years;

(ii) Payments received for the care of foster children or foster adults (usually individuals with disabilities, unrelated to the tenant family, who are unable to live alone);

(iii) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains, and settlement for personal or property losses (but see paragraph (1)(v) of this definition);

(iv) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(v) Income of a Live-in Aide;

(vi) The full amount of student financial assistance paid directly to the student or to the educational institution;

(vii) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;

(viii)(A) Amounts received under training programs funded by HUD;

(B) Amounts received by a disabled person that are disregarded for a limited time for purposes of supplemental security income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);

(C) Amounts received by a participant in other publicly assisted programs that are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and that are made solely to allow participation in a specific program;

(D) A resident service stipend. A resident service stipend is a modest amount (not to exceed $200 per month) received by an Indian housing resident for performing a service for the IHA, on a part-time basis, that enhances the quality of life in Indian housing. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, and resident initiatives coordination. No resident may receive more than one such stipend during the same period of time; or

(E) Compensation from State or local employment training programs and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and

[1] However, HUD is developing a proposed rule that would implement sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 and set forth new requirements concerning lead-based paint notice, evaluation, and reduction for all of the HUD's programs, including Indian housing.

objectives, and are excluded only for a limited period as determined in advance by the IHA;

(ix) Temporary, nonrecurring, or sporadic income (including gifts);

(x) For all initial determinations and reexaminations of income carried out on or after April 23, 1993, reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;

(xi) Earnings in excess of $480 for each full-time student 18 years old or older (excluding the head of household and spouse);

(xii) Adoption assistance payments in excess of $480 per adopted child;

(xiii) The earnings and benefits to any resident resulting from the participation in a program providing employment training and supportive services in accordance with the Family Support Act of 1988, section 22 of the U.S. Housing Act of 1937 (42 U.S.C. 1437t), or any comparable Federal, State, tribal, or local law during the exclusion period. For purposes of paragraph (2)(xiii) of this definition, the following definitions apply:

(A) *Comparable Federal, State, tribal, or local law* means a program that provides employment training and supportive services and that:

(*1*) Is authorized by Federal, State, tribal, or local law;

(*2*) Is funded by Federal, State, tribal, or local government;

(*3*) Is operated or administered by a public agency; and

(*4*) Has as its objective assisting participants in acquiring employment skills.

(B) *Exclusion period* means the period during which the resident participates in a program described in this definition, plus 18 months from the date the resident begins the first job acquired by the resident after completion of such program that is not funded by public housing assistance under the U.S. Housing Act of 1937. If the resident is terminated from employment without good cause, the exclusion period shall end.

(C) *Earnings and benefits* means the incremental earnings and benefits resulting from a qualifying employment training program or subsequent job;

(xiv) Deferred periodic payments of supplemental security income and social security benefits that are received in a lump-sum payment;

(xv) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes on the dwelling unit;

(xvi) Amounts paid by a State agency to a family with a developmentally disabled family member living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or

(xvii) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under the U.S. Housing Act of 1937. A notice will be published in the **Federal Register** and distributed to IHAs identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

(3) If it is not feasible to anticipate a level of income over a 12-month period, the income anticipated for a shorter period may be annualized subject to a redetermination at the end of the shorter period.

(4) Any family receiving the reparation payments referred to in paragraph (2)(x) of this definition that has been requested to repay assistance under this part as a result of receipt of such payments shall not be required to make further repayments on or after April 23, 1993.

* * * * *

2. On page 18194, in column three, and immediately before § 950.110, subpart A is corrected by adding a new § 950.103, to read as follows:

§ 950.103 Effective date.

In §§ 950.102, paragraphs (2)(ii), (2)(vi), (2)(viii)(D) through (E), (2)(xi), (2)(xii), (2)(xv), and (2)(xvi) of the definition of *Annual income* shall expire and shall not be in effect after May 6, 1996, unless prior to May 6, 1996, HUD publishes changes to those paragraphs in the definition of *Annual income* in § 950.102 or publishes a notice in the **Federal Register** to extend the effective date.

3. On page 18197, in column three, § 950.126 is corrected by revising paragraph (d)(2), to read as follows:

§ 950.126 Establishment of IHAs by tribal ordinance.

* * * * *

(d) * * *

(2) An IHA must certify that the ordinance has been enacted pursuant to any constitutional law or practice and that it has the local cooperation required by law.

4. On page 18202, in column two, § 950.175 is corrected by revising paragraph (d)(1)(iii), to read as follows:

§ 950.175 Indian preference requirements.

* * * * *

(d) * * *

(1) * * *

(iii) Develop and incorporate into their procurement policy, subject to HUD Area ONAP one-time approval, the IHA's method of providing preference. In no instance shall HUD approve a method that provides preference based upon affiliation or membership in a particular tribe or group of tribes. Indian preference methods adopted by an IHA prior to May 10, 1995 that met the Indian preference requirements of program regulations as they existed immediately before May 10, 1995 are considered to have received one-time approval of the HUD Area ONAP.

* * * * *

5. On page 18226, in column two, § 950.437 is corrected by redesignating paragraph (c)(1) as paragraph (c).

6. On page 18229, in column one, § 950.455 is corrected by revising the second sentence in paragraph (c), to read as follows:

§ 950.455 Conversion of rental projects.

* * * * *

(c) *Submission requirements.* * * * The HUD Area ONAP shall review the request for legal sufficiency; tribal acceptance; demonstration of family interest; evidence that units are habitable, safe, and sanitary; family qualifications as discussed in paragraph (b)(2) of this section; and financial feasibility. * * *

7. On page 18229, in the first column, § 950.458 is corrected by revising the second sentence in paragraph (c), to read as follows:

§ 950.458 Conversion of Mutual Help projects to rental program.

* * * * *

(c) *Submission requirements.* * * * The HUD Area ONAP shall review the request for legal sufficiency, tribal acceptance, demonstration of family interest, and financial feasibility. * * *

8. On page 18231, in column one, § 950.503 is corrected by revising the second sentence in paragraph (c), to read as follows:

§ 950.503 Conversion of Turnkey III developments.

* * * * *

(c) *Submission requirements.* * * * The HUD Area ONAP shall review the request for legal sufficiency, tribal acceptance, demonstration of family interest, and financial feasibility. * * *

9. On page 18237, in column one, § 950.553 is corrected by revising paragraph (c), to read as follows:

§ 950.553 Testing and abatement applicable to development.

* * * * *

(c) *Compliance with guidelines.* It is strongly encouraged, but not required, that all such properties be tested in accordance with the Lead-Based Paint Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing (hereafter Lead-Based Paint Interim Guidelines), as periodically amended or updated, and other future official departmental issuances related to lead-based paint, before any irrevocable commitment is made to acquire the property. The Lead-Based Paint Interim Guidelines are available by contacting the following office: Department of Housing and Urban Development, Office of Lead-Based Paint Abatement and Poisoning Prevention, Room B–133, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 755–1805. Properties that have already been tested in accordance with the Lead-Based Paint Poisoning Prevention Act as amended by the Housing and Community Development Act of 1987 need not be tested again. If lead-based paint is found in a property to be acquired, the cost of testing and abatement shall be considered when making the cost comparison to justify new construction, as well as when meeting maximum total development cost limitations.

* * * * *

10. On page 18237, in column three, § 950.570 is corrected by revising paragraph (c), to read as follows:

§ 950.570 Procedures involving EBLs.

* * * * *

(c) *Testing.* Testing shall be completed within five days after notification to the IHA of the identification of the EBL child. It is strongly recommended, but not required, that IHAs use the testing methods outlined in Part II of the Lead-Based Paint Interim Guidelines, as periodically amended or updated, and other future official departmental issuances related to lead-based paint. A qualified inspector or laboratory shall certify in writing the precise results of the inspection. Testing services available from State, local, or tribal health or housing agencies or an organization recognized by HUD shall be utilized to the extent available. If the results equal or exceed a level of 1 mg/cm2 or .5% by weight, the results shall be provided to the tenant or the family of the EBL child using the IHA-owned or operated child care facility. Testing will be considered an eligible modernization cost under subpart I of this part only upon IHA certification that testing services are otherwise unavailable.

* * * * *

Dated: June 28, 1995.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 95–17540 Filed 7–17–95; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8228]

Allocation and Apportionment of Interest Expense

CFR Correction

In title 26 of the Code of Federal Regulations, part 1, §§ 1.851 to 1.907, revised as of April 1, 1995, on page 140, § 1.861-8(e)(2) is corrected to read as follows:

§ 1.861-8 Computation of taxable income from sources inside the United States and from other sources and activities.

* * * * *

(e) *Allocation and apportionment of certain deductions.*

* * * * *

(2) *Interest.* [Reserved] For guidance, see § 1.861-8T(e)(2).

* * * * *

BILLING CODE 1505–01–D

26 CFR Part 1

[TD 8598]

RIN 1545–AT50

Consolidated Groups—Intercompany Transactions and Related Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that provide rules for disallowing loss and excluding gain for certain dispositions and other transactions involving stock of the common parent of a consolidated group. These temporary regulations are necessary to prevent taxpayers from recognizing certain gains and losses on common parent stock that would not be recognized if a consolidated group were treated as a single entity. 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 July 12, 1995.

For dates of applicability, see the effective date provision of the temporary regulations.

FOR FURTHER INFORMATION CONTACT: Victor Penico, (202) 622–7750 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 1502. These temporary regulations provide rules for disallowing loss and excluding gain for certain dispositions and other transactions involving stock of the common parent of a consolidated group.

Final regulations published in this issue of the **Federal Register** provide rules for the treatment of intercompany transactions. The regulations generally provide greater single entity treatment of intercompany transactions than prior regulations under §§ 1.1502–13 and –14.

For intercompany transactions with respect to stock of a member, however, the final regulations generally adopt separate entity treatment, similar to the treatment under prior § 1.1502–14. For example, stock is generally treated as an asset separate from the member's underlying assets and, if a member's stock is sold in an intercompany transaction, gain or loss from the stock sale is taken into account under the matching and acceleration rules that apply to other assets. The regulations adopt this approach in part because greater single entity treatment would significantly increase the complexity of the regulations. See Notice 94–49, 1994–18 I.R.B. 8, for a discussion of issues relating to the single entity treatment of stock.

The Treasury and the IRS are continuing to study whether greater single entity treatment of stock is appropriate or possible. While finalizing the intercompany transaction regulations, however, the Treasury and the IRS have become aware that consolidated groups are relying on the separate entity treatment of stock to claim losses on capital raising and other transactions. For example, taxpayers might seek to take advantage of separate entity treatment by having a subsidiary (S) purchase the stock of the common parent (P) from P. If the value of the P stock has gone down at a time when the group wants to issue P stock, S will sell its P stock at a loss and claim the losses, even though in a sale of the stock by P,

no gain or loss would be recognized under section 1032.

Although the circular ownership described in this structure could result in the recognition of gains as well as losses on the sale of P stock, taxpayers can easily avoid most gains. For example, if the P stock held by S appreciates, P can issue P stock and avoid recognizing gain under section 1032. Other transactions involving circular ownership are subject to specific relief. See, for example, Rev. Rul. 80–76, 1980–1 C.B. 15 (no gain on S's use of P stock to compensate S's employee); Prop. Reg. § 1.1032–2(b) (no gain or loss on S's use of certain P stock in triangular reorganizations).

Through planning techniques and relief provisions, taxpayers may use circular ownership structures to claim artificial losses and to avoid reporting of gains. As a result, taxpayers frequently have the benefit of single entity treatment for gains but separate entity treatment for losses. The Treasury and the IRS have concluded, therefore, that pending further study of single entity treatment of stock generally, temporary regulations are necessary to provide greater single entity treatment for losses by preventing groups from inappropriately claiming losses on the sale of stock of the common parent.

As mentioned above, in transactions where S intends to use P stock for a legitimate business purpose, S can generally avoid the recognition of gain. Nonetheless, structuring transactions to avoid the gain adds additional costs and uncertainties to these transactions. Therefore, these temporary regulations also include provisions to prevent taxpayers from being subject to inappropriate taxation on gains in certain transactions.

Explanation of Provisions

These temporary regulations are limited to transactions involving P stock. While similar artificial losses or gains may arise in transactions involving circular ownership with respect to the stock of a subsidiary, existing regulations address many issues with respect to losses in S stock. See § 1.1502–20. For purposes of these temporary regulations, P stock is any stock of the common parent held by another member, or any stock of a member (the issuer) that was the common parent if the stock was held by another member while the issuer was the common parent.

These temporary regulations provide that losses recognized with respect to P stock held by a member are permanently disallowed. Similarly, if a member, M, owns P stock, the stock is subsequently owned by a nonmember, and immediately before the stock is owned by the nonmember M's basis in the share exceeds its fair market value, then (unless the loss is disallowed under the general rule) M's basis in the share is reduced immediately before the share is held by the nonmember. For example, if M owns shares of P stock with a basis in excess of their fair market value and M becomes a nonmember, M's basis in the P shares is reduced to fair market value immediately before M becomes a nonmember. Similar principles apply to options and other positions with respect to P stock.

To qualify for the relief from gain, the member must acquire P stock directly from P through a contribution to capital or a transaction qualifying under section 351(a), and must, pursuant to a plan, transfer the stock immediately to an unrelated nonmember in a taxable transaction (other than in exchange for P stock). In addition, the common parent must remain the common parent and the member must remain a member.

These temporary regulations provide relief from gain by providing S with a fair market value basis in the P stock. To properly reflect the transaction in the basis of other members, (including P's basis in its S stock) these regulations treat S as if it purchased the stock from P with cash contributed by P. No inference is intended whether circular cash flows would be respected apart from this regulation. Similarly, no inference is intended with respect to other methods of avoiding gain on S's use of P stock.

The Treasury and the IRS request comments as to transactions outside the scope of the regulations. In particular, comments are requested as to whether any such transactions should be given relief from gain recognition. In addition, comments are requested on whether greater single entity treatment of stock should be adopted more generally.

These temporary regulations are effective for transactions on or after the date they are filed with the **Federal Register**.

Special Analysis

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations only affect affiliated groups of corporations that have elected to file consolidated returns, which tend to be larger businesses. The rules do not significantly alter the reporting or recordkeeping duties of small entities. Accordingly, a regulatory flexibility analysis is not required. It has also been determined that under section 553(d) of the Administrative Procedure Act (5 U.S.C. chapter 5) there is good cause for these regulations to be effective immediately to insure transactions in P stock are appropriately reflected. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

These regulations were drafted by personnel from the Treasury Department and the IRS.

List of 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 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * * Section 1.1502–13T also issued under 26 U.S.C. 1502 * * *

Par. 2. Section 1.1502–13T is added to read as follows:

§ 1.1502–13T Intercompany transactions temporary.

(a) through (f)(5) [Reserved] For further guidance, see 1.1502–13.

(f)(6) *Stock of common parent.* In addition to the general rules of this section, this paragraph (f)(6) applies to parent stock (P stock) and positions in parent stock held by another member. For this purpose, P stock is any stock of the common parent held by another member or any stock of a member (the issuer) that was the common parent if the stock was held by another member while the issuer was the common parent.

(i) *Loss stock*—(A) *Recognized loss.* Any loss recognized, directly or indirectly, by a member with respect to P stock is permanently disallowed and does not reduce earnings and profits. See § 1.1502–32(b)(3)(iii)(A) for a corresponding reduction in the basis of the member's stock.

(B) *Other cases.* If a member, M, owns P stock, the stock is subsequently owned by a nonmember, and

immediately before the stock is owned by the nonmember, M's basis in the share exceeds its fair market value, then to the extent paragraph (f)(6)(i)(A) of this section does not apply, M's basis in the share is reduced to the share's fair market value immediately before the share is held by the nonmember. For example, if M owns shares of P stock with a $100x basis and M becomes a nonmember at a time when the P shares have a value of $60x, M's basis in the P shares is reduced to $60x immediately before M becomes a nonmember. Similarly, if M contributes the P stock to a nonmember in a transaction subject to section 351, M's basis in the shares is reduced to $60x immediately before the contribution. See § 1.1502–32(b)(3)(iii)(B) for a corresponding reduction in the basis of M's stock.

(ii) *Gain stock.* If a member, M, would otherwise recognize gain on a qualified disposition of P stock, then immediately before the qualified disposition, M is treated as purchasing the P stock from P for fair market value with cash contributed to M by P (or, if necessary, through any intermediate members). A disposition is a qualified disposition only if—

(A) The member acquires the P stock directly from the common parent (P) through a contribution to capital or a transaction qualifying under section 351(a) (or, if necessary, through a series of such transactions involving only members);

(B) Pursuant to a plan, the member transfers the stock immediately to a nonmember that is not related, within the meaning of section 267(b) or 707(b), to any member of the group;

(C) No nonmember receives a substituted basis in the stock within the meaning of section 7701(a)(42);

(D) The P stock is not exchanged for P stock;

(E) P neither becomes nor ceases to be the common parent as part of, or in contemplation of, the plan or disposition; and

(F) M neither becomes nor ceases to be a member as part of, or in contemplation of, the plan or disposition.

(iii) *Options, warrants and other rights.* Paragraph (f)(6)(i) of this section applies to options, warrants, forward contracts, or other positions with respect to P stock (including, for example, cash-settled positions). For example, if S purchases (from any party) a warrant on P stock and the warrant lapses, any loss recognized by S is permanently disallowed. Similarly, if S purchases a warrant on P stock and S becomes a nonmember at a time when the value of the warrant is less than S's basis in the warrant, S's basis in the warrant is reduced to its fair market value immediately before S becomes a nonmember.

(iv) *Effective date.* This paragraph (f)(6) applies to transactions on or after July 12, 1995 (notwithstanding whether the intercompany transaction, if any, occurred prior to that date).

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Approved: June 29, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–16972 Filed 7–12–95; 12:56 pm]

BILLING CODE 4830–01–U

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26 CFR Parts 1 and 602

[TD 8597]

RIN 1545–AT58

Consolidated Groups and Controlled Groups—Intercompany Transactions and Related Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations amending the intercompany transaction system of the consolidated return regulations. The final regulations also revise the regulations under section 267(f), limiting losses and deductions from transactions between members of a controlled group. Amendments to other related regulations are also included in this document.

DATES: These regulations are effective July 18, 1995.

For dates of applicability, see the **EFFECTIVE DATES** section under the **SUPPLEMENTARY INFORMATION** portion of the preamble and the effective date provisions of the new or revised regulations.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations relating to consolidated groups generally, Roy Hirschhorn of the Office of Assistant Chief Counsel (Corporate), (202) 622–7770; concerning stock and obligations of members of consolidated groups, Victor Penico of the Office of Assistant Chief Counsel (Corporate), (202) 622–7750; concerning insurance issues, Gary Geisler of the Office of Assistant Chief Counsel (Financial Institutions and Products), (202) 622–3970; concerning international issues, Philip Tretiak of the Office of Associate Chief Counsel (International), (202) 622–3860; and concerning controlled groups, Martin Scully, Jr. of the Office of Assistant Chief Counsel (Income Tax and Accounting), (202) 622–4960. (These numbers are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

A. Paperwork Reduction Act

The collections of information contained in these final regulations have 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 1545–1433. The estimated average annual burden per respondent is .5 hours.

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, PC: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

This document contains final regulations under section 1502 of the Internal Revenue Code of 1986 (Code) that comprehensively revise the intercompany transaction system of the consolidated return regulations. Amendments are also made to related regulations, including the regulations under section 267(f), which apply to transactions between members of a controlled group.

The proposed regulations were published in the **Federal Register** on April 15, 1994 (59 FR 18011). The notice of hearing on the proposed regulations, Notice 94–49, 1994–1 C.B. 358, 59 FR 18048, contains an extensive discussion of the issues considered in developing the proposed regulations. The IRS received many comments on the proposed regulations and held public hearings on May 4, 1994 and August 8, 1994.

After consideration of the comments and the statements made at the hearings, the proposed regulations are adopted as revised by this Treasury decision. The principal comments and revisions are discussed below. However, a number of other changes have been made to the proposed regulations. References in the preamble to P, S, and B are references to the common parent, the selling member, and the buying member, respectively. No inference is intended as to the operation of the prior regulations or other rules.

C. Principal Issues Considered in Adopting the Final Regulations

1. Retention and modification of the deferred sale approach

The proposed regulations generally retain the deferred sale approach of prior law but comprehensively revise the manner in which deferral is achieved to eliminate many of the inconsistent combinations of single and separate entity treatment under prior law. Notwithstanding these revisions, the results for most common intercompany transactions remain unchanged.

Commentators uniformly supported the retention of the deferred sale approach. Some comments, however, suggested that the rules of prior law should be retained, with modifications only where necessary to address a specific problem. Since the adoption of the prior regulations in 1966, however, developments in business practice and the tax law have greatly increased the problems of accounting for intercompany transactions. Although additional amendments could have been made to the prior regulations, further amendments would risk raising additional inconsistencies or uncertainties without providing a unified regime. By comprehensively revising the intercompany transaction system, the proposed regulations provide a unified regime and eliminate many of the inconsistencies of prior law, without changing the results of most common transactions. The final regulations therefore generally retain the approach of the proposed regulations.

2. General v. Mechanical Rules

The prior intercompany transaction regulations were generally mechanical in operation. The proposed regulations rely less on mechanical rules and, instead, provide broad rules of general application based on the underlying principles of the regulations. To supplement the broad rules, the proposed regulations provide examples illustrating the application of the rules to many common intercompany transactions.

Some commentators supported the proposed regulations' use of broad rules based on principles. Others suggested that the final regulations should retain the mechanical rules of prior law. Mechanical rules provide more certainty for transactions clearly covered by those rules. For transactions that are not clearly covered, however, mechanical rules provide much less guidance.

The final regulations retain the approach of the proposed regulations. This approach is flexible enough to apply to the wide range of transactions that can be intercompany transactions. For example, the final regulations do not require special rules to coordinate with the depreciation rules under section 168, the installment reporting rules under sections 453 through 453B, and the limitations under sections 267, 382, and 469. Flexible rules adapt to changes in the tax law and reduce the need for continuous updating of the regulations.

3. Timing Rules of § 1.1502–13 as a Method of Accounting

The proposed regulations provide that ''the timing rules of this section are a method of accounting that overrides otherwise applicable accounting methods.'' A group's ability to change the manner of applying the intercompany transaction regulations is therefore subject to the generally applicable rules for accounting method changes. Several comments objected to this treatment.

Commentators pointed out that treating the timing provisions of these regulations as a group's method of accounting may increase the burden and complexity of correcting improper applications of the regulations (for example, necessitating requests for accounting method changes for the treatment of intercompany transactions). This treatment also raises questions about members coming into a group and leaving a group (for example, whether requests to change a method of accounting are required when a taxpayer becomes, or ceases to be, a member). Various technical points were also raised as to the effect of a shared accounting method on each member of a group, the propriety of applying accounting method rules only to certain transactions or classes of transactions, the interaction of the intercompany transaction rules with separate entity accounting methods of members, and the linkage of the selling member's method of accounting for its intercompany items with the buying member's method of accounting for its corresponding items.

The intercompany transaction regulations provide guidance on the appropriate time for taking into account items of income, deduction, gain, and loss from intercompany transactions to clearly reflect the consolidated taxable income of the group. Clear reflection of income is the central principle of section 446. Under section 446, any treatment that does or could change the taxable year in which taxable income is reported is a method of accounting. See Rev. Proc. 92–20, 1992–1 C.B. 685. The timing rules of the intercompany transaction regulations affect the taxable year in which items from intercompany transactions are taken into account in the computation of consolidated taxable income. Accordingly, the timing rules of these regulations are properly viewed as a method of accounting. Moreover, treating the timing rules as a method of accounting assures that the provisions will be applied consistently from year to year under the principles of section 446.

The final regulations retain the general approach of the proposed regulations, treating the timing rules of § 1.1502–13 as a method of accounting under section 446. The regulations also contain several provisions intended to reduce the administrative burden that commentators believe might result from this treatment. The final regulations treat the timing rules as an accounting method for intercompany transactions, to be applied by each member, and not as an accounting method of the group as a whole. However, an application of the timing rules of this section to an intercompany transaction will be considered to clearly reflect income only if the effect of the transaction on consolidated taxable income is clearly reflected. This treatment more closely conforms to the general practice of separate taxpayers having their own methods of accounting, thereby alleviating technical and administrative issues that were raised with respect to characterization of the method as the method of the group as a whole, rather than as the method of each member.

To reduce potential administrative burdens further, the final regulations generally provide automatic consent under section 446(e) to the extent changes in method are required when a member enters or leaves a group. In addition, for the first taxable year of the group to which the final regulations apply, consent is granted for any changes in method that are necessary to comply with the final regulations. For other years, members must obtain the Commissioner's consent to change their methods of accounting for intercompany transactions under applicable administrative procedures of section 446(e), currently Rev. Proc. 92–20. The regulations provide that changes will generally be effected on a cut-off basis (that is, the new method will apply to intercompany transactions occurring on or after the first day of the consolidated return year for which the change is effective). Changes in methods of accounting for intercompany transactions generally will otherwise be subject to the terms and conditions of applicable administrative procedures. The IRS may determine, however, that other terms and conditions are

appropriate in the interest of sound tax administration (for example, if a taxpayer misapplies the regulations to avoid matching S's intercompany item with B's corresponding item). See section 10 of Rev. Proc. 92–20.

Paragraph (e)(3) of the final regulations continues the procedure whereby the common parent may request consent from the IRS to report intercompany transactions on a separate entity basis. Rev. Proc. 82–36 (1982–1 C.B. 490), which provides procedures for obtaining consent under the prior regulations, will be updated and revised. Until new procedures are provided, taxpayers may rely on the principles of Rev. Proc. 82–36 in making applications under these final regulations.

If consent under paragraph (e)(3) of these regulations is obtained or revoked, the final regulations provide the Commissioner's consent under section 446(e) for each member to make any changes in methods of accounting necessary to conform members' methods of accounting to the consent or revocation. Any change in method under this provision must be made as of the beginning of the first year for which the consent (or revocation of consent) under paragraph (e)(3) is effective.

A group that has received consent under the prior intercompany transaction regulations not to defer items from deferred intercompany transactions will be considered to have obtained the consent of the Commissioner to take items from the same class (or classes) of intercompany transactions into account on a separate entity basis under these regulations.

4. Single Entity Treatment of Attributes

a. In General

The prior intercompany transaction system used a deferred sale approach that treated the members of a consolidated group as separate entities for some purposes and as a single entity for other purposes. In general, the *amount, location, character,* and *source* of items from an intercompany transaction were given separate entity treatment, but the *timing* of items was determined under rules that produced a single entity effect.

The matching rule of the proposed regulations expands single entity treatment by requiring the redetermination of the *attributes* (such as *character* and *source*) of items to produce a single entity effect. Several comments supported the broader single entity approach taken by the proposed regulations. Other comments asked that separate entity treatment of attributes be retained.

The commentators arguing for retention of separate entity treatment claimed that single entity treatment does not always result in more rational tax treatment, and may not reflect the economic results of a group's activities as accurately as separate entity treatment. They also argued that taxpayers should have the ability to avoid arbitrary results or administrative burdens by separately incorporating business operations. The Treasury and the IRS believe that single entity treatment of both timing and attributes generally results in a clear reflection of consolidated taxable income. In particular, single entity treatment minimizes the effect of an intercompany transaction on consolidated taxable income. In addition, single entity treatment minimizes the tax differences between a business structured divisionally and one structured with separate subsidiaries. The final regulations therefore retain the approach of the proposed regulations and generally adopt single entity treatment of attributes.

Nevertheless, in certain situations it may be appropriate to provide separate entity treatment. The Treasury and the IRS believe that these situations are relatively rare, and that any exceptions from single entity treatment should be specifically provided in regulations. For example, a separate entity election is permitted under Prop. Reg. § 1.1221–2(d) (published in the **Federal Register** on July 18, 1994, 59 FR 36394) in the case of certain hedging transactions. See also § 1.263A–9(g)(5). The Treasury and the IRS welcome comments on other situations in which this type of relief might be appropriate.

b. Conflict or Allocation of Attributes

The proposed regulations provide specific rules for certain cases in which separate entity attributes are redetermined under the matching rule. Some commentators believe that the proposed regulations do not provide sufficient guidance as to the manner in which these rules are to be applied. In response to these comments, the attribute redetermination provisions of the matching rule have been revised.

For example, the regulations have been revised to clarify that the separate entity attributes of S's intercompany item and B's corresponding item are redetermined under the matching rule only *to the extent necessary* to produce the same effect on consolidated taxable income as if the intercompany transaction had been between divisions. Thus, the redetermination is required only to the extent the separate entity attributes differ from the single entity attributes.

The final regulations generally retain the rule of the proposed regulations under which the attributes of B's corresponding item control the attributes of S's intercompany items to the extent the corresponding and intercompany items offset in amount. However, the final regulations provide an exception to this rule to the extent its application would lead to a result that is inconsistent with treating S and B as divisions of a single corporation. To the extent B's corresponding item on a separate entity basis is excluded from gross income or is a noncapital, nondeductible amount (such as a deduction disallowed under section 265), however, the attribute of B's item will always control. This assures the proper operation of attribute limitation provisions contained elsewhere in the regulations.

To the extent B's corresponding item and S's intercompany item do not offset in amount, the final regulations provide that redetermined attributes are allocated to S's intercompany item and B's corresponding item using a method that is reasonable in light of all of the facts and circumstances, including the purposes of these regulations and any other rule affected by the attributes of S's items or B's items. This rule provides taxpayers considerable flexibility to allocate attributes, but the regulations also provide that an allocation method will be treated as unreasonable if it is not used consistently by all members of the group from year to year.

c. Source of Income

Several commentators opposed single entity treatment for determining the source of income or loss from an intercompany transaction, arguing that the separate entity treatment under prior law more accurately measures the source of income of the members of the group. The final regulations, however, retain the single entity treatment of source for the same reasons that the single entity treatment of other attributes is retained. The final regulations modify the example in the proposed regulations to reflect the changes made to the attribute allocation rules.

Some comments suggested that a single entity approach would inappropriately reduce the foreign source income of consolidated groups that produce a natural resource abroad and sell it to customers within the United States. For example, assume that one member extracts a commodity

abroad and sells it to a second member, with title passing within a foreign country. The second member sells the commodity to unrelated customers with title passing in the United States. Assume that the first member's income is 80 percent of the group's income and would be treated solely as foreign source income under a separate entity approach. Under a single entity approach, the intercompany transaction is treated as occurring between divisions of a single corporation. If the special sourcing rule for production and sale of natural resources under the section 863 regulations does not apply because of ''peculiar circumstances,'' the income of the group will be subject to the so-called 50/50 rule of the section 863 regulations, and a portion of the group's foreign source income could be recharacterized as domestic source. Revisions to the section 863 regulations are being considered to address these issues. The Treasury and the IRS welcome comments regarding possible revisions to the section 863 regulations.

Another commentator noted that under the single entity approach, a pro rata allocation of the group's foreign and U.S. source income (as illustrated in *Example 17* of paragraph (c) of the proposed regulations) could cause a member that qualified as an ''80/20'' company under section 861(a)(1)(A) to lose that status. As a result, the member could be required to withhold Federal income tax on interest payments to a foreign lender. As indicated above, the final regulations revise the attribute rules to clarify that a redetermination is made only to the extent it is necessary to achieve the effect of treating S and B as divisions of a single corporation and to provide that redetermined attributes are allocated to S and B using a method that is reasonable in light of the purposes of § 1.1502–13 and any other affected rule. Thus, the group is not required to allocate U.S. and foreign source income on a pro rata basis, and a member that qualifies as an 80/20 company under current law generally need not lose that status solely as the result of the allocation from a transaction similar to that described in the example.

Commentators also suggested that the pro rata allocation methodology of the proposed regulations could be inconsistent with U.S. income tax treaties that require the United States to treat income that may be taxed by the treaty partner as derived from sources within the treaty partner. As revised, the attribute rules do not require the group to allocate U.S. and foreign source income on a pro rata basis. Thus, the regulations will generally be consistent with any source rules contained in U.S. income tax treaties. To the extent, however, that a U.S. income tax treaty provides benefits to a taxpayer, these regulations do not prevent a taxpayer from claiming those benefits.

The final regulations expand the example to illustrate the determination of source if an independent factory or production price exists, and also for a sale of mixed source property within the group that is subsequently sold outside the group if, incident to the sale, services are performed by one member for another member or intangibles are licensed from one member to another member. *Example 18* of paragraph (c) of the proposed regulations (*Example 15* of the final regulations) addresses the application of section 1248 to intercompany transactions and has been revised to reflect the changes made to the attribute allocation provisions. Issue 3 of Rev. Rul. 87–96 (1987–2 C.B. 709) will no longer be applicable to the extent it is inconsistent with *Example 15* and these regulations.

d. Limitation on attribute redetermination

The proposed regulations contain a provision limiting the treatment of S's intercompany income or gain as excluded from gross income under the matching rule to situations in which B's corresponding item is a deduction or loss that is permanently disallowed directly under other provisions of the Code or regulations. The final regulations clarify that the Code or regulations must explicitly provide for the disallowance of B's deduction or loss. Thus, B's amount that is realized but not recognized under any provision of the Code or regulations, such as in a liquidation under section 332, is not permanently and explicitly disallowed, notwithstanding that the amount may be considered a corresponding item because it is a ''disallowed or eliminated amount.''

5. Deemed Items

The proposed regulations provide rules under which certain basis adjustments are deemed to be items, and certain amounts are deemed not to be items. Under the proposed regulations an adjustment reflected in S's basis that is a substitute for an intercompany item is generally treated as an intercompany item (the ''deemed intercompany item rule''). An adjustment reflected in B's basis that is a substitute for a corresponding item is generally treated as a corresponding item (the ''deemed corresponding item rule''). In addition, a deduction or loss is not treated as an intercompany item or a corresponding item to the extent it does not reduce basis (the ''amounts not deemed to be items rule''). Commentators found these rules to be confusing. In addition, the rules generally overlap with other rules of the proposed regulations.

For example, the deemed intercompany item rule overlaps with the rule of the proposed regulations under which S's items must be taken into account even if they have not yet been taken into account under S's separate entity accounting method. If, under its method of accounting, S's income from an intercompany transaction is treated as a basis reduction, both rules could apply.

Similarly, the deemed corresponding item rule overlaps with the acceleration rule. S's intercompany item is taken into account under the acceleration rule to the extent it will not be taken into account under the matching rule. Thus, an adjustment to B's basis may result in accelerating S's intercompany item, to the extent the intercompany item is not reflected in B's basis following the adjustment. Because this is the same result that would occur under the deemed corresponding item rule, it is not necessary to treat the basis adjustment as a corresponding item under the matching rule. For example, B's reduction in the basis of property acquired from S under section 108(b) will cause S's intercompany gain to be accelerated to the extent the basis reduction exceeds S's basis in the property prior to the intercompany transaction.

The amounts deemed not to be items rule treats certain amounts that are within the definition of intercompany items as not being intercompany items to achieve a result consistent with these regulations and other Code provisions. Commentators indicated that this rule has limited application, does not achieve its desired effect in all cases, and is confusing to readers.

For these reasons, the deemed item rules and the amounts deemed not be items rule have been eliminated in the final regulations. Because the deemed item rules overlap with other provisions, their effects have been retained in the final regulations. In addition, to achieve the intended effect of the amounts deemed not be items rule, the attribute provisions of the final regulations have been modified to permit the Commissioner to treat intercompany gain as excluded from gross income when that treatment is consistent with these regulations and other applicable provisions of the Code.

6. The Acceleration Rule

The acceleration rule requires S and B to take into account their items from an intercompany transaction to the extent the items cannot be taken into account to produce the effect of treating S and B as divisions of a single corporation. The acceleration rule applies, for example, when either S or B leaves the group. Under the proposed regulations, the attributes of S's items from intercompany property transactions are determined under the principles of the matching rule ''as if B resold the property to a nonmember affiliate.'' Under this rule, S's gain from the sale of depreciable property is always treated as ordinary income under section 1239. This treatment is appropriate if the property remains in the group, as it would, for example, if the acceleration rule applies because S leaves the group. Many commentators objected to this treatment of S's attributes in other situations, arguing, for example, that if B leaves the group while it still owns the property, the rules should treat the property as sold to a person whose relationship to the group is the same as B's relationship to the group after it becomes a nonmember. The commentators argued that section 1239 should not apply if B is unrelated.

In response to these comments, the final regulations revise the acceleration rule to provide that if the property is owned by a nonmember immediately after the event causing acceleration occurs, S's attributes are determined under the principles of the matching rule as if B had sold the property to that nonmember. In applying this rule, if the nonmember is related for purposes of any provision of the Code or regulations to any party to the intercompany transaction (or any related transaction) or to P, the nonmember is treated as related to B for purposes of that provision. Accordingly, that relationship may affect the attributes of S's intercompany item.

Under both the prior regulations and the proposed regulations, if S sells an asset to B at a gain and B then transfers the asset to a partnership, S's gain is taken into account under the acceleration rule. Some commentators argued that gain should not be taken into account, at least to the extent of the member's share of the asset owned through the partnership, treating the partnership, in effect, as an aggregate of its partners, rather than as an entity. One commentator argued that continued deferral would be similar to the treatment currently available under the remedial allocation method under § 1.704–3 if appreciated property is transferred to the partnership without a prior intercompany transfer.

The final regulations retain the rule of the proposed regulations. One of the purposes of the acceleration rule is to prevent basis created in an intercompany transaction from affecting nonmembers prior to the time the group takes into account the transaction that created the basis. Allowing property that B purchased from S at a gain to be contributed to a partnership without acceleration would allow the basis created in the intercompany transaction to be reflected by the partnership prior to the group taking into account the gain. While rules could be developed to prevent this basis from affecting nonmembers in most circumstances, the rules would be unduly complex. For example, the rules would have to take into account the allocation of liabilities under section 752 and basis adjustments under section 755. Moreover, these rules would not resemble the remedial allocation method under § 1.704–3 but instead would more closely resemble the deferred sale method under the proposed regulations under section 704(c). However, this method was explicitly rejected when final regulations were issued. See § 1.704–3(a)(1).

7. Transactions Involving Stock of Members

a. Single Entity Treatment of Stock

In contrast to their predominantly single entity approach, the proposed regulations generally retain separate entity treatment of stock of members. For example, section 1032, which enables a member to sell its own stock without recognition of gain or loss, is not extended to sales of the stock of other members. Notice 94–49 (1994–1 C.B. 358) discusses the difficulties of extending single entity treatment to stock.

Several comments recommended greater single entity treatment of stock. Some recommended a limited approach under which single entity treatment would apply only to stock of the common parent. Under this approach section 1032 treatment would be expanded so that any member could sell stock of the common parent without recognizing any gain or loss. As a corollary, gain or loss would be recognized when a corporation owning stock of the common parent joined the group, treating the stock, in effect, as redeemed.

This suggestion was generally not adopted in the final regulations, because single entity treatment of P stock would significantly increase the complexity of the regulations and would require significant additional guidance dealing with the effect of this treatment on other provisions of the Code. For example, the regulations would have to coordinate single entity treatment of P stock with the reorganization provisions of the Code and applicable case law. Similarly, the regulations would have to address situations in which the common parent of the group changes, as well as a variety of collateral consequences.

Nevertheless, the Treasury and the IRS believe that limited single entity treatment of stock is needed to prevent disparities caused by separate entity treatment. Therefore, temporary regulations published elsewhere in this issue of the **Federal Register** provide a limited single entity approach to P stock that generally limits the ability of a group to create loss with respect to P stock and eliminates gain in certain circumstances. The feasibility of expanding single entity treatment for stock of members will continue to be studied. Comments and suggestions on this subject are welcome.

b. Liquidations

The proposed regulations provide that if S sells stock of a corporation (T) to B and T later liquidates into B in a transaction to which section 332 applies, S's intercompany gain is taken into account under the matching rule, even though the T stock is never held by a nonmember after the intercompany transaction. This treatment is similar to the treatment under prior regulations and has applied to liquidations under section 332 since 1966 and to deemed liquidations under 338(h)(10) since 1986, although the proposed regulations provide relief not previously available for these transactions.

Some commentators suggested that this rule should be eliminated because it could lead to two layers of tax inside the consolidated group. The final regulations, however, retain the rule (with the elective relief as described below). As more fully explained in Notice 94–49, the location of items within a group is a core principle underlying the operation of these regulations, which like the prior regulations, adopt a deferred sale approach, not a carryover basis approach. Taking intercompany gain into account in the event of a subsequent nonrecognition transaction is necessary to prevent the transfer and liquidation of subsidiaries from being used to affect consolidated taxable income or tax liability by changing the location of items within a group (a result that would be equivalent to a

carryover basis system). For example, assume that S has an asset with a zero basis and a $100 value. The group would like to shift this built-in gain to B. To do so, S could transfer the asset to T, a newly formed subsidiary. After the transfer, S has a zero basis in the T stock under section 358, and T has a zero basis in the asset under section 362. S then sells the T stock to B for $100 and realizes a $100 gain, which is not taken into account. T later liquidates into B, which receives the asset with a zero basis under section 334. If the transaction is not recharacterized as a direct transfer of assets or is not subject to adjustment under section 482, and S's gain on the sale of the T stock is treated as tax-exempt (or if it is indefinitely deferred), the series of transactions has the effect of a transfer of the asset by S to B in a carryover basis transaction.

The Treasury and the IRS rejected a carryover basis system for the reasons detailed in Notice 94–49. While a carryover basis system might be feasible in limited circumstances, extensive rules to prevent avoidance transactions would be required. The result would be to burden the consolidated return regulations with an unworkable combination of rules for both a deferred sale approach and a carryover basis approach. Accordingly, the rule of the proposed regulations has been retained. The regulations have been modified, however, to permit S to determine the amount of its taxable gain by offsetting intercompany gain with intercompany loss on shares of stock having the same material terms.

c. Liquidation Relief

The proposed regulations provide elective relief that, in certain circumstances, eliminates or offsets gain taken into account under the matching rule as a result of a section 332 liquidation (or a comparable nonrecognition transaction, such as a downstream merger). In response to comments, the final regulations broaden the circumstances under which this relief is available by eliminating the requirements that T have no minority shareholders and that T not have made substantial noncash distributions during the previous 12-month period.

The available relief depends on the form of the transaction that causes S's intercompany gain to be taken into account. In the case of a liquidation of T under section 332, relief is provided by treating the formation by B of a new subsidiary (new T) as if it were pursuant to the same plan or arrangement as the liquidation (thus allowing treatment as a reorganization if other applicable requirements are met). The final regulations expand the scope of this relief over that provided in the proposed regulations by allowing the transfer of assets to new T to be completed up to 12 months after the timely filing (including extensions) of the group's return for the year of T's liquidation, so long as the transaction occurs pursuant to a written plan, a copy of which is attached to the return. In the case of a deemed liquidation of T as the result of an election under section 338(h)(10) in connection with B's sale of the T stock to a nonmember, relief is provided by treating the deemed liquidation as if it were governed by section 331 instead of section 332. The amount of loss taken into account on the deemed liquidation is limited to the amount of the intercompany gain with respect to the T stock that is taken into account as a result of the deemed liquidation.

Some commentators requested that the relief applicable for a deemed liquidation resulting from a section 338(h)(10) election be extended to actual liquidations under section 332—that is, the liquidation would be a taxable event both to T and to B (with T's gain or loss not deferred, and B's basis in the T stock adjusted under § 1.1502–32 to reflect T's gain or loss from the taxable liquidation). This suggestion was not adopted. The suggestion would result in the group currently taking into account gain from, and increasing the basis of, property that continues to be held within the group. Adopting the commentators' suggestion could give groups the ability to selectively avoid the deferral of gain on intercompany transactions by instead engaging in stock sales and liquidations. Such selectivity would be contrary to the purpose of these regulations and could create the potential for abusive transactions.

d. Effective Date of Relief Provisions

As proposed, the effective date of the relief provisions follows the general effective date of the regulations, applying only if both the intercompany transaction and the triggering event occur in years beginning after the final regulations are filed with the **Federal Register**. Commentators requested retroactive application of the relief provisions to varying degrees. For example, some commentators suggested that the relief should extend to transactions after the date the regulations are finalized. Others suggested that the relief should apply for any open year.

In response to these comments, the final regulations adopt an effective date that allows groups to elect to apply the relief provisions to certain transactions that occur on or after July 12, 1995, regardless of whether the sale of the T stock from S to B occurred prior to July 12, 1995.

The final regulations neither provide relief for duplicated gains nor preclude losses taken into account under the prior regulations in periods prior to the effective date of the regulations. Broader retroactivity would result in significant additional administrative burdens for the IRS. In addition to an increase in amended returns, taxpayers that made elections to avoid triggering S's gain (for example, under section 338) might seek to revoke these elections. Revocation of these elections could raise difficult valuation issues for assets that were disposed of long ago, as well as questions with respect to other rules that have since been amended. In addition, relief for prior years would be somewhat arbitrary. For example, many taxpayers, such as those whose gain was taken into account from a liquidation of T into B, would be unable to benefit from the relief (because the relief requires T to be reformed within a limited time period). By allowing elective relief only for transactions occurring after the date the regulations are filed, the final regulations provide the most relief possible without creating these problems.

8. Obligations of Members

a. Deemed Satisfaction and Reissuance

In addition to the general matching provisions, the proposed regulations provide rules applicable to intercompany obligations that generally operate to match an obligor's items with an obligee's items from intercompany obligations. This matching results from a deemed satisfaction and reissuance of an intercompany obligation when either member realizes income or loss with respect to the intercompany obligation from the assignment or extinguishment of all or part of the remaining rights or obligations under the intercompany obligation, or from a comparable transaction, such as marking to market. For example, if one member is a dealer in securities that holds a security issued by another member, the dealer might be required to market the security issued by the other member at year-end under section 475. Under the proposed regulations, to market the other member's security will result in a deemed satisfaction and reissuance of the security, so that the marking member and the issuing member take offsetting gain and loss into account.

Commentators objected to the deemed satisfaction and reissuance provision as requiring significant recordkeeping and

burdensome computations that are not required for financial statement or internal management reporting purposes. Commentators suggested that Prop. Reg. § 1.446–4(e)(9) (published in the **Federal Register** on July 18, 1994, 59 FR 36394), which permits separate entity treatment for certain hedging transactions between members, should be extended beyond hedging transactions to other intercompany obligations, provided one party to the transaction marks its position to market. Separate entity treatment would avoid the deemed satisfaction and reissuance rule if one member is a dealer in securities required to mark its securities to market.

The final regulations do not adopt this suggestion. The rules of § 1.446–4 limit the nonmarking member's ability to selectively recognize gain or loss on its position in the intercompany obligation. Without a limitation of this type, separate entity treatment would allow taxpayers to achieve results that are contrary to the purposes of these regulations (for example, by allowing a member to mark a loss position in an intercompany obligation while the other member defers realization of the associated gain). Accordingly, separate entity treatment is not made available in the final regulations to other types of intercompany obligations.

The Treasury and the IRS recognize that Prop. Reg. § 1.446– 4(e)(9) provides an important exception to the general single entity treatment of these final regulations. The Treasury and the IRS anticipate that the proposed section 446 regulations will be finalized shortly.

b. Cancellation of Intercompany Indebtedness

The proposed regulations do not affect the application of section 108 to the cancellation of intercompany indebtedness. For example, under the proposed regulations if S loans money to B, a cancellation of the loan subject to section 108(a) may result in: (i) excluded income to B; (ii) a noncapital, nondeductible expense to S (under the matching rule); and (iii) a reduction of B's tax attributes (such as its basis in depreciable property). As a result, B's tax attributes are reduced even though the group has not excluded any income on a net basis. Accordingly, the final regulations provide that section 108(a) does not apply to the cancellation of intercompany indebtedness. As a result of this change, the general principles of the matching rule will prevent transactions to which section 108(a) would otherwise apply from having inappropriate effects on basis and consolidated taxable income. In the preceding example, S and B will have offsetting ordinary income and ordinary loss, and B's tax attributes will not be reduced. However, no inference is intended as to whether the extinguishment of a loan between S and B would be properly characterized as a transaction giving rise to cancellation of indebtedness income within the meaning of sections 61(a)(12) and 108, or as a contribution to capital, a dividend or other transaction.

c. Obligations Becoming Intercompany Obligations

Under the proposed regulations, if an obligation becomes an intercompany obligation, it is treated as satisfied and reissued immediately after the obligation becomes an intercompany obligation. This treatment applies to both the issuer and the holder. The attributes of the issuer's items and the holder's items are separately determined, and thus may not match. Commentators requested that the rules be revised to allow for single entity treatment of attributes, to avoid the mismatch of ordinary income with capital loss.

This suggestion was not adopted. The use of separate return attributes for gain and loss assures that the attributes of gain or loss will be the same whether the obligation is retired immediately before the transaction in which the obligation becomes an intercompany obligation, or is deemed retired as a result of that transaction. Providing for the use of single entity attributes would result in undue selectivity. In addition, the separate entity treatment of attributes in these circumstances best reflects the fact that the income and loss taken into account accrued before the issuer and the holder joined in filing a consolidated return.

Commentators also noted that, under § 1.1502–32, downward stock basis adjustments would be required upon the expiration of any capital losses created by the deemed satisfaction if a member joins the group while holding an obligation of another member. Because the proposed regulations provide that the deemed satisfaction and reissuance is treated as occurring immediately after the obligation becomes an intercompany obligation, these losses could not be waived under § 1.1502–32(b)(4). In response to this comment, the final regulations provide that, solely for purposes of § 1.1502–32(b)(4) and the effect of any elections under that provision, the joining member's loss from the deemed satisfaction and reissuance is treated as a loss carryover from a separate return limitation year. Thus, the group may elect to waive the capital losses and avoid the downward basis adjustment.

d. Warrants and Similar Instruments

The proposed regulations do not provide special rules for the treatment of warrants to acquire a member's stock. The proposed regulations could, however, be read to include warrants within the definition of intercompany obligations.

Under section 1032, warrants and other positions in stock of the issuer are treated like stock. See, for example, Rev. Rul. 88–31, 1988–1 C.B. 302. The treatment of warrants as intercompany obligations subject to a single entity regime is inconsistent with the general separate entity treatment of stock under these regulations. Accordingly, the final regulations provide that warrants and other positions with respect to a member's stock are not treated as obligations of that member. Instead, these instruments are governed by the rules generally applicable to stock of a member. In addition, the final regulations provide that the deemed satisfaction and reissuance rule for intercompany obligations will not apply to the conversion of an intercompany obligation into the stock of the obligor.

9. Anti-avoidance Rule

The purpose of the intercompany transaction regulations is to clearly reflect the taxable income (and tax liability) of the group as a whole by preventing intercompany transactions from creating, accelerating, avoiding, or deferring consolidated taxable income (or consolidated tax liability). The proposed regulations provide that transactions which are engaged in or structured with a principal purpose to achieve a contrary result are subject to adjustment under the anti-avoidance rule, notwithstanding compliance with other applicable authorities. Some commentators criticized this rule as being overly broad, unnecessary, and more appropriately placed in other regulations, such as § 1.701–2 (the partnership anti-abuse regulation). Other commentators supported the use of anti-avoidance rules but criticized the particular examples. The Treasury and the IRS continue to believe that the anti-avoidance rule is necessary to prevent transactions that are designed to achieve results inconsistent with the purpose of the regulations and therefore the final regulations retain the rule. Routine intercompany transactions that are undertaken for legitimate business purposes generally will be unaffected by the anti-avoidance rule.

The anti-avoidance provision can apply to transactions that are structured

to avoid treatment as intercompany transactions. For example, if property is indirectly transferred from one member to another using a nonmember intermediary to achieve a result that could not be achieved by a direct transfer within the group, the anti-avoidance rule might apply. Thus, transactions that take place indirectly between members but are not intercompany transactions (including, for example, transactions involving the use of fungible property, trusts, partnerships, and intermediaries) will be analyzed to determine whether they are substantially similar (in whole or in part) to an intercompany transaction, in which case the anti-avoidance rule might apply.

The examples from the proposed regulations have been revised to better illustrate the effect of the anti-avoidance rule. *Example 2* of the proposed regulations, which involved a transfer outside of the group to a partnership, has been eliminated. However, the transaction described in that example, as with any other transaction, is subject to challenge under other authorities. See, for example, § 1.701–2.

10. Transitional Anti-avoidance Rule

To prevent manipulation, the proposed regulations provide that if a transaction is engaged in or structured on or after April 8, 1994, with a principal purpose to avoid the final regulations, to duplicate, omit, or eliminate an item in determining taxable income (or tax liability), or to treat items inconsistently, appropriate adjustments must be made in years to which the final regulations apply to prevent the avoidance, duplication, omission, elimination, or inconsistency.

Commentators objected to this rule, arguing that it had the effect of treating the proposed regulation as an immediately effective temporary regulation. These commentators also raised questions as to when the rule applies and what ''appropriate adjustments'' will be necessary.

Because of the prospective application of the regulations, and particularly because members could otherwise engage in transactions entirely within the group with a principal purpose to avoid the application of the final regulations with almost no transaction costs, this rule is retained in the final regulations, with minor clarifications.

11. Dealers in Securities

If S is a dealer in securities under section 475 and sells securities to B, a nondealer, the proposed regulations require S to treat any gain or loss on the sale as an intercompany item. Furthermore, under the single entity approach of the matching rule, B must continue to mark to market securities acquired from S.

Several commentators argued that this approach is inconsistent with proposed regulations under section 475, which require S to mark to market the security immediately before the transfer, and take any gain or loss into account immediately (that is, the gain or loss is not subject to deferral under the prior intercompany transaction regulations).

Although the rules applicable to these types of transactions under the proposed regulations and the proposed section 475 regulations differ, the effects of these transactions on consolidated taxable income are generally the same. That is, the dealer's gain or loss is taken into account in the taxable year of the transfer.

The approach of the proposed intercompany transaction regulations is consistent with the general single entity principle, and has been retained in the final regulations. Nevertheless, the Treasury and the IRS will continue to consider the most appropriate treatment of these transactions, in view of the underlying purposes of these regulations and section 475. The Treasury and the IRS anticipate that upcoming regulations under section 475 will address any remaining inconsistencies in the approach, and will provide exceptions to the single entity approach if appropriate. Comments and suggestions on this subject are welcome.

12. Changes to Section 267 Regulations

The proposed regulations under section 267(f) generally provide that losses from sales or exchanges of property between related parties are taken into account in the same manner as is provided in the timing provisions of the regulations under § 1.1502–13. Several technical changes have been incorporated into the final regulations under section 267.

For example, the regulations clarify that to the extent S's loss would have been treated as a noncapital, nondeductible amount under the attribute rules of the regulations under § 1.1502–13, the loss is deferred under section 267(f) until S and B are no longer in a controlled group relationship with each other. Section 267 is intended to prevent a taxpayer from taking a loss into account from the sale or exchange of property when the property continues to be held by a member of the same controlled group. Under § 1.1502–13, S's loss might be taken into account but redetermined to be noncapital or nondeductible, permanently preventing the loss from being taken into account. It could be argued that this is the result of the attribute provisions of § 1.1502–13, which do not apply under section 267(f), not a result of the timing provisions of § 1.1502–13, and thus, a controlled group member could take its loss into account. The change made in the final regulations assures that the purpose of section 267 is not defeated as a result of the non-application of the attribute redetermination rules of § 1.1502–13 for purposes of section 267(f).

The proposed regulations also require loss deferral similar to section 267(d) when B transfers property acquired at a loss from S to a nonmember related party. This provision has been modified in the final regulations to include parties described in section 707(b) as related parties to prevent avoidance of the rules of section 267 through the use of related partnerships.

13. Election to Deconsolidate

Section 1.1502–75 authorizes the Commissioner to grant all groups, or groups in a particular class, permission to discontinue filing consolidated returns if any provision of the Code or regulations has been amended and the amendment could have a substantial adverse effect relative to the filing of separate returns. The Commissioner has determined that it is generally appropriate to grant permission to discontinue filing consolidated returns as a result of the amendments made in these regulations. To lessen taxpayer burden and ease administrability, permission will be granted without requiring the group to demonstrate any adverse effect. The Treasury and the IRS intend to issue, prior to January 1, 1996, a revenue procedure pursuant to which groups may receive permission to deconsolidate effective for their first taxable year to which these regulations apply. Permission for a group to deconsolidate will be granted under terms and conditions similar to those prescribed in Rev. Proc. 95–11 (1995–4 I.R.B. 48).

D. Effective Dates

The regulations are effective in years beginning on or after July 12, 1995. For dates of applicability, see § 1.1502–13(l).

E. Special Analyses

It has been determined that this Treasury Decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations do not have a significant economic impact on

a substantial number of small entities. This certification is based on the fact that these regulations will primarily affect affiliated groups of corporations that have elected to file consolidated returns, which tend to be larger businesses. The regulations also govern certain transactions between members of controlled groups of corporations, but generally produce the same results for such transactions as current law. The regulations do not significantly alter the reporting or recordkeeping duties of small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping 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 revising the entries for §§ 1.1502–13, 1.1502–33, and 1.1502–80, as set forth below; by removing the entries for sections ''1.469–1'', ''1.469–1T'', ''1.1502–13T'', ''1.1502–14'', and ''1.1502–14T''; and adding the remaining entries in numerical order to read as follows:

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

Section 1.108–3 also issued under 26 U.S.C. 108, 267, and 1502. * * *

Section 1.267(f)–1 also issued under 26 U.S.C. 267 and 1502. * * *

Section 1.460–4 also issued under 26 U.S.C. 460 and 1502. * * *

Section 1.469–1 also issued under 26 U.S.C. 469. * * *

Section 1.469–1T also issued under 26 U.S.C. 469. * * *

Section 1.1502–13 also issued under 26 U.S.C. 108, 337, 446, 1275, 1502 and 1503. * * *

Section 1.1502–17 also issued under 26 U.S.C. 446 and 1502.

Section 1.1502–18 also issued under 26 U.S.C. 1502. * * *

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

Section 1.1502–33 also issued under 26 U.S.C. 1502. * * *

Section 1.1502–79 also issued under 26 U.S.C. 1502. * * *

Section 1.1502–80 also issued under 26 U.S.C. 1502. * * *

Par. 2. In the list below, for each location indicated in the left column, remove the language in the middle column from that section, and add the language in the right column.

Affected section	Remove	Add
1.167(a)–(11)(d)(3)(v)(*b*), 1st sentence	which results in ''deferred gain or loss'' within the meaning of paragraph (c) of 1.1502–13.	
1.167(c)–1(a)(5)	, 1.1502–13, and 1.1502–14	and 1.1502–13
1.263A–1T(b)(2)(vi)(B), 2nd sentence	a deferred intercompany transaction	an intercompany transaction
1.263A–1T(e)(1)(ii), 1st sentence	a deferred intercompany transaction	an intercompany transaction
1.263A–1T(e)(1)(ii), 4th sentence	1.1502–13(c)(2)	1.1502–13
1.263A–1T(e)(1)(ii), 4th sentence	deferred.	
1.263A–1T(e)(1)(ii), 7th sentence	''deferred intercompany transaction''	''intercompany transaction''
1.263A–1T(e)(1)(ii), 7th sentence	defined	as used
1.263A–1T(e)(1)(iii)(A) *Example,* 2nd sentence	1.1502–13(c)	1.1502–13
1.263A–1T(e)(1)(iii)(A) *Example,* 4th sentence	1.1502–13(c)	1.1502–13
1.279–6(b)(4)	, § 1.1502–13T, § 1.1502–14, or § 1.1502–14T.	
1.337(d)–1(a)(5) *Example 8(i),* 5th sentence	1.1502–13(c)	1.1502–13
1.337(d)–1(a)(5) *Example 8(ii),* 1st sentence	1.1502–13(c)	1.1502–13
1.337(d)–1(a)(5) *Example 8(ii),* 2nd sentence	1.1502-13(f)(1)(i), 1.267(f)–2T(e)(1)	1.1502–13, 1.267(f)–1
1.337(d)–2(g)(1), 2nd sentence	1.1502–13T, 1.1502–14, and 1.1502–14T	and 1.1502–14 (as contained in the 26 CFR part 1 edition revised as of April 1, 1995)
1.338–4(f)(4) *Example (2)*(a)	1.1502–13(f)	1.1502–13
1.341–7(e)(10)	paragraph (c)(1) of § 1.1502–14 for the deferral.	§ 1.1502–13 for the treatment
1.861–8T(d)(2)(i), concluding text	1.1502–13(c)(2)	1.1502–13
1.861–8T(d)(2)(i), concluding text	deferred.	
1.861–8T(d)(2)(i), concluding text	1.1502–13(a)(2)	1.1502–13
1.861–9T(g)(2)(iv), paragraph heading	deferred.	
1.861–9T(g)(2)(iv), 1st sentence	deferred intercompany transactions	intercompany transactions
1.1502–3(a)(2)	1.1502–13(a)(1)	1.1502–13(b)
1.1502–4(j) *Example (1),* 8th sentence	Under § 1.1502–13	Under § 1.1502–13 (as contained in the 26 CFR part 1 edition revised as of April 1, 1995)
1.1502–9(f) *Example (6)*	a restoration event under section 1.1502–13(f) occurs.	the intercompany gain is taken into account under § 1.1502–13
1.1502–12(a)	§§ 1.1502–13 and 1.1502–14	§ 1.1502–13
1.1502–12(g)(2)	a deferred intercompany transaction as defined in § 1.1502–13(a)(2).	an intercompany transaction as defined in § 1.1502–13
1.1502–22(a)(3)	1.1502–14,.	
1.1502–22(a)(5) *Example (i)*	paragraph (d), (e), or (f) of § 1.1502–13	§ 1.1502–13
1.1502–26(b), second sentence	paragraph (a)(1) of § 1.1502–14	§ 1.1502–13
1.1502–47(e)(4)(iii), first sentence	§§ 1.1502–13(f), 1.1502–14,	§§ 1.1502–13,
1.1502–47(e)(4)(iv) *Example 4,* third sentence	deferred intercompany transactions (see § 1.1502–13(a)(2)).	intercompany transactions (see § 1.1502–13)
1.1502–47(e)(4)(iv) *Example 4,* fourth sentence	1.1502–13(f)(1)(iv)	1.1502–13
1.1502-47(e)(4)(iv) *Example 4,* chart header	Deferred intercompany transactions between	Intercompany transactions between

Affected section	Remove	Add
1.1502-47(e)(4)(iv) *Example 4,* chart header	1.1502-13(f)(1)(iv)	1.1502–13
1.1502–47(f)(3), first sentence	1.1502–14,.	
1.1502–47(r), second sentence	deferred.	
1.1503–2(d)(4) *Example 1* (iii), fourth sentence	deferred.	
1.1503–2(d)(4) *Example 1* (iii), fourth sentence	1.1502–13(a)(2)	1.1502–13
1.1552–1(a)(2)(ii)(c)	1.1502–14	1.1502–13 (f) and (g)

Par. 3. Section 1.108–3 is added to read as follows:

§ 1.108–3 Intercompany losses and deductions.

(a) *General rule.* This section applies to certain losses and deductions from the sale, exchange, or other transfer of property between corporations that are members of a consolidated group or a controlled group (an intercompany transaction). See section 267(f) (controlled groups) and § 1.1502–13 (consolidated groups) for applicable definitions. For purposes of determining the attributes to which section 108(b) applies, a loss or deduction not yet taken into account under section 267(f) or § 1.1502–13 (an intercompany loss or deduction) is treated as basis described in section 108(b) that the transferor retains in property. To the extent a loss not yet taken into account is reduced under this section, it cannot subsequently be taken into account under section 267(f) or § 1.1502–13. For example, if S and B are corporations filing a consolidated return, and S sells land with a $100 basis to B for $90 and the $10 loss is deferred under section 267(f) and § 1.1502–13, the deferred loss is treated for purposes of section 108(b) as $10 of basis that S has in land (even though S has no remaining interest in the land sold to B) and is subject to reduction under section 108(b)(2)(E). Similar principles apply, with appropriate adjustments, if S and B are members of a controlled group and S's loss is deferred only under section 267(f).

(b) *Effective date.* This section applies with respect to discharges of indebtedness occurring on or after September 11, 1995.

§ 1.167(a)–11 [Amended]

Par. 4. Section 1.167(a)–11(d)(3)(v)(*e*) is amended by removing the second sentence of *Example (3).*

Par. 5. In § 1.263A–1, paragraph (j)(1)(ii)(B), the last sentence is revised to read as follows:

§ 1.263A–1 Uniform capitalization of costs.

* * * * *

(j) * * *

(1) * * *

(ii) * * *

(B) * * * See § 1.1502–13.

* * * * *

Par. 6. Section 1.267(f)–1 is revised to read as follows: *§ 1.267(f)–1 Controlled groups.*

(a) *In general*—(1) *Purpose.* This section provides rules under section 267(f) to defer losses and deductions from certain transactions between members of a controlled group (intercompany sales). The purpose of this section is to prevent members of a controlled group from taking into account a loss or deduction solely as the result of a transfer of property between a selling member (S) and a buying member (B).

(2) *Application of consolidated return principles.* Under this section, S's loss or deduction from an intercompany sale is taken into account under the *timing* principles of § 1.1502–13 (intercompany transactions between members of a consolidated group), treating the intercompany sale as an intercompany transaction. For this purpose:

(i) The matching and acceleration rules of § 1.1502–13 (c) and (d), the definitions and operating rules of § 1.1502–13 (b) and (j), and the simplifying rules of § 1.1502–13(e)(1) apply with the adjustments in paragraphs (b) and (c) of this section to reflect that this section—

(A) Applies on a controlled group basis rather than consolidated group basis; and

(B) Generally affects only the *timing* of a loss or deduction, and not *it's attributes* (*e.g., its source* and *character*) or the holding period of property.

(ii) The special rules under § 1.1502–13(f) (stock of members) and (g) (obligations of members) apply under this section only to the extent the transaction is also an intercompany transaction to which § 1.1502–13 applies.

(iii) Any election under § 1.1502–13 to take items into account on a separate entity basis does not apply under this section. See § 1.1502–13(e)(3).

(3) *Other law.* The rules of this section apply in addition to other applicable law (including nonstatutory authorities). For example, to the extent a loss or deduction deferred under this section is from a transaction that is also an intercompany transaction under § 1.1502–13(b)(1), attributes of the loss or deduction are also subject to recharacterization under § 1.1502–13. See also, sections 269 (acquisitions to evade or avoid income tax) and 482 (allocations among commonly controlled taxpayers). Any loss or deduction taken into account under this section can be deferred, disallowed, or eliminated under other applicable law. See, for example, section 1091 (loss eliminated on wash sale).

(b) *Definitions and operating rules.* The definitions in § 1.1502–13(b) and the operating rules of § 1.1502–13(j) apply under this section with appropriate adjustments, including the following:

(1) *Intercompany sale.* An intercompany sale is a sale, exchange, or other transfer of property between members of a controlled group, if it would be an intercompany transaction under the principles of § 1.1502–13, determined by treating the references to a consolidated group as references to a controlled group and by disregarding whether any of the members join in filing consolidated returns.

(2) *S's losses or deductions.* Except to the extent the intercompany sale is also an intercompany transaction to which § 1.1502–13 applies, S's losses or deductions subject to this section are determined on a separate entity basis. For example, the principles of § 1.1502–13(b)(2)(iii) (treating certain amounts not yet recognized as items to be taken into account) do not apply. A loss or deduction is from an intercompany sale whether it is directly or indirectly from the intercompany sale.

(3) *Controlled group; member.* For purposes of this section, a controlled group is defined in section 267(f). Thus, a controlled group includes a FSC (as defined in section 922) and excluded members under section 1563(b)(2), but does not include a DISC (as defined in section 992). Corporations remain members of a controlled group as long as they remain in a controlled group relationship with each other. For example, corporations become nonmembers with respect to each other when they cease to be in a controlled group relationship with each other, rather than by having a separate return year (described in § 1.1502–13(j)(7)).

Further, the principles of § 1.1502–13(j)(6) (former common parent treated as continuation of group) apply to any corporation if, immediately before it becomes a nonmember, it is both the selling member and the owner of property with respect to which a loss or deduction is deferred (whether or not it becomes a member of a different controlled group filing consolidated or separate returns). Thus, for example, if S and B merge together in a transaction described in section 368(a)(1)(A), the surviving corporation is treated as the successor to the other corporation, and the controlled group relationship is treated as continuing.

(4) *Consolidated taxable income.* References to consolidated taxable income (and consolidated tax liability) include references to the combined taxable income of the members (and their combined tax liability). For corporations filing separate returns, it ordinarily will not be necessary to actually combine their taxable incomes (and tax liabilities) because the taxable income (and tax liability) of one corporation does not affect the taxable income (or tax liability) of another corporation.

(c) *Matching and acceleration principles of § 1.1502–13*—(1) *Adjustments to the timing rules.* Under this section, S's losses and deductions are deferred until they are taken into account under the timing principles of the matching and acceleration rules of § 1.1502–13(c) and (d) with appropriate adjustments. For example, if S sells depreciable property to B at a loss, S's loss is deferred and taken into account under the principles of the matching rule of § 1.1502–13(c) to reflect the difference between B's depreciation taken into account with respect to the property and the depreciation that B would take into account if S and B were divisions of a single corporation; if S and B subsequently cease to be in a controlled group relationship with each other, S's remaining loss is taken into account under the principles of the acceleration rule of § 1.1502–13(d). For purposes of this section, the adjustments to § 1.1502–13 (c) and (d) include the following:

(i) *Application on controlled group basis.* The matching and acceleration rules apply on a controlled group basis, rather than a consolidated group basis. Thus if S and B are wholly-owned members of a consolidated group and 21% of the stock of S is sold to an unrelated person, S's loss continues to be deferred under this section because S and B continue to be members of a controlled group even though S is no longer a member of the consolidated group. Similarly, S's loss would continue to be deferred if S and B remain in a controlled group relationship after both corporations become nonmembers of their former consolidated group.

(ii) *Different taxable years.* If S and B have different taxable years, the taxable years that include a December 31 are treated as the same taxable years. If S or B has a short taxable year that does not include a December 31, the short year is treated as part of the succeeding taxable year that does include a December 31.

(iii) *Transfer to a section 267(b) or 707(b) related person.* To the extent S's loss or deduction from an intercompany sale of property is taken into account under this section as a result of B's transfer of the property to a nonmember that is a person related to any member, immediately after the transfer, under sections 267(b) or 707(b), or as a result of S or B becoming a nonmember that is related to any member under section 267(b) (for example, if S or B becomes an S corporation), the loss or deduction is taken into account but allowed only to the extent of any income or gain taken into account as a result of the transfer. The balance not allowed is treated as a loss referred to in section 267(d) if it is from a sale or exchange by B (rather than from a distribution).

(iv) *B's item is excluded from gross income or noncapital and nondeductible.* To the extent S's loss would be redetermined to be a noncapital, nondeductible amount under the principles of § 1.1502–13 but is not redetermined because of paragraph (c)(2) of this section, then, if paragraph (c)(1)(iii) of this section does not apply, S's loss continues to be deferred and is not taken into account until S and B are no longer in a controlled group relationship. For example, if S sells all of the stock of corporation T to B at a loss and T subsequently liquidates into B in a transaction qualifying under section 332, S's loss is deferred until S and B (including their successors) are no longer in a controlled group relationship. See § 1.1502–13(c)(6)(ii).

(v) *Circularity of references.* References to deferral or elimination under the Internal Revenue Code or regulations do not include references to section 267(f) or this section. See, e.g., § 1.1502–13(a)(4) (applicability of other law).

(2) *Attributes generally not affected.* The matching and acceleration rules are not applied under this section to affect the attributes of S's intercompany item, or cause it to be taken into account before it is taken into account under S's separate entity method of accounting. However, the attributes of S's intercompany item may be redetermined, or an item may be taken into account earlier than under S's separate entity method of accounting, to the extent the transaction is also an intercompany transaction to which § 1.1502–13 applies. Similarly, except to the extent the transaction is also an intercompany transaction to which § 1.1502–13 applies, the matching and acceleration rules do not apply to affect the timing or attributes of B's corresponding items.

(d) *Intercompany sales of inventory involving foreign persons*—(1) *General rule.* Section 267(a)(1) and this section do not apply to an intercompany sale of property that is inventory (within the meaning of section 1221(1)) in the hands of both S and B, if—

(i) The intercompany sale is in the ordinary course of S's trade or business;

(ii) S or B is a foreign corporation; and

(iii) Any income or loss realized on the intercompany sale by S or B is not income or loss that is recognized as effectively connected with the conduct of a trade or business within the United States within the meaning of section 864 (unless the income is exempt from taxation pursuant to a treaty obligation of the United States).

(2) *Intercompany sales involving related partnerships.* For purposes of paragraph (d)(1) of this section, a partnership and a foreign corporation described in section 267(b)(10) are treated as members, provided that the income or loss of the foreign corporation is described in paragraph (d)(1)(iii) of this section.

(3) *Intercompany sales in ordinary course.* For purposes of this paragraph (d), whether an intercompany sale is in the ordinary course of business is determined under all the facts and circumstances.

(e) *Treatment of a creditor with respect to a loan in nonfunctional currency.* Sections 267(a)(1) and this section do not apply to an exchange loss realized with respect to a loan of nonfunctional currency if—

(1) The loss is realized by a member with respect to nonfunctional currency loaned to another member;

(2) The loan is described in § 1.988–1(a)(2)(i);

(3) The loan is not in a hyperinflationary currency as defined in § 1.988–1(f); and

(4) The transaction does not have as a significant purpose the avoidance of Federal income tax.

(f) *Receivables.* If S acquires a receivable from the sale of goods or services to a nonmember at a gain, and S sells the receivable at fair market

value to B, any loss or deduction of S from its sale to B is not deferred under this section to the extent it does not exceed S's income or gain from the sale to the nonmember that has been taken into account at the time the receivable is sold to B.

(g) *Earnings and profits.* A loss or deduction deferred under this section is not reflected in S's earnings and profits before it is taken into account under this section. See, e.g., §§ 1.312–6(a), 1.312–7, and 1.1502–33(c)(2).

(h) *Anti-avoidance rule.* If a transaction is engaged in or structured with a principal purpose to avoid the purposes of this section (including, for example, by avoiding treatment as an intercompany sale or by distorting the timing of losses or deductions), adjustments must be made to carry out the purposes of this section.

(i) [Reserved]

(j) *Examples.* For purposes of the examples in this paragraph (j), unless otherwise stated, corporation P owns 75% of the only class of stock of subsidiaries S and B, X is a person unrelated to any member of the P controlled group, the taxable year of all persons is the calendar year, all persons use the accrual method of accounting, tax liabilities are disregarded, the facts set forth the only activity, and no member has a special status. If a member acts as both a selling member and a buying member (e.g., with respect to different aspects of a single transaction, or with respect to related transactions), the member is referred as to M (rather than as S or B). This section is illustrated by the following examples.

Example 1. Matching and acceleration rules. (a) *Facts.* S holds land for investment with a basis of $130. On January 1 of Year 1, S sells the land to B for $100. On a separate entity basis, S's loss is long-term capital loss. B holds the land for sale to customers in the ordinary course of business. On July 1 of Year 3, B sells the land to X for $110.

(b) *Matching rule.* Under paragraph (b)(1) of this section, S's sale of land to B is an intercompany sale. Under paragraph (c)(1) of this section, S's $30 loss is taken into account under the timing principles of the matching rule of § 1.1502–13(c) to reflect the difference for the year between B's corresponding items taken into account and the recomputed corresponding items. If S and B were divisions of a single corporation and the intercompany sale were a transfer between the divisions, B would succeed to S's $130 basis in the land and would have a $20 loss from the sale to X in Year 3. Consequently, S takes no loss into account in Years 1 and 2, and takes the entire $30 loss into account in Year 3 to reflect the $30 difference in that year between the $10 gain B takes into account and its $20 recomputed loss. The attributes of S's intercompany items and B's corresponding items are determined on a separate entity basis. Thus, S's $30 loss is long-term capital loss and B's $10 gain is ordinary income.

(c) *Acceleration resulting from sale of B stock.* The facts are the same as in paragraph (a) of this *Example 1*, except that on July 1 of Year 3 P sells all of its B stock to X (rather than B's selling the land to X). Under paragraph (c)(1) of this section, S's $30 loss is taken into account under the timing principles of the acceleration rule of § 1.1502–13(d) immediately before the effect of treating S and B as divisions of a single corporation cannot be produced. Because the effect cannot be produced once B becomes a nonmember, S takes its $30 loss into account in Year 3 immediately before B becomes a nonmember. S's loss is long-term capital loss.

(d) *Subgroup principles applicable to sale of S and B stock.* The facts are the same as in paragraph (a) of this *Example 1*, except that on July 1 of Year 3 P sells all of its S and B stock to X (rather than B's selling the land to X). Under paragraph (b)(3) of this section, S and B are considered to remain members of a controlled group as long as they remain in a controlled group relationship with each other (whether or not in the original controlled group). P's sale of their stock does not affect the controlled group relationship of S and B with each other. Thus, S's loss is not taken into account as a result of P's sale of the stock. Instead, S's loss is taken into account based on subsequent events (e.g., B's sale of the land to a nonmember).

Example 2. Distribution of loss property. (a) *Facts.* S holds land with a basis of $130 and value of $100. On January 1 of Year 1, S distributes the land to P in a transaction to which section 311 applies. On July 1 of Year 3, P sells the land to X for $110.

(b) *No loss taken into account.* Under paragraph (b)(2) of this section, because P and S are not members of a consolidated group, § 1.1502–13(f)(2)(iii) does not apply to cause S to recognize a $30 loss under the principles of section 311(b). Thus, S has no loss to be taken into account under this section. (If P and S were members of a consolidated group, § 1.1502–13(f)(2)(iii) would apply to S's loss in addition to the rules of this section, and the loss would be taken into account in Year 3 as a result of P's sale to X.)

Example 3. Loss not yet taken into account under separate entity accounting method. (a) *Facts.* S holds land with a basis of $130. On January 1 of Year 1, S sells the land to B at a $30 loss but does not take into account the loss under its separate entity method of accounting until Year 4. On July 1 of Year 3, B sells the land to X for $110.

(b) *Timing.* Under paragraph (b)(2) of this section, S's loss is determined on a separate entity basis. Under paragraph (c)(1) of this section, S's loss is not taken into account before it is taken into account under S's separate entity method of accounting. Thus, although B takes its corresponding gain into account in Year 3, S has no loss to take into account until Year 4. Once S's loss is taken into account in Year 4, it is not deferred under this section because B's corresponding gain has already been taken into account. (If S and B were members of a consolidated group, S would be treated under § 1.1502–13(b)(2)(iii) as taking the loss into account in Year 3.)

Example 4. Consolidated groups. (a) *Facts.* P owns all of the stock of S and B, and the P group is a consolidated group. S holds land for investment with a basis of $130. On January 1 of Year 1, S sells the land to B for $100. B holds the land for sale to customers in the ordinary course of business. On July 1 of Year 3, P sells 25% of B's stock to X. As a result of P's sale, B becomes a nonmember of the P consolidated group but S and B remain in a controlled group relationship with each other for purposes of section 267(f). Assume that if S and B were divisions of a single corporation, the items of S and B from the land would be ordinary by reason of B's activities.

(b) *Timing and attributes.* Under paragraph (a)(3) of this section, S's sale to B is subject to both § 1.1502–13 and this section. Under § 1.1502–13, S's loss is redetermined to be an ordinary loss by reason of B's activities. Under paragraph (b)(3) of this section, because S and B remain in a controlled group relationship with each other, the loss is not taken into account under the acceleration rule of § 1.1502–13(d) as modified by paragraph (c) of this section. See § 1.1502–13(a)(4). Nevertheless, S's loss is redetermined by § 1.1502–13 to be an ordinary loss, and the character of the loss is not further redetermined under this section. Thus, the loss continues to be deferred under this section, and will be taken into account as ordinary loss based on subsequent events (e.g., B's sale of the land to a nonmember).

(c) *Resale to controlled group member.* The facts are the same as in paragraph (a) of this *Example 4*, except that P owns 75% of X's stock, and B resells the land to X (rather than P's selling any B stock). The results for S's loss are the same as in paragraph (b) of this *Example 4*. Under paragraph (b) of this section, X is also in a controlled group relationship, and B's sale to X is a second intercompany sale. Thus, S's loss continues to be deferred and is taken into account under this section as ordinary loss based on subsequent events (e.g., X's sale of the land to a nonmember).

Example 5. Intercompany sale followed by installment sale. (a) *Facts.* S holds land for investment with a basis of $130x. On January 1 of Year 1, S sells the land to B for $100x. B holds the land for investment. On July 1 of Year 3, B sells the land to X in exchange for X's $110x note. The note bears a market rate of interest in excess of the applicable Federal rate, and provides for principal payments of $55x in Year 4 and $55x in Year 5. Section 453A applies to X's note.

(b) *Timing and attributes.* Under paragraph (c) of this section, S's $30x loss is taken into account under the timing principles of the matching rule of § 1.1502–13(c) to reflect the difference in each year between B's gain taken into account and its recomputed loss. Under section 453, B takes into account $5x of gain in Year 4 and in Year 5. Therefore, S takes $20x of its loss into account in Year 3 to reflect the $20x difference in that year between B's $0 loss taken into account and its $20x recomputed loss. In addition, S takes

$5x of its loss into account in Year 4 and in Year 5 to reflect the $5x difference in each year between B's $5x gain taken into account and its $0 recomputed gain. Although S takes into account a loss and B takes into account a gain, the attributes of B's $10x gain are determined on a separate entity basis, and therefore the interest charge under section 453A(c) applies to B's $10x gain on the installment sale beginning in Year 3.

Example 6. Section 721 transfer to a related nonmember. (a) *Facts.* S owns land with a basis of $130. On January 1 of Year 1, S sells the land to B for $100. On July 1 of Year 3, B transfers the land to a partnership in exchange for a 40% interest in capital and profits in a transaction to which section 721 applies. P also owns a 25% interest in the capital and profits of the partnership.

(b) *Timing.* Under paragraph (c)(1)(iii) of this section, because the partnership is a nonmember that is a related person under sections 267(b) and 707(b), S's $30 loss is taken into account in Year 3, but only to the extent of any income or gain taken into account as a result of the transfer. Under section 721, no gain or loss is taken into account as a result of the transfer to the partnership, and thus none of S's loss is taken into account. Any subsequent gain recognized by the partnership with respect to the property is limited under section 267(d). (The results would be the same if the P group were a consolidated group, and S's sale to B were also subject to § 1.1502–13.)

Example 7. Receivables. (a) *Controlled group.* S owns goods with a $60 basis. In Year 1, S sells the goods to X for X's $100 note. The note bears a market rate of interest in excess of the applicable Federal rate, and provides for payment of principal in Year 5. S takes into account $40 of income in Year 1 under its method of accounting. In Year 2, the fair market value of X's note falls to $90 due to an increase in prevailing market interest rates, and S sells the note to B for its $90 fair market value.

(b) *Loss not deferred.* Under paragraph (f) of this section, S takes its $10 loss into account in Year 2. (If the sale were not at fair market value, paragraph (f) of this section would not apply and none of S's $10 loss would be taken into account in Year 2.)

(c) *Consolidated group.* Assume instead that P owns all of the stock of S and B, and the P group is a consolidated group. In Year 1, S sells to X goods having a basis of $90 for X's $100 note (bearing a market rate of interest in excess of the applicable Federal rate, and providing for payment of principal in Year 5), and S takes into account $10 of income in Year 1. In Year 2, S sells the receivable to B for its $85 fair market value. In Year 3, P sells 25% of B's stock to X. Although paragraph (f) of this section provides that $10 of S's loss (i.e., the extent to which S's $15 loss does not exceed its $10 of income) is not deferred under this section, S's entire $15 loss is subject to § 1.1502–13 and none of the loss is taken into account in Year 2 under the matching rule of § 1.1502–13(c). See paragraph (a)(3) of this section (continued deferral under § 1.1502–13). P's sale of B stock results in B becoming a nonmember of the P consolidated group in Year 3. Thus, S's $15 loss is taken into account in Year 3 under the acceleration rule of § 1.1502–13(d). Nevertheless, B remains in a controlled group relationship with S and paragraph (f) of this section permits only $10 of S's loss to be taken into account in Year 3. See § 1.1502–13(a)(4) (continued deferral under section 267). The remaining $5 of S's loss continues to be deferred under this section and taken into account under this section based on subsequent events (e.g., B's collection of the note or P's sale of the remaining B stock to a nonmember).

Example 8. Selling member ceases to be a member. (a) *Facts.* P owns all of the stock of S and B, and the P group is a consolidated group. S has several historic assets, including land with a basis of $130 and value of $100. The land is not essential to the operation of S's business. On January 1 of Year 1, S sells the land to B for $100. On July 1 of Year 3, P transfers all of S's stock to newly formed X in exchange for a 20% interest in X stock as part of a transaction to which section 351 applies. Although X holds many other assets, a principal purpose for P's transfer is to accelerate taking S's $30 loss into account. P has no plan or intention to dispose of the X stock.

(b) *Timing.* Under paragraph (c) of this section, S's $30 loss ordinarily is taken into account immediately before P's transfer of the S stock, under the timing principles of the acceleration rule of § 1.1502–13(d). Although taking S's loss into account results in a $30 negative stock basis adjustment under § 1.1502–32, because P has no plan or intention to dispose of its X stock, the negative adjustment will not immediately affect taxable income. P's transfer accelerates a loss that otherwise would be deferred, and an adjustment under paragraph (h) of this section is required. Thus, S's loss is never taken into account, and S's stock basis and earnings and profits are reduced by $30 under §§ 1.1502–32 and 1.1502–33 immediately before P's transfer of the S stock.

(c) Nonhistoric assets. Assume instead that, with a principal purpose to accelerate taking into account any further loss that may accrue in the value of the land without disposing of the land outside of the controlled group, P forms M with a $100 contribution on January 1 of Year 1 and S sells the land to M for $100. On December 1 of Year 1, when the value of the land has decreased to $90, M sells the land to B for $90. On July 1 of Year 3, while B still owns the land, P sells all of M's stock to X and M becomes a nonmember. Under paragraph (c) of this section, M's $10 loss ordinarily is taken into account under the timing principles of the acceleration rule of § 1.1502–13(d) immediately before M becomes a nonmember. (S's $30 loss is not taken into account under the timing principles of § 1.1502–13(c) or § 1.1502–13(d) as a result of M becoming a nonmember, but is taken into account based on subsequent events such as B's sale of the land to a nonmember or P's sale of the stock of S or B to a nonmember.) The land is not an historic asset of M and, although taking M's loss into account reduces P's basis in the M stock under § 1.1502–32, the negative adjustment only eliminates the $10 duplicate stock loss. Under paragraph (h) of this section, M's loss is never taken into account. M's stock basis, and the earnings and profits of M and P, are reduced by $10 under §§ 1.1502–32 and 1.1502–33 immediately before P's sale of the M stock.

(k) *Cross-reference.* For additional rules applicable to the disposition or deconsolidation of the stock of members of consolidated groups, see §§ 1.337(d)–1, 1.337(d)–2, 1.1502–13T(f)(6), and 1.1502–20.

(l) *Effective dates*—(1) *In general.* This section applies with respect to transactions occurring in S's years beginning on or after July 12, 1995. If both this section and prior law apply to a transaction, or neither applies, with the result that items are duplicated, omitted, or eliminated in determining taxable income (or tax liability), or items are treated inconsistently, prior law (and not this section) applies to the transaction.

(2) *Avoidance transactions.* This paragraph (l)(2) applies if a transaction is engaged in or structured on or after April 8, 1994, with a principal purpose to avoid the rules of this section applicable to transactions occurring in years beginning on or after July 12, 1995, to duplicate, omit, or eliminate an item in determining taxable income (or tax liability), or to treat items inconsistently. If this paragraph (l)(2) applies, appropriate adjustments must be made in years beginning on or after July 12, 1995, to prevent the avoidance, duplication, omission, elimination, or inconsistency.

(3) *Prior law.* For transactions occurring in S's years beginning before July 12, 1995 see the applicable regulations issued under sections 267 and 1502. See, e.g., §§ 1.267(f)–1, 1.267(f)–1T, 1.267(f)–2T, 1.267(f)–3, 1.1502–13, 1.1502–13T, 1.1502–14, 1.1502–14T, and 1.1502–31 (as contained in the 26 CFR part 1 edition revised as of April 1, 1995).

§§ 1.267(f)–1T, 1.267(f)–2T, and 1.267(f)–3 [Removed]

Par. 7. Sections 1.267(f)–1T, 1.267(f)–2T, and 1.267(f)–3 are removed.

Par. 8. Section 1.460–0 is amended in the table of contents by revising the entries for § 1.460–4 to read as follows:

§ 1.460–0 Outline of regulations under section 460.

* * * * *

§ 1.460–4 Methods of accounting for long-term contracts.

(a) through (i) [Reserved]

(j) Consolidated groups and controlled groups.

(1) Intercompany transactions.

(i) In general.

(ii) Definitions and nomenclature.

(2) Example.
(3) Effective dates.
(i) In general.
(ii) Prior law.
(4) Consent to change method of accounting.
* * * * *

Par. 9. Section 1.460–4 is amended by:

1. Revising the section heading.
2. Adding and reserving paragraphs (a) through (i).
3. Adding paragraph (j).

The revisions and additions read as follows:

§ 1.460–4 Methods of accounting for long-term contracts.

(a) through (i) [Reserved]

(j) *Consolidated groups and controlled groups*—(1) *Intercompany transactions*—(i) In general. Section 1.1502–13 does not apply to the income, gain, deduction, or loss from an intercompany transaction between members of a consolidated group, and section 267(f) does not apply to these items from an intercompany sale between members of a controlled group, to the extent—

(A) The transaction or sale directly or indirectly benefits, or is intended to benefit, another member's long-term contract with a nonmember;

(B) The selling member is required under section 460 to determine any part of its gross income from the transaction or sale under the percentage-of-completion method (PCM); and

(C) The member with the long-term contract is required under section 460 to determine any part of its gross income from the long-term contract under the PCM.

(ii) *Definitions and nomenclature.* The definitions and nomenclature under § 1.1502–13 and § 1.267(f)–1 apply for purposes of this paragraph (j).

(2) *Example.* The following example illustrates the principles of paragraph (j)(1) of this section.

Example. Corporations P, S, and B file consolidated returns on a calendar-year basis. In 1996, B enters into a long-term contract with X, a nonmember, to manufacture 5 airplanes for $500 million, with delivery scheduled for 1999. Section 460 requires B to determine the gross income from its contract with X under the PCM. S enters into a contract with B to manufacture for $50 million the engines that B will install on X's airplanes. Section 460 requires S to determine the gross income from its contract with B under the PCM. S estimates that it will incur $40 million of total contract costs during 1997 and 1998 to manufacture the engines. S incurs $10 million of contract costs in 1997 and $30 million in 1998. Under paragraph (j) of this section, S determines its gross income from the long-term contract under the PCM rather than taking its income or loss into account under section 267(f) or § 1.1502–13. Thus, S includes $12.5 million of gross receipts and $10 million of contract costs in gross income in 1997 and includes $37.5 million of gross receipts and $30 million of contract costs in gross income in 1998.

(3) *Effective dates*—(i) *In general.* This paragraph (j) applies with respect to transactions and sales occurring pursuant to contracts entered into in years beginning on or after July 12, 1995.

(ii) *Prior law.* For transactions and sales occurring pursuant to contracts entered into in years beginning before July 12, 1995, see the applicable regulations issued under sections 267(f) and 1502, including §§ 1.267(f)–1T, 1.267(f)–2T, and 1.1502–13(n) (as contained in the 26 CFR part 1 edition revised as of April 1, 1995).

(4) *Consent to change method of accounting.* For transactions and sales to which this paragraph (j) applies, the Commissioner's consent under section 446(e) is hereby granted to the extent any changes in method of accounting are necessary solely to comply with this section, provided the changes are made in the first taxable year of the taxpayer to which the rules of this paragraph (j) apply. Changes in method of accounting for these transactions are to be effected on a cut-off basis.

Par. 10. In § 1.469–0, the table of contents is amended by:

1. Revising the entries for § 1.469–1:
   a. Paragraphs (a) through (d)(1).
   b. Paragraphs (g)(5) through (h)(3).
   c. Paragraphs (h)(5) through (k).
2. Revising the entries for § 1.469–1T, paragraphs (c)(8), and (h)(1), (2), and (6).

The revisions read as follows:

§ 1.469–0 Table of contents.

* * * * *

§ 1.469–1 General rules.

(a) through (c)(7) [Reserved]
(c)(8) Consolidated groups.
(c)(9) through (d)(1) [Reserved]
* * * * *
(g)(5) [Reserved]
(h)(1) In general.
(h)(2) Definitions.
(h)(3) [Reserved]
* * * * *
(h)(5) [Reserved]
(h)(6) Intercompany transactions.
(i) In general.
(ii) Example.
(iii) Effective dates.
(h)(7) through (k) [Reserved]

§ 1.469–1T General rules (temporary).

* * * * *
(c)(8) [Reserved]
* * * * *
(h)(1) [Reserved]
(h)(2) [Reserved]
* * * * *
(h)(6) [Reserved]
* * * * *

Par. 11. Section 1.469–1 is amended by adding paragraphs (c)(8), (h)(1), (h)(2) and (h)(6) to read as follows (paragraphs (a) through (c)(7), (c)(9) through (d)(1), (g)(5), (h)(3), (h)(5) and (h)(7) through (k) continue to be reserved):

§ 1.469–1 General rules.

(a) through (c)(7) [Reserved]

(c)(8) Consolidated groups. Rules relating to the application of section 469 to consolidated groups are contained in paragraph (h) of this section.

(c)(9) through (d)(1) [Reserved]
* * * * *
(g)(5) [Reserved]

(h)(1) In general. This paragraph (h) provides rules for applying section 469 in computing a consolidated group's consolidated taxable income and consolidated tax liability (and the separate taxable income and tax liability of each member).

(2) Definitions. The definitions and nomenclature in the regulations under section 1502 apply for purposes of this paragraph (h). See, e.g., §§ 1.1502–1 (definitions of group, consolidated group, member, subsidiary, and consolidated return year), 1.1502–2 (consolidated tax liability), 1.1502–11 (consolidated taxable income), 1.1502–12 (separate taxable income), 1.1502–13 (intercompany transactions), 1.1502–21 (consolidated net operating loss), and 1.1502–22 (consolidated net capital gain or loss).

(3) [Reserved]
* * * * *
(5) [Reserved]

(6) Intercompany transactions—(i) In general. Section 1.1502–13 applies to determine the treatment under section 469 of intercompany items and corresponding items from intercompany transactions between members of a consolidated group. For example, the matching rule of § 1.1502–13(c) treats the selling member (S) and the buying member (B) as divisions of a single corporation for purposes of determining whether S's intercompany items and B's corresponding items are from a passive activity. Thus, for purposes of applying § 1.469–2(c)(2)(iii) and § 1.469–2T(d)(5)(ii) to property sold by S to B in an intercompany transaction—

(A) S and B are treated as divisions of a single corporation for determining the uses of the property during the 12-month period preceding its disposition to a nonmember, and generally have an aggregate holding period for the property; and

(B) § 1.469–2(c)(2)(iv) does not apply.

(ii) Example. The following example illustrates the application of this paragraph (h)(6).

Example. (i) P, a closely held corporation, is the common parent of the P consolidated group. P owns all of the stock of S and B. X is a person unrelated to any member of the P group. S owns and operates equipment that is not used in a passive activity. On January 1 of Year 1, S sells the equipment to B at a gain. B uses the equipment in a passive activity and does not dispose of the equipment before it has been fully depreciated.

(ii) Under the matching rule of § 1.1502–13(c), S's gain taken into account as a result of B's depreciation is treated as gain from a passive activity even though S used the equipment in a nonpassive activity.

(iii) The facts are the same as in paragraph (a) of this Example, except that B sells the equipment to X on December 1 of Year 3 at a further gain. Assume that if S and B were divisions of a single corporation, gain from the sale to X would be passive income attributable to a passive activity. To the extent of B's depreciation before the sale, the results are the same as in paragraph (ii) of this Example. B's gain and S's remaining gain taken into account as a result of B's sale are treated as attributable to a passive activity.

(iv) The facts are the same as in paragraph (iii) of this Example, except that B recognizes a loss on the sale to X. B's loss and S's gain taken into account as a result of B's sale are treated as attributable to a passive activity.

(iii) Effective dates. This paragraph (h)(6) applies with respect to transactions occurring in years beginning on or after July 12, 1995. For transactions occurring in years beginning before July 12, 1995, see § 1.469–1T(h)(6) (as contained in the 26 CFR part 1 edition revised as of April 1, 1995).

(h)(7) through (k) [Reserved]

§ 1.469–1T [Amended]

Par. 12. Section 1.469–1T is amended by removing and reserving paragraphs (c)(8), (h)(1), (2), and (6).

Par. 13. Section 1.1502–13 is revised to read as follows:

§ 1.1502–13 Intercompany transactions.

(a) *In general*—(1) *Purpose.* This section provides rules for taking into account items of income, gain, deduction, and loss of members from intercompany transactions. The purpose of this section is to provide rules to clearly reflect the taxable income (and tax liability) of the group as a whole by preventing intercompany transactions from creating, accelerating, avoiding, or deferring consolidated taxable income (or consolidated tax liability).

(2) *Separate entity and single entity treatment.* Under this section, the selling member (S) and the buying member (B) are treated as separate entities for some purposes but as divisions of a single corporation for other purposes. The *amount* and *location* of S's intercompany items and B's corresponding items are determined on a separate entity basis (separate entity treatment). For example, S determines its gain or loss from a sale of property to B on a separate entity basis, and B has a cost basis in the property. The *timing*, and the *character*, *source*, and other *attributes* of the intercompany items and corresponding items, although initially determined on a separate entity basis, are redetermined under this section to produce the effect of transactions between divisions of a single corporation (single entity treatment). For example, if S sells land to B at a gain and B sells the land to a nonmember, S does not take its gain into account until B's sale to the nonmember.

(3) *Timing rules as a method of accounting*—(i) *In general.* The timing rules of this section are a method of accounting for intercompany transactions, to be applied by each member in addition to the member's other methods of accounting. See § 1.1502–17. To the extent the timing rules of this section are inconsistent with a member's otherwise applicable methods of accounting, the timing rules of this section control. For example, if S sells property to B in exchange for B's note, the timing rules of this section apply instead of the installment sale rules of section 453. S's or B's application of the timing rules of this section to an intercompany transaction clearly reflects income only if the effect of that transaction as a whole (including, for example, related costs and expenses) on consolidated taxable income is clearly reflected.

(ii) *Automatic consent for joining and departing members*—(A) *Consent granted.* Section 446(e) consent is granted under this section to the extent a change in method of accounting is necessary solely by reason of the timing rules of this section—

(*1*) For each member, with respect to its intercompany transactions, in the first consolidated return year which follows a separate return year and in which the member engages in an intercompany transaction; and

(*2*) For each former member, with respect to its transactions with members that would otherwise be intercompany transactions if the former member were still a member, in the first separate return year in which the former member engages in such a transaction.

(*B*) *Cut-off basis.* Any change in method of accounting described in paragraph (a)(3)(ii)(A) of this section is to be effected on a cut-off basis for transactions entered into on or after the first day of the year for which consent is granted under paragraph (a)(3)(ii)(A) of this section.

(4) *Other law.* The rules of this section apply in addition to other applicable law (including nonstatutory authorities). For example, this section applies in addition to sections 267(f) (additional rules for certain losses), 269 (acquisitions to evade or avoid income tax), and 482 (allocations among commonly controlled taxpayers). Thus, an item taken into account under this section can be deferred, disallowed, or eliminated under other applicable law, for example, section 1091 (losses from wash sales).

(5) *References.* References in other sections to this section include, as appropriate, references to prior law. For effective dates and prior law see paragraph (l) of this section.

(6) *Overview*—(i) *In general.* The principal rules of this section that implement single entity treatment are the matching rule and the acceleration rule of paragraphs (c) and (d) of this section. Under the matching rule, S and B are generally treated as divisions of a single corporation for purposes of taking into account their items from intercompany transactions. The acceleration rule provides additional rules for taking the items into account if the effect of treating S and B as divisions cannot be achieved (for example, if S or B becomes a nonmember). Paragraph (b) of this section provides definitions. Paragraph (e) of this section provides simplifying rules for certain transactions. Paragraphs (f) and (g) of this section provide additional rules for stock and obligations of members. Paragraphs (h) and (j) of this section provide anti-avoidance rules and miscellaneous operating rules.

(ii) *Table of examples.* Set forth below is a table of the examples contained in this section.

Matching rule. (§ 1.1502–13(c)(7)(ii))

Example 13. Manufacturer incentive payments.
Example 14. Source of income under section 863.
Example 15. Section 1248.

Acceleration rule. (§ 1.1502–13(d)(3))

Example 1. Becoming a nonmember—timing.
Example 2. Becoming a nonmember—attributes.
Example 3. Selling member's disposition of installment note.
Example 4. Cancellation of debt and attribute reduction under section 108(b).
Example 5. Section 481.

Simplifying rules—inventory. (§ 1.1502–13(e)(1)(v))

Example 1. Increment averaging method.
Example 2. Increment valuation method.
Example 3. Other reasonable inventory methods.

Stock of members. (§ 1.1502–13(f)(7))

Example 1. Dividend exclusion and property distribution.
Example 2. Excess loss accounts.
Example 3. Intercompany reorganization.
Example 4. Stock redemptions and distributions.
Example 5. Intercompany stock sale followed by section 332 liquidation.
Example 6. Intercompany stock sale followed by section 355 distribution.

Obligations of members. (§ 1.1502–13(g)(5))

Example 1. Interest on intercompany debt.
Example 2. Intercompany debt becomes nonintercompany debt.
Example 3. Loss or bad debt deduction with respect to intercompany debt.
Example 4. Nonintercompany debt becomes intercompany debt.
Example 5. Notional principal contracts.

Anti-avoidance rules. (§ 1.1502–13(h)(2))

Example 1. Sale of a partnership interest.
Example 2. Transitory status as an intercompany obligation.
Example 3. Corporate mixing bowl.
Example 4. Partnership mixing bowl.
Example 5. Sale and leaseback.

Miscellaneous operating rules. (§ 1.1502–13(j)(9))

Example 1. Intercompany sale followed by section 351 transfer to member.
Example 2. Intercompany sale of member stock followed by recapitalization.
Example 3. Back-to-back intercompany transactions—matching.
Example 4. Back-to-back intercompany transactions—acceleration.
Example 5. Successor group.
Example 6. Liquidation—80% distributee.
Example 7. Liquidation—no 80% distributee.

(b) *Definitions.* For purposes of this section—

(1) *Intercompany transactions*—(i) *In general.* An intercompany transaction is a transaction between corporations that are members of the same consolidated group immediately after the transaction. S is the member transferring property or providing services, and B is the member receiving the property or services. Intercompany transactions include—

(A) S's sale of property (or other transfer, such as an exchange or contribution) to B, whether or not gain or loss is recognized;

(B) S's performance of services for B, and B's payment or accrual of its expenditure for S's performance;

(C) S's licensing of technology, rental of property, or loan of money to B, and B's payment or accrual of its expenditure; and

(D) S's distribution to B with respect to S stock.

(ii) *Time of transaction.* If a transaction occurs in part while S and B are members and in part while they are not members, the transaction is treated as occurring when performance by either S or B takes place, or when payment for performance would be taken into account under the rules of this section if it were an intercompany transaction, whichever is earliest. Appropriate adjustments must be made in such cases by, for example, dividing the transaction into two separate transactions reflecting the extent to which S or B has performed.

(iii) *Separate transactions.* Except as otherwise provided in this section, each transaction is analyzed separately. For example, if S simultaneously sells two properties to B, one at a gain and the other at a loss, each property is treated as sold in a separate transaction. Thus, the gain and loss cannot be offset or netted against each other for purposes of this section. Similarly, each payment or accrual of interest on a loan is a separate transaction. In addition, an accrual of premium is treated as a separate transaction, or as an offset to interest that is not a separate transaction, to the extent required under separate entity treatment. If two members exchange property, each member is S with respect to the property it transfers and B with respect to the property it receives. If two members enter into a notional principal contract, each payment under the contract is a separate transaction and the member making the payment is B with respect to that payment and the member receiving the payment is S. See paragraph (j)(4) of this section for rules aggregating certain transactions.

(2) *Intercompany items*—(i) *In general.* S's income, gain, deduction, and loss from an intercompany transaction are its intercompany items. For example, S's gain from the sale of property to B is intercompany gain. An item is an intercompany item whether it is directly or indirectly from an intercompany transaction.

(ii) *Related costs or expenses.* S's costs or expenses related to an intercompany transaction are included in determining its intercompany items. For example, if S sells inventory to B, S's direct and indirect costs properly includible under section 263A are included in determining its intercompany income. Similarly, related costs or expenses that are not capitalized under S's separate entity method of accounting are included in determining its intercompany items. For example, deductions for employee wages, in addition to other related costs, are included in determining S's intercompany items from performing services for B, and depreciation deductions are included in determining S's intercompany items from renting property to B.

(iii) *Amounts not yet recognized or incurred.* S's intercompany items include amounts from an intercompany transaction that are not yet taken into account under its separate entity method of accounting. For example, if S is a cash method taxpayer, S's intercompany income might be taken into account under this section even if the cash is not yet received. Similarly, an amount reflected in basis (or an amount equivalent to basis) under S's separate entity method of accounting that is a substitute for income, gain, deduction or loss from an intercompany transaction is an intercompany item.

(3) *Corresponding items*—(i) *In general.* B's income, gain, deduction, and loss from an intercompany transaction, or from property acquired in an intercompany transaction, are its corresponding items. For example, if B pays rent to S, B's deduction for the rent is a corresponding deduction. If B buys property from S and sells it to a nonmember, B's gain or loss from the sale to the nonmember is a corresponding gain or loss; alternatively, if B recovers the cost of the property through depreciation, B's depreciation deductions are corresponding deductions. An item is a corresponding item whether it is directly or indirectly from an intercompany transaction (or from property acquired in an intercompany transaction).

(ii) *Disallowed or eliminated amounts.* B's corresponding items include amounts that are permanently disallowed or permanently eliminated, whether directly or indirectly. Thus, corresponding items include amounts disallowed under section 265 (expenses relating to tax-exempt income), and amounts not recognized under section 311(a) (nonrecognition of loss on distributions), section 332

(nonrecognition on liquidating distributions), or section 355(c) (certain distributions of stock of a subsidiary). On the other hand, an amount is not permanently disallowed or permanently eliminated (and therefore is not a corresponding item) to the extent it is not recognized in a transaction in which B receives a successor asset within the meaning of paragraph (j)(1) of this section. For example, B's corresponding items do not include amounts not recognized from a transaction with a nonmember to which section 1031 applies or from another transaction in which B receives exchanged basis property.

(4) *Recomputed corresponding items.* The recomputed corresponding item is the corresponding item that B would take into account if S and B were divisions of a single corporation and the intercompany transaction were between those divisions. For example, if S sells property with a $70 basis to B for $100, and B later sells the property to a nonmember for $90, B's corresponding item is its $10 loss, and the recomputed corresponding item is $20 of gain (determined by comparing the $90 sales price with the $70 basis the property would have if S and B were divisions of a single corporation). Although neither S nor B actually takes the recomputed corresponding item into account, it is computed as if B did take it into account (based on reasonable and consistently applied assumptions, including any provision of the Internal Revenue Code or regulations that would affect its timing or attributes).

(5) *Treatment as a separate entity.* Treatment as a separate entity means treatment without application of the rules of this section, but with the application of the other consolidated return regulations. For example, if S sells the stock of another member to B, S's gain or loss on a separate entity basis is determined with the application of § 1.1502–80(b) (non-applicability of section 304), but without redetermination under paragraph (c) or (d) of this section.

(6) *Attributes.* The attributes of an intercompany item or corresponding item are all of the item's characteristics, except *amount, location,* and *timing,* necessary to determine the item's effect on taxable income (and tax liability). For example, attributes include character, source, treatment as excluded from gross income or as a noncapital, nondeductible amount, and treatment as built-in gain or loss under section 382(h) or 384. In contrast, the characteristics of property, such as a member's holding period, or the fact that property is included in inventory, are not attributes of an item, but these characteristics might affect the determination of the attributes of items from the property.

(c) *Matching rule.* For each consolidated return year, B's corresponding items and S's intercompany items are taken into account under the following rules:

(1) *Attributes and holding periods*—(i) *Attributes.* The separate entity attributes of S's intercompany items and B's corresponding items are redetermined to the extent necessary to produce the same effect on consolidated taxable income (and consolidated tax liability) as if S and B were divisions of a single corporation, and the intercompany transaction were a transaction between divisions. Thus, the activities of both S and B might affect the attributes of both intercompany items and corresponding items. For example, if S holds property for sale to unrelated customers in the ordinary course of its trade or business, S sells the property to B at a gain and B sells the property to an unrelated person at a further gain, S's intercompany gain and B's corresponding gain might be ordinary because of S's activities with respect to the property. Similar principles apply if S performs services, rents property, or engages in any other intercompany transaction.

(ii) *Holding periods.* The holding period of property transferred in an intercompany transaction is the aggregate of the holding periods of S and B. However, if the basis of the property is determined by reference to the basis of other property, the property's holding period is determined by reference to the holding period of the other property. For example, if S distributes stock to B in a transaction to which section 355 applies, B's holding period in the distributed stock is determined by reference to B's holding period in the stock of S.

(2) *Timing*—(i) *B's items.* B takes its corresponding items into account under its accounting method, but the redetermination of the attributes of a corresponding item might affect its timing. For example, if B's sale of property acquired from S is treated as a dealer disposition because of S's activities, section 453(b) prevents any corresponding income of B from being taken into account under the installment method.

(ii) *S's items.* S takes its intercompany item into account to reflect the difference for the year between B's corresponding item taken into account and the recomputed corresponding item.

(3) *Divisions of a single corporation.* As divisions of a single corporation, S and B are treated as engaging in their actual transaction and owning any actual property involved in the transaction (rather than treating the transaction as not occurring). For example, S's sale of land held for investment to B for cash is not disregarded, but is treated as an exchange of land for cash between divisions (and B therefore succeeds to S's basis in the property). Similarly, S's issuance of its own stock to B in exchange for property is not disregarded, B is treated as owning the stock it receives in the exchange, and section 1032 does not apply to B on its subsequent sale of the S stock. Although treated as divisions, S and B nevertheless are treated as:

(i) Operating separate trades or businesses. See, e.g., § 1.446–1(d) (accounting methods for a taxpayer engaged in more than one business).

(ii) Having any special status that they have under the Internal Revenue Code or regulations. For example, a bank defined in section 581, a domestic building and loan association defined in section 7701(a)(19), and an insurance company to which section 801 or 831 applies are treated as divisions having separate special status. On the other hand, the fact that a member holds property for sale to customers in the ordinary course of its trade or business is not a special status.

(4) *Conflict or allocation of attributes.* This paragraph (c)(4) provides special rules for redetermining and allocating attributes under paragraph (c)(1)(i) of this section.

(i) *Offsetting amounts*—(A) *In general.* To the extent B's corresponding item offsets S's intercompany item in amount, the attributes of B's corresponding item, determined based on both S's and B's activities, control the attributes of S's offsetting intercompany item. For example, if S sells depreciable property to B at a gain and B depreciates the property, the attributes of B's depreciation deduction (ordinary deduction) control the attributes of S's offsetting intercompany gain. Accordingly, S's gain is ordinary.

(B) *B controls unreasonable.* To the extent the results under paragraph (c)(4)(i)(A) are inconsistent with treating S and B as divisions of a single corporation, the attributes of the offsetting items must be redetermined in a manner consistent with treating S and B as divisions of a single corporation. To the extent, however, that B's corresponding item on a separate entity basis is excluded from gross income, is a noncapital, nondeductible amount, or

is otherwise permanently disallowed or eliminated, the attributes of B's corresponding item always control the attributes of S's offsetting intercompany item.

(ii) *Allocation.* To the extent S's intercompany item and B's corresponding item do not offset in amount, the attributes redetermined under paragraph (c)(1)(i) of this section must be allocated to S's intercompany item and B's corresponding item by using a method that is reasonable in light of all the facts and circumstances, including the purposes of this section and any other rule affected by the attributes of S's intercompany item and B's corresponding item. A method of allocation or redetermination is unreasonable if it is not used consistently by all members of the group from year to year.

(5) *Special status.* Notwithstanding the general rule of paragraph (c)(1)(i) of this section, to the extent an item's attributes determined under this section are permitted or not permitted to a member under the Internal Revenue Code or regulations by reason of the member's special status, the attributes required under the Internal Revenue Code or regulations apply to that member's items (but not the other member). For example, if S is a bank to which section 582(c) applies, and sells debt securities at a gain to B, a nonbank, the character of S's intercompany gain is ordinary as required under section 582(c), but the character of B's corresponding item as capital or ordinary is determined under paragraph (c)(1)(i) of this section without the application of section 582(c). For other special status issues, see, for example, sections 595(b) (foreclosure on property securing loans), 818(b) (life insurance company treatment of capital gains and losses), and 1503(c) (limitation on absorption of certain losses).

(6) *Treatment of intercompany items if corresponding items are excluded or nondeductible*—(i) *In general.* Under paragraph (c)(1)(i) of this section, S's intercompany item might be redetermined to be excluded from gross income or treated as a noncapital, nondeductible amount. For example, S's intercompany loss from the sale of property to B is treated as a noncapital, nondeductible amount if B distributes the property to a nonmember shareholder at no further gain or loss (because, if S and B were divisions of a single corporation, the loss would not have been recognized under section 311(a)). Paragraph (c)(6)(ii) of this section, however, provides limitations on the application of this rule to intercompany income or gain. See also §§ 1.1502–32 and 1.1502–33 (adjustments to S's stock basis and earnings and profits to reflect amounts so treated).

(ii) *Limitation on treatment of intercompany items as excluded from gross income.* Notwithstanding the general rule of paragraph (c)(1)(i) of this section, S's intercompany income or gain is redetermined to be excluded from gross income only to the extent one of the following applies:

(A) *Disallowed amounts.* B's corresponding item is a deduction or loss and, in the taxable year the item is taken into account under this section, it is permanently and explicitly disallowed under another provision of the Internal Revenue Code or regulations. For example, deductions that are disallowed under section 265 are permanently and explicitly disallowed. An amount is not permanently and explicitly disallowed, for example, to the extent that—

(*1*) The Internal Revenue Code or regulations provide that the amount is not recognized (for example, a loss that is realized but not recognized under section 332 or section 355(c) is not permanently and explicitly disallowed, notwithstanding that it is a corresponding item within the meaning of paragraph (b)(3)(ii) of this section (certain disallowed or eliminated amounts));

(*2*) A related amount might be taken into account by B with respect to successor property, such as under section 280B (demolition costs recoverable as capitalized amounts);

(*3*) A related amount might be taken into account by another taxpayer, such as under section 267(d) (disallowed loss under section 267(a) might result in nonrecognition of gain for a related person);

(*4*) A related amount might be taken into account as a deduction or loss, including as a carryforward to a later year, under any provision of the Internal Revenue Code or regulations (whether or not the carryforward expires in a later year); or

(*5*) The amount is reflected in the computation of any credit against (or other reduction of) Federal income tax (whether allowed for the taxable year or carried forward to a later year).

(B) *Section 311.* The corresponding item is a loss that is realized, but not recognized under section 311(a) on a distribution to a nonmember (even though the loss is not a permanently and explicitly disallowed amount within the meaning of paragraph (c)(6)(ii)(A) of this section).

(C) *Other amounts.* The Commissioner determines that treating S's intercompany item as excluded from gross income is consistent with the purposes of this section and other applicable provisions of the Internal Revenue Code and regulations.

(7) *Examples*—(i) *In general.* For purposes of the examples in this section, unless otherwise stated, P is the common parent of the P consolidated group, P owns all of the only class of stock of subsidiaries S and B, X is a person unrelated to any member of the P group, the taxable year of all persons is the calendar year, all persons use the accrual method of accounting, tax liabilities are disregarded, the facts set forth the only corporate activity, no member has any special status, and the transaction is not otherwise subject to recharacterization. If a member acts as both a selling member and a buying member (e.g., with respect to different aspects of a single transaction, or with respect to related transactions), the member is referred to as M, M1, or M2 (rather than as S or B).

(ii) *Matching rule.* The matching rule of this paragraph (c) is illustrated by the following examples.

Example 1. Intercompany sale of land followed by sale to a nonmember. (a) *Facts.* S holds land for investment with a basis of $70. S has held the land for more than one year. On January 1 of Year 1, S sells the land to B for $100. B also holds the land for investment. On July 1 of Year 3, B sells the land to X for $110.

(b) *Definitions.* Under paragraph (b)(1) of this section, S's sale of the land to B is an intercompany transaction, S is the selling member, and B is the buying member. Under paragraphs (b)(2) and (3) of this section, S's $30 gain from the sale to B is its intercompany item, and B's $10 gain from the sale to X is its corresponding item.

(c) *Attributes.* Under the matching rule of paragraph (c) of this section, S's $30 intercompany gain and B's $10 corresponding gain are taken into account to produce the same effect on consolidated taxable income (and consolidated tax liability) as if S and B were divisions of a single corporation. In addition, the holding periods of S and B for the land are aggregated. Thus, the group's entire $40 of gain is long-term capital gain. Because both S's intercompany item and B's corresponding item on a separate entity basis are long-term capital gain, the attributes are not redetermined under paragraph (c)(1)(i) of this section.

(d) *Timing.* For each consolidated return year, S takes its intercompany item into account under the matching rule to reflect the difference for the year between B's corresponding item taken into account and the recomputed corresponding item. If S and B were divisions of a single corporation and the intercompany sale were a transfer between the divisions, B would succeed to S's $70 basis in the land and would have a $40 gain from the sale to X in Year 3, instead of a $10 gain. Consequently, S takes no gain

into account in Years 1 and 2, and takes the entire $30 gain into account in Year 3, to reflect the $30 difference in that year between the $10 gain B takes into account and the $40 recomputed gain (the recomputed corresponding item). Under §§ 1.1502–32 and 1.1502–33, P's basis in its S stock and the earnings and profits of S and P do not reflect S's $30 gain until the gain is taken into account in Year 3. (Under paragraph (a)(3) of this section, the results would be the same if S sold the land to B in an installment sale to which section 453 would otherwise apply, because S must take its intercompany gain into account under this section.)

(e) *Intercompany loss followed by sale to a nonmember at a gain.* The facts are the same as in paragraph (a) of this *Example 1,* except that S's basis in the land is $130 (rather than $70). The attributes and timing of S's intercompany loss and B's corresponding gain are determined under the matching rule in the manner provided in paragraphs (c) and (d) of this *Example 1.* If S and B were divisions of a single corporation and the intercompany sale were a transfer between the divisions, B would succeed to S's $130 basis in the land and would have a $20 loss from the sale to X instead of a $10 gain. Thus, S takes its entire $30 loss into account in Year 3 to reflect the $30 difference between B's $10 gain taken into account and the $20 recomputed loss. (The results are the same under section 267(f).) S's $30 loss is long-term capital loss, and B's $10 gain is long-term capital gain.

(f) *Intercompany gain followed by sale to a nonmember at a loss.* The facts are the same as in paragraph (a) of this *Example 1,* except that B sells the land to X for $90 (rather than $110). The attributes and timing of S's intercompany gain and B's corresponding loss are determined under the matching rule. If S and B were divisions of a single corporation and the intercompany sale were a transfer between the divisions, B would succeed to S's $70 basis in the land and would have a $20 gain from the sale to X instead of a $10 loss. Thus, S takes its entire $30 gain into account in Year 3 to reflect the $30 difference between B's $10 loss taken into account and the $20 recomputed gain. S's $30 gain is long-term capital gain, and B's $10 loss is long-term capital loss.

(g) *Intercompany gain followed by distribution to a nonmember at a loss.* The facts are the same as in paragraph (a) of this *Example 1,* except that B distributes the land to X, a minority shareholder of B, and at the time of the distribution the land has a fair market value of $90. The attributes and timing of S's intercompany gain and B's corresponding loss are determined under the matching rule. Under section 311(a), B does not recognize its $10 loss on the distribution to X. If S and B were divisions of a single corporation and the intercompany sale were a transfer between divisions, B would succeed to S's $70 basis in the land and would have a $20 gain from the distribution to X instead of an unrecognized $10 loss. Under paragraph (b)(3)(ii) of this section, B's loss that is not recognized under section 311(a) is a corresponding item. Thus, S takes its $30 gain into account under the matching rule in Year 3 to reflect the difference between B's $10 corresponding unrecognized loss and the $20 recomputed gain. B's $10 corresponding loss offsets $10 of S's intercompany gain and, under paragraph (c)(4)(i) of this section, the attributes of B's corresponding item control the attributes of S's intercompany item. Paragraph (c)(6) of this section does not prevent the redetermination of S's intercompany item as excluded from gross income. (See paragraph (c)(6)(ii)(B) of this section). Thus, $10 of S's $30 gain is redetermined to be excluded from gross income.

(h) *Intercompany sale followed by section 1031 exchange with nonmember.* The facts are the same as in paragraph (a) of this *Example 1,* except that, instead of selling the land to X, B exchanges the land for land owned by X in a transaction to which section 1031 applies. There is no difference in Year 3 between B's $0 corresponding item taken into account and the $0 recomputed corresponding item. Thus, none of S's intercompany gain is taken into account under the matching rule as a result of the section 1031 exchange. Instead, B's gain is preserved in the land received from X and, under the successor asset rule of paragraph (j)(1) of this section, S's intercompany gain is taken into account by reference to the replacement property. (If B takes gain into account as a result of boot received in the exchange, S's intercompany gain is taken into account under the matching rule to the extent the boot causes a difference between B's gain taken into account and the recomputed gain.)

(i) *Intercompany sale followed by section 351 transfer to nonmember.* The facts are the same as in paragraph (a) of this *Example 1,* except that, instead of selling the land to X, B transfers the land to X in a transaction to which section 351(a) applies and X remains a nonmember. There is no difference in Year 3 between B's $0 corresponding item taken into account and the $0 recomputed corresponding item. Thus, none of S's intercompany gain is taken into account under the matching rule as a result of the section 351(a) transfer. However, S's entire gain is taken into account in Year 3 under the acceleration rule of paragraph (d) of this section (because X, a nonmember, reflects B's $100 cost basis in the land under section 362).

Example 2. Dealer activities. (a) *Facts.* S holds land for investment with a basis of $70. On January 1 of Year 1, S sells the land to B for $100. B develops the land as residential real estate, and sells developed lots to customers during Year 3 for an aggregate amount of $110.

(b) *Attributes.* S and B are treated under the matching rule as divisions of a single corporation for purposes of determining the attributes of S's intercompany item and B's corresponding item. Thus, although S held the land for investment, whether the gain is treated as from the sale of property described in section 1221(1) is based on the activities of both S and B. If, based on both S's and B's activities, the land is described in section 1221(1), both S's gain and B's gain are ordinary income.

Example 3. Intercompany section 351 transfer. (a) *Facts.* S holds land with a $70 basis and a $100 fair market value for sale to customers in the ordinary course of business. On January 1 of Year 1, S transfers the land to B in exchange for all of the stock of B in a transaction to which section 351 applies. S has no gain or loss under section 351(a), and its basis in the B stock is $70 under section 358. Under section 362, B's basis in the land is $70. B holds the land for investment. On July 1 of Year 3, B sells the land to X for $100. Assume that if S and B were divisions of a single corporation, B's gain from the sale would be ordinary income because of S's activities.

(b) *Timing and attributes.* Under paragraph (b)(1) of this section, S's transfer to B is an intercompany transaction. Under paragraph (c)(3) of this section, S is treated as transferring the land in exchange for B's stock even though, as divisions, S could not own stock of B. S has no intercompany item, but B's $30 gain from its sale of the land to X is a corresponding item because the land was acquired in an intercompany transaction. B's $30 gain is ordinary income that is taken into account under B's method of accounting.

(c) *Intercompany section 351 transfer with boot.* The facts are the same as in paragraph (a) of this *Example 3,* except that S receives $10 cash in addition to the B stock in the transfer. S recognizes $10 of gain under section 351(b), and its basis in the B stock is $70 under section 358. Under section 362, B's basis in the land is $80. S takes its $10 intercompany gain into account in Year 3 to reflect the $10 difference between B's $20 corresponding gain taken into account and the $30 recomputed gain. Both S's $10 gain and B's $20 gain are ordinary income.

(d) *Partial disposition.* The facts are the same as in paragraph (c) of this *Example 3,* except B sells only a one- half, undivided interest in the land to X for $50. The timing and attributes are determined in the manner provided in paragraph (b) of this *Example 3,* except that S takes only $5 of its gain into account in Year 3 to reflect the $5 difference between B's $10 gain taken into account and the $15 recomputed gain.

Example 4. Depreciable property. (a) *Facts.* On January 1 of Year 1, S buys 10-year recovery property for $100 and depreciates it under the straight-line method. On January 1 of Year 3, S sells the property to B for $130. Under section 168(i)(7), B is treated as S for purposes of section 168 to the extent B's $130 basis does not exceed S's adjusted basis at the time of the sale. B's additional basis is treated as new 10-year recovery property for which B elects the straight-line method of recovery. (To simplify the example, the half-year convention is disregarded.)

(b) *Depreciation through Year 3; intercompany gain.* S claims $10 of depreciation for each of Years 1 and 2 and has an $80 basis at the time of the sale to B. Thus, S has a $50 intercompany gain from its sale to B. For Year 3, B has $10 of depreciation with respect to $80 of its basis (the portion of its $130 basis not exceeding S's adjusted basis). In addition, B has $5 of depreciation with respect to the $50 of its additional basis that exceeds S's adjusted basis.

(c) *Timing.* S's $50 gain is taken into account to reflect the difference for each

consolidated return year between B's depreciation taken into account with respect to the property and the recomputed depreciation. For Year 3, B takes $15 of depreciation into account. If the intercompany transaction were a transfer between divisions of a single corporation, B would succeed to S's adjusted basis in the property and take into account only $10 of depreciation for Year 3. Thus, S takes $5 of gain into account in Year 3. In each subsequent year that B takes into account $15 of depreciation with respect to the property, S takes into account $5 of gain.

(d) *Attributes.* Under paragraph (c)(1)(i) of this section, the attributes of S's gain and B's depreciation must be redetermined to the extent necessary to produce the same effect on consolidated taxable income as if the intercompany transaction were between divisions of a single corporation (the group must have a net depreciation deduction of $10). In each year, $5 of B's corresponding depreciation deduction offsets S's $5 intercompany gain taken into account and, under paragraph (c)(4)(i) of this section, the attributes of B's corresponding item control the attributes of S's intercompany item. Accordingly, S's intercompany gain that is taken into account as a result of B's depreciation deduction is ordinary income.

(e) *Sale of property to a nonmember.* The facts are the same as in paragraph (a) of this *Example 4,* except that B sells the property to X on January 1 of Year 5 for $110. As set forth in paragraphs (c) and (d) of this *Example 4,* B has $15 of depreciation with respect to the property in each of Years 3 and 4, causing S to take $5 of intercompany gain into account in each year as ordinary income. The $40 balance of S's intercompany gain is taken into account in Year 5 as a result of B's sale to X, to reflect the $40 difference between B's $10 gain taken into account and the $50 of recomputed gain ($110 of sale proceeds minus the $60 basis B would have if the intercompany sale were a transfer between divisions of a single corporation). Treating S and B as divisions of a single corporation, $40 of the gain is section 1245 gain and $10 is section 1231 gain. On a separate entity basis, S would have more than $10 treated as section 1231 gain, and B would have no amount treated as section 1231 gain. Under paragraph (c)(4)(ii) of this section, all $10 of the section 1231 gain is allocated to S. S's remaining $30 of gain, and all of B's $10 gain, is treated as section 1245 gain.

Example 5. Intercompany sale followed by installment sale. (a) *Facts.* S holds land for investment with a basis of $70x. On January 1 of Year 1, S sells the land to B for $100x. B also holds the land for investment. On July 1 of Year 3, B sells the land to X in exchange for X's $110x note. The note bears a market rate of interest in excess of the applicable Federal rate, and provides for principal payments of $55x in Year 4 and $55x in Year 5. The interest charge under section 453A(c) applies to X's note.

(b) *Timing and attributes.* S takes its $30x gain into account to reflect the difference in each consolidated return year between B's gain taken into account for the year and the recomputed gain. Under section 453, B takes into account $5x of gain in Year 4 and $5x of gain in Year 5. Thus, S takes into account $15x of gain in Year 4 and $15x of gain in Year 5 to reflect the $15x difference in each of those years between B's $5x gain taken into account and the $20x recomputed gain. Both S's $30x gain and B's $10x gain are subject to the section 453A(c) interest charge beginning in Year 3.

(c) *Election out under section 453(d).* If, under the facts in paragraph (a) of this *Example 5,* the P group wishes to elect not to apply section 453 with respect to S's gain, an election under section 453(d) must be made for Year 3 with respect to B's gain. This election will cause B's $10x gain to be taken into account in Year 3. Under the matching rule, this will result in S's $30x gain being taken into account in Year 3. (An election by the P group solely with respect to S's gain has no effect because the gain from S's sale to B is taken into account under the matching rule, and therefore must reflect the difference between B's gain taken into account and the recomputed gain.)

(d) *Sale to a nonmember at a loss, but overall gain.* The facts are the same as in paragraph (a) of this *Example 5,* except that B sells the land to X in exchange for X's $90x note (rather than $110x note). If S and B were divisions of a single corporation, B would succeed to S's basis in the land, and the sale to X would be eligible for installment reporting under section 453, because it resulted in an overall gain. However, because only gains may be reported on the installment method, B's $10x corresponding loss is taken into account in Year 3. Under paragraph (b)(4) of this section the recomputed corresponding item is $20x gain that would be taken into account under the installment method, $0 in Year 3 and $10x in each of Years 4 and 5. Thus, in Year 3 S takes $10x of gain into account to reflect the difference between B's $10x loss taken into account and the $0 recomputed gain for Year 3. Under paragraph (c)(4)(i) of this section, B's $10x corresponding loss offsets $10x of S's intercompany gain, and B's attributes control. S takes $10x of gain into account in each of Years 4 and 5 to reflect the difference in those years between B's $0 gain taken into account and the $10x recomputed gain that would be taken into account under the installment method. Only the $20x of S's gain taken into account in Years 4 and 5 is subject to the interest charge under section 453A(c) beginning in Year 3. (If P elects under section 453(d) for Year 3 not to apply section 453 with respect to the gain, all of S's $30x gain will be taken into account in Year 3 to reflect the difference between B's $10x loss taken into account and the $20x recomputed gain.)

(e) *Intercompany loss, installment gain.* The facts are the same as in paragraph (a) of this *Example 5,* except that S has a $130x (rather than $70x) basis in the land. Under paragraph (c)(1)(i) of this section, the separate entity attributes of S's and B's items from the intercompany transaction must be redetermined to produce the same effect on consolidated taxable income (and tax liability) as if the transaction had been a transfer between divisions. If S and B were divisions of a single corporation, B would succeed to S's basis in the land and the group would have $20x loss from the sale to X, installment reporting would be unavailable, and the interest charge under section 453A(c) would not apply. Accordingly, B's gain from the transaction is not eligible for installment treatment under section 453. B takes its $10x gain into account in Year 3, and S takes its $30x of loss into account in Year 3 to reflect the difference between B's $10x gain and the $20x recomputed loss.

(f) *Recapture income.* The facts are the same as in paragraph (a) of this *Example 5,* except that S bought depreciable property (rather than land) for $100x, claimed depreciation deductions, and reduced the property's basis to $70x before Year 1. (To simplify the example, B's depreciation is disregarded.) If the intercompany sale of property had been a transfer between divisions of a single corporation, $30x of the $40x gain from the sale to X would be section 1245 gain (which is ineligible for installment reporting) and $10x would be section 1231 gain (which is eligible for installment reporting). On a separate entity basis, S would have $30x of section 1245 gain and B would have $10x of section 1231 gain. Accordingly, the attributes are not redetermined under paragraph (c)(1)(i) of this section. All of B's $10x gain is eligible for installment reporting and is taken into account $5x each in Years 4 and 5 (and is subject to the interest charge under section 453A(c)). S's $30x gain is taken into account in Year 3 to reflect the difference between B's $0 gain taken into account and the $30x of recomputed gain. (If S had bought the depreciable property for $110x and its recomputed basis under section 1245 had been $110x (rather than $100x), B's $10x gain and S's $30x gain would both be recapture income ineligible for installment reporting.)

Example 6. Intercompany sale of installment obligation. (a) *Facts.* S holds land for investment with a basis of $70x. On January 1 of Year 1, S sells the land to X in exchange for X's $100x note, and S reports its gain on the installment method under section 453. X's note bears interest at a market rate of interest in excess of the applicable Federal rate, and provides for principal payments of $50x in Year 5 and $50x in Year 6. Section 453A applies to X's note. On July 1 of Year 3, S sells X's note to B for $100x, resulting in $30x gain from S's prior sale of the land to X under section 453B(a).

(b) *Timing and attributes.* S's sale of X's note to B is an intercompany transaction, and S's $30x gain is intercompany gain. S takes $15x of the gain into account in each of Years 5 and 6 to reflect the $15x difference in each year between B's $0 gain taken into account and the $15x recomputed gain. S's gain continues to be treated as its gain from the sale to X, and the deferred tax liability remains subject to the interest charge under section 453A(c).

(c) *Worthlessness.* The facts are the same as in paragraph (a) of this *Example 6,* except that X's note becomes worthless on December 1 of Year 3 and B has a $100x short-term capital loss under section 165(g) on a separate entity basis. Under paragraph (c)(1)(ii) of this section, B's holding period

for X's note is aggregated with S's holding period. Thus, B's loss is a long- term capital loss. S takes its $30x gain into account in Year 3 to reflect the $30x difference between B's $100x loss taken into account and the $70x recomputed loss. Under paragraph (c)(1)(i) of this section, S's gain is long-term capital gain.

(d) *Pledge.* The facts are the same as in paragraph (a) of this *Example 6,* except that, on December 1 of Year 3, B borrows $100x from an unrelated bank and secures the indebtedness with X's note. X's note remains subject to section 453A(d) following the sale to B. Under section 453A(d), B's $100x of proceeds from the secured indebtedness is treated as an amount received on December 1 of Year 3 by B on X's note. Thus, S takes its entire $30x gain into account in Year 3.

Example 7. Performance of services. (a) *Facts.* S is a driller of water wells. B operates a ranch in a remote location, and B's taxable income from the ranch is not subject to section 447. B's ranch requires water to maintain its cattle. During Year 1, S drills an artesian well on B's ranch in exchange for $100 from B, and S incurs $80 of expenses (e.g., for employees and equipment). B capitalizes its $100 cost for the well under section 263, and takes into account $10 of cost recovery deductions in each of Years 2 through 11. Under its separate entity method of accounting, S would take its income and expenses into account in Year 1. If S and B were divisions of a single corporation, the costs incurred in drilling the well would be capitalized.

(b) *Definitions.* Under paragraph (b)(1) of this section, the service transaction is an intercompany transaction, S is the selling member, and B is the buying member. Under paragraph (b)(2)(ii) of this section, S's $100 of income and $80 of related expenses are both included in determining its intercompany income of $20.

(c) *Timing and attributes.* S's $20 of intercompany income is taken into account under the matching rule to reflect the $20 difference between B's corresponding items taken into account (based on its $100 cost basis in the well) and the recomputed corresponding items (based on the $80 basis that B would have if S and B were divisions of a single corporation and B's basis were determined by reference to S's $80 of expenses). In Year 1, S takes into account $80 of its income and the $80 of expenses. In each of Years 2 through 11, S takes $2 of its $20 intercompany income into account to reflect the annual $2 difference between B's $10 of cost recovery deductions taken into account and the $8 of recomputed cost recovery deductions. S's $100 income and $80 expenses, and B's cost recovery deductions, are ordinary items (because S's and B's items would be ordinary on a separate entity basis, the attributes are not redetermined under paragraph (c)(1)(i) of this section). If S's offsetting $80 of income and expense would not be taken into account in the same year under its separate entity method of accounting, they nevertheless must be taken into account under this section in a manner that clearly reflects consolidated taxable income. See paragraph (a)(3)(i) of this section.

(d) *Sale of capitalized services.* The facts are the same as in paragraph (a) of this *Example 7,* except that B sells the ranch before Year 11 and recognizes gain attributable to the well. To the extent of S's income taken into account as a result of B's cost recovery deductions, as well as S's offsetting $80 of income and expense, the timing and attributes are determined in the manner provided in paragraph (c) of this *Example 7.* The attributes of the remainder of S's $20 of income and B's gain from the sale are redetermined to produce the same effect on consolidated taxable income as if S and B were divisions of a single corporation. Accordingly, S's remaining intercompany income is treated as recapture income or section 1231 gain, even though it is from S's performance of services.

Example 8. Rental of property. B operates a ranch that requires grazing land for its cattle. S owns undeveloped land adjoining B's ranch. On January 1 of Year 1, S leases grazing rights to B for Year 1. B's $100 rent expense is deductible for Year 1 under its separate entity accounting method. Under paragraph (b)(1) of this section, the rental transaction is an intercompany transaction, S is the selling member, and B is the buying member. S takes its $100 of income into account in Year 1 to reflect the $100 difference between B's rental deduction taken into account and the $0 recomputed rental deduction. S's income and B's deduction are ordinary items (because S's intercompany item and B's corresponding item would both be ordinary on a separate entity basis, the attributes are not redetermined under paragraph (c)(1)(i) of this section).

Example 9. Intercompany sale of a partnership interest. (a) *Facts.* S owns a 20% interest in the capital and profits of a general partnership. The partnership holds land for investment with a basis equal to its value, and operates depreciable assets which have value in excess of basis. S's basis in its partnership interest equals its share of the adjusted basis of the partnership's land and depreciable assets. The partnership has an election under section 754 in effect. On January 1 of Year 1, S sells its partnership interest to B at a gain. During Years 1 through 10, the partnership depreciates the operating assets, and B's depreciation deductions from the partnership reflect the increase in the basis of the depreciable assets under section 743(b).

(b) *Timing and attributes.* S's gain is taken into account during Years 1 through 10 to reflect the difference in each year between B's depreciation deductions from the partnership taken into account and the recomputed depreciation deductions from the partnership. Under paragraphs (c)(1)(i) and (c)(4)(i) of this section, S's gain taken into account is ordinary income. (The acceleration rule does not apply to S's gain as a result of the section 743(b) adjustment, because the adjustment is solely with respect to B and therefore no nonmember reflects any part of the intercompany transaction.)

(c) *Partnership sale of assets.* The facts are the same as in paragraph (a) of this *Example 9,* and the partnership sells some of its depreciable assets to X at a gain on December 31 of Year 4. In addition to the intercompany gain taken into account as a result of the partnership's depreciation, S takes intercompany gain into account in Year 4 to reflect the difference between B's partnership items taken into account from the sale (which reflect the basis increase under section 743(b)) and the recomputed partnership items. The attributes of S's additional gain are redetermined to produce the same effect on consolidated taxable income as if S and B were divisions of a single corporation (recapture income or section 1231 gain).

(d) *B's sale of partnership interest.* The facts are the same as in paragraph (a) of this *Example 9,* and on December 31 of Year 4, B sells its partnership interest to X at no gain or loss. In addition to the intercompany gain taken into account as a result of the partnership's depreciation, the remaining balance of S's intercompany gain is taken into account in Year 4 to reflect the difference between B's $0 gain taken into account from the sale of the partnership interest and the recomputed gain. The character of S's remaining intercompany item and B's corresponding item are determined on a separate entity basis under section 751, and then redetermined to the extent necessary to produce the same effect as treating the intercompany transaction as occurring between divisions of a single corporation.

(e) *No section 754 election.* The facts are the same as in paragraph (d) of this *Example 9,* except that the partnership does not have a section 754 election in effect, and B recognizes a capital loss from its sale of the partnership interest to X on December 31 of Year 4. Because there is no difference between B's depreciation deductions from the partnership taken into account and the recomputed depreciation deductions, S does not take any of its gain into account during Years 1 through 4 as a result of B's partnership's items. Instead, S's entire intercompany gain is taken into account in Year 4 to reflect the difference between B's loss taken into account from the sale to X and the recomputed gain or loss.

Example 10. Net operating losses subject to section 382 or the SRLY rules. (a) *Facts.* On January 1 of Year 1, P buys all of S's stock. S has net operating loss carryovers from prior years. P's acquisition results in an ownership change under section 382 with respect to S's loss carryovers, and S has a net unrealized built-in gain (within the meaning of section 382(h)(3)). S owns nondepreciable property with a $70 basis and $100 value. On July 1 of Year 3, S sells the property to B for $100, and its $30 gain is recognized built-in gain (within the meaning of section 382(h)(2)) on a separate entity basis. On December 1 of Year 5, B sells the property to X for $90.

(b) *Timing and attributes.* S's $30 gain is taken into account in Year 5 to reflect the $30 difference between B's $10 loss taken into account and the recomputed $20 gain. S and B are treated as divisions of a single corporation for purposes of applying section 382 in connection with the intercompany transaction. Under a single entity analysis, the single corporation has losses subject to limitation under section 382, and this limitation may be increased under section

382(h) if the single corporation has recognized built-in gain with respect to those losses. B's $10 corresponding loss offsets $10 of S's intercompany gain, and thus, under paragraph (c)(4)(i) of this section, $10 of S's intercompany gain is redetermined not to be recognized built-in gain. S's remaining $20 intercompany gain continues to be treated as recognized built-in gain.

(c) *B's recognized built-in gain.* The facts are the same as in paragraph (a) of this *Example 10,* except that the property declines in value after S becomes a member of the P group, S sells the property to B for its $70 basis, and B sells the property to X for $90 during Year 5. Treating S and B as divisions of a single corporation, S's sale to B does not cause the property to cease to be built-in gain property. Thus, B's $20 gain from its sale to X is recognized built-in gain that increases the section 382 limitation applicable to S's losses.

(d) *SRLY limitation.* The facts are the same as in paragraph (a) of this *Example 10,* except that S's net operating loss carryovers are subject to the separate return limitation year (SRLY) rules. See § 1.1502–21(c). The application of the SRLY rules depends on S's status as a separate corporation having losses from separate return limitation years. Under paragraph (c)(5), the attribute of S's intercompany item as it relates to S's SRLY limitation is not redetermined, because the SRLY limitation depends on S's special status. Accordingly, S's $30 intercompany gain is included in determining its SRLY limitation for Year 5.

Example 11. Section 475. (a) *Facts.* S, a dealer in securities within the meaning of section 475(c), owns a security with a basis of $70. The security is held for sale to customers and is not identified under section 475(b) as within an exception to marking to market. On July 1 of Year 1, S sells the security to B for $100. B is not a dealer and holds the security for investment. On December 31 of Year 1, the fair market value of the security is $100. On July 1 of Year 2, B sells the security to X for $110.

(b) *Attributes.* Under section 475, a dealer in securities can treat a security as within an exception to marking to market under section 475(b) only if it timely identifies the security as so described. Under the matching rule, attributes must be redetermined by treating S and B as divisions of a single corporation. As a result of S's activities, the single corporation is treated as a dealer with respect to securities, and B must continue to mark to market the security acquired from S. Thus, B's corresponding items and the recomputed corresponding items are determined by continuing to treat the security as not within an exception to marking to market. Under section 475(d)(3), it is possible for the character of S's intercompany items to differ from the character of B's corresponding items.

(c) *Timing and character.* S has a $30 gain when it disposes of the security by selling it to B. This gain is intercompany gain that is taken into account in Year 1 to reflect the $30 difference between B's $0 gain taken into account from marking the security to market under section 475 and the recomputed $30 gain that would be taken into account. The character of S's gain and B's gain are redetermined as if the security were transferred between divisions. Accordingly, S's gain is ordinary income under section 475(d)(3)(A)(i), but under section 475(d)(3)(B)(ii) B's $10 gain from its sale to X is capital gain that is taken into account in Year 2.

(d) *Nondealer to dealer.* The facts are the same as in paragraph (a) of this Example 11, except that S is not a dealer and holds the security for investment with a $70 basis, B is a dealer to which section 475 applies and, immediately after acquiring the security from S for $100, B holds the security for sale to customers in the ordinary course of its trade or business. Because S is not a dealer and held the security for investment, the security is treated as properly identified as held for investment under section 475(b)(1) until it is sold to B. Under section 475(b)(3), the security thereafter ceases to be described in section 475(b)(1) because B holds the security for sale to customers. The mark-to-market requirement applies only to changes in the value of the security after B's acquisition. B's mark-to-market gain taken into account and the recomputed mark-to-market gain are both determined based on changes from the $100 value of the security at the time of B's acquisition. There is no difference between B's $0 mark-to-market gain taken into account in Year 1 and the $0 recomputed mark-to-market gain. Therefore, none of S's gain is taken into account in Year 1 as a result of B's marking the security to market in Year 1. In Year 2, B has a $10 gain when it disposes of the security by selling it to X, but would have had a $40 gain if S and B were divisions of a single corporation. Thus, S takes its $30 gain into account in Year 2 under the matching rule. Under section 475(d)(3), S's gain is capital gain even though B's subsequent gain or loss from marking to market or disposing of the security is ordinary gain or loss. If B disposes of the security at a $10 loss in Year 2, S's gain taken into account in Year 2 is still capital because on a single entity basis section 475(d)(3) would provide for $30 of capital gain and $10 of ordinary loss. Because the attributes are not redetermined under paragraph (c)(1)(i) of this section, paragraph (c)(4)(i) of this section does not apply. Furthermore, if B held the security for investment, and so identified the security under section 475(b)(1), the security would continue to be excepted from marking to market.

Example 12. Section 1092. (a) *Facts.* On July 1 of Year 1, S enters into offsetting long and short positions with respect to actively traded personal property. The positions are not section 1256 contracts, and they are the only positions taken into account for purposes of applying section 1092. On August 1 of Year 1, S sells the long position to B at an $11 loss, and there is $11 of unrealized gain in the offsetting short position. On December 1 of Year 1, B sells the long position to X at no gain or loss. On December 31 of Year 1, there is still $11 of unrealized gain in the short position. On February 1 of Year 2, S closes the short position at an $11 gain.

(b) *Timing and attributes.* If the sale from S to B were a transfer between divisions of a single corporation, the $11 loss on the sale to X would have been deferred under section 1092(a)(1)(A). Accordingly, there is no difference in Year 1 between B's corresponding item of $0 and the recomputed corresponding item of $0. S takes its $11 loss into account in Year 2 to reflect the difference between B's corresponding item of $0 taken into account in Year 2 and the recomputed loss of $11 that would have been taken into account in Year 2 under section 1092(a)(1)(B) if S and B had been divisions of a single corporation. (The results are the same under section 267(f)).

Example 13. Manufacturer incentive payments. (a) *Facts.* B is a manufacturer that sells its products to independent dealers for resale. S is a credit company that offers financing, including financing to customers of the dealers. S also purchases the product from the dealers for lease to customers of the dealers. During Year 1, B initiates a program of incentive payments to the dealers' customers. Under B's program, S buys a product from an independent dealer for $100 and leases it to a nonmember. S pays $90 to the dealer for the product, and assigns to the dealer its $10 incentive payment from B. Under their separate entity accounting methods, B would deduct the $10 incentive payment in Year 1 and S would take a $90 basis in the product. Assume that if S and B were divisions of a single corporation, the $10 payment would not be deductible and the basis of the property would be $100.

(b) *Timing and attributes.* Under paragraph (b)(1) of this section, the incentive payment transaction is an intercompany transaction. Under paragraph (b)(2)(iii) of this section, S has a $10 intercompany item not yet taken into account under its separate entity method of accounting. Under the matching rule, S takes its intercompany item into account to reflect the difference between B's corresponding item taken into account and the recomputed corresponding item. In Year 1 there is a $10 difference between B's $10 deduction taken into account and the $0 recomputed deduction. Accordingly, under the matching rule S must take the $10 incentive payment into account as intercompany income in Year 1. S's $10 of income and B's $10 deduction are ordinary items. S's basis in the product is $100 rather than the $90 it would be under S's separate entity method of accounting. S's additional $10 of basis in the product is recovered based on subsequent events (e.g., S's cost recovery deductions or its sale of the product).

Example 14. Source of income under section 863. (a) *Intercompany sale with no independent factory price.* S manufactures inventory in the United States, and recognizes $75 of income on sales to B in Year 1. B distributes the inventory in Country Y and recognizes $25 of income on sales to X, also in Year 1. Title passes from S to B, and from B to X, in Country Y. There is no independent factory price (as defined in regulations under section 863) for the sale from S to B. Under the matching rule, S's $75 intercompany income and B's $25 corresponding income are taken into account in Year 1. In determining the source of income, S and B are treated as divisions of a single corporation, and section 863 applies

as if $100 of income were recognized from producing in the United States and selling in Country Y. Assume that applying the section 863 regulations on a single entity basis, $50 is treated as foreign source income and $50 as U.S. source income. Assume further that on a separate entity basis, S would have $37.50 of foreign source income and $37.50 of U.S. source income, and that all of B's $25 of income would be foreign source income. Thus, on a separate entity basis, S and B would have $62.50 of combined foreign source income and $37.50 of U.S. source income. Accordingly, under single entity treatment, $12.50 that would be treated as foreign source income on a separate entity basis is redetermined to be U.S. source income. Under paragraph (c)(1)(i) of this section, attributes are redetermined only to the extent of the $12.50 necessary to achieve the same effect as a single entity determination. Under paragraph (c)(4)(ii) of this section, the redetermined attribute must be allocated between S and B using a reasonable method. For example, it may be reasonable to recharacterize only S's foreign source income as U.S. source income because only S would have any U.S. source income on a separate entity basis. However, it may also be reasonable to allocate the redetermined attribute between S and B in proportion to their separate entity amounts of foreign source income (in a 3:2 ratio, so that $7.50 of S's foreign source income is redetermined to be U.S. source and $5 of B's foreign source income is redetermined to be U.S. source), provided the same method is applied to all similar transactions within the group.

(b) *Intercompany sale with independent factory price.* The facts are the same as in paragraph (a) of this *Example 14,* except that an independent factory price exists for the sale by S to B such that $70 of S's $75 of income is attributable to the production function. Assume that on a single entity basis, $70 is treated as U.S. source income (because of the existence of the independent factory price) and $30 is treated as foreign source income. Assume that on a separate entity basis, $70 of S's income would be treated as U.S. source, $5 of S's income would be treated as foreign source income, and all of B's $25 income would be treated as foreign source income. Because the results are the same on a single entity basis and a separate entity basis, the attributes are not redetermined under paragraph (c)(1)(i) of this section.

(c) *Sale of property reflecting intercompany services or intangibles.* S earns $10 of income performing services in the United States for B. B capitalizes S's fees into the basis of property that it manufactures in the United States and sells to an unrelated person in Year 1 at a $90 profit, with title passing in Country Y. Under the matching rule, S's $10 income and B's $90 income are taken into account in Year 1. In determining the source of income, S and B are treated as divisions of a single corporation, and section 863 applies as if $100 were earned from manufacturing in the United States and selling in Country Y. Assume that on a single entity basis $50 is treated as foreign source income and $50 is treated as U.S. source income. Assume that on a separate entity basis, S would have $10 of U.S. source income, and B would have $45 of foreign source income and $45 of U.S. source income. Accordingly, under single entity treatment, $5 of income that would be treated as U.S. source income on a separate entity basis is redetermined to be foreign source income. Under paragraph (c)(1)(i) of this section, attributes are redetermined only to the extent of the $5 necessary to achieve the same effect as a single entity determination. Under paragraph (c)(4)(ii) of this section, the redetermined attribute must be allocated between S and B using a reasonable method. (If instead of performing services, S licensed an intangible to B and earned $10 that would be treated as U.S. source income on a separate entity basis, the results would be the same.)

Example 15. Section 1248. (a) *Facts.* On January 1 of Year 1, S forms FT, a wholly owned foreign subsidiary, with a $10 contribution. During Years 1 through 3, FT has earnings and profits of $40. None of the earnings and profits is taxed as subpart F income under section 951, and FT distributes no dividends to S during this period. On January 1 of Year 4, S sells its FT stock to B for $50. While B owns FT, FT has a deficit in earnings and profits of $10. On July 1 of Year 6, B sells its FT stock for $70 to X, an unrelated foreign corporation.

(b) *Timing.* S's $40 of intercompany gain is taken into account in Year 6 to reflect the difference between B's $20 of gain taken into account and the $60 recomputed gain.

(c) *Attributes.* Under the matching rule, the attributes of S's intercompany gain and B's corresponding gain are redetermined to have the same effect on consolidated taxable income (and consolidated tax liability) as if S and B were divisions of a single corporation. On a single entity basis, there is $60 of gain and the portion which is characterized as a dividend under section 1248 is determined on the basis of FT's $30 of earnings and profits at the time of the sale of FT to X (the sum of FT's $40 of earnings and profits while held by S and FT's $10 deficit in earnings and profits while held by B). Therefore, $30 of the $60 gain is treated as a dividend under section 1248. The remaining $30 is treated as capital gain. On a separate entity basis, all of S's $40 gain would be treated as a dividend under section 1248 and all of B's $20 gain would be treated as capital gain. Thus, as a result of the single entity determination, $10 that would be treated as a dividend under section 1248 on a separate entity basis is redetermined to be capital gain. Under paragraph (c)(4)(ii) of this section, this redetermined attribute must be allocated between S's intercompany item and B's corresponding item by using a reasonable method. On a separate entity basis, only S would have any amount treated as a dividend under section 1248 available for redetermination. Accordingly, $10 of S's income is redetermined to be not subject to section 1248, with the result that $30 of S's intercompany gain is treated as a dividend and the remaining $10 is treated as capital gain. All of B's corresponding gain is treated as capital gain, as it would be on a separate entity basis.

(d) *B has loss.* The facts are the same as in paragraph (a) of this *Example 15,* except that FT has no earnings and profits or deficit in earnings and profits while B owns FT, and B sells the FT stock to X for $40. On a single entity basis, there is $30 of gain, and section 1248 is applied on the basis of FT's $40 earnings and profits at the time of the sale of FT to X. Under section 1248, the amount treated as a dividend is limited to $30 (the amount of the gain). On a separate entity basis, S's entire $40 gain would be treated as a dividend under section 1248, and B's $10 loss would be a capital loss. B's $10 corresponding loss offsets $10 of S's intercompany gain and, under paragraph (c)(4)(i) of this section, the attributes of B's corresponding item control. Accordingly, $10 of S's gain must be redetermined to be capital gain. B's $10 loss remains a capital loss. (If, however, S sold FT to B at a loss and B sold FT to X at a gain, it may be unreasonable for the attributes of B's corresponding gain to control S's offsetting intercompany loss. If B's attributes were to control, for example, the group could possibly claim a larger foreign tax credit than would be available if S and B were divisions of a single corporation.)

(d) *Acceleration rule.* S's intercompany items and B's corresponding items are taken into account under this paragraph (d) to the extent they cannot be taken into account to produce the effect of treating S and B as divisions of a single corporation. For this purpose, the following rules apply:

(1) *S's items*—(i) *Timing.* S takes its intercompany items into account to the extent they cannot be taken into account to produce the effect of treating S and B as divisions of a single corporation. The items are taken into account immediately before it first becomes impossible to achieve this effect. For this purpose, the effect cannot be achieved—

(A) To the extent an intercompany item or corresponding item will not be taken into account in determining the group's consolidated taxable income (or consolidated tax liability) under the matching rule (for example, if S or B becomes a nonmember, or if S's intercompany item is no longer reflected in the difference between B's basis (or an amount equivalent to basis) in property and the basis (or equivalent amount) the property would have if S and B were divisions of a single corporation); or

(B) To the extent a nonmember reflects, directly or indirectly, any aspect of the intercompany transaction (e.g., if B's cost basis in property purchased from S is reflected by a nonmember under section 362 following a section 351 transaction).

(ii) *Attributes.* The attributes of S's intercompany items taken into account

under this paragraph (d)(1) are determined as follows:

(A) *Sale, exchange, or distribution.* If the item is from an intercompany sale, exchange, or distribution of property, its attributes are determined under the principles of the matching rule as if B sold the property, at the time the item is taken into account under paragraph (d)(1)(i) of this section, for a cash payment equal to B's adjusted basis in the property (i.e., at no net gain or loss), to the following person:

(*1*) *Property leaves the group.* If the property is owned by a nonmember immediately after S's item is taken into account, B is treated as selling the property to that nonmember. If the nonmember is related for purposes of any provision of the Internal Revenue Code or regulations to any party to the intercompany transaction (or any related transaction) or to the common parent, the nonmember is treated as related to B for purposes of that provision. For example, if the nonmember is related to P within the meaning of section 1239(b), the deemed sale is treated as being described in section 1239(a). See paragraph (j)(6) of this section, under which property is not treated as being owned by a nonmember if it is owned by the common parent after the common parent becomes the only remaining member.

(*2*) *Property does not leave the group.* If the property is not owned by a nonmember immediately after S's item is taken into account, B is treated as selling the property to an affiliated corporation that is not a member of the group.

(B) *Other transactions.* If the item is from an intercompany transaction other than a sale, exchange, or distribution of property (e.g., income from S's services capitalized by B), its attributes are determined on a separate entity basis.

(2) *B's items*—(i) *Attributes.* The attributes of B's corresponding items continue to be redetermined under the principles of the matching rule, with the following adjustments:

(A) If S and B continue to join with each other in the filing of consolidated returns, the attributes of B's corresponding items (and any applicable holding periods) are determined by continuing to treat S and B as divisions of a single corporation.

(B) Once S and B no longer join with each other in the filing of consolidated returns, the attributes of B's corresponding items are determined as if the S division (but not the B division) were transferred by the single corporation to an unrelated person. Thus, S's activities (and any applicable holding period) before the intercompany transaction continue to affect the attributes of the corresponding items (and any applicable holding period).

(ii) *Timing.* If paragraph (d)(1) of this section applies to S, B nevertheless continues to take its corresponding items into account under its accounting method. However, the redetermination of the attributes of a corresponding item under this paragraph (d)(2) might affect its timing.

(3) *Examples.* The acceleration rule of this paragraph (d) is illustrated by the following examples.

Example 1. Becoming a nonmember—timing. (a) *Facts.* S owns land with a basis of $70. On January 1 of Year 1, S sells the land to B for $100. On July 1 of Year 3, P sells 60% of S's stock to X for $60 and, as a result, S becomes a nonmember.

(b) *Matching rule.* Under the matching rule, none of S's $30 gain is taken into account in Years 1 through 3 because there is no difference between B's $0 gain or loss taken into account and the recomputed gain or loss.

(c) *Acceleration of S's intercompany items.* Under the acceleration rule of paragraph (d) of this section, S's $30 gain is taken into account in computing consolidated taxable income (and consolidated tax liability) immediately before the effect of treating S and B as divisions of a single corporation cannot be produced. Because the effect cannot be produced once S becomes a nonmember, S takes its $30 gain into account in Year 3 immediately before becoming a nonmember. S's gain is reflected under § 1.1502–32 in P's basis in the S stock immediately before P's sale of the stock. Under § 1.1502–32, P's basis in the S stock is increased by $30, and therefore P's gain is reduced (or loss is increased) by $18 (60% of $30). See also §§ 1.1502–33 and 1.1502–76(b). (The results would be the same if S sold the land to B in an installment sale to which section 453 would otherwise apply, because S must take its intercompany gain into account under this section.)

(d) *B's corresponding items.* Notwithstanding the acceleration of S's gain, B continues to take its corresponding items into account under its accounting method. Thus, B's items from the land are taken into account based on subsequent events (e.g., its sale of the land).

(e) *Sale of B's stock.* The facts are the same as in paragraph (a) of this *Example 1,* except that P sells 60% of B's stock (rather than S stock) to X for $60 and, as a result, B becomes a nonmember. Because the effect of treating S and B as divisions of a single corporation cannot be produced once B becomes a nonmember, S takes its $30 gain into account under the acceleration rule immediately before B becomes a nonmember. (The results would be the same if S sold the land to B in an installment sale to which section 453 would otherwise apply, because S must take its intercompany gain into account under this section.)

(f) *Discontinue filing consolidated returns.* The facts are the same as in paragraph (a) of this *Example 1,* except that the P group receives permission under § 1.1502–75(c) to discontinue filing consolidated returns beginning in Year 3. Under the acceleration rule, S takes its $30 gain into account on December 31 of Year 2.

(g) *No subgroups.* The facts are the same as in paragraph (a) of this *Example 1,* except that P simultaneously sells all of the stock of both S and B to X (rather than 60% of S's stock), and S and B become members of the X consolidated group. Because the effect of treating S and B as divisions of a single corporation in the P group cannot be produced once S and B become nonmembers, S takes its $30 gain into account under the acceleration rule immediately before S and B become nonmembers. (Paragraph (j)(5) of this section does not apply to treat the X consolidated group as succeeding to the P group because the X group acquired only the stock of S and B.) However, so long as S and B continue to join with each other in the filing of consolidated returns, B continues to treat S and B as divisions of a single corporation for purposes of determining the attributes of B's corresponding items from the land.

Example 2. Becoming a nonmember—attributes. (a) *Facts.* S holds land for investment with a basis of $70. On January 1 of Year 1, S sells the land to B for $100. B holds the land for sale to customers in the ordinary course of business, and expends substantial resources over a two-year period subdividing, developing, and marketing the land. On July 1 of Year 3, before B has sold any of the land, P sells 60% of S's stock to X for $60 and, as a result, S becomes a nonmember.

(b) *Attributes.* Under the acceleration rule, the attributes of S's gain are redetermined under the principles of the matching rule as if B sold the land to an affiliated corporation that is not a member of the group for a cash payment equal to B's adjusted basis in the land (because the land continues to be held within the group). Thus, whether S's gain is capital gain or ordinary income depends on the activities of both S and B. Because S and B no longer join with each other in the filing of consolidated returns, the attributes of B's corresponding items (e.g., from its subsequent sale of the land) are redetermined under the principles of the matching rule as if the S division (but not the B division) were transferred by the single corporation to an unrelated person at the time of P's sale of the S stock. Thus, B continues to take into account the activities of S with respect to the land before the intercompany transaction.

(c) *Depreciable property.* The facts are the same as in paragraph (a) of this *Example 2,* except that the property sold by S to B is depreciable property. Section 1239 applies to treat all of S's gain as ordinary income because it is taken into account as a result of B's deemed sale of the property to a affiliated corporation that is not a member of the group (a related person within the meaning of section 1239(b)).

Example 3. Selling member's disposition of installment note. (a) *Facts.* S owns land with a basis of $70. On January 1 of Year 1, S sells the land to B in exchange for B's $110 note. The note bears a market rate of interest in excess of the applicable Federal rate, and

provides for principal payments of $55 in Year 4 and $55 in Year 5. On July 1 of Year 3, S sells B's note to X for $110.

(b) *Timing.* S's intercompany gain is taken into account under this section, and not under the rules of section 453. Consequently, S's sale of B's note does not result in its intercompany gain from the land being taken into account (e.g., under section 453B). The sale does not prevent S's intercompany items and B's corresponding items from being taken into account in determining the group's consolidated taxable income under the matching rule, and X does not reflect any aspect of the intercompany transaction (X has its own cost basis in the note). S will take the intercompany gain into account under the matching rule or acceleration rule based on subsequent events (e.g., B's sale of the land). See also paragraph (g) of this section for additional rules applicable to B's note as an intercompany obligation.

Example 4. Cancellation of debt and attribute reduction under section 108(b). (a) *Facts.* S holds land for investment with a basis of $0. On January 1 of Year 1, S sells the land to B for $100. B also holds the land for investment. During Year 3, B is insolvent and B's nonmember creditors discharge $60 of B's indebtedness. Because of insolvency, B's $60 discharge is excluded from B's gross income under section 108(a), and B reduces the basis of the land by $60 under sections 108(b) and 1017.

(b) *Acceleration rule.* As a result of B's basis reduction under section 1017, $60 of S's intercompany gain will not be taken into account under the matching rule (because there is only a $40 difference between B's $40 basis in the land and the $0 basis the land would have if S and B were divisions of a single corporation). Accordingly, S takes $60 of its gain into account under the acceleration rule in Year 3. S's gain is long-term capital gain, determined under paragraph (d)(1)(ii) of this section as if B sold the land to an affiliated corporation that is not a member of the group for $100 immediately before the basis reduction.

(c) *Purchase price adjustment.* Assume instead that S sells the land to B in exchange for B's $100 purchase money note, B remains solvent, and S subsequently agrees to discharge $60 of the note as a purchase price adjustment to which section 108(e)(5) applies. Under applicable principles of tax law, $60 of S's gain and $60 of B's basis in the land are eliminated and never taken into account. Similarly, the note is not treated as satisfied and reissued under paragraph (g) of this section.

Example 5. Section 481. (a) *Facts.* S operates several trades or businesses, including a manufacturing business. S receives permission to change its method of accounting for valuing inventory for its manufacturing business. S increases the basis of its ending inventory by $100, and the related $100 positive section 481(a) adjustment is to be taken into account ratably over six taxable years, beginning in Year 1. During Year 3, S sells all of the assets used in its manufacturing business to B at a gain. Immediately after the transfer, B does not use the same inventory valuation method as S. On a separate entity basis, S's sale results in an acceleration of the balance of the section 481(a) adjustment to Year 3.

(b) *Timing and attributes.* Under paragraph (b)(2) of this section, the balance of S's section 481(a) adjustment accelerated to Year 3 is intercompany income. However, S's $100 basis increase before the intercompany transaction eliminates the related difference for this amount between B's corresponding items taken into account and the recomputed corresponding items in subsequent periods. Because the accelerated section 481(a) adjustment will not be taken into account in determining the group's consolidated taxable income (and consolidated tax liability) under the matching rule, the balance of S's section 481 adjustment is taken into account under the acceleration rule as ordinary income at the time of the intercompany transaction. (If S's sale had not resulted in accelerating S's section 481(a) adjustment on a separate entity basis, S would have no intercompany income to be taken into account under this section.)

(e) *Simplifying rules*—(1) *Dollar-value LIFO inventory methods*—(i) *In general.* This paragraph (e)(1) applies if either S or B uses a dollar-value LIFO inventory method to account for intercompany transactions. Rather than applying the matching rule separately to each intercompany inventory transaction, this paragraph (e)(1) provides methods to apply an aggregate approach that is based on dollar-value LIFO inventory accounting. Any method selected under this paragraph (e)(1) must be applied consistently.

(ii) *B uses dollar-value LIFO*—(A) *In general.* If B uses a dollar-value LIFO inventory method to account for its intercompany inventory purchases, and includes all of its inventory costs incurred for a year in its cost of goods sold for the year (that is, B has no inventory increment for the year), S takes into account all of its intercompany inventory items for the year. If B does not include all of its inventory costs incurred for the year in its cost of goods sold for the year (that is, B has an inventory increment for the year), S does not take all of its intercompany inventory income or loss into account. The amount not taken into account is determined under either the increment averaging method of paragraph (e)(1)(ii)(B) of this section or the increment valuation method of paragraph (e)(1)(ii)(C) of this section. Separate computations are made for each pool of B that receives intercompany purchases from S, and S's amount not taken into account is layered based on B's LIFO inventory layers.

(B) *Increment averaging method.* Under this paragraph (e)(1)(ii)(B), the amount not taken into account is the amount of S's intercompany inventory income or loss multiplied by the ratio of the LIFO value of B's current-year costs of its layer of increment to B's total inventory costs incurred for the year under its LIFO inventory method. If B includes more than its inventory costs incurred during any subsequent year in its cost of goods sold (a decrement), S takes into account the intercompany inventory income or loss layers in the same manner and proportion as B takes into account its inventory decrements.

(C) *Increment valuation method.* Under this paragraph (e)(1)(ii)(C), the amount not taken into account is the amount of S's intercompany inventory income or loss for the appropriate period multiplied by the ratio of the LIFO value of B's current-year costs of its layer of increment to B's total inventory costs incurred in the appropriate period under its LIFO inventory method. The principles of paragraph (e)(1)(ii)(B) of this section otherwise apply. The appropriate period is the period of B's year used to determine its current-year costs.

(iii) *S uses dollar-value LIFO.* If S uses a dollar-value LIFO inventory method to account for its intercompany inventory sales, S may use any reasonable method of allocating its LIFO inventory costs to intercompany transactions. LIFO inventory costs include costs of prior layers if a decrement occurs. For example, a reasonable allocation of the most recent costs incurred during the consolidated return year can be used to compute S's intercompany inventory income or loss for the year if S has an inventory increment and uses the earliest acquisitions costs method, but S must apportion costs from the most recent appropriate layers of increment if an inventory decrement occurs for the year.

(iv) *Other reasonable methods.* S or B may use a method not specifically provided in this paragraph (e)(1) that is expected to reasonably take into account intercompany items and corresponding items from intercompany inventory transactions. However, if the method used results, for any year, in a cumulative amount of intercompany inventory items not taken into account by S that significantly exceeds the cumulative amount that would not be taken into account under paragraph (e)(1)(ii) or (iii) of this section, S must take into account for that year the amount necessary to eliminate the excess. The method is thereafter applied with appropriate adjustments to reflect the amount taken into account.

(v) *Examples.* The inventory rules of this paragraph (e)(1) are illustrated by the following examples.

Example 1. Increment averaging method. (a) *Facts.* Both S and B use a double-

extension, dollar-value LIFO inventory method, and both value inventory increments using the earliest acquisitions cost valuation method. During Year 2, S sells 25 units of product Q to B on January 15 at $10/unit. S sells another 25 units on April 15, on July 15, and on September 15, at $12/unit. S's earliest cost of product Q is $7.50/unit and S's most recent cost of product Q is $8.00/unit. Both S and B have an inventory increment for the year. B's total inventory costs incurred during Year 2 are $6,000 and the LIFO value of B's Year 2 layer of increment is $600.

(b) *Intercompany inventory income.* Under paragraph (e)(1)(iii) of this section, S must use a reasonable method of allocating its LIFO inventory costs to intercompany transactions. Because S has an inventory increment for Year 2 and uses the earliest acquisitions cost method, a reasonable method of determining its intercompany cost of goods sold for product Q is to use its most recent costs. Thus, its intercompany cost of goods sold is $800 ($8.00 most recent cost, multiplied by 100 units sold to B), and its intercompany inventory income is $350 ($1,150 sales proceeds from B minus $800 cost).

(c) *Timing.* (i) Under the increment averaging method of paragraph (e)(1)(ii)(B) of this section, $35 of S's $350 of intercompany inventory income is not taken into account in Year 2, computed as follows:

$$\frac{\text{LIFO value of B's Year 2 layer of increment}}{\text{B's total inventory costs for Year 2}} = \frac{\$600}{\$6{,}000} = 10\%$$

$$10\% \times \text{S's \$350 intercompany inventory income} = \$35$$

(ii) Thus, $315 of S's intercompany inventory income is taken into account in Year 2 ($350 of total intercompany inventory income minus $35 not taken into account).

(d) *S incurs a decrement.* The facts are the same as in paragraph (a) of this *Example 1,* except that in Year 2, S incurs a decrement equal to 50% of its Year 1 layer. Under paragraph (e)(1)(iii) of this section, S must reasonably allocate the LIFO cost of the decrement to the cost of goods sold to B to determine S's intercompany inventory income.

(e) *B incurs a decrement.* The facts are the same as in paragraph (a) of this *Example 1,* except that B incurs a decrement in Year 2. S must take into account the entire $350 of Year 2 intercompany inventory income because all 100 units of product Q are deemed sold by B in Year 2.

Example 2. Increment valuation method. (a) The facts are the same as in Example 1. In addition, B's use of the earliest acquisition's cost method of valuing its increments results in B valuing its year-end inventory using costs incurred from January through March. B's costs incurred during the year are: $1,428 in the period January through March; $1,498 in the period April through June; $1,524 in the period July through September; and $1,550 in the period October through December. S's intercompany inventory income for these periods is: $50 in the period January through March ((25×$10) − (25×$8)); $100 in the period April through June ((25×$12) − (25×$8)); $100 in the period July through September ((25×$12) − (25×$8)); and $100 in the period October through December ((25×$12) − (25×$8)).

(b) *Timing.* (i) Under the increment valuation method of paragraph (e)(1)(ii)(C) of this section, $21 of S's $350 of intercompany inventory income is not taken into account in Year 2, computed as follows:

$$\frac{\text{LIFO value of B's Year 2 layer of increment}}{\text{B's total inventory costs from January through March of Year 2}} = \frac{\$600}{\$1{,}428} = 42\%$$

$$42\% \times \text{S's \$50 intercompany inventory income for the period from January through March} = \$21$$

(ii) Thus, $329 of S's intercompany inventory income is taken into account in Year 2 ($350 of total intercompany inventory income minus $21 not taken into account).

(c) *B incurs a subsequent decrement.* The facts are the same as in paragraph (a) of this *Example 2.* In addition, assume that in Year 3, B experiences a decrement in its pool that receives intercompany purchases from S. B's decrement equals 20% of the base-year costs for its Year 2 layer. The fact that B has incurred a decrement means that all of its inventory costs incurred for Year 3 are included in cost of goods sold. As a result, S takes into account its entire amount of intercompany inventory income from its Year 3 sales. In addition, S takes into account $4.20 of its Year 2 layer of intercompany inventory income not already taken into account (20% of $21).

Example 3. Other reasonable inventory methods. (a) *Facts.* Both S and B use a dollar-value LIFO inventory method for their inventory transactions. During Year 1, S sells inventory to B and to X. Under paragraph (e)(1)(iv) of this section, to compute its intercompany inventory income and the amount of this income not taken into account, S computes its intercompany inventory income using the transfer price of the inventory items less a FIFO cost for the goods, takes into account these items based on a FIFO cost flow assumption for B's corresponding items, and the LIFO methods used by S and B are ignored for these computations. These computations are comparable to the methods used by S and B for financial reporting purposes, and the book methods and results are used for tax purposes. S adjusts the amount of intercompany inventory items not taken into account as required by section 263A.

(b) *Reasonable method.* The method used by S is a reasonable method under paragraph (e)(1)(iv) of this section if the cumulative amount of intercompany inventory items not taken into account by S is not significantly greater than the cumulative amount that would not be taken into account under the methods specifically described in paragraph (e)(1) of this section. If, for any year, the method results in a cumulative amount of intercompany inventory items not taken into account by S that significantly exceeds the cumulative amount that would not be taken into account under the methods specifically provided, S must take into account for that year the amount necessary to eliminate the excess. The method is thereafter applied with appropriate adjustments to reflect the amount taken into account (e.g., to prevent the amount from being taken into account more than once).

(2) *Reserve accounting*—(i) *Banks and thrifts.* Except as provided in paragraph (g)(3)(iv) of this section (deferral of items from an intercompany obligation), a member's addition to, or reduction of, a reserve for bad debts that is maintained under section 585 or 593 is taken into account on a separate entity basis. For example, if S makes a loan to a nonmember and subsequently sells the loan to B, any deduction for an addition to a bad debt reserve under section 585 and any recapture income (or reduced bad debt deductions) are taken into account on a separate entity basis rather than as intercompany items or corresponding items taken into account under this section. Any gain or loss of S from its sale of the loan to B is taken into account under this section, however, to the extent it is not attributable to recapture of the reserve.

(ii) *Insurance companies*—(A) *Direct insurance.* If a member provides insurance to another member in an intercompany transaction, the

transaction is taken into account by both members on a separate entity basis. For example, if one member provides life insurance coverage for another member with respect to its employees, the premiums, reserve increases and decreases, and death benefit payments are determined and taken into account by both members on a separate entity basis rather than taken into account under this section as intercompany items and corresponding items.

(B) *Reinsurance—(1) In general.* Paragraph (e)(2)(ii)(A) of this section does not apply to a reinsurance transaction that is an intercompany transaction. For example, if a member assumes all or a portion of the risk on an insurance contract written by another member, the amounts transferred as reinsurance premiums, expense allowances, benefit reimbursements, reimbursed policyholder dividends, experience rating adjustments, and other similar items are taken into account under the matching rule and the acceleration rule. For purposes of this section, the assuming company is treated as B and the ceding company is treated as S.

(*2*) *Reserves determined on a separate entity basis.* For purposes of determining the amount of a member's increase or decrease in reserves, the amount of any reserve item listed in section 807(c) or 832(b)(5) resulting from a reinsurance transaction that is an intercompany transaction is determined on a separate entity basis. But see section 845, under which the Commissioner may allocate between or among the members any items, recharacterize any such items, or make any other adjustments necessary to reflect the proper source and character of the separate taxable income of a member.

(3) *Consent to treat intercompany transactions on a separate entity basis*—(i) *General rule.* The common parent may request consent to take into account on a separate entity basis items from intercompany transactions other than intercompany transactions with respect to stock or obligations of members. Consent may be granted for all items, or for items from a class or classes of transactions. The consent is effective only if granted in writing by the Internal Revenue Service. Unless revoked with the written consent of the Internal Revenue Service, the separate entity treatment applies to all affected intercompany transactions in the consolidated return year for which consent is granted and in all subsequent consolidated return years. Consent under this paragraph (e)(3) does not apply for purposes of taking into account losses and deductions deferred under section 267(f).

(ii) *Time and manner for requesting consent.* The request for consent described in paragraph (e)(3)(i) of this section must be made in the form of a ruling request. The request must be signed by the common parent, include any information required by the Internal Revenue Service, and be filed on or before the due date of the consolidated return (not including extensions of time) for the first consolidated return year to which the consent is to apply. The Internal Revenue Service may impose terms and conditions for granting consent. A copy of the consent must be attached to the group's consolidated returns (or amended returns) as required by the terms of the consent.

(iii) *Effect of consent on methods of accounting.* A consent for separate entity accounting under this paragraph (e)(3), and a revocation of that consent, may require changes in members' methods of accounting for intercompany transactions. Because the consent, or a revocation of the consent, is effective for all intercompany transactions occurring in the consolidated return year for which the consent or revocation is first effective, any change in method is effected on a cut-off basis. Section 446(e) consent is granted for any changes in methods of accounting for intercompany transactions that are necessary solely to conform a member's methods to a binding consent with respect to the group under this paragraph (e)(3) or the revocation of that consent, provided the changes are made in the first consolidated return year for which the consent or revocation under this paragraph (e)(3) is effective. Therefore, section 446(e) consent must be separately requested under applicable administrative procedures if a member has failed to conform its practices to the separate entity accounting provided under this paragraph (e)(3) or the revocation of that treatment in the first consolidated return year for which the consent to use separate entity accounting or revocation of that consent is effective.

(iv) *Consent to treat intercompany transactions on a separate entity basis under prior law.* A group that has received consent that is in effect as of the first day of the first consolidated return year beginning on or after July 12, 1995 to treat certain intercompany transactions as provided in § 1.1502–13(c)(3) of the regulations (as contained in the 26 CFR part 1 edition revised as of April 1, 1995) will be considered to have obtained the consent of the Commissioner to take items from intercompany transactions into account on a separate entity basis as provided in paragraph (e)(3)(i) of this section. This treatment is applicable only to the items, class or classes of transactions for which consent was granted under prior law.

(f) *Stock of members*—(1) *In general.* In addition to the general rules of this section, the rules of this paragraph (f) apply to stock of members.

(2) *Intercompany distributions to which section 301 applies*—(i) *In general.* This paragraph (f)(2) provides rules for intercompany transactions to which section 301 applies (intercompany distributions). For purposes of determining whether a distribution is an intercompany distribution, it is treated as occurring under the principles of the entitlement rule of paragraph (f)(2)(iv) of this section. A distribution is not an intercompany distribution to the extent it is deducted by the distributing member. See, for example, section 1382(c)(1).

(ii) *Distributee member.* An intercompany distribution is not included in the gross income of the distributee member (B). However, this exclusion applies to a distribution only to the extent there is a corresponding negative adjustment reflected under § 1.1502–32 in B's basis in the stock of the distributing member (S). For example, no amount is included in B's gross income under section 301(c)(3) from a distribution in excess of the basis of the stock of a subsidiary that results in an excess loss account under § 1.1502–32(a) which is treated as negative basis under § 1.1502–19. See § 1.1502–26(b) (applicability of the dividends received deduction to distributions not excluded from gross income, such as a distribution from the common parent to a subsidiary owning stock of the common parent).

(iii) *Distributing member.* The principles of section 311(b) apply to S's loss, as well as gain, from an intercompany distribution of property. Thus, S's loss is taken into account under the matching rule if the property is subsequently sold to a nonmember. However, section 311(a) continues to apply to distributions to nonmembers (for example, loss is not recognized).

(iv) *Entitlement rule*—(A) *In general.* For all Federal income tax purposes, an intercompany distribution is treated as taken into account when the shareholding member becomes entitled to it (generally on the record date). For example, if B becomes entitled to a cash distribution before it is made, the distribution is treated as made when B becomes entitled to it. For this purpose, B is treated as entitled to a distribution

no later than the time the distribution is taken into account under the Internal Revenue Code (e.g., under section 305(c)). To the extent a distribution is not made, appropriate adjustments must be made as of the date it was taken into account.

(B) *Nonmember shareholders.* If nonmembers own stock of the distributing corporation at the time the distribution is treated as occurring under this paragraph (f)(2)(iv), appropriate adjustments must be made to prevent the acceleration of the distribution to members from affecting distributions to nonmembers.

(3) *Boot in an intercompany reorganization*—(i) *Scope.* This paragraph (f)(3) provides additional rules for an intercompany transaction in which the receipt of money or other property (nonqualifying property) results in the application of section 356. For example, the distribution of stock of a lower-tier member to a higher-tier member in an intercompany transaction to which section 355 would apply but for the receipt of nonqualifying property is a transaction to which this paragraph (f)(3) applies. This paragraph (f)(3) does not apply if a party to the transaction becomes a member or nonmember as part of the same plan or arrangement. For example, if S merges into a nonmember in a transaction described in section 368(a)(1)(A), this paragraph (f)(3) does not apply.

(ii) *Treatment.* Nonqualifying property received as part of a transaction described in this paragraph (f)(3) is treated as received by the member shareholder in a separate transaction. See, for example, sections 302 and 311 (rather than sections 356 and 361). The nonqualifying property is treated as taken into account immediately after the transaction if section 354 would apply but for the fact that nonqualifying property is received. It is treated as taken into account immediately before the transaction if section 355 would apply but for the fact that nonqualifying property is received. The treatment under this paragraph (f)(3)(ii) applies for all Federal income tax purposes.

(4) *Acquisition by issuer of its own stock.* If a member acquires its own stock, or an option to buy or sell its own stock, in an intercompany transaction, the member's basis in that stock or option is treated as eliminated for all purposes. Accordingly, S's intercompany items from the stock or options of B are taken into account under this section if B acquires the stock or options in an intercompany transaction (unless, for example, B acquires the stock in exchange for successor property within the meaning of paragraph (j)(1) of this section in a nonrecognition transaction). For example, if B redeems its stock from S in a transaction to which section 302(a) applies, S's gain from the transaction is taken into account immediately under the acceleration rule.

(5) *Certain liquidations and distributions*—(i) *Netting allowed.* S's intercompany item from a transfer to B of the stock of another corporation (T) is taken into account under this section in certain circumstances even though the T stock is never held by a nonmember after the intercompany transaction. For example, if S sells all of T's stock to B at a gain, and T subsequently liquidates into B in a separate transaction to which section 332 applies, S's gain is taken into account under the matching rule. Under paragraph (c)(6)(ii) of this section, S's intercompany gain taken into account as a result of a liquidation under section 332 or a comparable nonrecognition transaction is not redetermined to be excluded from gross income. Under this paragraph (f)(5)(i), if S has both intercompany income or gain and intercompany deduction or loss attributable to stock of the same corporation having the same material terms, only the income or gain in excess of the deduction or loss is subject to paragraph (c)(6)(ii) of this section. This paragraph (f)(5)(i) applies only to a transaction in which B's basis in its T stock is permanently eliminated in a liquidation under section 332 or any comparable nonrecognition transaction, including—

(A) A merger of B into T under section 368(a);

(B) A distribution by B of its T stock in a transaction described in section 355; or

(C) A deemed liquidation of T resulting from an election under section 338(h)(10).

(ii) *Elective relief*—(A) *In general.* If an election is made pursuant to this paragraph (f)(5)(ii), certain transactions are recharacterized to prevent S's items from being taken into account or to provide offsets to those items. This paragraph (f)(5)(ii) applies only if T is a member throughout the period beginning with S's transfer and ending with the completion of the nonrecognition transaction.

(B) *Section 332*—(*1*) *In general.* If section 332 applies to T's liquidation into B, and B transfers T's assets to a new member (new T) in a transaction not otherwise pursuant to the same plan or arrangement as the liquidation, the transfer is nevertheless treated for all Federal income tax purposes as pursuant to the same plan or arrangement as the liquidation. For example, if T liquidates into B, but B forms new T by transferring substantially all of T's former assets to new T, S's intercompany gain or loss generally is not taken into account solely as a result of the liquidation if the liquidation and transfer would qualify as a reorganization described in section 368(a). (Under paragraph (j)(1) of this section, B's stock in new T would be a successor asset to B's stock in T, and S's gain would be taken into account based on the new T stock.)

(*2*) *Time limitation and adjustments.* The transfer of an asset to new T not otherwise pursuant to the same plan or arrangement as the liquidation is treated under this paragraph (f)(5)(ii)(B) as pursuant to the same plan or arrangement only if B transfers it to new T pursuant to a written plan, a copy of which is attached to a timely filed original return (including extensions) for the year of T's liquidation, and the transfer is completed within 12 months of the filing of that return. Appropriate adjustments are made to reflect any events occurring before the formation of new T and to reflect any assets not transferred to new T as part of the same plan or arrangement. For example, if B retains an asset in the reorganization, the asset is treated under paragraph (f)(3) of this section as acquired by new T but distributed to B immediately after the reorganization.

(*3*) *Downstream merger, etc.* The principles of this paragraph (f)(5)(ii)(B) apply, with appropriate adjustments, if B's basis in the T stock is eliminated in a transaction similar to a section 332 liquidation, such as a transaction described in section 368 in which B merges into T. For example, if S and B are subsidiaries, and S sells all of T's stock to B at a gain followed by B's merger into T in a separate transaction described in section 368(a), S's gain is not taken into account solely as a result of the merger if T (as successor to B) forms new T with substantially all of T's former assets.

(C) *Section 338(h)(10)*—(*1*) *In general.* This paragraph (f)(5)(ii)(C) applies to a deemed liquidation of T under section 332 as the result of an election under section 338(h)(10). This paragraph (f)(5)(ii)(C) does not apply if paragraph (f)(5)(ii)(B) of this section is applied to the deemed liquidation. Under this paragraph, B is treated with respect to each share of its T stock as recognizing as a corresponding item any loss or deduction it would recognize (determined after adjusting stock basis under § 1.1502–32) if section 331 applied to the deemed liquidation. For

all other Federal income tax purposes, the deemed liquidation remains subject to section 332.

(*2*) *Limitation on amount of loss.* The amount of B's loss or deduction under this paragraph (f)(5)(ii)(C) is limited as follows—

(*i*) The aggregate amount of loss recognized with respect to T stock cannot exceed the amount of S's intercompany income or gain that is in excess of S's intercompany deduction or loss with respect to shares of T stock having the same material terms as the shares giving rise to S's intercompany income or gain; and

(*ii*) The aggregate amount of loss recognized under this paragraph (f)(5)(ii)(C) from T's deemed liquidation cannot exceed the net amount of deduction or loss (if any) that would be taken into account from the deemed liquidation if section 331 applied with respect to all T shares.

(*3*) *Asset sale, etc.* The principles of this paragraph (f)(5)(ii)(C) apply, with appropriate adjustments, if T transfers all of its assets to a nonmember and completely liquidates in a transaction comparable to the section 338(h)(10) transaction described in paragraph (f)(5)(ii)(C)(*1*) of this section. For example, if S sells all of T's stock to B at a gain followed by T's merger into a nonmember in exchange for a cash payment to B in a transaction treated for Federal income tax purposes as T's sale of its assets to the nonmember and complete liquidation, the merger is ordinarily treated as a comparable transaction.

(D) *Section 355.* If B distributes the T stock in an intercompany transaction to which section 355 applies (including an intercompany transaction to which 355 applies because of the application of paragraph (f)(3) of this section), the redetermination of the basis of the T stock under section 358 could cause S's gain or loss to be taken into account under this section. This paragraph (f)(5)(ii)(D) applies to treat B's distribution as subject to sections 301 and 311 (as modified by this paragraph (f)), rather than section 355. The election will prevent S's gain or loss from being taken into account immediately to the extent matching remains possible, but B's gain or loss from the distribution will also be taken into account under this section.

(E) *Election.* An election to apply this paragraph (f)(5)(ii) is made in a separate statement entitled ''[Insert Name and Employer Identification Number of Common Parent] HEREBY ELECTS THE APPLICATION OF § 1.1502–13(f)(5)(ii).'' The election must include a description of S's intercompany transaction and T's liquidation (or other transaction). It must specify which provision of § 1.1502–13(f)(5)(ii) applies and how it alters the otherwise applicable results under this section (including, for example, the amount of S's intercompany items and the amount deferred or offset as a result of this § 1.1502–13(f)(5)(ii)). A separate election must be made for each application of this paragraph (f)(5)(ii). The election must be signed by the common parent and filed with the group's income tax return for the year of T's liquidation (or other transaction). The Commissioner may impose reasonable terms and conditions to the application of this paragraph (f)(5)(ii) that are consistent with the purposes of this section.

(6) [Reserved]

(7) *Examples.* The application of this section to intercompany transactions with respect to stock of members is illustrated by the following examples.

Example 1. Dividend exclusion and property distribution. (a) *Facts.* S owns land with a $70 basis and $100 value. On January 1 of Year 1, P's basis in S's stock is $100. During Year 1, S declares and makes a dividend distribution of the land to P. Under section 311(b), S has a $30 gain. Under section 301(d), P's basis in the land is $100. On July 1 of Year 3, P sells the land to X for $110.

(b) *Dividend elimination and stock basis adjustments.* Under paragraph (b)(1) of this section, S's distribution to P is an intercompany distribution. Under paragraph (f)(2)(ii) of this section, P's $100 of dividend income is not included in gross income. Under § 1.1502–32, P's basis in S's stock is reduced from $100 to $0 in Year 1.

(c) *Matching rule and stock basis adjustments.* Under the matching rule (treating P as the buying member and S as the selling member), S takes its $30 gain into account in Year 3 to reflect the $30 difference between P's $10 gain taken into account and the $40 recomputed gain. Under § 1.1502–32, P's basis in S's stock is increased from $0 to $30 in Year 3.

(d) *Loss property.* The facts are the same as in paragraph (a) of this *Example 1*, except that S has a $130 (rather than $70) basis in the land. Under paragraph (f)(2)(iii) of this section, the principles of section 311(b) apply to S's loss from the intercompany distribution. Thus, S has a $30 loss that is taken into account under the matching rule in Year 3 to reflect the $30 difference between P's $10 gain taken into account and the $20 recomputed loss. (The results are the same under section 267(f).) Under § 1.1502–32, P's basis in S's stock is reduced from $100 to $0 in Year 1, and from $0 to a $30 excess loss account in Year 3. (If P had distributed the land to its shareholders, rather than selling the land to X, P would take its $10 gain under section 311(b) into account, and S would take its $30 loss into account under the matching rule with $10 offset by P's gain and $20 recharacterized as a noncapital, nondeductible amount.)

(e) *Entitlement rule.* The facts are the same as in paragraph (a) of this *Example 1*, except that, after P becomes entitled to the distribution but before the distribution is made, S issues additional stock to the public and becomes a nonmember. Under paragraph (f)(2)(i) of this section, the determination of whether a distribution is an intercompany distribution is made under the entitlement rule of paragraph (f)(2)(iv) of this section. Treating S's distribution as made when P becomes entitled to it results in the distribution being an intercompany distribution. Under paragraph (f)(2)(ii) of this section, the distribution is not included in P's gross income. S's $30 gain from the distribution is intercompany gain that is taken into account under the acceleration rule immediately before S becomes a nonmember. Thus, there is a net $70 decrease in P's basis in its S stock under § 1.1502–32 ($100 decrease for the distribution and a $30 increase for S's $30 gain). See also § 1.1502–20(b) (additional stock basis reductions applicable to certain deconsolidations). Under paragraph (f)(2)(iv) of this section, P does not take the distribution into account again under separate return rules when received, and P is not entitled to a dividends received deduction.

Example 2. Excess loss accounts. (a) *Facts.* S owns all of T's only class of stock with a $10 basis and $100 value. S has substantial earnings and profits, and T has $10 of earnings and profits. On January 1 of Year 1, S declares and distributes a dividend of all of the T stock to P. Under section 311(b), S has a $90 gain. Under section 301(d), P's basis in the T stock is $100. During Year 3, T borrows $90 and declares and makes a $90 distribution to P to which section 301 applies, and P's basis in the T stock is reduced under § 1.1502–32 from $100 to $10. During Year 6, T has $5 of earnings that increase P's basis in the T stock under § 1.1502–32 from $10 to $15. On December 1 of Year 9, T issues additional stock to X and, as a result, T becomes a nonmember.

(b) *Dividend exclusion.* Under paragraph (f)(2)(ii) of this section, P's $100 of dividend income from S's distribution of the T stock, and its $10 of dividend income from T's $90 distribution, are not included in gross income.

(c) *Matching and acceleration rules.* Under § 1.1502–19(b)(1), when T becomes a nonmember P must include in income the amount of its excess loss account (if any) in T stock. P has no excess loss account in the T stock. Therefore P's corresponding item from the deconsolidation of T is $0. Treating S and P as divisions of a single corporation, the T stock would continue to have a $10 basis after the distribution, and the adjustments under § 1.1502–32 for T's $90 distribution and $5 of earnings would result in a $75 excess loss account. Thus, the recomputed corresponding item from the deconsolidation is $75. Under the matching rule, S takes $75 of its $90 gain into account in Year 9 as a result of T becoming a nonmember, to reflect the difference between P's $0 gain taken into account and the $75 recomputed gain. S's remaining $15 of gain is taken into account under the matching and acceleration rules based on subsequent

events (for example, under the matching rule if P subsequently sells its T stock, or under the acceleration rule if S becomes a nonmember).

(d) *Reverse sequence.* The facts are the same as in paragraph (a) of this *Example 2,* except that T borrows $90 and makes its $90 distribution to S before S distributes T's stock to P. Under paragraph (f)(2)(ii) of this section, T's $90 distribution to S ($10 of which is a dividend) is not included in S's gross income. The corresponding negative adjustment under § 1.1502–32 reduces S's basis in the T stock from $10 to an $80 excess loss account. Under section 311(b), S has a $90 gain from the distribution of T stock to P. Under section 301(d) P's initial basis in the T stock is $10 (the stock's fair market value), and the basis increases to $15 under § 1.1502–32 as a result of T's earnings in Year 6. The timing and attributes of S's gain are determined in the manner provided in paragraph (c) of this *Example 2.* Thus, $75 of S's gain is taken into account under the matching rule in Year 9 as a result of T becoming a nonmember, and the remaining $15 is taken into account under the matching and acceleration rules based on subsequent events.

(e) *Partial stock sale.* The facts are the same as in paragraph (a) of this *Example 2,* except that P sells 10% of T's stock to X on December 1 of Year 9 for $1.50 (rather than T's issuing additional stock and becoming a nonmember). Under the matching rule, S takes $9 of its gain into account to reflect the difference between P's $0 gain taken into account ($1.50 sale proceeds minus $1.50 basis) and the $9 recomputed gain ($1.50 sale proceeds plus $7.50 excess loss account).

(f) *Loss, rather than cash distribution.* The facts are the same as in paragraph (a) of this *Example 2,* except that T retains the loan proceeds and incurs a $90 loss in Year 3 that is absorbed by the group. The timing and attributes of S's gain are determined in the same manner provided in paragraph (c) of this *Example 2.* Under § 1.1502–32, the loss in Year 3 reduces P's basis in the T stock from $100 to $10, and T's $5 of earnings in Year 6 increase the basis to $15. Thus, $75 of S's gain is taken into account under the matching rule in Year 9 as a result of T becoming a nonmember, and the remaining $15 is taken into account under the matching and acceleration rules based on subsequent events. (The timing and attributes of S's gain would be determined in the same manner provided in paragraph (d) of this *Example 2* if T incurred the $90 loss before S's distribution of the T stock to P.)

(g) *Stock sale, rather than stock distribution.* The facts are the same as in paragraph (a) of this *Example 2,* except that S sells the T stock to P for $100 (rather than distributing the stock). The timing and attributes of S's gain are determined in the same manner provided in paragraph (c) of this *Example 2.* Thus, $75 of S's gain is taken into account under the matching rule in Year 9 as a result of T becoming a nonmember, and the remaining $15 is taken into account under the matching and acceleration rules based on subsequent events.

Example 3. Intercompany reorganization. (a) *Facts.* P forms S and B by contributing $200 to the capital of each. During Years 1 through 4, S and B each earn $50, and under § 1.1502–32 P adjusts its basis in the stock of each to $250. (See § 1.1502–33 for adjustments to earnings and profits.) On January 1 of Year 5, the fair market value of S's assets and its stock is $500, and S merges into B in a tax-free reorganization. Pursuant to the plan of reorganization, P receives B stock with a fair market value of $350 and $150 of cash.

(b) *Treatment as a section 301 distribution.* The merger of S into B is a transaction to which paragraph (f)(3) of this section applies. P is treated as receiving additional B stock with a fair market value of $500 and, under section 358, a basis of $250. Immediately after the merger, $150 of the stock received is treated as redeemed, and the redemption is treated under section 302(d) as a distribution to which section 301 applies. Because the $150 distribution is treated as not received as part of the merger, section 356 does not apply and no basis adjustments are required under section 358(a)(1)(A) and (B). Because B is treated under section 381(c)(2) as receiving S's earnings and profits and the redemption is treated as occurring after the merger, $100 of the distribution is treated as a dividend under section 301 and P's basis in the B stock is reduced correspondingly under § 1.1502–32. The remaining $50 of the distribution reduces P's basis in the B stock. Section 301(c)(2) and § 1.1502–32. Under paragraph (f)(2)(ii) of this section, P's $100 of dividend income is not included in gross income. Under § 1.302–2(c), proper adjustments are made to P's basis in its B stock to reflect its basis in the B stock redeemed, with the result that P's basis in the B stock is reduced by the entire $150 distribution.

(c) *Depreciated property.* The facts are the same as in paragraph (a) of this *Example 3,* except that property of S with a $200 basis and $150 fair market value is distributed to P (rather than cash of B). As in paragraph (b) of this *Example 3,* P is treated as receiving additional B stock in the merger and a $150 distribution to which section 301 applies immediately after the merger. Under paragraph (f)(2)(iii) of this section, the principles of section 311(b) apply to B's $50 loss and the loss is taken into account under the matching and acceleration rules based on subsequent events (e.g., under the matching rule if P subsequently sells the property, or under the acceleration rule if B becomes a nonmember). The results are the same under section 267(f).

(d) *Divisive transaction.* Assume instead that, pursuant to a plan, S distributes the stock of a lower-tier subsidiary in a spin-off transaction to which section 355 applies together with $150 of cash. The distribution of stock is a transaction to which paragraph (f)(3) of this section applies. P is treated as receiving the $150 of cash immediately before the section 355 distribution, as a distribution to which section 301 applies. Section 356(b) does not apply and no basis adjustments are required under section 358(a)(1) (A) and (B). Because the $150 distribution is treated as made before the section 355 distribution, the distribution reduces P's basis in the S stock under § 1.1502–32, and the basis allocated under section 358(c) between the S stock and the lower-tier subsidiary stock received reflects this basis reduction.

Example 4. Stock redemptions and distributions. (a) *Facts.* Before becoming a member of the P group, S owns P stock with a $30 basis. On January 1 of Year 1, P buys all of S's stock. On July 1 of Year 3, P redeems the P stock held by S for $100 in a transaction to which section 302(a) applies.

(b) *Gain under section 302.* Under paragraph (f)(4) of this section, P's basis in the P stock acquired from S is treated as eliminated. As a result of this elimination, S's intercompany item will never be taken into account under the matching rule because P's basis in the stock does not reflect S's intercompany item. Therefore, S's $70 gain is taken into account under the acceleration rule in Year 3. The attributes of S's item are determined under paragraph (d)(1)(ii) of this section by applying the matching rule as if P had sold the stock to an affiliated corporation that is not a member of the group at no gain or loss. Although P's corresponding item from a sale of its stock would have been excluded from gross income under section 1032, paragraph (c)(6)(ii) of this section prevents S's gain from being treated as excluded from gross income; instead S's gain is capital gain.

(c) *Gain under section 311.* The facts are the same as in paragraph (a) of this *Example 4,* except that S distributes the P stock to P in a transaction to which section 301 applies (rather than the stock being redeemed), and S has a $70 gain under section 311(b). The timing and attributes of S's gain are determined in the manner provided in paragraph (b) of this *Example 4.*

(d) *Loss stock.* The facts are the same as in paragraph (a) of this *Example 4,* except that S has a $130 (rather than $30) basis in the P stock and has a $30 loss under section 302(a). The limitation under paragraph (c)(6)(ii) of this section does not apply to intercompany losses. Thus, S's loss is taken into account in Year 3 as a noncapital, nondeductible amount.

Example 5. Intercompany stock sale followed by section 332 liquidation. (a) *Facts.* S owns all of the stock of T, with a $70 basis and $100 value, and T's assets have a $10 basis and $100 value. On January 1 of Year 1, S sells all of T's stock to B for $100. On July 1 of Year 3, when T's assets are still worth $100, T distributes all of its assets to B in an unrelated complete liquidation to which section 332 applies.

(b) *Timing and attributes.* Under paragraph (b)(3)(ii) of this section, B's unrecognized gain or loss under section 332 is a corresponding item for purposes of applying the matching rule. In Year 3 when T liquidates, B has $0 of unrecognized gain or loss under section 332 because B has a $100 basis in the T stock and receives a $100 distribution with respect to its T stock. Treating S and B as divisions of a single corporation, the recomputed corresponding item would have been $30 of unrecognized gain under section 332 because B would have succeeded to S's $70 basis in the T stock. Thus, under the matching rule, S's $30 intercompany gain is taken into account in

Year 3 as a result of T's liquidation. Under paragraph (c)(1)(i) of this section, the attributes of S's gain and B's corresponding item are redetermined as if S and B were divisions of a single corporation. Although S's gain ordinarily would be redetermined to be treated as excluded from gross income to reflect the nonrecognition of B's gain under section 332, S's gain remains capital gain because B's unrecognized gain under section 332 is not permanently and explicitly disallowed under the Code. See paragraph (c)(6)(ii) of this section. However, relief may be elected under paragraph (f)(5)(ii) of this section.

(c) *Intercompany sale at a loss.* The facts are the same as in paragraph (a) of this *Example 5*, except that S has a $130 (rather than $70) basis in the T stock. The limitation under paragraph (c)(6)(ii) of this section does not apply to intercompany losses. Thus, S's intercompany loss is taken into account in Year 3 as a noncapital, nondeductible amount. However, relief may be elected under paragraph (f)(5)(ii) of this section.

Example 6. Intercompany stock sale followed by section 355 distribution. (a) *Facts.* S owns all of the stock of T with a $70 basis and a $100 value. On January 1 of Year 1, S sells all of T's stock to M for $100. On June 1 of Year 6, M distributes all of its T stock to its nonmember shareholders in a transaction to which section 355 applies. At the time of the distribution, M has a basis in T stock of $100 and T has a value of $150.

(b) *Timing and attributes.* Under paragraph (b)(3)(ii) of this section, M's $50 gain not recognized on the distribution under section 355 is a corresponding item. Treating S and M as divisions of a single corporation, the recomputed corresponding item would be $80 of unrecognized gain under section 355 because M would have succeeded to S's $70 basis in the T stock. Thus, under the matching rule, S's $30 intercompany gain is taken into account in Year 6 as a result of the distribution. Under paragraph (c)(1)(i) of this section, the attributes of S's intercompany item and M's corresponding item are redetermined to produce the same effect on consolidated taxable income as if S and M were divisions of a single corporation. Although S's gain ordinarily would be redetermined to be treated as excluded from gross income to reflect the nonrecognition of M's gain under section 355(c), S's gain remains capital gain because M's unrecognized gain under section 355(c) is not permanently and explicitly disallowed under the Code. See paragraph (c)(6)(ii) of this section. Because M's distribution of the T stock is not an intercompany transaction, relief is not available under paragraph (f)(5)(ii) of this section.

(c) *Section 355 distribution within the group.* The facts are the same as under paragraph (a) of this *Example 6*, except that M distributes the T stock to B (another member of the group), and B takes a $75 basis in the T stock under section 358. Under paragraph (j)(2) of this section, B is a successor to M for purposes of taking S's intercompany gain into account, and therefore both M and B might have corresponding items with respect to S's intercompany gain. To the extent it is possible, matching with respect to B's corresponding items produces the result most consistent with treating S, M, and B as divisions of a single corporation. See paragraphs (j)(3) and (j)(4) of this section. However, because there is only $5 difference between B's $75 basis in the T stock and the $70 basis the stock would have if S, M, and B were divisions of a single corporation, only $5 can be taken into account under the matching rule with respect to B's corresponding items. (This $5 is taken into account with respect to B's corresponding items based on subsequent events.) The remaining $25 of S's $30 intercompany gain is taken into account in Year 6 under the matching rule with respect to M's corresponding item from its distribution of the T stock. The attributes of S's remaining $25 of gain are determined in the same manner as in paragraph (b) of this *Example 6*.

(d) *Relief elected.* The facts are the same as in paragraph (c) of this *Example 6* except that P elects relief pursuant to paragraph (f)(5)(ii)(D) of this section. As a result of the election, M's distribution of the T stock is treated as subject to sections 301 and 311 instead of section 355. Accordingly, M recognizes $50 of intercompany gain from the distribution, B takes a basis in the stock equal to its fair market value of $150, and S and M take their intercompany gains into account with respect to B's corresponding items based on subsequent events. (None of S's gain is taken into account in Year 6 as a result of M's distribution of the T stock.)

(g) *Obligations of members*—(1) *In general.* In addition to the general rules of this section, the rules of this paragraph (g) apply to intercompany obligations.

(2) *Definitions.* For purposes of this section—

(i) *Obligation of a member.* An obligation of a member is—

(A) Any obligation of the member constituting indebtedness under general principles of Federal income tax law (for example, under nonstatutory authorities, or under section 108, section 163, section 171, or section 1275), but not an executory obligation to purchase or provide goods or services; and

(B) Any security of the member described in section 475(c)(2)(D) or (E), and any comparable security with respect to commodities, but not if the security is a position with respect to the member's stock. See paragraph (f)(4) of this section and § 1.1502–13T(f)(6) for special rules applicable to positions with respect to a member's stock.

(ii) *Intercompany obligations.* An intercompany obligation is an obligation between members, but only for the period during which both parties are members.

(3) *Deemed satisfaction and reissuance of intercompany obligations*—(i) *Application*—(A) *In general.* If a member realizes an amount (other than zero) of income, gain, deduction, or loss, directly or indirectly, from the assignment or extinguishment of all or part of its remaining rights or obligations under an intercompany obligation, the intercompany obligation is treated for all Federal income tax purposes as satisfied under paragraph (g)(3)(ii) of this section and, if it remains outstanding, reissued under paragraph (g)(3)(iii) of this section. Similar principles apply under this paragraph (g)(3) if a member realizes any such amount, directly or indirectly, from a comparable transaction (for example, a marking-to-market of an obligation or a bad debt deduction), or if an intercompany obligation becomes an obligation that is not an intercompany obligation.

(B) *Exceptions.* This paragraph (g)(3) does not apply to an obligation if any of the following applies:

(*1*) The obligation became an intercompany obligation by reason of an event described in § 1.108–2(e) (exceptions to the application of section 108(e)(4)).

(*2*) The amount realized is from reserve accounting under section 585 or section 593 (see paragraph (g)(3)(iv) of this section for special rules).

(*3*) The amount realized is from the conversion of an obligation into stock of the obligor.

(*4*) Treating the obligation as satisfied and reissued will not have a significant effect on any person's Federal income tax liability for any year. For this purpose, obligations issued in connection with the same transaction or related transactions are treated as a single obligation. However, this paragraph (g)(3)(i)(B)(*4*) does not apply to any obligation if the aggregate effect of this treatment for all obligations in a year would be significant.

(ii) *Satisfaction*—(A) *General rule.* If a creditor member sells intercompany debt for cash, the debt is treated as satisfied by the debtor immediately before the sale for the amount of the cash. For other transactions, similar principles apply to treat the intercompany debt as satisfied immediately before the transaction. Thus, if the debt is transferred for property, it is treated as satisfied for an amount consistent with the amount for which the debt is deemed reissued under paragraph (g)(3)(iii) of this section, and the basis of the property is also adjusted to reflect that amount. If this paragraph (g)(3) applies because the debtor or creditor becomes a nonmember, the obligation is treated as satisfied for cash in an amount equal to its fair market value immediately before

the debtor or creditor becomes a nonmember. Similar principles apply to intercompany obligations other than debt.

(B) *Timing and attributes.* For purposes of applying the matching rule and the acceleration rule—

(*1*) Paragraph (c)(6)(ii) of this section (limitation on treatment of intercompany income or gain as excluded from gross income) does not apply to prevent any intercompany income or gain from being excluded from gross income; and

(*2*) Any gain or loss from an intercompany obligation is not subject to section 108(a), section 354 or section 1091.

(iii) *Reissuance.* If a creditor member sells intercompany debt for cash, the debt is treated as a new debt (with a new holding period) issued by the debtor immediately after the sale for the amount of cash. For other transactions, if the intercompany debt remains outstanding, similar principles apply to treat the debt as reissued immediately after the transaction. Thus, if the debt is transferred for property, it is treated as new debt issued for the property. See, for example, section 1273(b)(3) or section 1274. If this paragraph (g)(3) applies because the debtor or creditor becomes a nonmember, the debt is treated as new debt issued for an amount of cash equal to its fair market value immediately after the debtor or creditor becomes a nonmember. Similar principles apply to intercompany obligations other than debt.

(iv) *Bad debt reserve.* A member's deduction under section 585 or section 593 for an addition to its reserve for bad debts with respect to an intercompany obligation is not taken into account, and is not treated as realized under this paragraph (g)(3) until the intercompany obligation becomes an obligation that is not an intercompany obligation, or, if earlier, the redemption or cancellation of the intercompany obligation.

(4) *Deemed satisfaction and reissuance of obligations becoming intercompany obligations*—(i) *Application*—(A) *In general.* This paragraph (g)(4) applies if an obligation that is not an intercompany obligation becomes an intercompany obligation.

(B) *Exceptions.* This paragraph (g)(4) does not apply to an obligation if—

(*1*) The obligation becomes an intercompany obligation by reason of an event described in § 1.108–2(e) (exceptions to the application of section 108(e)(4)); or

(*2*) Treating the obligation as satisfied and reissued will not have a significant effect on any person's Federal income tax liability for any year. For this purpose, obligations issued in connection with the same transaction or related transactions are treated as a single obligation. However, this paragraph (g)(4)(i)(B)(*2*) does not apply to any obligation if the aggregate effect of this treatment for all obligations in a year would be significant.

(ii) *Intercompany debt.* If this paragraph (g)(4) applies to an intercompany debt—

(A) Section 108(e)(4) does not apply;

(B) The debt is treated for all Federal income tax purposes, immediately after it becomes an intercompany debt, as satisfied and a new debt issued to the holder (with a new holding period) in an amount determined under the principles of § 1.108–2(f);

(C) The attributes of all items taken into account from the satisfaction are determined on a separate entity basis, rather than by treating S and B as divisions of a single corporation;

(D) Any intercompany gain or loss taken into account is treated as not subject to section 354 or section 1091; and

(E) Solely for purposes of § 1.1502–32(b)(4) and the effect of any election under that provision, any loss taken into account under this paragraph (g)(4) by a corporation that becomes a member as a result of the transaction in which the obligation becomes an intercompany obligation is treated as a loss carryover from a separate return limitation year.

(iii) *Other intercompany obligations.* If this paragraph (g)(4) applies to an intercompany obligation other than debt, the principles of paragraph (g)(4)(ii) of this section apply to treat the intercompany obligation as satisfied and reissued for an amount of cash equal to its fair market value immediately after the obligation becomes an intercompany obligation.

(5) *Examples.* The application of this section to obligations of members is illustrated by the following examples.

Example 1. Interest on intercompany debt. (a) *Facts.* On January 1 of Year 1, B borrows $100 from S in return for B's note providing for $10 of interest annually at the end of each year, and repayment of $100 at the end of Year 5. B fully performs its obligations. Under their separate entity methods of accounting, B accrues a $10 interest deduction annually under section 163, and S accrues $10 of interest income annually under section 61(a)(4).

(b) *Matching rule.* Under paragraph (b)(1) of this section, the accrual of interest on B's note is an intercompany transaction. Under the matching rule, S takes its $10 of income into account in each of Years 1 through 5 to reflect the $10 difference between B's $10 of interest expense taken into account and the $0 recomputed expense. S's income and B's deduction are ordinary items. (Because S's intercompany item and B's corresponding item would both be ordinary on a separate entity basis, the attributes are not redetermined under paragraph (c)(1)(i) of this section.)

(c) *Original issue discount.* The facts are the same as in paragraph (a) of this *Example 1,* except that B borrows $90 (rather than $100) from S in return for B's note providing for $10 of interest annually and repayment of $100 at the end of Year 5. The principles described in paragraph (b) of this *Example 1* for stated interest also apply to the $10 of original issue discount. Thus, as B takes into account its corresponding expense under section 163(e), S takes into account its intercompany income. S's income and B's deduction are ordinary items.

(d) *Tax-exempt income.* The facts are the same as in paragraph (a) of this *Example 1,* except that B's borrowing from S is allocable under section 265 to B's purchase of state and local bonds to which section 103 applies. The timing of S's income is the same as in paragraph (b) of this *Example 1.* Under paragraph (c)(4)(i) of this section, the attributes of B's corresponding item of disallowed interest expense control the attributes of S's offsetting intercompany interest income. Paragraph (c)(6)(ii) of this section does not prevent the redetermination of S's intercompany item as excluded from gross income, because section 265 permanently and explicitly disallows B's corresponding deduction. Accordingly, S's intercompany income is treated as excluded from gross income.

Example 2. Intercompany debt becomes nonintercompany debt. (a) *Facts.* On January 1 of Year 1, B borrows $100 from S in return for B's note providing for $10 of interest annually at the end of each year, and repayment of $100 at the end of Year 20. As of January 1 of Year 3, B has paid the interest accruing under the note and S sells B's note to X for $70, reflecting a change in the value of the note as a result of increases in prevailing market interest rates. B is never insolvent within the meaning of section 108(d)(3).

(b) *Deemed satisfaction.* Under paragraph (g)(3) of this section, B's note is treated as satisfied for $70 immediately before S's sale to X. As a result of the deemed satisfaction of the obligation for less than its adjusted issue price, B takes into account $30 of discharge of indebtedness income under section 61(a)(12). On a separate entity basis, S's $30 loss would be a capital loss under section 1271(a)(1). Under the matching rule, however, the attributes of S's intercompany item and B's corresponding item must be redetermined to produce the same effect as if the transaction had occurred between divisions of a single corporation. B's corresponding item completely offsets S's intercompany item in amount. Accordingly, under paragraph (c)(4)(i) of this section, the attributes of B's $30 of discharge of indebtedness income control the attributes of S's loss. Thus, S's loss is treated as ordinary loss.

(c) *Deemed reissuance.* Under paragraph (g)(3) of this section, B is also treated as reissuing, directly to X, a new note with a $70 issue price and a $100 stated redemption

price at maturity. The new note is not an intercompany obligation, it has a $70 issue price and $100 stated redemption price at maturity, and the $30 of original issue discount will be taken into account by B and X under sections 163(e) and 1272.

(d) *Creditor deconsolidation.* The facts are the same as in paragraph (a) of this *Example 2,* except that P sells S's stock to X (rather than S's selling the note of B). Under paragraph (g)(3) of this section, the note is treated as satisfied by B for its $70 fair market value immediately before S becomes a nonmember, and B is treated as reissuing a new note to S immediately after S becomes a nonmember. The results for S's $30 of loss and B's discharge of indebtedness income are the same as in paragraph (b) of this *Example 2.* The new note is not an intercompany obligation, it has a $70 issue price and $100 stated redemption price at maturity, and the $30 of original issue discount will be taken into account by B and S under sections 163(e) and 1272.

(e) *Debtor deconsolidation.* The facts are the same as in paragraph (a) of this *Example 2,* except that P sells B's stock to X (rather than S's selling the note of B). The results are the same as in paragraph (d) of this *Example 2.*

(f) *Appreciated note.* The facts are the same as in paragraph (a) of this *Example 2,* except that S sells B's note to X for $130 (rather than $70), reflecting a decline in prevailing market interest rates. Under paragraph (g)(3) of this section, B's note is treated as satisfied for $130 immediately before S's sale of the note to X. Under § 1.163–7(c), B takes into account $30 of repurchase premium. On a separate entity basis, S's $30 gain would be a capital gain under section 1271(a)(1), and B's $30 premium deduction would be an ordinary deduction. Under the matching rule, however, the attributes of S's intercompany item and B's corresponding item must be redetermined to produce the same effect as if the transaction had occurred between divisions of a single corporation. Under paragraph (c)(4)(i) of this section, the attributes of B's corresponding premium deduction control the attributes of S's intercompany gain. Accordingly, S's gain is treated as ordinary income. B is also treated as reissuing a new note directly to X which is not an intercompany obligation. The new note has a $130 issue price and a $100 stated redemption price at maturity. Under § 1.61–12(c), B's $30 premium income under the new note is taken into account over the life of the new note.

Example 3. Loss or bad debt deduction with respect to intercompany debt. (a) *Facts.* On January 1 of Year 1, B borrows $100 from S in return for B's note providing for $10 of interest annually at the end of each year, and repayment of $100 at the end of Year 5. In Year 3, S sells B's note to P for $60. B is never insolvent within the meaning of section 108(d)(3). Assume B's note is not a security within the meaning of section 165(g)(2).

(b) *Deemed satisfaction and reissuance.* Under paragraph (g)(3) of this section, B is treated as satisfying its note for $60 immediately before the sale, and reissuing a new note directly to P with a $60 issue price and a $100 stated redemption price at maturity. On a separate entity basis, S's $40 loss would be a capital loss, and B's $40 income would be ordinary income. Under the matching rule, however, the attributes of S's intercompany item and B's corresponding item must be redetermined to produce the same effect as if the transaction had occurred between divisions of a single corporation. Under paragraph (c)(4)(i) of this section, the attributes of B's corresponding discharge of indebtedness income control the attributes of S's intercompany loss. Accordingly, S's loss is treated as ordinary loss.

(c) *Partial bad debt deduction.* The facts are the same as in paragraph (a) of this *Example 3,* except that S claims a $40 partial bad debt deduction under section 166(a)(2) (rather than selling the note to P). The results are the same as in paragraph (b) of this *Example 3.* B's note is treated as satisfied and reissued with a $60 issue price. S's $40 intercompany deduction and B's $40 corresponding income are both ordinary.

(d) *Insolvent debtor.* The facts are the same as in paragraph (a) of this *Example 3,* except that B is insolvent within the meaning of section 108(d)(3) at the time that S sells the note to P. On a separate entity basis, S's $40 loss would be capital, B's $40 income would be excluded from gross income under section 108(a), and B would reduce attributes under section 108(b) or section 1017. However, under paragraph (g)(3)(ii)(B) of this section, section 108(a) does not apply to B's income to characterize it as excluded from gross income. Accordingly, the attributes of S's intercompany loss and B's corresponding income are redetermined in the same manner as in paragraph (b) of this *Example 3.*

Example 4. Nonintercompany debt becomes intercompany debt. (a) *Facts.* On January 1 of Year 1, B borrows $100 from X in return for B's note providing for $10 of interest annually at the end of each year, and repayment of $100 at the end of Year 5. As of January 1 of Year 3, B has fully performed its obligations, but the note's fair market value is $70. On January 1 of Year 3, P buys all of X's stock. B is solvent within the meaning of section 108(d)(3).

(b) *Deemed satisfied and reissuance.* Under paragraph (g)(4) of this section, B is treated as satisfying its indebtedness for $70 (determined under the principles of § 1.108–2(f)(2)) immediately after X becomes a member. Both X's $30 capital loss under section 1271(a)(1) and B's $30 of discharge of indebtedness income under section 61(a)(12) are taken into account in determining consolidated taxable income for Year 3. Under paragraph (g)(4)(ii)(C) of this section, the attributes of items resulting from the satisfaction are determined on a separate entity basis. But see section 382 and § 1.1502–15 (limitations on the absorption of built-in losses). B is also treated as reissuing a new note. The new note is an intercompany obligation, it has a $70 issue price and $100 stated redemption price at maturity, and the $30 of original issue discount will be taken into account by B and X in the same manner as provided in paragraph (c) of *Example 1* of this paragraph (g)(5).

(c) *Election to file consolidated returns.* Assume instead that B borrows $100 from S during Year 1, but the P group does not file consolidated returns until Year 3. Under paragraph (g)(4) of this section, B's indebtedness is treated as satisfied and a new note reissued immediately after the debt becomes intercompany debt. The satisfaction and reissuance are deemed to occur on January 1 of Year 3, for the fair market value of the note (determined under the principles of § 1.108–2(f)(2)) at that time.

Example 5. Notional principal contracts. (a) *Facts.* On April 1 of Year 1, M1 enters into a contract with counterparty M2 under which, for a term of five years, M1 is obligated to make a payment to M2 each April 1, beginning in Year 2, in an amount equal to the London Interbank Offered Rate (LIBOR), as determined on the immediately preceding April 1, multiplied by a $1,000 notional principal amount. M2 is obligated to make a payment to M1 each April 1, beginning in Year 2, in an amount equal to 8% multiplied by the same notional principal amount. LIBOR is 7.80% on April 1 of Year 1. On April 1 of Year 2, M2 owes $2 to M1.

(b) *Matching rule.* Under § 1.446–3(d), the net income (or net deduction) from a notional principal contract for a taxable year is included in (or deducted from) gross income. Under § 1.446–3(e), the ratable daily portion of M2's obligation to M1 as of December 31 of Year 1 is $1.50 ($2 multiplied by 275/365). Under the matching rule, M1's net income for Year 1 of $1.50 is taken into account to reflect the difference between M2's net deduction of $1.50 taken into account and the $0 recomputed net deduction. Similarly, the $.50 balance of the $2 of net periodic payments made on April 1 of Year 2 is taken into account for Year 2 in M1's and M2's net income and net deduction from the contract. In addition, the attributes of M1's intercompany income and M2's corresponding deduction are redetermined to produce the same effect as if the transaction had occurred between divisions of a single corporation. Under paragraph (c)(4)(i) of this section, the attributes of M2's corresponding deduction control the attributes of M1's intercompany income. (Although M1 is the selling member with respect to the payment on April 1 of Year 2, it might be the buying member in a subsequent period if it owes the net payment.)

(c) *Dealer.* The facts are the same as in paragraph (a) of this *Example 5,* except that M2 is a dealer in securities, and the contract with M1 is not inventory in the hands of M2. Under section 475, M2 must mark its securities to market at year-end. Assume that under section 475, M2's loss from marking to market the contract with M1 is $100. Under paragraph (g)(3) of this section, M2 is treated as making a $100 payment to M1 to terminate the contract immediately before section 475 is applied. M1's $100 of income from the termination payment is taken into account under the matching rule to reflect M2's deduction under § 1.446–3(h). The attributes of M1's intercompany income and M2's corresponding deduction are redetermined to produce the same effect as if the transaction had occurred between divisions of a single corporation. Under paragraph (c)(4)(i) of this section, the attributes of M2's corresponding

deduction control the attributes of M1's intercompany income. Accordingly, M1's income is treated as ordinary income. Paragraph (g)(3) of this section also provides that, immediately after section 475 would apply, a new contract is treated as reissued with an upfront payment of $100. Under § 1.446–3(f), the deemed $100 payment by M2 to M1 is taken into account over the term of the new contract in a manner reflecting the economic substance of the contract (for example, allocating the payment in accordance with the forward rates of a series of cash-settled forward contracts that reflect the specified index and the $1,000 notional principal amount). (The timing of taking items into account is the same if M1, rather than M2, is the dealer subject to the mark-to-market requirement of section 475 at year-end. However in this case, because the attributes of the corresponding deduction control the attributes of the intercompany income, M1's income from the deemed termination payment might be ordinary or capital.)

(h) *Anti-avoidance rules*—(1) *In general.* If a transaction is engaged in or structured with a principal purpose to avoid the purposes of this section (including, for example, by avoiding treatment as an intercompany transaction), adjustments must be made to carry out the purposes of this section.

(2) *Examples.* The anti-avoidance rules of this paragraph (h) are illustrated by the following examples. The examples set forth below do not address common law doctrines or other authorities that might apply to recast a transaction or to otherwise affect the tax treatment of a transaction. Thus, in addition to adjustments under this paragraph (h), the Commissioner can, for example, apply the rules of section 269 or § 1.701–2 to disallow a deduction or to recast a transaction.

Example 1. Sale of a partnership interest. (a) *Facts.* S owns land with a $10 basis and $100 value. B has net operating losses from separate return limitation years (SRLYs) subject to limitation under § 1.1502–21(c). Pursuant to a plan to absorb the losses without limitation by the SRLY rules, S transfers the land to an unrelated, calendar-year partnership in exchange for a 10% interest in the capital and profits of the partnership in a transaction to which section 721 applies. The partnership does not have a section 754 election in effect. S later sells its partnership interest to B for $100. In the following year, the partnership sells the land to X for $100. Because the partnership does not have a section 754 election in effect, its $10 basis in the land does not reflect B's $100 basis in the partnership interest. Under section 704(c), the partnership's $90 built-in gain is allocated to B, and B's basis in the partnership interest increases to $190 under section 705. In a later year, B sells the partnership interest to a nonmember for $100.

(b) *Adjustments.* Under § 1.1502–21(c), the partnership's $90 built-in gain allocated to B ordinarily increases the amount of B's SRLY limitation, and B's $90 loss from its sale of the partnership interest ordinarily is not subject to limitation under the SRLY rules. Because the contribution of property to the partnership and the sale of the partnership interest were part of a plan a principal purpose of which was to achieve a reduction in consolidated tax liability by creating offsetting gain and loss for B while deferring S's intercompany gain, B's allocable share of the partnership's gain from its sale of the land is treated under paragraph (h)(1) of this section as not increasing the amount of B's SRLY limitation.

Example 2. Transitory status as an intercompany obligation. (a) *Facts.* P historically has owned 70% of X's stock and the remaining 30% is owned by unrelated shareholders. On January 1 of Year 1, S borrows $100 from X in return for S's note requiring $10 of interest annually at the end of each year, and repayment of $100 at the end of Year 20. As of January 1 of Year 3, the P group has substantial net operating loss carryovers, and the fair market value of S's note falls to $70 due to an increase in prevailing market interest rates. X is not permitted under section 166(a)(2) to take into account a $30 loss with respect to the note. Pursuant to a plan to permit X to take into account its $30 loss without disposing of the note, P acquires an additional 10% of X's stock, causing X to become a member, and P subsequently resells the 10% interest. X's $30 loss with respect to the note is a net unrealized built-in loss within the meaning of § 1.1502–15.

(b) *Adjustments.* Under paragraph (g)(4) of this section, X ordinarily would take into account its $30 loss as a result of the note becoming an intercompany obligation, and S would take into account $30 of discharge of indebtedness income. Under § 1.1502–22(c), X's loss is not combined with items of the other members and the loss would be carried to X's separate return years as a result of X becoming a nonmember. However, the transitory status of S's indebtedness to X as an intercompany obligation is structured with a principal purpose to accelerate the recognition of X's loss. Thus, S's note is treated under paragraph (h)(1) of this section as not becoming an intercompany obligation.

Example 3. Corporate mixing bowl. (a) *Facts.* M1 and M2 are subsidiaries of P. M1 operates a manufacturing business on land it leases from M2. The land is the only asset held by M2. P intends to dispose of the M1 business, including the land owned by M2; P's basis in the M1 stock is equal to the stock's fair market value. M2's land has a value of $20 and a basis of $0 and P has a $0 basis in the stock of M2. In Year 1, with a principal purpose of avoiding gain from the sale of the land (by transferring the land to M1 with a carry-over basis without affecting P's basis in the stock of M1 or M2), M1 and M2 form corporation T; M1 contributes cash in exchange for 80% of the T stock and M2 contributes the land in exchange for 20% of the stock. In Year 3, T liquidates, distributing $20 cash to M2 and the land (plus $60 cash) to M1. Under § 1.1502–34, section 332 applies to both M1 and M2. Under section 337, T recognizes no gain or loss from its liquidating distribution of the land to M1. T has neither gain nor loss on its distribution of cash to M2. In Year 4, P sells all of the stock of M1 to X and liquidates M2.

(b) *Adjustments.* A principal purpose for the formation and liquidation of T was to avoid gain from the sale of M2's land. Thus, under paragraph (h)(1) of this section, M2 must take $20 of gain into account when the stock of M1 is sold to X.

Example 4. Partnership mixing bowl. (a) *Facts.* M1 owns a self-created intangible asset with a $0 basis and a fair market value of $100. M2 owns land with a basis of $100 and a fair market value of $100. In Year 1, with a principal purpose of creating basis in the intangible asset (which would be eligible for amortization under section 197), M1 and M2 form partnership PRS; M1 contributes the intangible asset and M2 contributes the land. X, an unrelated person, contributes cash to PRS in exchange for a substantial interest in the partnership. PRS uses the contributed assets in legitimate business activities. Five years and six months later, PRS liquidates, distributing the land to M1, the intangible to M2, and cash to X. The group reports no gain under sections 707(a)(2)(B) and 737(a) and claims that M2's basis in the intangible asset is $100 under section 732 and that the asset is eligible for amortization under section 197.

(b) *Adjustments.* A principal purpose of the formation and liquidation of PRS was to create additional amortization without an offsetting increase in consolidated taxable income by avoiding treatment as an intercompany transaction. Thus, under paragraph (h)(1) of this section, appropriate adjustments must be made.

Example 5. Sale and leaseback. (a) *Facts.* S operates a factory with a $70 basis and $100 value, and has loss carryovers from SRLYs. Pursuant to a plan to take into account the $30 unrealized gain while continuing to operate the factory, S sells the factory to X for $100 and leases it back on a long-term basis. In the transaction, a substantial interest in the factory is transferred to X. The sale and leaseback are not recharacterized under general principles of Federal income tax law. As a result of S's sale to X, the $30 gain is taken into account and increases S's SRLY limitation.

(b) *No adjustments.* Although S's sale was pursuant to a plan to accelerate the $30 gain, it is not subject to adjustment under paragraph (h)(1) of this section. The sale is not treated as engaged in or structured with a principal purpose to avoid the purposes of this section.

(i) [Reserved]

(j) *Miscellaneous operating rules.* For purposes of this section—

(1) *Successor assets.* Any reference to an asset includes, as the context may require, a reference to any other asset the basis of which is determined, directly or indirectly, in whole or in part, by reference to the basis of the first asset.

(2) *Successor persons*—(i) *In general.* Any reference to a person includes, as the context may require, a reference to a predecessor or successor. For this

purpose, a predecessor is a transferor of assets to a transferee (the successor) in a transaction—

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

(B) In which substantially all of the assets of the transferor are transferred to members in a complete liquidation;

(C) In which the successor's basis in assets is determined (directly or indirectly, in whole or in part) by reference to the basis of the transferor, but the transferee is a successor only with respect to the assets the basis of which is so determined; or

(D) Which is an intercompany transaction, but only with respect to assets that are being accounted for by the transferor in a prior intercompany transaction.

(ii) *Intercompany items.* If the assets of a predecessor are acquired by a successor member, the successor succeeds to, and takes into account (under the rules of this section), the predecessor's intercompany items. If two or more successor members acquire assets of the predecessor, the successors take into account the predecessor's intercompany items in a manner that is consistently applied and reasonably carries out the purposes of this section and applicable provisions of law.

(3) *Multiple triggers.* If more than one corresponding item can cause an intercompany item to be taken into account under the matching rule, the intercompany item is taken into account in connection with the corresponding item most consistent with the treatment of members as divisions of a single corporation. For example, if S sells a truck to B, its intercompany gain from the sale is not taken into account by reference to B's depreciation if the depreciation is capitalized under section 263A as part of B's cost for a building; instead, S's gain relating to the capitalized depreciation is taken into account when the building is sold or as it is depreciated. Similarly, if B purchases appreciated land from S and transfers the land to a lower-tier member in exchange for stock, thereby duplicating the basis of the land in the basis of the stock, items with respect to both the stock and the land can cause S's intercompany gain to be taken into account; if the lower-tier member becomes a nonmember as a result of the sale of its stock, the attributes of S's intercompany gain are determined with respect to the land rather than the stock.

(4) *Multiple or successive intercompany transactions.* If a member's intercompany item or corresponding item affects the accounting for more than one intercompany transaction, appropriate adjustments are made to treat all of the intercompany transactions as transactions between divisions of a single corporation. For example, if S sells property to M, and M sells the property to B, then S, M, and B are treated as divisions of a single corporation for purposes of applying the rules of this section. Similar principles apply with respect to intercompany transactions that are part of the same plan or arrangement. For example, if S sells separate properties to different members as part of the same plan or arrangement, all of the participating members are treated as divisions of a single corporation for purposes of determining the attributes (which might also affect timing) of the intercompany items and corresponding items from each of the properties.

(5) *Acquisition of group*—(i) *Scope.* This paragraph (j)(5) applies only if a consolidated group (the terminating group) ceases to exist as a result of—

(A) The acquisition by a member of another consolidated group of either the assets of the common parent of the terminating group in a reorganization described in section 381(a)(2), or the stock of the common parent of the terminating group; or

(B) The application of the principles of § 1.1502–75(d)(2) or (d)(3).

(ii) *Application.* If the terminating group ceases to exist under circumstances described in paragraph (j)(5)(i) of this section, the surviving group is treated as the terminating group for purposes of applying this section to the intercompany transactions of the terminating group. For example, intercompany items and corresponding items from intercompany transactions between members of the terminating group are taken into account under the rules of this section by the surviving group. This treatment does not apply, however, to members of the terminating group that are not members of the surviving group immediately after the terminating group ceases to exist (for example, under section 1504(a)(3) relating to reconsolidation, or section 1504(c) relating to includible insurance companies).

(6) *Former common parent treated as continuation of group.* If a group terminates because the common parent is the only remaining member, the common parent succeeds to the treatment of the terminating group for purposes of applying this section so long as it neither becomes a member of an affiliated group filing separate returns nor becomes a corporation described in section 1504(b). For example, if the only subsidiary of the group liquidates into the common parent in a complete liquidation to which section 332 applies, or the common parent merges into the subsidiary and the subsidiary is treated as the common parent's successor under paragraph (j)(2)(i) of this section, the taxable income of the surviving corporation is treated as the group's consolidated taxable income in which the intercompany and corresponding items must be included. See § 1.267(f)–1 for additional rules applicable to intercompany losses or deductions.

(7) *Becoming a nonmember.* For purposes of this section, a member is treated as becoming a nonmember if it has a separate return year (including another group's consolidated return year). A member is not treated as having a separate return year if its items are treated as taken into account in computing the group's consolidated taxable income under paragraph (j)(5) or (6) of this section.

(8) *Recordkeeping.* Intercompany and corresponding items must be reflected on permanent records (including work papers). See also section 6001, requiring records to be maintained. The group must be able to identify from these permanent records the amount, location, timing, and attributes of the items, so as to permit the application of the rules of this section for each year.

(9) *Examples.* The operating rules of this paragraph (j) are illustrated generally throughout this section, and by the following examples.

Example 1. Intercompany sale followed by section 351 transfer to member. (a) *Facts.* S holds land for investment with a basis of $70. On January 1 of Year 1, S sells the land to M for $100. M also holds the land for investment. On July 1 of Year 3, M transfers the land to B in exchange for all of B's stock in a transaction to which section 351 applies. Under section 358, M's basis in the B stock is $100. B holds the land for sale to customers in the ordinary course of business and, under section 362(b), B's basis in the land is $100. On December 1 of Year 5, M sells 20% of the B stock to X for $22. In an unrelated transaction on July 1 of Year 8, B sells 20% of the land for $22.

(b) *Definitions.* Under paragraph (b)(1) of this section, S's sale of the land to M and M's transfer of the land to B are both intercompany transactions. S is the selling member and M is the buying member in the first intercompany transaction, and M is the selling member and B is the buying member in the second intercompany transaction. M has no intercompany items under paragraph (b)(2) of this section. Because B acquired the land in an intercompany transaction, B's items from the land are corresponding items to be taken into account under this section. Under the successor asset rule of paragraph (j)(1) of this section, references to the land include references to M's B stock. Under the successor person rule of paragraph (j)(2) of this section, references to M include references to B with respect to the land.

(c) *Timing and attributes resulting from the stock sale.* Under paragraph (c)(3) of this section, M is treated as owning and selling B's stock for purposes of the matching rule even though, as divisions, M could not own and sell stock in B. Under paragraph (j)(3) of this section, both M's B stock and B's land can cause S's intercompany gain to be taken into account under the matching rule. Thus, S takes $6 of its gain into account in Year 5 to reflect the $6 difference between M's $2 gain taken into account from its sale of B stock and the $8 recomputed gain. Under paragraph (j)(4) of this section, the attributes of this gain are determined by treating S, M, and B as divisions of a single corporation. Under paragraph (c)(1) of this section, S's $6 gain and M's $2 gain are treated as long-term capital gain. The gain would be capital on a separate entity basis (assuming that section 341 does not apply), and this treatment is not inconsistent with treating S, M, and B as divisions of a single corporation because the stock sale and subsequent land sale are unrelated transactions and B remains a member following the sale.

(d) *Timing and attributes resulting from the land sale.* Under paragraph (j)(3) of this section, S takes $6 of its gain into account in Year 8 under the matching rule to reflect the $6 difference between B's $2 gain taken into account from its sale of an interest in the land and the $8 recomputed gain. Under paragraph (j)(4) of this section, the attributes of this gain are determined by treating S, M, and B as divisions of a single corporation and taking into account the activities of S, M, and B with respect to the land. Thus, both S's gain and B's gain might be ordinary income as a result of B's activities. (If B subsequently sells the balance of the land, S's gain taken into account is limited to its remaining $18 of intercompany gain.)

(e) *Sale of successor stock resulting in deconsolidation.* The facts are the same as in paragraph (a) of this *Example 1,* except that M sells 60% of the B stock to X for $66 on December 1 of Year 5 and B becomes a nonmember. Under the matching rule, M's sale of B stock results in $18 of S's gain being taken into account (to reflect the difference between M's $6 gain taken into account and the $24 recomputed gain). Under the acceleration rule, however, the entire $30 gain is taken into account (to reflect B becoming a nonmember, because its basis in the land reflects M's $100 cost basis from the prior intercompany transaction). Under paragraph (j)(4) of this section, the attributes of S's gain are determined by treating S, M, and B as divisions of a single corporation. Because M's cost basis in the land will be reflected by B as a nonmember, all of S's gain is treated as from the land (rather than a portion being from B's stock), and B's activities with respect to the land might therefore result in S's gain being ordinary income.

Example 2. Intercompany sale of member stock followed by recapitalization. (a) *Facts.* Before becoming a member of the P group, S owns P stock with a basis of $70. On January 1 of Year 1, P buys all of S's stock. On July 1 of Year 3, S sells the P stock to M for $100. On December 1 of Year 5, P acquires M's original P stock in exchange for new P stock in a recapitalization described in section 368(a)(1)(E).

(b) *Timing and attributes.* Although P's basis in the stock acquired from M is eliminated under paragraph (f)(4) of this section, the new P stock received by M is exchanged basis property (within the meaning of section 7701(a)(44)) having a basis under section 358 equal to M's basis in the original P stock. Under the successor asset rule of paragraph (j)(1) of this section, references to M's original P stock include references to M's new P stock. Because it is still possible to take S's intercompany item into account under the matching rule with respect to the successor asset, S's gain is not taken into account under the acceleration rule as a result of the basis elimination under paragraph (f)(4) of this section. Instead, the gain is taken into account based on subsequent events with respect to M's new P stock (for example, a subsequent distribution or redemption of the new stock).

Example 3. Back-to-back intercompany transactions—matching. (a) *Facts.* S holds land for investment with a basis of $70. On January 1 of Year 1, S sells the land to M for $90. M also holds the land for investment. On July 1 of Year 3, M sells the land for $100 to B, and B holds the land for sale to customers in the ordinary course of business. During Year 5, B sells all of the land to customers for $105.

(b) *Timing.* Under paragraph (b)(1) of this section, S's sale of the land to M and M's sale of the land to B are both intercompany transactions. S is the selling member and M is the buying member in the first intercompany transaction, and M is the selling member and B is the buying member in the second intercompany transaction. Under paragraph (j)(4) of this section, S, M and B are treated as divisions of a single corporation for purposes of determining the timing of their items from the intercompany transactions. See also paragraph (j)(2) of this section (B is treated as a successor to M for purposes of taking S's intercompany gain into account). Thus, S's $20 gain and M's $10 gain are both taken into account in Year 5 to reflect the difference between B's $5 gain taken into account with respect to the land and the $35 recomputed gain (the gain that B would have taken into account if the intercompany sales had been transfers between divisions of a single corporation, and B succeeded to S's $70 basis).

(c) *Attributes.* Under paragraphs (j)(4) of this section, the attributes of the intercompany items and corresponding items of S, M, and B are also determined by treating S, M, and B as divisions of a single corporation. For example, the attributes of S's and M's intercompany items are determined by taking B's activities into account.

Example 4. Back-to-back intercompany transactions—acceleration. (a) *Facts.* During Year 1, S performs services for M in exchange for $10 from M. S incurs $8 of employee expenses. M capitalizes the $10 cost of S's services under section 263 as part of M's cost to acquire real property from X. Under its separate entity method of accounting, S would take its income and expenses into account in Year 1. M holds the real property for investment and, on July 1 of Year 5, M sells it to B at a gain. B also holds the real property for investment. On December 1 of Year 8, while B still owns the real property, P sells all of M's stock to X and M becomes a nonmember.

(b) *M's items.* M takes its gain into account immediately before it becomes a nonmember. Because the real property stays in the group, the acceleration rule redetermines the attributes of M's gain under the principles of the matching rule as if B sold the real property to an affiliated corporation that is not a member of the group for a cash payment equal to B's adjusted basis in the real property, and S, M, and B were divisions of a single corporation. Thus, M's gain is capital gain.

(c) *S's items.* Under paragraph (b)(2)(ii) of this section, S includes the $8 of expenses in determining its $2 intercompany income. In Year 1, S takes into account $8 of income and $8 of expenses. Under paragraph (j)(4) of this section, appropriate adjustments must be made to treat both S's performance of services for M and M's sale to B as occurring between divisions of a single corporation. Thus, S's $2 of intercompany income is not taken into account as a result of M becoming a nonmember, but instead will be taken into account based on subsequent events (e.g., under the matching rule based on B's sale of the real property to a nonmember, or under the acceleration rule based on P's sale of the stock of S or B to a nonmember). See the successor person rules of paragraph (j)(2) of this section (B is treated as a successor to M for purposes of taking S's intercompany income into account).

(d) *Sale of S's stock.* The facts are the same as in paragraph (a) of this *Example 4,* except that P sells all of S's stock (rather than M's stock) and S becomes a nonmember on July 1 of Year 5. S's remaining $2 of intercompany income is taken into account immediately before S becomes a nonmember. Because S's intercompany income is not from an intercompany sale, exchange, or distribution of property, the attributes of the intercompany income are determined on a separate entity basis. Thus, S's $2 of intercompany income is ordinary income. M does not take any of its intercompany gain into account as a result of S becoming a nonmember.

(e) *Intercompany income followed by intercompany loss.* The facts are the same as in paragraph (a) of this *Example 4,* except that M sells the real property to B at a $1 loss (rather than a gain). M takes its $1 loss into account under the acceleration rule immediately before M becomes a nonmember. But see § 1.267(f)–1 (which might further defer M's loss if M and B remain in a controlled group relationship after M becomes a nonmember). Under paragraph (j)(4) of this section appropriate adjustments must be made to treat the group as if both intercompany transactions occurred between divisions of a single corporation. Accordingly, P's sale of M stock also results in S taking into account $1 of intercompany income as capital gain to offset M's $1 of corresponding capital loss. The remaining $1 of S's intercompany income is taken into account based on subsequent events.

Example 5. Successor group. (a) *Facts.* On January 1 of Year 1, B borrows $100 from S in return for B's note providing for $10 of interest annually at the end of each year, and repayment of $100 at the end of Year 20. As of January 1 of Year 3, B has paid the interest accruing under the note. On that date, X acquires all of P's stock and the former P group members become members of the X consolidated group.

(b) *Successor.* Under paragraph (j)(5) of this section, although B's note ceases to be an intercompany obligation of the P group, the note is not treated as satisfied and reissued under paragraph (g) of this section as a result of X's acquisition of P stock. Instead, the X consolidated group succeeds to the treatment of the P group for purposes of paragraph (g) of this section, and B's note is treated as an intercompany obligation of the X consolidated group.

(c) *No subgroups.* The facts are the same as in paragraph (a) of this *Example 5,* except that X simultaneously acquires the stock of S and B from P (rather than X acquiring all of P's stock). Paragraph (j)(5) of this section does not apply to X's acquisitions. Unless an exception described in paragraph (g)(3)(i)(B) applies, B's note is treated as satisfied immediately before S and B become nonmembers, and reissued immediately after they become members of the X consolidated group. The amount at which the note is satisfied and reissued under paragraph (g)(3) of this section is based on the fair market value of the note at the time of P's sales to X. Paragraph (g)(4) of this section does not apply to the reissued B note in the X consolidated group, because the new note is always an intercompany obligation of the X consolidated group.

Example 6. Liquidation—80% distributee. (a) *Facts.* X has had preferred stock described in section 1504(a)(4) outstanding for several years. On January 1 of Year 1, S buys all of X's common stock for $60, and B buys all of X's preferred stock for $40. X's assets have a $0 basis and $100 value. On July 1 of Year 3, X distributes all of its assets to S and B in a complete liquidation. Under § 1.1502–34, section 332 applies to both S and B. Under section 337, X has no gain or loss from its liquidating distribution to S. Under sections 336 and 337(c), X has a $40 gain from its liquidating distribution to B. B has a $40 basis under section 334(a) in the assets received from X, and S has a $0 basis under section 334(b) in the assets received from X.

(b) *Intercompany items from the liquidation.* Under the matching rule, X's $40 gain from its liquidating distribution to B is not taken into account under this section as a result of the liquidation (and therefore is not yet reflected under §§ 1.1502–32 and 1.1502–33). Under the successor person rule of paragraph (j)(2)(i) of this section, S and B are both successors to X. Under section 337(c), X recognizes gain or loss only with respect to the assets distributed to B. Under paragraph (j)(2)(ii) of this section, to be consistent with the purposes of this section, S succeeds to X's $40 intercompany gain. The gain will be taken into account by S under the matching and acceleration rules of this section based on subsequent events. (The allocation of the intercompany gain to S does not govern the allocation of any other attributes.)

Example 7. Liquidation—no 80% distributee. (a) *Facts.* X has only common stock outstanding. On January 1 of Year 1, S buys 60% of X's stock for $60, and B buys 40% of X's stock for $40. X's assets have a $0 basis and $100 value. On July 1 of Year 3, X distributes all of its assets to S and B in a complete liquidation. Under § 1.1502–34, section 332 applies to both S and B. Under sections 336 and 337(c), X has a $100 gain from its liquidating distributions to S and B. Under section 334(b), S has a $60 basis in the assets received from X and B has a $40 basis in the assets received from X.

(b) *Intercompany items from the liquidation.* Under the matching rule, X's $100 intercompany gain from its liquidating distributions to S and B is not taken into account under this section as a result of the liquidation (and therefore is not yet reflected under §§ 1.1502–32 and 1.1502–33). Under the successor person rule of paragraph (j)(2)(i) of this section, S and B are both successors to X. Under paragraph (j)(2)(ii) of this section, to be consistent with the purposes of this section, S succeeds to X's $40 intercompany gain with respect to the assets distributed to B, and B succeeds to X's $60 intercompany gain with respect to the assets distributed to S. The gain will be taken into account by S and B under the matching and acceleration rules of this section based on subsequent events. (The allocation of the intercompany gain does not govern the allocation of any other attributes.)

(k) *Cross references*—(1) *Section 108.* See § 1.108–3 for the treatment of intercompany deductions and losses as subject to attribute reduction under section 108(b).

(2) *Section 263A(f).* See section 263A(f) and § 1.263A–9(g)(5) for special rules regarding interest from intercompany transactions.

(3) *Section 267(f).* See section 267(f) and § 1.267(f)–1 for special rules applicable to certain losses and deductions from transactions between members of a controlled group.

(4) *Section 460.* See § 1.460–4(j) for special rules regarding the application of section 460 to intercompany transactions.

(5) *Section 469.* See § 1.469–1(h) for special rules regarding the application of section 469 to intercompany transactions.

(6) *§ 1.1502–80.* See § 1.1502–80 for the non-application of certain Internal Revenue Code rules.

(l) *Effective dates*—(1) *In general.* This section applies with respect to transactions occurring in years beginning on or after July 12, 1995. If both this section and prior law apply to a transaction, or neither applies, with the result that items may be duplicated, omitted, or eliminated in determining taxable income (or tax liability), or items may be treated inconsistently, prior law (and not this section) applies to the transaction. For example, S's and B's items from S's sale of property to B which occurs before July 12, 1995 are taken into account under prior law, even though B may dispose of the property after July 12, 1995. Similarly, an intercompany distribution to which a shareholder becomes entitled before July 12, 1995 but which is distributed after that date is taken into account under prior law (generally when distributed), because this section generally takes dividends into account when the shareholder becomes entitled to them but this section does not apply at that time. If application of prior law to S's deferred gain or loss from a deferred intercompany transaction (as defined under prior law) occurring prior to July 12, 1995 would be affected by an intercompany transaction (as defined under this section) occurring after July 12, 1995, S's deferred gain or loss continues to be taken into account as provided under prior law, and the items from the subsequent intercompany transaction are taken into account under this section. Appropriate adjustments must be made to prevent items from being duplicated, omitted, or eliminated in determining taxable income as a result of the application of both this section and prior law to the successive transactions, and to ensure the proper application of prior law.

(2) *Avoidance transactions.* This paragraph (l)(2) applies if a transaction is engaged in or structured on or after April 8, 1994, with a principal purpose to avoid the rules of this section (and instead to apply prior law). If this paragraph (l)(2) applies, appropriate adjustments must be made in years beginning on or after July 12, 1995, to prevent the avoidance, duplication, omission, or elimination of any item (or tax liability), or any other inconsistency with the rules of this section. For example, if S is a dealer in real property and sells land to B on March 16, 1995 with a principal purpose of converting any future appreciation in the land to capital gain, B's gain from the sale of the land on May 11, 1997 might be characterized as ordinary income under this paragraph (l)(2).

(3) *Election for certain stock elimination transactions*—(i) *In general.* A group may elect pursuant to this paragraph (l)(3) to apply this section (including the elections available under paragraph (f)(5)(ii) of this section) to stock elimination transactions to which prior law would otherwise apply. If an election is made, this section, and not prior law, applies to determine the timing and attributes of S's and B's gain

or loss from stock with respect to all stock elimination transactions.

(ii) *Stock elimination transactions.* For purposes of this paragraph (l)(3), a stock elimination transaction is a transaction in which stock transferred from S to B—

(A) Is cancelled or redeemed on or after July 12, 1995;

(B) Is treated as cancelled in a liquidation pursuant to an election under section 338(h)(10) with respect to a qualified stock purchase with an acquisition date on or after July 12, 1995;

(C) Is distributed on or after July 12, 1995; or

(D) Is exchanged on or after July 12, 1995 for stock of a member (determined immediately after the exchange) in a transaction that would cause S's gain or loss from the transfer to be taken into account under prior law.

(iii) *Time and manner of making election.* An election under this paragraph (l)(3) is made by attaching to a timely filed original return (including extensions) for the consolidated return year including July 12, 1995 a statement entitled ''[Insert Name and Employer Identification Number of Common Parent] HEREBY ELECTS THE APPLICATION OF § 1.1502–13(l)(3).'' See paragraph (f)(5)(ii)(E) of this section for the manner of electing the relief provisions of paragraph (f)(5)(ii) of this section.

(4) *Prior law.* For transactions occurring in S's years beginning before July 12, 1995, see the applicable regulations issued under section 1502. See §§ 1.1502–13, 1.1502–13T, 1.1502–14, 1.1502–14T, 1.1502–31, and 1.1502–32 (as contained in the 26 CFR part 1 edition revised as of April 1, 1995).

(5) *Consent to adopt method of accounting.* For intercompany transactions occurring in a consolidated group's first taxable year beginning on or after July 12, 1995, the Commissioner's consent under section 446(e) is hereby granted for any changes in methods of accounting that are necessary solely by reason of the timing rules of this section. Changes in method of accounting for these transactions are to be effected on a cut-off basis.

§§ 1.1502–13T, 1.1502–14, and 1.1502–14T [Removed]

Par. 14. Sections 1.1502–13T, 1.1502–14, and 1.1502–14T are removed.

Par. 15. Section 1.1502–17 is amended as follows:

1. Paragraph (b) is revised.

2. Paragraph (c) is redesignated as paragraph (d).

3. New paragraphs (c) and (e) are added.

4. Newly designated paragraph (d) is amended by:

a. Revising the paragraph heading and the introductory text.

b. Designating the existing example as *Example 1* and adding a heading.

c. Adding *Examples 2* and *3.*

The added and revised provisions read as follows:

§ 1.1502–17 Methods of accounting.

* * * * *

(b) *Adjustments required if method of accounting changes—(1) General rule.* If a member of a group changes its method of accounting for a consolidated return year, the terms and conditions prescribed by the Commissioner under section 446(e), including section 481(a) where applicable, shall apply to the member. If the requirements of section 481(b) are met because applicable adjustments under section 481(a) are substantial, the increase in tax for any prior year shall be computed upon the basis of a consolidated return or a separate return, whichever was filed for such prior year.

(2) *Changes in method of accounting for intercompany transactions.* If a member changes its method of accounting for intercompany transactions for a consolidated return year, the change in method generally will be effected on a cut-off basis.

(c) *Anti-avoidance rules*—(1) *General rule.* If one member (B) directly or indirectly acquires an activity of another member (S), or undertakes S's activity, with the principal purpose to avail the group of an accounting method that would be unavailable (or would be unavailable without securing consent from the Commissioner) if S and B were treated as divisions of a single corporation, B must use the accounting method for the acquired or undertaken activity determined under paragraph (c)(2) of this section or must secure consent from the Commissioner under applicable administrative procedures to use a different method.

(2) *Treatment as divisions of a single corporation.* B must use the method of accounting that would be required if B acquired the activity from S in a transaction to which section 381 applied. Thus, the principles of section 381 (c)(4) and (c)(5) apply to resolve any conflicts between the accounting methods of S and B, and the acquired or undertaken activity is treated as having the accounting method used by S. Appropriate adjustments are made to treat all acquisitions or undertakings that are part of the same plan or arrangement as a single acquisition or undertaking.

(d) *Examples.* The provisions of this section are illustrated by the following examples:

Example 1. Separate return treatment generally. * * *

Example 2. Adopting methods. Corporation P is a member of a consolidated group. P provides consulting services to customers under various agreements. For one type of customer, P's agreements require payment only when the contract is completed (payment-on-completion contracts). P uses an overall accrual method of accounting. Accordingly, P takes its income from consulting contracts into account when earned, received, or due, whichever is earlier. With the principal purpose to avoid seeking the consent of the Commissioner to change its method of accounting for the payment-on-completion contracts to the cash method, P forms corporation S, and S begins to render services to those customers subject to the payment-on-completion contracts. P continues to render services to those customers not subject to these contracts.

(b) Under paragraph (c) of this section, S must account for the consulting income under the payment-on-completion contracts on an accrual method rather than adopting the cash method contemplated by P.

Example 3. Changing inventory sub-method. (a) Corporation P is a member of a consolidated group. P operates a manufacturing business that uses dollar-value LIFO, and has built up a substantial LIFO reserve. P has historically manufactured all its inventory and has used one natural business unit pool. P begins purchasing goods identical to its own finished goods from a foreign supplier, and is concerned that it must establish a separate resale pool under § 1.472–8(c). P anticipates that it will begin to purchase, rather than manufacture, a substantial portion of its inventory, resulting in a recapture of most of its LIFO reserve because of decrements in its manufacturing pool. With the principal purpose to avoid the decrements, P forms corporation S in Year 1. S operates as a distributor to nonmembers, and P sells all of its existing inventories to S. S adopts LIFO, and elects dollar-value LIFO with one resale pool. Thereafter, P continues to manufacture and purchase inventory, and to sell it to S for resale to nonmembers. P's intercompany gain from sales to S is taken into account under § 1.1502–13. S maintains its Year 1 base dollar value of inventory so that P will not be required to take its intercompany items (which include the effects of the LIFO reserve recapture) into account.

(b) Under paragraph (c) of this section, S must maintain two pools (manufacturing and resale) to the same extent that P would be required to maintain those pools under § 1.472–8 if it had not formed S.

(e) *Effective dates.* Paragraph (b) of this section applies to changes in method of accounting effective for years beginning on or after July 12, 1995. For changes in method of accounting effective for years beginning before that date, see § 1.1502–17 (as contained in the 26 CFR part 1 edition revised as of

April 1, 1995). Paragraphs (c) and (d) apply with respect to acquisitions occurring or activities undertaken in years beginning on or after July 12, 1995.

Par. 16. Section 1.1502–18 is amended by revising the heading for paragraph (f) and adding paragraph (g) to read as follows:

§ 1.1502–18 Inventory adjustment.

* * * * *

(f) *Transitional rules for years before 1966.* * * *

(g) *Transitional rules for years beginning on or after July 12, 1995.* Paragraphs (a) through (f) of this section do not apply for taxable years beginning on or after July 12, 1995. Any remaining unrecovered inventory amount of a member under paragraph (c) of this section is recovered in the first taxable year beginning on or after July 12, 1995, under the principles of paragraph (c)(3) of this section by treating the first taxable year as the first separate return year of the member. The unrecovered inventory amount can be recovered only to the extent it was previously included in taxable income. The principles of this section apply, with appropriate adjustments, to comparable amounts under paragraph (f) of this section.

Par. 17. Section 1.1502–20 is amended as follows:

1. Paragraph (a)(5) *Example 6* is amended as follows:
   a. The fifth sentence of paragraph (i) is revised.
   b. Paragraph (ii) is revised.
   c. Paragraphs (iii) and (iv) are added.
2. Paragraph (b)(6) *Example 5* is amended as follows:
   a. The fifth sentence of paragraph (i) is revised.
   b. A sentence is added at the beginning of paragraph (ii).
   c. Paragraph (iii) is revised.
   d. Paragraph (iv) is removed.
3. Paragraph (b)(6) *Example 7* is amended as follows:
   a. The fourth sentence of paragraph (i) is revised.
   b. The first sentence of paragraph (iii) is revised.
4. Paragraph (c)(4) is amended as follows:
   a. *Example 3* is amended by removing paragraph (iii).
   b. *Example 9* is added.
5. Paragraph (e)(3) is amended as follows:
   a. *Examples 2* and *8* are removed.
   b. *Example 3* through *Example 7* are redesignated as *Example 2* through *Example 6.*
   c. Newly designated *Example 5* is revised.
6. In paragraph (h)(1), the second sentence is revised. The revised and added provisions read as follows:

§ 1.1502–20 Disposition or deconsolidation of subsidiary stock.

(a) * * *

(5) * * *

Example 6. * * *

(i) * * * S sells its T stock to P for $100 in an intercompany transaction, recognizing a $60 intercompany loss that is deferred under section 267(f) and § 1.1502–13. * * *

(ii) Under paragraph (a)(3)(i) of this section, the application of paragraph (a)(1) of this section to S's $60 intercompany loss on the sale of its T stock to P is deferred, because S's intercompany loss is deferred under section 267(f) and § 1.1502–13. P's sale of the T stock to X ordinarily would result in S's intercompany loss being taken into account under the matching rule of § 1.1502–13(c). The deferred loss is not taken into account under § 1.267(f)–1, however, because P's sale to X (a member of the same controlled group as P) is a second intercompany transaction for purposes of section 267(f). Nevertheless, paragraph (a)(3)(ii) of this section provides that paragraph (a)(1) of this section applies to the intercompany loss as a result of P's sale to X because the T stock ceases to be owned by a member of the P consolidated group. Thus, the loss is disallowed under paragraph (a)(1) of this section immediately before P's sale and is therefore never taken into account under section 267(f).

(iii) The facts are the same as in (i) of this *Example,* except that S is liquidated after its sale of the T stock to P, but before P's sale of the T stock to X, and P sells the T stock to X for $110. Under §§ 1.1502–13(j) and 1.267(f)–1(b), P succeeds to S's intercompany loss as a result of S's liquidation. Thus, paragraph (a)(3)(i) of this section continues to defer the application of paragraph (a)(1) of this section until P's sale to X. Under paragraph (a)(4) of this section, the amount of S's $60 intercompany loss disallowed under paragraph (a)(1) of this section is limited to $50 because P's $10 gain on the disposition of the T stock is taken into account as a consequence of the same plan or arrangement.

(iv) The facts are the same as in (i) of this *Example,* except that P sells the T stock to A, a person related to P within the meaning of section 267(b)(2). Although S's intercompany loss is ordinarily taken into account under the matching rule of § 1.1502–13(c) as a result of P's sale, § 1.267(f)–1(c)(2)(ii) provides that none of the intercompany loss is taken into account because A is a nonmember that is related to P under section 267(b). Under paragraph (a)(3)(i) of this section, paragraph (a)(1) of this section does not apply to loss that is disallowed under any other provision. Because § 1.267(f)–1(c)(2)(ii) and section 267(d) provide that the benefit of the intercompany loss is retained by A if the property is later disposed of at a gain, the intercompany loss is not disallowed for purposes of paragraph (a)(3)(i) of this section. Thus, the intercompany loss is disallowed under paragraph (a)(1) of this section immediately before P's sale and is therefore never taken into account under section 267(d).

(b) * * *

(6) * * *

Example 5. * * *

(i) * * * S sells its T stock to P for $100 in an intercompany transaction, recognizing a $60 intercompany loss that is deferred under section 267(f) and § 1.1502–13. * * *

(ii) Under paragraph (a)(3)(i) of this section, the application of paragraph (a)(1) of this section to S's intercompany loss on the sale of its T stock to P is deferred because S's loss is deferred under section 267(f) and § 1.1502–13. * * *

(iii) T's issuance of the additional shares to the public does not result in S's intercompany loss being taken into account under the matching or acceleration rules of § 1.1502–13(c) and (d), or under the application of the principles of those rules in section 267(f). However, the deconsolidation of T is an overriding event under paragraph (a)(3)(ii) of this section, and paragraph (a)(1) of this section disallows the intercompany loss immediately before the deconsolidation even though the intercompany loss is not taken into account at that time.

Example 7. * * *

(i) * * * S recently purchased its T stock from S1, a lower tier subsidiary, in an intercompany transaction in which S1 recognized a $30 intercompany gain that was deferred under § 1.1502–13. * * *

* * * * *

(iii) Under the matching rule of § 1.1502–13, S's sale of its T stock results in S1's $30 intercompany gain being taken into account. * * *

* * * * *

(c) * * *

(4) * * *

Example 9. Intercompany stock sales.

(i) P is the common parent of a consolidated group, S is a wholly owned subsidiary of P, and T is a wholly owned recently purchased subsidiary of S. S has a $100 basis in the T stock, and T has a capital asset with a basis of $0 and a value of $100. T's asset declines in value to $60. Before T has any positive investment adjustments or extraordinary gain dispositions, S sells its T stock to P for $60. T's asset reappreciates and is sold for $100, and T recognizes $100 of gain. Under the investment adjustment system, P's basis in the T stock increases to $160. P then sells all of the T stock for $100 and recognizes a loss of $60.

(ii) S's sale of the T stock to P is an intercompany transaction. Thus, S's $40 loss is deferred under section 267(f) and § 1.1502–13. Under paragraph (a)(3) of this section, the application of paragraph (a)(1) of this section to S's $40 loss is deferred until the loss is taken into account. Under the matching rule of § 1.1502–13(c), the loss is taken into account to reflect the difference for each year between P's corresponding items taken into account and P's recomputed corresponding items (the corresponding items that P would take into account for the year if S and P were divisions of a single corporation). If S and P

were divisions of a single corporation and the intercompany sale were a transfer between the divisions, P would succeed to S's $100 basis and would have a $200 basis in the T stock at the time it sells the T stock ($100 of initial basis plus $100 under the investment adjustment system). S's $40 loss is taken into account at the time of P's sale of the T stock to reflect the $40 difference between the $60 loss P takes into account and P's recomputed $100 loss.

(iii) Under the matching rule of § 1.1502–13(c), the attributes of S's $40 loss and P's $60 loss are redetermined to produce the same effect on consolidated taxable income (and consolidated tax liability) as if S and P were divisions of a single corporation. Under § 1.1502–13(b)(6), attributes of the losses include whether they are disallowed under this section. Because the amount described in paragraph (c)(1) of this section is $100, both S's $40 loss and P's $60 loss are disallowed.

* * * * *

(e) * * *

(3) * * *

Example 5. Absence of a view.

(i) In Year 1, P buys all the stock of T for $100, and T becomes a member of the P group. T has 2 historic assets, asset 1 with a basis of $40 and value of $90, and asset 2 with a basis of $60 and value of $10. In Year 2, T sells asset 1 for $90. Under the investment adjustment system, P's basis in the T stock increases from $100 to $150. Asset 2 is not essential to the operation of T's business, and T distributes asset 2 to P in Year 5 with a view to having the group retain its $50 loss inherent in the asset. Under § 1.1502–13(f)(2), and the application of the principles of this rule in section 267(f), T has a $50 intercompany loss that is deferred. Under § 1.1502–32(b)(3)(iv), the distribution reduces P's basis in the T stock by $10 to $140 in Year 5. In Year 6, P sells all the T stock for $90. Under the acceleration rule of § 1.1502–13(d), and the application of the principles of this rule in section 267(f), T's intercompany loss is ordinarily taken into account immediately before P's sale of the T stock. Assuming that the loss is absorbed by the group, P's basis in T's stock would be reduced from $140 to $90 under § 1.1502–32(b)(3)(i), and there would be no gain or loss from the stock disposition. (Alternatively, if the loss is not absorbed and the loss is reattributed to P under paragraph (g) of this section, the reattribution would reduce P's basis in T's stock from $140 to $90.)

(ii) A $50 loss is reflected both in T's basis in asset 2 and in P's basis in the T stock. Because the distribution results in the loss with respect to asset 2 being taken into account before the corresponding loss reflected in the T stock, and asset 2 is an historic asset of T, the distribution is not with the view described in paragraph (e)(2) of this section.

* * * * *

(h) * * *

(1) * * * For this purpose, dispositions deferred under § 1.1502–13 are deemed to occur at the time the deferred gain or loss is taken into account unless the stock was deconsolidated before February 1, 1991.

* * *

* * * * *

Par. 18. Section 1.1502–26 is amended by revising paragraph (b) to read as follows:

§ 1.1502–26 Consolidated dividends received deduction.

* * * * *

(b) *Intercompany dividends.* The deduction determined under paragraph (a) of this section is determined without taking into account intercompany dividends to the extent that, under § 1.1502–13(f)(2), they are not included in gross income. See § 1.1502–13 for additional rules relating to intercompany dividends.

* * * * *

Par. 19. Section 1.1502–33 is amended by revising paragraph (c)(2) to read as follows:

§ 1.1502–33 Earnings and profits.

* * * * *

(c) * * *

(2) *Intercompany transactions.* Intercompany items and corresponding items are not reflected in earnings and profits before they are taken into account under § 1.1502–13. See § 1.1502–13 for the applicable rules and definitions.

* * * * *

§ 1.1502–79 [Amended]

Par. 20. Section 1.1502–79 is amended by removing paragraph (f).

Par. 21. Section 1.1502–80 is amended by adding paragraphs (e) and (f) to read as follows:

§ 1.1502–80 Applicability of other provisions of law.

* * * * *

(e) *Non-applicability of section 163(e)(5).* Section 163(e)(5) does not apply to any intercompany obligation (within the meaning of § 1.1502–13(g)) issued in a consolidated return year beginning on or after July 12, 1995.

(f) *Non-applicability of section 1031.* Section 1031 does not apply to any intercompany transaction occurring in consolidated return years beginning on or after July 12, 1995.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 22. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 23. In § 602.101, paragraph (c) is amended as follows:

1. Removing the following entries from the table:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control number
* * * * *	
1.267(f)–1T	1545–0885
* * * * *	
1.469–1T	1545–1008
* * * * *	
1.1502–14	1545–0123
1.1502–14T	1545–1161
* * * * *	

2. Adding entries in numerical order to the table for §§ 1.267(f)–1 and 1.469–1 and revising the entry for § 1.1502–13 to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

CFR part or section where identified and described	Current OMB control number
* * * * *	
1.267(f)–1	1545–0885
* * * * *	
1.469–1	1545–1008
* * * * *	
1.1502–13	1545–0123, 1545–0885, 1545–1161, 1545–1433
* * * * *	

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Approved: June 29, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 95–16973 Filed 7–12–95; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF JUSTICE

28 CFR Part 0

[AG Order No. 1977–95]

Service of Subpoenas Upon the Attorney General

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule delegates authority to the Assistant Attorney General for Administration to accept official-capacity subpoenas directed to the Attorney General. This action is being undertaken to promote administrative efficiency.

EFFECTIVE DATE: July 18, 1995.

FOR FURTHER INFORMATION CONTACT:

Rafael A. Madan, Attorney-Advisor, Office of the General Counsel, Justice Management Division, U.S. Department of Justice, (202) 514–3452.

SUPPLEMENTARY INFORMATION: Currently, 28 CFR 0.77(j) authorizes the Assistant Attorney General for Administration to accept official-capacity process, except subpoenas, directed to the Attorney General. Because the Assistant Attorney General for Administration does not have authority to accept official-capacity subpoenas directed to the Attorney General, the Justice Management Division's Office of General Counsel, acting for the Assistant Attorney General for Administration, at present conducts a preliminary review (to determine facial validity) of all such subpoenas that are served at the Main Justice Building in Washington, D.C., and escorts the process servers through the building to named individuals, usually on the Attorney General's staff, who have specific authority to accept them. This procedure will be significantly disrupted by the relocation of Justice Management Division's Office of General Counsel out of the Main Justice Building. Thus, for administrative convenience, the Attorney General has determined to delegate authority to the Assistant Attorney General for Administration to accept such subpoenas.

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a significant impact on a substantial number of small business entities. This rule is not considered to be a ''significant regulatory action'' within the meaning of section 3(f) of Executive Order 12866, nor does it have federalism implications warranting the preparation of a federalism assessment in accordance with Executive Order 12612. This rule pertains to agency management and is not subject the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553(b). This rule is not considered to have a significant impact on family formation, maintenance, or general well-being in accordance with Executive Order 12606.

List of Subjects in 28 CFR part 0

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

Accordingly, 28 CFR part 0 is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

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

Authority: 5 U.S.C. 301, 3151; 28 U.S.C. 509, 510, 515–519.

2. Section 0.77 of subpart 0 of title 28 of the Code of Federal Regulations is amended by revising paragraph (j) to read as follows:

§ 0.77 Operational functions.

* * * * *

(j) Accepting service of summonses, complaints, or other papers, including, without limitation, subpoenas, directed to the Attorney General in his official capacity, as a representative of the Attorney General, under the Federal Rules of Civil and Criminal Procedure or in any suit within the purview of subsection (a) of section 208 of the Department of Justice Appropriation Act, 1953 (66 Stat. 560 (43 U.S.C. 666(a))).

* * * * *

Dated: July 7, 1995.

Janet Reno,

Attorney General.

[FR Doc. 95–17514 Filed 7–17–95; 8:45 am]

BILLING CODE 4110–01–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Chapter II

Completing Reviews and Audits of Royalty Payments

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability of guidance.

SUMMARY: The extent of the time periods covered by audits of royalty payments has been a matter of considerable controversy between the Minerals Management Service (MMS) and the minerals industry for several years. During the 1980's, MMS increased audit activities in compliance with the Federal Oil and Gas Royalty Management Act (30 U.S.C. 1711). The resulting orders issued to companies for royalty underpayments often covered periods more than six years old. Many companies have challenged MMS orders on statute of limitations grounds and their theories have been asserted in Federal court cases and in a large number of administrative appeals.

In order to be more responsive to the public we serve, the MMS, in consultation with affected states, Indian tribes, and the minerals industry, has developed guidance regarding the extent of the time periods to be covered when reviewing and auditing royalty payments. Copies of this guidance may be obtained by contacting the Office of the Deputy Associate Director for Compliance at (303) 231–3641.

FOR FURTHER INFORMATION CONTACT: Mr. David Guzy, Chief, Rules and Procedures Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS–3101, Denver, Colorado, 80225–0165, telephone number (303) 231–3432, fax number (303) 231–3194.

Dated: July 12, 1995.

James W. Shaw,

Associate Director for Royalty Management.

[FR Doc. 95–17774 Filed 7–17–95; 8:45 am]

BILLING CODE 4310–MR–P

POSTAL SERVICE

39 CFR Part 265

Compliance With Subpoenas, Summonses, and Court Orders by Postal Employees Within the Inspection Service Where the Postal Service or the United States Is Not a Party

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service has established procedures for Postal Service employees within the Postal Inspection Service to respond to subpoenas, summonses, and court orders to produce records or give testimony in cases where the Postal Service is not a party. The purpose of this rule is to minimize disruption of normal Postal Inspection Service functions caused by compliance with those demands, maintain control over release of public information, prevent the disclosure of information that should not legally be disclosed, prevent the Postal Service from being misused for private purposes, and otherwise protect the interests of the United States. These procedures prohibit postal employees within or assigned to the Postal Inspection Service from complying with subpoenas, summonses, and other court orders in cases where

the Postal Service is not a party unless authorized by certain authorizing officials.

EFFECTIVE DATE: July 18, 1995.

FOR FURTHER INFORMATION CONTACT: James M. Parrott, Associate Counsel, Office of the Chief Postal Inspector, (202) 268–4417.

SUPPLEMENTARY INFORMATION: On June 6, 1995, the Postal Service published in the **Federal Register** (60 FR 29806–29809) a notice for public comment on a proposed rule to establish procedures for employee compliance with subpoenas, summonses, or other court orders where the Postal Service is not a party. The rule amends 39 CFR 265 to provide that postal employees within or assigned to the Postal Inspection Service must follow certain rules for the release of information in the form of documents or testimony. Giving testimony or releasing a document in legal proceedings where the Postal Service or the United States is not a party must be authorized beforehand. Such employees may comply with subpoenas, summonses, and court orders after consulting Inspection Service legal counsel and with authorization by specified authorizing officials. The release of the information must be in compliance with applicable laws and regulations and not be against the interest of the United States.

No comments were received by the closing date of July 6, 1995. The Postal Service therefore adopts the rule below as originally published on June 6, 1995.

Several federal agencies have enacted regulations that give them the authority to control the release of documents and testimony in legal proceedings where the agency is not a party. Courts have recognized that federal agencies may limit compliance in these situations. See *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951). Additionally, subpoenas, summonses, and orders issued by state courts, legislatures, or legislative committees that attempt to assert jurisdiction over federal agencies are inconsistent with the Supremacy Clause of the U.S. Constitution. A federal regulation regarding compliance with those subpoenas reinforces this principle. *McCulloch* v. *Maryland*, 17 U.S. (4 Wheat.) 316 (1819); *United States* v. *McLeod*, 385 F.2d 734 (5th Cir. 1967).

This rule does not apply to situations in which the United States, the Postal Service, or any federal agency is a party in action; Congressional requests, summonses, or subpoenas; consultative services and technical assistance rendered by the Inspection Service in the course of its normal functions; employees serving as expert witnesses; employees making appearances in their private capacity; and when it has been determined by an authorizing official that it is in the public interest.

New § 265.13 of title 39 of the Code of Federal Regulations is the Postal Service regulation concerning the compliance with subpoenas, summonses, and court orders by postal employees within the Inspection Service where the Postal Service or the United States is not a party. This section has also been written to reflect the changes in organization that the Inspection Service has undergone. As an example, the position of Regional Chief Inspector no longer exists within the Inspection Service. Current regulations identify that official as responsible for authorizing testimony or the production of documents pursuant to a subpoena, summons, or court order where the Postal Service, the United States, or another federal agency is not a party. Now, the authorizing official, in most cases, is the Postal Inspector in Charge of the affected field Division.

List of Subjects in 39 CFR Part 265

Administrative practice and procedure, Government employees, Release of information.

Accordingly, 39 CFR part 265 is amended as set forth below.

PART 265—RELEASE OF INFORMATION

1. The authority citation for part 265 continues to read as follows:

Authority: 5 U.S.C. 552; 5 U.S.C. App. 3; 39 U.S.C. 401, 403, 410, 1001, 2601.

2. The heading of § 265.11 is revised to read as follows:

§ 265.11 Compliance with subpoena duces tecum, court orders, and summonses.

3. Paragraphs (b) and (c) of § 265.11 are removed and paragraph (b) is reserved.

4. A new § 265.13 is added to read as follows:

§ 265.13 Compliance with subpoenas, summonses, and court orders by postal employees within the Inspection Service where the Postal Service, the United States, or any other federal agency is not a party.

(a) *Applicability of this section.* The rules in this section apply to all federal, state, and local court proceedings, as well as administrative and legislative proceedings, other than:

(1) Proceedings where the United States, the Postal Service, or any other federal agency is a party;

(2) Congressional requests or subpoenas for testimony or documents;

(3) Consultative services and technical assistance rendered by the Inspection Service in executing its normal functions;

(4) Employees serving as expert witnesses in connection with professional and consultative services under § 447.23 of this chapter and under title 5, Code of Federal Regulations, part 7001, provided that employees acting in this capacity must state for the record that their testimony reflects their personal opinions and should not be viewed as the official position of the Postal Service;

(5) Employees making appearances in their private capacities in proceedings that do not relate to the Postal Service (e.g., cases arising from traffic accidents, domestic relations) and do not involve professional or consultative services; and

(6) When in the opinion of the Counsel or the Counsel's designee, Office of the Chief Postal Inspector, it has been determined that it is in the best interest of the Inspection Service or in the public interest.

(b) *Purpose and scope.* The provisions in this section limit the participation of postal employees within or assigned to the Inspection Service, in private litigation, and other proceedings in which the Postal Service, the United States, or any other federal agency is not a party. The rules are intended to promote the careful supervision of Inspection Service resources and to reduce the risk of inappropriate disclosures that might affect postal operations.

(c) *Definitions.* For the purposes of this section:

(1) *Authorizing official* is the person responsible for giving the authorization for release of documents or permission to testify.

(2) *Case* or *matter* means any civil proceeding before a court of law, administrative board, hearing officer, or other body conducting a judicial or administrative proceeding in which the United States, the Postal Service, or another federal agency is not a named party.

(3) *Demand* includes any request, order, or subpoena for testimony or the production of documents.

(4) *Document* means all records, papers, or official files, including, but not limited to, official letters, telegrams, memoranda, reports, studies, calendar and diary entries, graphs, notes, charts, tabulations, data analyses, statistical or information accumulations, records of meetings and conversations, film impressions, magnetic tapes, computer discs, and sound or mechanical reproductions;

(5) *Employee* or *Inspection Service employee,* for the purpose of this section only, refers to a Postal Service employee currently or formerly assigned to the Postal Inspection Service, student interns, contractors and employees of contractors who have access to Inspection Service information and records.

(6) *Inspection Service* means the organizational unit within the Postal Service as outlined in § 224.3 of this chapter.

(7) *Inspection Service Legal Counsel* is an attorney authorized by the Chief Postal Inspector to give legal advice to members of the Inspection Service.

(8) *Inspection Service Manual* is the directive containing the standard operating procedures for Postal Inspectors and certain Inspection Service employees.

(9) *Nonpublic* includes any material or information not subject to mandatory public disclosure under § 265.6(b).

(10) *Official case file* means official documents that relate to a particular case or investigation. These documents may be kept at any location and do not necessarily have to be in the same location in order to constitute the file.

(11) *Postal Inspector reports* include all written reports, letters, recordings, or other memorializations made in conjunction with the duties of a Postal Inspector.

(12) *Testify* or *testimony* includes both in-person oral statements before any body conducting a judicial or administrative proceeding and statements made in depositions, answers to interrogatories, declarations, affidavits, or other similar documents.

(13) *Third-party action* means an action, judicial or administrative, in which the United States, the Postal Service, or any other federal agency is not a named party.

(d) *Policy.* (1) No current or former employee within the Inspection Service may testify or produce documents concerning information acquired in the course of employment or as a result of his or her relationship with the Postal Service in any proceeding to which this section applies (see paragraph (a) of this section), unless authorized to do so. Authorization will be provided by:

(i) The Postal Inspector in Charge of the affected field Division, or designee, for Division personnel and records, after that official has determined through consultation with Inspection Service legal counsel that no legal objection, privilege, or exemption applies to such testimony or production of documents.

(ii) The Chief Postal Inspector or designee for Headquarters employees and records, after that official has determined through consultation with Inspection Service legal counsel, that no legal objection, privilege, or exemption applies to such testimony or production of documents.

(2) Consideration shall be given to:

(i) Statutory restrictions, as well as any legal objection, exemption, or privilege that may apply;

(ii) Relevant legal standards for disclosure of nonpublic information and documents;

(iii) Inspection Service rules and regulations and the public interest;

(iv) Conservation of employee time; and

(v) Prevention of the expenditure of Postal Service resources for private purposes.

(3) If additional information is necessary before a determination can be made, the authorizing official may, in coordination with Inspection Service legal counsel, request assistance from the Department of Justice.

(e) *Compliance with subpoena duces tecum.* (1) Except as required by part 262 of this chapter, produce any other record of the Postal Service only in compliance with a subpoena *duces tecum* or appropriate court order.

(2) Do not release any record containing information relating to an employee's security or loyalty.

(3) Honor subpoenas and court orders only when disclosure is authorized.

(4) When authorized to comply with a subpoena *duces tecum* or court order, do not leave the originals with the court.

(5) Postal Inspector reports are considered to be confidential internal documents and shall not be released unless there is specific authorization by the Chief Postal Inspector or the Inspector in Charge of the affected field Division, after consulting with Inspection Service legal counsel.

(6) The Inspection Service Manual and other operating instructions issued to Inspection Service employees are considered to be confidential and shall not be released unless there is specific authorization, after consultation with Inspection Service legal counsel. If the requested information relates to confidential investigative techniques, or release of the information would adversely affect the law enforcement mission of the Inspection Service, the subpoenaed official, through Inspection Service legal counsel, may request an *in camera, ex parte* conference to determine the necessity for the release of the information. The entire Manual should not be given to any party.

(7) Notes, memoranda, reports, transcriptions, whether written or recorded and made pursuant to an official investigation conducted by a member of the Inspection Service, are the property of the Inspection Service and are part of the official case file, whether stored with the official file.

(f) *Compliance with summonses and subpoenas ad testificandum.* (1) If an Inspection Service employee is served with a third-party summons or a subpoena requiring an appearance in court, contact should be made with Inspection Service legal counsel to determine whether and which exemptions or restrictions apply to proposed testimony. Inspection Service employees are directed to comply with summonses, subpoenas, and court orders, as to appearance, but may not testify without authorization.

(2) Postal Inspector reports or records will not be presented during testimony, in either state or federal courts in which the United States, the Postal Service, or another federal agency is not a party in interest, unless authorized by the Chief Postal Inspector or the Postal Inspector in Charge of the affected field Division, who will make the decision after consulting with Inspection Service legal counsel. If an attempt is made to compel production, through testimony, the employee is directed to decline to produce the information or matter and to state that it may be exempted and may not be disclosed or produced without the specific approval of the Chief Postal Inspector or the Postal Inspector in Charge of the affected field Division. The Postal Service will offer all possible assistance to the courts, but the question of disclosing information for which an exemption may be claimed is a matter of discretion that rests with the appropriate official. Paragraph (e) of this section covers the release of Inspection Service documents in cases where the Postal Service or the United States is not a party.

(g) *General procedures for obtaining Inspection Service documents and testimony from Inspection Service employees.* (1) To facilitate the orderly response to demands for the testimony of Inspection Service employees and production of documents in cases where the United States, the Postal Service, or another federal agency is not a party, all demands for the production of nonpublic documents or testimony of Inspection Service employees concerning matters relating to their official duties and not subject to the exemptions set forth in paragraph (a) of this section shall be in writing and conform to the requirements outlined in paragraphs (g)(2) and (g)(3) of this section.

(2) Before or simultaneously with service of a demand described in paragraph (g)(1) of this section, the

requesting party shall serve on the Counsel, Office of the Chief Postal Inspector, 475 L'Enfant Plaza SW., Washington, DC 20260–2181, an affidavit or declaration containing the following information:

(i) The title of the case and the forum where it will be heard;

(ii) The party's interest in the case;

(iii) The reasons for the demand′;

(iv) A showing that the requested information is available, by law, to a party outside the Postal Service;

(v) If testimony is sought, a summary of the anticipated testimony;

(vi) If testimony is sought, a showing that Inspection Service records could not be provided and used in place of the requested testimony;

(vii) The intended use of the documents or testimony; and

(viii) An affirmative statement that the documents or testimony is necessary for defending or prosecuting the case at issue.

(3) The Counsel, Office of the Chief Postal Inspector, shall act as agent for the receipt of legal process for demands for production of records or testimony of Inspection Service employees where the United States, the Postal Service, or any other federal agency is not a party. A subpoena for testimony or for the production of documents from an Inspection Service employee concerning official matters shall be served in accordance with the applicable rules of civil procedure. A copy of the subpoena and affidavit or declaration, if not previously furnished, shall also be sent to the Chief Postal Inspector or the appropriate Postal Inspector in Charge.

(4) Any Inspection Service employee who is served with a demand shall promptly inform the Chief Postal Inspector, or the appropriate Postal Inspector in Charge, of the nature of the documents or testimony sought and all relevant facts and circumstances.

(h) *Authorization of testimony or production of documents.* (1) The Chief Postal Inspector or the Postal Inspector in Charge of the affected field Division, after consulting with Inspection Service legal counsel, shall determine whether testimony or the production of documents will be authorized.

(2) Before authorizing the requested testimony or the production of documents, the Chief Postal Inspector or the Postal Inspector in Charge of the affected field Division shall consider the following factors:

(i) Statutory restrictions, as well as any legal objection, exemption, or privilege that may apply;

(ii) Relevant legal standards for disclosure of nonpublic information and documents;

(iii) Inspection Service rules and regulations and the public interest;

(iv) Conservation of employee time; and

(v) Prevention of expenditures of government time and resources solely for private purposes.

(3) If, in the opinion of the authorizing official, the documents should not be released or testimony should not be furnished, that official's decision is final.

(4) Inspection Service legal counsel may consult or negotiate with the party or the party's counsel seeking testimony or documents to refine and limit the demand, so that compliance is less burdensome, or obtain information necessary to make the determination whether the documents or testimony will be authorized. If the party or party's counsel seeking the documents or testimony fails to cooperate in good faith, preventing Inspection Service legal counsel from making an informed recommendation to the authorizing official, that failure may be presented to the court or other body conducting the proceeding as a basis for objection.

(5) Permission to testify or to release documents in all cases will be limited to matters outlined in the affidavit or declaration described in paragraph (g)(2) of this section or to such parts as deemed appropriate by the authorizing official.

(6) If the authorizing official allows the release of documents or testimony to be given by an employee, arrangements shall be made for the taking of testimony or receipt of documents by the least disruptive methods to the employee's official duties. Testimony may, for example, be provided by affidavits, answers to interrogatories, written depositions, or depositions transcribed, recorded, or preserved by any other means allowable by law.

(i) While giving a deposition, the employee may, at the option of the authorizing official, be represented by Inspection Service legal counsel.

(ii) While completing affidavits, or other written reports or at any time during the process of preparing for testimony or releasing documents, the employee may seek the assistance of Inspection Service legal counsel.

(7) Absent written authorization from the authorizing official, the employee shall respectfully decline to produce the requested documents, testify, or, otherwise, disclose the requested information.

(8) If the authorization is denied or not received by the return date, the employee, together with counsel, where appropriate, shall appear at the stated time and place, produce a copy of this section, and respectfully decline to testify or produce any document on the basis of the regulations in this section.

(9) The employee shall appear as ordered by the subpoena, summons, or other appropriate court order, unless:

(i) Legal counsel has advised the employee that an appearance is inappropriate, as in cases where the subpoena, summons, or other court order was not properly issued or served, has been withdrawn, discovery has been stayed; or

(ii) Where the Postal Service will present a legal objection to furnishing the requested information or testimony.

(i) *Inspection Service employees as expert or opinion witnesses.* No Inspection Service employee may testify as an expert or opinion witness, with regard to any matter arising out of the employee's duties or functions at the Postal Service, for any party other than the United States, except that in extraordinary circumstances, the Counsel, Office of the Chief Postal Inspector, may approve such testimony in private litigation. An Inspection Service employee may not testify as such an expert or opinion witness without the express authorization of the Counsel, Office of the Chief Postal Inspector. A litigant must first obtain authorization of the Counsel, Office of the Chief Postal Inspector, before designating an Inspection Service employee as an expert or opinion witness.

(j) *Postal liability.* This section is intended to provide instructions to Inspection Service employees and does not create any right or benefit, substantive or procedural, enforceable by any party against the Postal Service.

(k) *Fees.* (1) Unless determined by 28 U.S.C. 1821 or other applicable statute, the costs of providing testimony, including transcripts, shall be borne by the requesting party.

(2) Unless limited by statute, such costs shall also include reimbursement to the Postal Service for the usual and ordinary expenses attendant upon the employee's absence from his or her official duties in connection with the case or matter, including the employee's salary and applicable overhead charges, and any necessary travel expenses as follows:

(i) The Inspection Service is authorized to charge reasonable fees to parties demanding documents or information. Such fees, calculated to reimburse the Postal Service for the cost of responding to a demand, may include the costs of time expended by Inspection Service employees, including attorneys, to process and respond to the demand; attorney time for reviewing the

demand and for legal work in connection with the demand; expenses generated by equipment used to search for, produce, and copy the requested information; travel costs of the employee and the agency attorney, including lodging and per diem where appropriate. Such fees shall be assessed at the rates and in the manner specified in § 265.9.

(ii) At the discretion of the Inspection Service where appropriate, fees and costs may be estimated and collected before testimony is given.

(iii) The provisions in this section do not affect rights and procedures governing public access to official documents pursuant to the Freedom of Information Act, 5 U.S.C 552a.

(l) *Acceptance of service.* The rules in this section in no way modify the requirements of the Federal Rules of Civil Procedure (28 U.S.C. Appendix) regarding service of process.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–17326 Filed 7–17–95; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MT25–1–6541a; FRL–5251–8]

Approval and Promulgation of Air Quality Implementation Plans; Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is acting on revisions to the State Implementation Plan (SIP) submitted by the Governor of Montana on May 17, 1994. The submittal included, among other things, revisions to the State's construction permitting regulations to comply with Federal requirements and revisions to address outstanding rule deficiencies, as well as a request that the existing regulations in the SIP be replaced with the October 1979 recodification of the Administrative Rules of Montana (ARM). EPA is approving all of the regulations included in this submittal, with the exception of the two director's discretion provisions regarding hydrocarbon emissions which EPA is disapproving, the odor control rules and the sulfur oxide rules for lead smelters on which EPA is taking no action, and the variance provisions which EPA will be acting on in a separate notice. Also, EPA is not approving the submitted versions of two provisions of the State's open burning rules which EPA previously disapproved. The previously-approved versions of these rules remain part of the SIP. In addition, EPA is only partially approving the State's nonattainment permitting rules for the Kalispell PM–10 nonattainment area. Last, EPA is approving Montana's construction permit rules for sources of hazardous air pollutants under section 112(l) of the Clean Air Act.

DATES: This final rule is effective on September 18, 1995, unless adverse or critical comments are received by August 17, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the State's submittal and other relevant information are available for inspection during normal business hours at the following locations: Air Programs Branch, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466; and Air Quality Division, Montana Department of Health and Environmental Sciences, P.O. Box 200901, Cogswell Building, Helena, Montana 59620–0901.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, 8ART–AP, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466, (303) 293–1765.

SUPPLEMENTARY INFORMATION:

I. Background

On May 17, 1994, the Governor of Montana submitted comprehensive revisions to the Montana SIP. Specifically, the submittal included the following revisions to the State's regulations:

(1) Revisions to the nonattainment new source review (NSR) permitting program by the addition of new ARM 16.8.1701–1705 and 16.8.1801–1806 to meet the requirements of 40 CFR 51.165 and the amended Clean Air Act (Act), as required for all of the State's nonattainment areas;

(2) Revisions to the prevention of significant deterioration (PSD) permitting program in ARM 16.8.945–963 to bring the State's PSD rules up to date with the Federal PSD requirements in 40 CFR 51.166 and with some of the new requirements of the amended Act;

(3) Revisions to the general NSR permitting requirements in ARM 16.8.1101–1120 to address outstanding EPA concerns and to reflect the major source preconstruction permitting requirements in subchapters 9, 17, and 18 of title 16, chapter 8 of the ARM;

(4) Revisions to address commitments in Montana's PM–10 SIPs including, among other things, revisions to: (1) The State's NSR rules as discussed above; (2) the source testing requirements in ARM 16.8.708–709; (3) the New Source Performance Standards (NSPS) in ARM 16.8.1423; and (4) the National Emission Standards for Hazardous Air Pollutants (NESHAPs) in ARM 16.8.1424;

(5) Revisions to the wood waste burner emission rule in ARM 16.8.1407 to address EPA's December 4, 1992 disapproval of the previous revision to this rule (see 57 FR 57345);

(6) Revisions to the general definitions for Montana's air program rules in ARM 16.8.701; and

(7) Miscellaneous revisions to other source-category emission control rules in ARM 16.8.1401, 1425, and 1427–1428.

Also as part of this submittal, the State submitted the entire State air quality rules which were recodified in October of 1979 to be incorporated into the SIP. Although the State recodified its rules in 1979, the State never formally submitted the recodified rules to replace the existing rules approved by EPA in the SIP. Only rules to which revisions were made after 1979 have been submitted to EPA and approved in the SIP. Therefore, in this submittal, the State submitted its entire air quality regulations to be incorporated into the SIP and to replace the existing State rules approved in the SIP.

A. Nonattainment NSR and PSD Requirements of the Act

The air quality planning requirements for nonattainment NSR are set out in part D of title I of the Act. The EPA has issued a ''General Preamble'' describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under part D, including those State submittals containing nonattainment area NSR SIP requirements (see 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of part D advanced in this notice and the supporting rationale. A brief discussion of the specific elements required in a State's nonattainment NSR program is also included in Section II.B. of this document.

EPA is currently developing rule revisions to implement the changes under the 1990 Clean Air Act Amendments (1990 Amendments) in the NSR provisions of parts C and D of title I of the Act. The EPA anticipates

that the proposed rule will be published for public comment in the near future. If EPA has not taken final action on States' NSR submittals by that time, EPA may generally refer to the proposed rule as the most authoritative guidance available regarding the approvability of the submittals. EPA expects to take final action to promulgate the rule revisions to implement the part C and D changes sometime during 1996. Upon promulgation of those revised regulations, EPA will review NSR SIPs to determine whether additional SIP revisions are necessary to satisfy the requirements of the rulemaking.

Prior to EPA approval of a State's NSR SIP submission, the State may continue permitting only in accordance with the new statutory requirements for permit applications completed after the relevant SIP submittal date. This policy was explained in transition guidance memoranda from John Seitz dated March 11, 1991 and September 3, 1992.

As explained in the March 11 memorandum, EPA does not believe Congress intended to mandate the more stringent title I NSR requirements during the time provided for SIP development. States were thus allowed to continue to issue permits consistent with requirements in their current NSR SIPs during that period, or to apply 40 CFR part 51, appendix S for newly designated areas that did not previously have NSR SIP requirements.

The September 3, 1992 memorandum also addressed the situation where States did not submit the part D NSR SIP revisions by the applicable statutory deadline. For permit applications complete by the SIP submittal deadline, States may issue final permits under the prior NSR rules, assuming certain conditions in the September 3 memorandum are met. However, for applications completed after the SIP submittal deadline, EPA will consider the source to be in compliance with the Act where the source obtains from the State a permit that is consistent with the substantive new NSR part D provisions in the amended Act. EPA believes this guidance continues to apply to permitting pending final action on Montana's NSR SIP submittal.

For further information on the NSR and PSD requirements of the amended Act, see the Technical Support Document (TSD) accompanying this document.

B. Outstanding Rule Deficiencies

Prior to enactment of the 1990 Amendments, EPA had identified numerous deficiencies in the State's PSD and nonattainment NSR rules in subchapters 9 and 11 of the State's air quality rules. Note that subchapter 11 previously contained the State's nonattainment NSR rules as well as its general construction permit rules. As part of the PM–10 SIP submittals, the State committed, among other things, to correct these deficiencies in its NSR and PSD rules as well as to address all of the new NSR requirements of the amended Act. The State's May 1994 submittal was intended to address all major NSR/PSD deficiencies and inconsistencies with the Federal requirements.

In order to address EPA's concerns, as well as to address the new NSR requirements of the amended Act, the State revised subchapters 9 and 11 and adopted new subchapters 17 and 18. Specifically, the State's PSD permitting rules in subchapter 9 were revised to conform with the existing Federal PSD rules in 40 CFR 51.166 and with the amended Act. New subchapter 17 includes the nonattainment NSR rules and was written to conform with the existing Federal nonattainment NSR rules in 40 CFR 51.165 and the amended Act. New subchapter 18 includes the permitting requirements for new and modified major stationary sources locating in attainment areas but which cause or contribute to a violation of the National Ambient Air Quality Standards (NAAQS).

Also as part of the PM–10 SIP submittals, the State committed to correct other deficiencies in the Statewide SIP. Specifically, the State committed to adopt regulations which specify 40 CFR part 51, appendix M, Methods 201, 201A, and 202 as required test methods for the determination of PM–10 emissions, correct its wood waste burner rule in ARM 16.8.1407 to address EPA's December 2, 1992 disapproval of this rule (57 FR 57345), and revise its NSPS and NESHAPs in ARM 16.8.1423 and 1424 to incorporate all Federal requirements promulgated through July 1, 1992.

For further information on the outstanding deficiencies with these rules, see the TSD accompanying this notice.

C. State-Initiated Revisions

In addition to the revisions mentioned above, the State also made other regulatory revisions in this submittal. Those revisions included: (1) Changes resulting from the State's substantial revisions to its PSD and NSR permitting regulations, and new statutory authority from the State's 1993 Legislature; (2) a restructuring of the State's emission control rules in subchapter 14; (3) the addition of some director's discretion provisions in the State's hydrocarbon emission rule in ARM 16.8.1425 and the State's odor control rule in ARM 16.8.1427; and (4) other minor revisions for clarity. For further details, see the TSD.

II. Analysis of State Submission

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565–13566).

A. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[1] Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action [see section 110(k)(1) and 57 FR 13565, April 16, 1992]. The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law under section 110(k)(a)(B) if a completeness determination is not made by EPA within 6 months after receipt of the submission.

The State of Montana held public hearings on July 16, 1993, September 17, 1993, and November 19, 1993 to entertain public comment on these various SIP revisions. Following the public hearings, the revisions to subchapter 14 were adopted on September 17, 1993, and all of the other regulatory revisions were adopted on November 19, 1993. These rule revisions were formally submitted to EPA for approval on May 17, 1994.

The SIP revisions were reviewed by EPA to determine completeness shortly after their submittal, in accordance with the completeness criteria referenced above. The submittal was found to be complete, and a letter dated July 13, 1994 was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the processing of the SIP submittal.

[1] Section 172(c)(7) of the Act provides that plan provisions for nonattainment areas shall meet the applicable provisions of Section 110(a)(2).

B. Review of Submittal for Meeting the Nonattainment NSR and PSD Requirements of the Amended Act

1. General Nonattainment NSR Requirements

The general statutory requirements for nonattainment NSR permitting as amended by the 1990 Amendments are found in sections 172 and 173 of the Act. These requirements apply in all nonattainment areas. The State's nonattainment NSR rules are generally found in subchapter 17 of the ARM. The following represents EPA's review of the State's rules in meeting the NSR requirements of the Act:

(a) The amended Act repealed the construction ban provisions previously found in section 110(a)(2)(I) with certain exceptions. No construction bans are currently imposed in Montana, so this requirement is inapplicable.

(b) Section 173(a)(1)(A) of the Act requires a demonstration for permit issuance that the new source growth does not interfere with reasonable further progress (RFP) for the area. Also, calculations of emissions offsets must be based on the same emissions baseline used in the RFP demonstration. In ARM 16.8.1704(1)(c)(iii), the State has established provisions which address section 173(a)(1).

(c) Section 173(c)(1) of the Act requires that offsets must generally be obtained by the same source or other sources in the same nonattainment area. However, offsets may be obtained from sources in other nonattainment areas if: the area in which the offsets are obtained has an equal or higher nonattainment classification; and emissions from the nonattainment area in which the offsets are obtained contribute to a NAAQS violation in the area in which the source would construct. In ARM 16.8.1705(7), the State has established provisions that meet the requirements of section 173(c)(1).

(d) Section 173(c)(1) of the Act requires that any emissions offsets obtained in conjunction with the issuance of a permit to a new or modified source must be in effect and enforceable by the time the new or modified source commences operation. In ARM 16.8.1704(1)(c)(v) and (1)(d) and 16.8.1705(6), the State has established provisions that meet the requirements of section 173(c)(1).

(e) Section 173(c)(1) of the Act requires that emissions increases from new or modified major stationary sources are offset by real reductions in actual emissions. In ARM 16.8.1704(1)(c) and 16.8.1705(1), the State has established provisions that meet the requirements of section 173(c)(1).

(f) Section 173(c)(2) of the Act prohibits emissions reductions otherwise required by the Act from being credited for purposes of satisfying the part D offset requirements. In ARM 16.8.1705(12), the State has established provisions that meet the requirements of section 173(c)(2).

(g) Section 173(a)(3) provides that, as a condition of permit issuance, states must require the owner or operator of a proposed new or modified source to demonstrate that all major stationary sources under the same ownership or control are in compliance or are on a schedule for compliance with all applicable emission limitations and standards. In ARM 16.8.1704(1)(b), the State has established provisions that meet the requirements of section 173(a)(3).

(h) Section 173(a)(2) requires a new or modified major stationary source to comply with the lowest achievable emission rate (LAER). In ARM 16.8.1704(1)(a), the State has established provisions that address section 173(a)(2).

(i) Revised sections 172(c)(4), 173(a)(1)(B), and 173(b) of the Act limit and invalidate use of certain growth allowances in nonattainment areas. In ARM 16.8.1704(2), the State has adopted a provision invalidating any existing growth allowances in a nonattainment area that received a notice prior to the 1990 Amendments that the SIP was substantially inadequate or that receives such a notice of inadequacy under section 110(k) in the future, consistent with the requirements of section 173(b). Further, the State has no formally targeted economic growth areas in which growth allowances would be allowed per sections 172(c)(4) and 173(a)(1)(B) of the Act.

(j) Revised section 173(a)(5) of the Act requires that, as a prerequisite to issuing any part D permit, an analysis of alternative sites, sizes, production processes, and environmental control techniques for a proposed source be completed which demonstrates that the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification. In ARM 16.8.1704(1)(e), the State has established provisions which address section 173(a)(5).

(k) Section 173(d) of the Act requires States to submit control technology information from permits to EPA for the purposes of making such information available through the RACT/BACT/LAER clearinghouse. Montana and EPA have established provisions in the annual State-EPA agreement requiring the State to submit information from nonattainment NSR permits to EPA's RACT/BACT/LAER clearinghouse, which EPA believes is adequate to meet this requirement.

(l) Revised section 302(z) of the Act sets forth a new definition of ''stationary source'' reflecting Congressional intent that certain stationary internal combustion engines are subject to State regulation under stationary source permitting programs, while certain ''nonroad engines,'' defined in section 216(10), are generally excluded. On June 17, 1994, the EPA published regulations in 40 CFR Part 89 regarding new nonroad engines and vehicles, including a definition of nonroad engine (59 FR 31306). EPA's action to approve this SIP revision is limited in that it does not include the regulation of nonroad engines in a manner inconsistent with section 209 of the Act and EPA regulations implementing section 209.

2. Nonattainment Area-Specific NSR Requirements

In addition to all of the general nonattainment NSR provisions mentioned above, there are also nonattainment area-specific NSR provisions in subparts 2, 3, and 4 of part D of the Act, some of which supersede these general NSR provisions because they are more stringent. The following provisions are the additional NSR provisions that apply in Montana's nonattainment areas and represent EPA's review of the State's regulation in meeting these requirements:

(a) Carbon Monoxide Nonattainment Areas. The State of Montana has three carbon monoxide (CO) nonattainment areas: the Billings area and the Great Falls area, both currently not classified, and Missoula, currently classified moderate with a design value less than 12.7 parts per million (ppm).

For both not classified and moderate CO nonattainment areas, States must submit the following NSR provisions, in addition to provisions meeting the general NSR requirements in sections 172 and 173 of the Act discussed above: A definition of the term ''major stationary source'' that reflects the section 302(j) 100 tons per year (tpy) CO threshold and a 100 tpy significance level for defining major modifications of CO, consistent with the significance level in 40 CFR 51.165(a)(1)(x).

In the definition of ''major stationary source'' in ARM 16.8.1701(12)(a)(i), the State has established a 100 tpy threshold for sources of CO. In addition, the State has established a 100 tpy significance threshold for CO in the

definition of ''significant'' in ARM 16.8.1701(18). Therefore, EPA finds that the State's NSR rules meet the requirements for all of its CO nonattainment areas.

(b) PM–10 Nonattainment Areas. The State of Montana has seven PM–10 nonattainment areas, all of which are currently classified as moderate. These areas include the cities of Libby, Missoula, Columbia Falls, Kalispell, Butte, Thompson Falls, and Whitefish. The State was required to submit the nonattainment NSR rules for all of these areas, except the Whitefish and Thompson Falls areas, by June 30, 1992. For the Whitefish and Thompson Falls PM–10 nonattainment areas whose nonattainment designation was not effective until November 18, 1993 and January 20, 1994, respectively, the State has eighteen months after the date of redesignation (or until May 18, 1995 and July 20, 1995, respectively) to submit the PM–10 attainment plans for the areas which must include, among other things, provisions meeting the NSR requirements of part D (see section 189(a)(2)(B) of the Act).

For moderate PM–10 nonattainment areas, States must submit the following NSR provisions, in addition to provisions meeting the general NSR requirements in sections 172 and 173 of the Act discussed above:

(1) A definition of ''major stationary source'' that reflects the section 302(j) 100 tpy PM–10 threshold and a 15 tpy significance level defining major modifications of PM–10, consistent with the significance level in 40 CFR part 51.

(2) Section 189(e) of subpart 4 of part D of the amended Act requires that the control requirements applicable to major stationary sources of PM–10 must also apply to major stationary sources of PM–10 precursors, except where the Administrator of EPA has determined that such sources do not contribute significantly to PM–10 levels which exceed the standard in the area. PM–10 precursors may include volatile organic compounds (VOCs) which form secondary organic compounds, sulfur dioxide (SO_2) which forms sulfate compounds, and oxides of nitrogen (NO_X) which form nitrate compounds. Thus, unless the EPA Administrator finds otherwise, States must submit rules for PM–10 precursors meeting all of the NSR provisions mentioned above, including the section 302(j) 100 tpy threshold for defining major stationary sources and the current significance level thresholds in 40 CFR 51.165(a)(1)(x) for each PM–10 precursor pollutant for defining major modifications.

In the definition of ''major stationary source'' in ARM 16.8.1701(12)(a)(i), the State has established a 100 tpy threshold for any source of PM–10 located in a PM–10 nonattainment area. In ARM 16.8.1701(12)(a)(ii), the State has established a 70 tpy threshold for defining major stationary sources of PM–10 locating in serious PM–10 nonattainment areas, in the event that one of the State's PM–10 nonattainment areas is classified as serious at some point. The State has also established a 15 tpy significance level for PM–10 in the definition of ''significant'' in ARM 16.8.1701(18).

EPA plans to make findings of whether major stationary sources of PM–10 precursors contribute significantly to PM–10 levels in excess of the NAAQS (and thus whether the requirements of section 189(e) apply) concurrent with EPA's action on the State's PM–10 SIP submittals.[2] As of the date of this document, EPA has promulgated findings that such sources of PM–10 precursors do not contribute significantly to PM–10 exceedances in the Missoula, Butte, Columbia Falls, and Libby PM–10 nonattainment areas (see, respectively, 59 FR 2539 (January 18, 1994), 59 FR 11552 (March 11, 1994), 59 FR 17702 (April 14, 1994), and 59 FR 44630 (August 30, 1994)). However, EPA has not yet proposed or promulgated a finding that such sources of PM–10 precursors do not contribute significantly in the Kalispell area.

Until EPA promulgates such a finding for the Kalispell PM–10 nonattainment area, the State is required to adopt NSR provisions meeting the requirements of section 189(e) for this PM–10 nonattainment area. Because the State has not yet submitted these NSR provisions, EPA is only partially approving the State's nonattainment NSR submittal. If EPA promulgates a finding that such sources of PM–10 precursors do not contribute significantly in the Kalispell area, then the State's nonattainment NSR program will be considered to be fully approved as meeting all of the nonattainment NSR requirements of the amended Act. If EPA does not promulgate such a finding or if the State fails to timely submit PM–10 precursor NSR rules, then EPA will promulgate the partial disapproval that is the companion of this partial approval.

Since the State is not required to submit NSR provisions for the Whitefish and Thompson Falls PM–10 nonattainment areas until May 18, 1995 and July 20, 1995, respectively, EPA will determine the approvability of the State's NSR provisions for those nonattainment areas when EPA takes action on the attainment plans for those areas.

Thus, EPA finds that the State's NSR program meets all of the requirements for the Butte, Columbia Falls, Libby and Missoula PM–10 nonattainment areas, and EPA finds that the State has only partially met the nonattainment NSR requirements for the Kalispell PM–10 nonattainment area.

(c) Sulfur Dioxide Nonattainment Areas. The State of Montana has two SO_2 nonattainment areas, which are defined as the Laurel area and the East Helena area. For SO_2 nonattainment areas, States must submit the following NSR provisions, in addition to provisions meeting the general NSR requirements in sections 172 and 173 of the Act discussed above:

A definition of ''major stationary source'' that reflects the section 302(j) 100 tpy SO_2 and a 40 tpy significance level for defining major modifications of SO_2, consistent with the significance level in 40 CFR 51.165(a)(1)(x).

In the definition of ''major stationary source'' in ARM 16.8.1701(12)(a)(1), the State has established a 100 tpy threshold for SO_2. In addition, the State has established a 40 tpy significance threshold for SO_2 in the definition of ''significant'' in ARM 16.8.1701(18). Therefore, EPA finds that the State's NSR rules meet the requirements for all of its SO_2 nonattainment areas.

(d) Lead Nonattainment Areas. The State of Montana has one lead nonattainment area, which is defined as the East Helena area. For lead nonattainment areas, States must submit the following NSR provisions, in addition to provisions meeting the general NSR requirements in sections 172 and 173 of the Act discussed above:

A definition of ''major stationary source'' that reflects the section 302(j) 100 tpy lead and a 0.6 tpy significance level for defining major modifications of lead, consistent with the significance level in 40 CFR 51.165(a)(1)(x).

In the definition of ''major stationary source'' in ARM 16.8.1701(12)(a)(1), the State has established a 100 tpy threshold for lead. In addition, the State has established a 0.6 tpy significance threshold for lead in the definition of ''significant'' in ARM 16.8.1701(18). Therefore, EPA finds that the State's NSR rules meets the requirements for its lead nonattainment area.

For further information on these requirements and the State's provisions which meet these requirements, please

[2] Note that EPA's findings are based on the current character of an area including, for example, the existing mix of sources in an area. It is possible, therefore, that future growth could change the significance of precursors in an area.

see the TSD accompanying this document.

3. Montana's PSD Revisions Due to the Amended Act

In its revisions to its PSD regulations, the State addressed one new requirement of the amended Act pertaining to hazardous air pollutants (HAPs). Prior to the 1990 Amendments, section 112 HAPs were regulated both under PSD permitting and the NESHAPs, in addition to any other applicable State or Federal rules. A new source or modification that was considered to be major for any pollutant was subject to PSD permitting requirements, including BACT, for every pollutant subject to regulation under the Act that was emitted by the source in significant quantities. Section 112(b)(6) of the amended Act eliminates PSD applicability of the HAPs listed in section 112. Thus, new and modified sources subject to PSD permitting are no longer required to apply BACT and other PSD requirements to all HAPs emitted in significant amounts. There is one exception to this exemption from PSD requirements: Any HAPs which are regulated as constituents of a more general pollutant listed under section 108 of the Act are still subject to PSD as part of the more general pollutant, despite the exemption described above. This includes pollutants such as VOCs, PM–10, and elemental lead. (See 57 FR 18075, April 29, 1992.)

The State made numerous revisions to its PSD rules in subchapter 9 to clarify that HAPs are no longer regulated under PSD except to the extent that such HAPs are regulated as constituents of more general pollutants regulated under section 108 of the Act. EPA believes the State's PSD rule revisions regarding HAPs are consistent with the amended Act and, therefore, are approvable.

C. Outstanding Rule Deficiencies

EPA's review of the State's revisions to its PSD permitting rules in subchapter 9 found that the State's revised rules are consistent with the Federal PSD permitting requirements in 40 CFR 51.166.

EPA's review of the State's new subchapters 17 and 18, which contain the State's nonattainment NSR regulations, found that the State's rules are consistent with the corresponding Federal regulations in 40 CFR 51.165, as well as with the amended Act as discussed in Section II.B. above.

Since the State now has separate permitting regulations for new and modified major sources locating in attainment or unclassified areas and nonattainment areas, subchapter 11 is now generally considered to be the State's general construction permit requirements. The corresponding Federal requirements that such programs must meet are found in 40 CFR 51.160 through 51.164. EPA has reviewed the revised subchapter 11 and believes the State's general construction permit requirements adequately meet all of the Federal requirements in 40 CFR 51.160 through 51.164. See the TSD for further details.

Therefore, EPA believes the State has satisfied the commitment in its PM–10 SIPs to revise its construction permitting rules to address deficiencies previously identified by EPA.

In ARM 16.8.709, the State adopted provisions requiring all emission source testing to be performed as specified in the applicable sampling method contained in the Federal regulations, including 40 CFR part 51, appendix M (which includes Methods 201, 201A, and 202 for determination of PM–10 emissions). Thus, the State has satisfied the commitment in its PM–10 SIPs to adopt regulations which specify 40 CFR part 51, appendix M, Methods 201, 201A, and 202 as required test methods for the determination of PM–10 emissions.

The State also adequately addressed EPA's enforceability concerns with its wood waste burner rule in ARM 16.8.1407 by deleting the mass particulate emission limit which was not practicably enforceable at the tepee-style wood waste burners in the State. Therefore, EPA is approving the revised wood waste burner rule.

Last, the State has satisfied the PM–10 SIP commitment to revise its NSPS and NESHAPs in ARM 16.8.1423 and 1424 to incorporate all Federal requirements promulgated through July 1, 1992.

Thus, EPA believes this submittal satisfies all of the Statewide SIP deficiencies which the State committed to address in its PM–10 SIPs, with the exception of the Kalispell PM–10 SIP commitment regarding NSR. Since the State's NSR rules are only being partially approved for the Kalispell PM–10 nonattainment area at this time, the State can only be considered to have partially met the PM–10 SIP commitment regarding NSR for this area.

D. Evaluation of the Other Regulations Included in the State's Submittal

EPA believes that the other revisions to the State's regulations provide for clarity and consistency within the State's regulations and are consistent with any corresponding Federal requirements, with a few exceptions. One of those exceptions is the revisions to the hydrocarbon emission rule in ARM 16.8.1425. Specifically, the State revised this rule to allow the Montana Department of Health and Environmental Sciences, rather than the previously-required Administrator of EPA, to authorize use of other equipment that is equally efficient to that equipment required by this rule. Thus, the State's rule now permits the State to modify a specific control requirement of the SIP without requiring EPA review and approval of the alternative control equipment. Such a provision is generally termed a ''director's discretion'' provision, in that it allows the State discretionary authority to alter a provision of the SIP. EPA cannot legally approve such discretionary authority in States' SIPs without the State providing for some type of EPA review and approval of alternatives to the stated requirements in this regulation. Therefore, EPA is disapproving the revisions to ARM 16.8.1425(1)(c) and (2)(d) which allow this discretion. If the State wishes to implement these provisions for a certain source allowing alternatives to the control equipment required in this rule, then the State must submit such alternatives to EPA for review and approval.

In this submittal, as discussed at the beginning of this document, the State submitted the entire State air quality rules which were recodified in October of 1979 to be incorporated into the SIP and to replace any previous codifications of State rules currently approved as part of the SIP. EPA is therefore replacing the previously approved Montana rules with all of the rules included in the State's submittal, with the exception of the following:

1. As discussed above, EPA is disapproving the director's discretion provisions in ARM 16.8.1425 (1)(c) and (2)(d);

2. In this submittal, the State included the most current version of its open burning rules. However, on December 21, 1992, EPA disapproved revisions to ARM 16.8.1302 and 16.8.1307 which were submitted by the Governor on April 9, 1991 (see 57 FR 60485–60486 for further details). Therefore, EPA is not approving the current version of ARM 16.8.1302 and 16.8.1307. The previously approved version of ARM 16.8.1302 and 16.8.1307, as in effect on April 16, 1982 and as approved by EPA on July 15, 1982 (47 FR 30763, 40 CFR 52.1370(c)(11)), remain part of the SIP;

3. EPA believes it has no legal basis in the Act for approving the State's odor control rule in ARM 16.8.1427 and making it federally enforceable because

odor control provisions are not generally related to attainment or maintenance of the NAAQS. Therefore, EPA is not taking action on ARM 16.8.1427, and it is not considered part of the federally enforceable SIP;

4. EPA is not taking action on the State's variance provision in ARM 16.8.101–102 at this time and will instead take action on this rule in a separate **Federal Register** notice; and

5. EPA is not taking action on the State's sulfur oxide emission limits for lead or lead-zinc smelters in ARM 16.8.1414 because EPA has never previously approved this regulation into the SIP. Further, EPA understands that the State plans to repeal this regulation in the near future. See the TSD for further details.

III. Section 112(l) Approval

In addition to approving Montana's construction permit program in ARM 16.8.1101–1120 as part of the SIP, EPA is also approving Montana's construction permit program for the regulation of HAPs under the authority provided in section 112(l) of the amended Act. Approval of the State's construction permit program under section 112(l) is necessary to allow the State to create federally enforceable limits on the potential to emit HAPs, because SIP approval of the State's construction permit rules only extends to the control of HAPs which are constituents of photochemically reactive organic compounds or particulate matter. Federally enforceable limits on photochemically reactive organic compounds or particulate matter may have the incidental effect of limiting certain HAPs. As a legal matter, no additional program approval by the EPA is required in order for those ''criteria'' pollutant limits to be recognized as federally enforceable. However, section 112 of the Act provides the underlying authority for controlling all HAP emissions.

The State's construction permit program applies to new and modified sources which would emit ''air contaminants.'' ''Air contaminant'' is further defined in Section 75–2–103 of the MCA as ''dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.'' The State has defined ''air contaminant'' in such a broad manner that it includes HAPs. Consequently, the State's construction permit program provides authority for the State to issue construction permits to sources of HAPs.

The criteria which were used in reviewing Montana's construction permit program are located in 40 CFR 51.160 through 51.164. As discussed in Section II.C. above and as detailed in the TSD accompanying this notice, EPA believes the State's construction permit program adequately meets the requirements of 40 CFR 51.160 through 51.164. EPA believes the most significant criteria in 40 CFR part 51 for creating federally enforceable limits through construction permits are those in 40 CFR 51.160 through 51.162. Further, as discussed in EPA's January 25, 1995 memorandum from John S. Seitz, Director of the Office of Air Quality Planning and Standards, and Robert I. Van Heuvelen, Director of the Office of Regulatory Enforcement, entitled ''Options for Limiting the Potential to Emit of a Stationary Source Under Section 112 and Title V of the Clean Air Act,'' in order for EPA to consider any construction permit terms federally enforceable, such permit conditions must be enforceable as a practical matter. Montana's program will allow the State to issue permits that are enforceable as a practical matter. Thus, any permits issued in accordance with Montana's program and which are practically enforceable would be considered federally enforceable.

In addition to meeting the criteria in 40 CFR 51.160–164 for creating federally enforceable construction permits, a construction permit program for HAPs must meet the statutory criteria for approval under section 112(l)(5) of the Act. This section allows EPA to approve a program only if it: (1) Contains adequate authority to assure compliance with any section 112 standards or requirements; (2) provides for adequate resources; (3) provides for an expeditious schedule for assuring compliance with section 112 requirements; and (4) is otherwise likely to satisfy the objectives of the Act.

The EPA plans to codify the approval criteria for programs limiting the potential to emit of HAPs through amendments to subpart E of 40 CFR part 63, the regulations promulgated to implement section 112(l) of the Act. EPA believes it has the authority under section 112(l) to approve programs to limit potential to emit HAPs directly under section 112(l) prior to this revision to subpart E of 40 CFR part 63. Given the timing problems posed by impending deadlines under section 112 and Title V, EPA believes it is reasonable to read section 112(l) to allow for approval of programs to limit potential to emit prior to issuance of a rule specifically addressing this issue. The EPA is therefore approving Montana's construction permit program to limit the potential to emit HAPs now, so that the State may begin to issue federally enforceable synthetic minor permits as soon as possible. The EPA also plans to codify programs approved under section 112(l) without further rulemaking once the revisions to subpart E are promulgated.

As discussed above in Section II.C., Montana's construction permit program in ARM 16.8.1101–1120 satisfies the criteria for such programs in 40 CFR 51.160 through 51.164. In addition, EPA believes Montana's construction permit program meets the statutory criteria for approval under section 112(l)(5). For further details, refer to the TSD accompanying this document. Accordingly, EPA finds that Montana's construction permit program in subchapter 11 of its air quality rules satisfies the applicable criteria for establishing federally enforceable limitations for HAPs. Therefore, EPA is approving Montana's construction permit program in ARM 16.8.1101–1120 of the State's rules under section 112(l) of the Act.

Final Action

EPA is acting on the revisions to the Montana SIP which were submitted by the Governor on May 17, 1994. Specifically, EPA is approving the State's submittal for meeting the NSR requirements of the amended Act for the State's CO, SO_2, and lead nonattainment areas and for the Butte, Columbia Falls, Libby, and Missoula PM–10 nonattainment areas. However, for the Kalispell PM–10 nonattainment areas where EPA has not yet promulgated a finding that major sources of PM–10 precursors do not contribute significantly to PM–10 exceedances in the area, EPA is only partially approving the submittal at this time because the State's submittal did not include NSR provisions for new and modified major sources of PM–10 precursors proposing to locate in this area. EPA is approving all of the other State regulations included in this submittal, with the exception of: the variance provisions in 16.8.101–102, which EPA will be acting on in a separate notice; the hydrocarbon rule director's discretion provisions in 16.8.1425(1)(c) and (2)(d), which EPA is disapproving; and the odor rules in 16.8.1427 and the sulfur oxide emission limits for lead smelters in 16.8.1414, which EPA is not incorporating into the approved SIP. In addition, EPA is not approving the current version of ARM 16.8.1302 and 1307 of the State's open burning rules included in the State's May 1994 submittal, because these provisions were previously disapproved by EPA on December 21, 1992 (see 57 FR 60485–60486). The previously approved version of ARM 16.8.1302 and

1307, as in effect on April 16, 1982 and as approved by EPA on July 15, 1982 (47 FR 30763, 40 CFR 52.1370(c)(11)), remain part of the SIP.

EPA is also approving the State's construction permit requirements in ARM 16.8.1101–1120 for the purposes of creating federally enforceable limits for HAPs pursuant to section 112(l) of the Act, as well as for pollutants regulated under the SIP.

In accordance with the Governor's request, EPA is replacing any State regulations previously approved in the SIP with the following State regulations effective as of March 30, 1994: ARM 16.8.201–202, 16.8.301–304, 16.8.401–404, 16.8.701–709, 16.8.945–963, 16.8.1001–1008, 16.8.1101–1120, 16.8.1204–1206, 16.8.1301, 16.8.1303–1306, 16.8.1308, 16.8.1401–1413, 1419–1424, 16.8.1425 (except 16.8.1425(1)(c) and (2)(d)), 16.8.1426, 16.8.1428–1430, 16.8.1501–1505, 16.8.1701–1705, 16.8.1801–1806. The previously-approved versions of ARM 16.8.1302 and 16.8.1307, as in effect on April 16, 1982, remain part of the SIP.

Also in this action, EPA is deleting 40 CFR 52.1386, in which EPA originally codified its disapproval of Montana's malfunction provision. EPA subsequently approved a revised version of Montana's malfunction provision on July 13, 1984 (see 49 FR 28553) and inadvertently failed to remove this previous disapproval from the Code of Federal Regulations. Thus, the disapproval in 40 CFR 52.1386 no longer is applicable and is being deleted.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. Under the procedures established in the May 10, 1994 **Federal Register** (59 FR 24054), this action will be effective on September 18, 1995 unless, by August 17, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on September 18, 1995.

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.

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

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 economic 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 Act 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 Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act 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).

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section 110 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 18, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect thefinality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 23, 1995.

Jack W. McGraw,

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 BB—Montana

2. Section 52.1370 is amended by adding paragraph (c)(39) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(39) On May 17, 1994, the Governor of Montana submitted revisions to the Administrative Rules of Montana (ARM) regarding nonattainment new source review, prevention of significant deterioration, general construction permitting, wood waste burners, source

test methods, new source performance standards, and national emission standards for hazardous air pollutants. Also, the Governor requested that all existing State regulations approved in the SIP be replaced with the October 1, 1979 codification of the ARM as in effect on March 30, 1994. EPA is replacing all of the previously approved State regulations, except ARM 16.8.1302 and 16.8.1307, with those regulations listed in paragraph (c)(39)(i)(A) of this section. ARM 16.8.1302 and 16.8.1307, as in effect on April 16, 1982 and as approved by EPA at 40 CFR 52.1370(c)(11), will remain part of the SIP.

(i) Incorporation by reference.

(A) Administrative Rules of Montana (ARM) Sections 16.8.201–202, 16.8.301–304, and 16.8.401–404, effective 12/31/72; Section 16.8.701, effective 12/10/93; Section 16.8.704, effective 2/14/87; Section 16.8.705, effective 6/18/82; Section 16.8.707, effective 9/13/85; Sections 16.8.708–709, effective 12/10/93; Sections 16.8.945–963, effective 12/10/93; Sections 16.8.1001–1003, effective 9/13/85; Section 16.8.1004, effective 12/25/92; Sections 16.8.1005–1006, effective 9/13/85; Section 16.8.1007, effective 4/29/88; Section 16.8.1008, effective 9/13/85; Section 16.8.1101, effective 6/16/89; Section 16.8.1102, effective 2/14/87; Section 16.8.1103, effective 6/16/89; Section 16.8.1104, effective 3/16/79; Section 16.8.1105, effective 12/27/91; Sections 16.8.1107 and 16.8.1109, effective 12/10/93; Sections 16.8.1110–1112. effective 3/16/79; Section 16.8.1113, effective 2/14/87; Section 16.8.1114, effective 12/10/93; Sections 16.8.1115, 16.8.1117, and 16.8.1118, effective 3/16/79; Sections 16.8.1119–1120, effective 12/10/93; Sections 16.8.1204–1206, effective 6/13/86; Sections 16.8.1301 and 16.8.1303, effective 4/16/82; Section 16.8.1304, effective 9/11/92; Section 16.8.1305, effective 4/16/82; Section 16.8.1306, effective 4/1/82; Section 16.8.1308, effective 10/16/92; Section 16.8.1401, effective 10/29/93; Section 16.8.1402, effective 3/11/88; Section 16.8.1403, effective 9/5/75; Section 16.8.1404, effective 6/13/86; Section 16.8.1406, effective 12/29/78; Section 16.8.1407, effective 10/29/93; Section 16.8.1411, effective 12/31/72; Section 16.8.1412, effective 3/13/81; Section 16.8.1413, effective 12/31/72; Section 16.8.1419, effective 12/31/72; Sections 16.8.1423, 16.8.1424, and 16.8.1425 (except 16.8.1425(1)(c) and (2)(d)), effective 10/29/93; Section 16.8.1426, effective 12/31/72; Sections 16.8.1428–1430, effective 10/29/93; Section 16.8.1501, effective 2/10/89; Section 16.8.1502, effective 2/26/82; Section 16.8.1503, effective 2/10/89; Sections 16.8.1504–1505, effective 2/26/82; Sections 16.8.1701–1705, effective 12/10/93; and Sections 16.8.1801–1806, effective 12/10/93.

3. Section 52.1384 is amended by removing and reserving paragraph (a) and adding a new paragraph (c) to read as follows:

§ 52.1384 Emission control regulations.

* * * * *

(c) The provisions in ARM 16.8.1425(1)(c) and (2)(d) of the State's rule regulating hydrocarbon emissions from petroleum products, which were submitted by the Governor of Montana on May 17, 1994 and which allow discretion by the State to allow different equipment than that required by this rule, are disapproved. Such discretion cannot be allowed without requiring EPA review and approval of the alternative equipment to ensure that it is equivalent in efficiency to that equipment required in the approved SIP.

§ 52.1386 [Removed and reserved]

4. Section 52.1386 is removed and reserved.

[FR Doc. 95–17212 Filed 7–17–95; 8:45 am]
BILLING CODE 6560–50–P

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40 CFR Part 52

[UT24–1–7036a; FRL–5260–9]

Withdrawal of the Determination of Attainment of Ozone Standard for the Salt Lake and Davis Counties Ozone Nonattainment Area; Utah; and the Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: On June 8, 1995, EPA published a direct final rule (60 FR 30189) determining the applicability of certain reasonable further progress and attainment demonstration requirements, along with certain other related requirements, of Part D of Title I of the Clean Air Act (CAA) for the Salt Lake and Davis Counties ozone nonattainment area. This action was published without prior proposal. Because EPA has received adverse comments on this action, EPA is withdrawing the June 8, 1995, direct final rulemaking action pertaining to the Salt Lake and Davis Counties area.

EFFECTIVE DATE: July 18, 1995.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air Programs Branch (8ART–AP), United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466 Phone: (303) 293–1814.

SUPPLEMENTARY INFORMATION: On June 8, 1995, EPA published a direct final rule determining that certain reasonable further progress and attainment demonstration requirements, along with certain other related requirements, of Part D of Title I of the Clean Air Act (CAA), as amended 1990, for the Salt Lake and Davis Counties, Utah, ozone nonattainment area were no longer applicable. This determination was based on the area having attained the National Ambient Air Quality Standard (NAAQS) for ozone based on three years of ambient air quality monitoring data (60 FR 30189). The direct final rule was published, without prior proposal, in the **Federal Register** with a provision for a 30 day comment period. In addition, EPA published a proposed rule, also on June 8, 1995, which announced that this direct final rule would convert to a proposed rule in the event that adverse comments were submitted to EPA within 30 days of the date of publication of the direct final rule in the **Federal Register** (60 FR 30217). EPA received adverse comments within the prescribed comment period. With this notice, EPA is withdrawing the June 8, 1995, direct final rulemaking action (60 FR 30189) pertaining to the Salt Lake and Davis Counties' ozone nonattainment area. All public comments that were received will be addressed in a final rulemaking action based on the proposed rule (60 FR 30217).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen Dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 13, 1995.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 95–17756 Filed 7–17–95; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 52

[UT24–1–7128; FRL–5261–1]

Determination of Attainment of Ozone Standard for Salt Lake and Davis Counties, Utah, and Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On June 8, 1995, the EPA published a direct final and proposed rulemakings determining that the Salt Lake and Davis Counties, Utah, moderate ozone nonattainment area had attained the ozone National Ambient Air Quality Standard (NAAQS). Based on this determination, the EPA also determined that certain reasonable further progress and attainment demonstration requirements, along with certain other related requirements, of part D of Title 1 of the Clean Air Act (CAA), as amended in 1990, are not applicable to the area so long as the area continues to attain the ozone NAAQS. The 30-day comment period concluded on July 10, 1995. During this comment period, the EPA received two comment letters in response to the June 8, 1995, rulemaking. This final rule summarizes all comments and EPA's responses, and finalizes the EPA's determination that the area has attained the ozone standard and that certain reasonable further progress and attainment demonstration requirements as well as other related requirements of part D of the CAA are not applicable to these areas as long as the area continues to attain the ozone NAAQS.

EFFECTIVE DATE: This action is effective July 18, 1995.

ADDRESSES: Copies of the documents relevant to this action are available for inspection at the following address: United States Environmental Protection Agency, Region 8, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air Programs Branch (8ART–AP), United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, Telephone Number (303) 293–1814.

SUPPLEMENTARY INFORMATION:

I. Background Information

On June 8, 1995, the EPA published a direct final rulemaking (60 FR 30189) determining that the Salt Lake and Davis Counties moderate ozone nonattainment area has attained the NAAQS for ozone. In that rulemaking, the EPA determined that, as a consequence of that determination, the requirements of section 182(b)(1) concerning the submission of a 15 percent reasonable further progress plan and ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures are not applicable to the area so long as the area does not violate the ozone standard. In addition, the EPA determined that the sanctions clock started on January 19, 1994, for this area for failure to submit the section 182(b)(1) reasonable further progress requirements and section 172(c)(9) contingency measures would be stopped since the deficiencies on which it was based no longer exist.

At the same time that the EPA published the direct final rule, a separate notice of proposed rulemaking was published in the **Federal Register** (60 FR 30217). This proposed rulemaking specified that EPA would withdraw the direct final rule if adverse or critical comments were filed on the rulemaking. The EPA received two letters containing adverse comments regarding the direct final rule, within 30 days of publication of the proposed rule, and is withdrawing the direct final rule in a separate notice published in this **Federal Register**.

The specific rationale and air quality analysis the EPA used to determine that the Salt Lake and Davis Counties ozone nonattainment area had attained the ozone NAAQS and is not required to submit State Implementation Plan (SIP) revisions for reasonable further progress, attainment demonstration and related requirements are explained in the direct final rule and will not be restated here.

This final rule contained in this **Federal Register** addresses the comments which were received during the public comment period and announces EPA's final action regarding these determinations.

II. Public Comments and EPA Responses

Two letters were received in response to the June 8, 1995, proposal and direct final **Federal Register** notices. One was a joint comment from the Utah Chapter of the Sierra Club and the Wasatch Clean Air Coalition (Wasatch Coalition) and the other was from the Citizens Commission for Clean Air in the Lake Michigan Basin (Citizens Commission). The following discussion summarizes and responds to the comments received.

Comment 1.: According to the Sierra Club and Wasatch Coalition, the procedure used by EPA unlawfully circumvents the formal redesignation process required by section 107(d) of the CAA. The commentors stated that Utah has not met the technical and legal requirements for redesignation of the Salt Lake and Davis Counties nonattainment area to attainment for ozone and that, as a result, EPA's finding that certain CAA requirements do not apply is illegal and inappropriate. According to the commentors, EPA may not redesignate an area to attainment unless the criteria of section 107(d)(3) of the CAA have been satisfied and EPA may not allow nonattainment areas to avoid requirements by meeting only one of the five criteria of section 107(d)(3) (the requirement that a nonattainment area has attained the standard). The commentors assert that Part D expressly defines attainment or nonattainment exclusively by reference to the section 107(d) redesignation process and that the statutory provisions of Part D at issue are tied expressly to the formal designation process of section 107(d). The commentors conclude that the ozone nonattainment plan provisions of Part D apply expressly to areas classified under section 181, which include all areas designated nonattainment under section 107(d), and that all of the requirements of section 182(b) apply to all areas designated nonattainment and classified as moderate under section 181. The commentors also contend that an area may be excused from sanctions only on the basis of redesignation to attainment under section 107(d).

Response to Comment 1: In response, EPA first notes that with this action, EPA is neither redesignating the Salt Lake and Davis Counties nonattainment area, nor avoiding the redesignation requirements of section 107(d). All of those requirements remain in effect and must be satisfied for EPA to approve the pending redesignation request for the Salt Lake and Davis Counties area. What EPA is doing is making a determination that since the area is attaining the standard, which is a factual determination, certain provisions of the CAA, whose express purpose is to achieve attainment of the standard, do not require SIP revisions to be made by the State for so long as the area continues to attain the standard. In sum, this action is not and does not purport to be a redesignation to attainment pursuant to section 107(d). Consequently, the criteria of section 107(d)(3) do not apply to this action.

EPA disagrees with the commentors' analysis of the language and structure of the CAA. EPA's statutory analysis was

explained in detail in the June 8, 1995, direct final rule and in the May 10, 1995, memorandum from John Seitz, Director, Office of Air Quality Planning and Standards, referred to in the June 8, 1995, **Federal Register** notice. EPA will not recount that analysis here, but will respond to the arguments presented by the commentors regarding the statutory language and structure of Part D of Title I of the CAA as it relates to EPA's action.

In sum, EPA's legal rationale is based upon the statutory definition of ''reasonable further progress'' in section 171(1), the concept that additional reductions are not needed to attain the standard in an area already attaining the standard, and the language of section 172(c)(9) requiring contingency measures ''if the area fails to make reasonable further progress, or to attain the national primary ambient air quality standard by the attainment date applicable under this part.'' As the commentors acknowledge, section 171(1) defines ''reasonable further progress'' as ''such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.''

The commentors, however, assert that EPA is ignoring the definition of ''nonattainment area'' in section 171(2). The commentors then proceed to argue that as Part D ozone requirements are linked with the classification under section 181 of areas designated nonattainment for ozone under section 107(d), EPA cannot excuse ozone nonattainment areas from full compliance with section 182 unless all requirements of section 107(d)(3) are met.

In response, EPA first notes that the commentors appear to equate the designation of an area as attainment or nonattainment with the factual issue of whether an area, regardless of its designation, is attaining the standard. These are two distinct issues, however. Title I of the CAA, including Part D, contains provisions that distinguish between the concept of whether an area is attaining a standard and an area's designation as attainment or nonattainment.

Indeed, section 107(d)(3) itself clearly demonstrates the distinction as only one of the five criteria for redesignation of a nonattainment area to attainment is the determination that the area ''has attained the national ambient air quality standard.'' (Section 107(d)(3)((E)(i).) Plainly, the CAA clearly contemplates that there will be areas designated nonattainment that are attaining the standard as there could be a nonattainment area that meets the air quality criterion for redesignation to attainment without satisfying the other criteria. Such an area would need to remain designated nonattainment even though it was attaining the standard.

A provision of Part D that demonstrates the distinction between attaining the standard and the designation of an area as attainment or nonattainment is section 182(f), which authorizes EPA to waive NOx reduction requirements that apply to ozone nonattainment areas by virtue of their designation and classification if EPA determines that the NOx reductions would ''not contribute to attainment of the'' standard. EPA has interpreted and applied this provision on numerous occasions to waive NOx emission reduction requirements for areas that have attained the standard since such reductions in areas that have already attained the standard would not contribute to attainment. *See, e.g.*, 60 FR 3760 (January 19, 1995) (final action on NOx waivers for Toledo and Dayton, Ohio). Thus, that provision clearly contemplates that areas designated nonattainment that have attained the standard may have certain specified requirements waived.

In sum, the CAA clearly does not equate the factual issue of whether an area is attaining the standard with the area's designation status as attainment or nonattainment. It expressly contemplates situations in which areas designated nonattainment may be attaining the standard. Thus, the definition of ''nonattainment area'' in section 171(2), which provides that, for purposes of Part D, a nonattainment area means an area that ''is designated 'nonattainment' with respect to [a particular] pollutant within the meaning of section 107(d)'' does not detract from EPA's interpretation of the language of section 171(1) defining ''reasonable further progress'' requirements in terms of reductions for the purpose of ''ensuring attainment.''

EPA agrees with the commentors' basic conception of the Part D ozone nonattainment area requirements, which is that the classification of an area designated nonattainment for ozone determines the set of requirements of subpart 2 to which the area is subject. For example, areas such as the Salt Lake and Davis Counties area that are classified as moderate pursuant to section 181 are subject to the requirements of section 182(b), while areas that are classified as serious are subject to the requirements of section 182(c).

The question at issue in this rulemaking concerns the substance of some of those requirements. As a general matter, section 182(b)(1) and section 172(c)(9) apply to moderate ozone nonattainment areas. However, in this rulemaking EPA is interpreting section 182(b)(1) and 172(c)(9) such that they do not impose SIP submission requirements on an area classified as a moderate ozone nonattainment area that is attaining the ozone standard for so long as the area continues to attain the standard. This is not a waiver of requirements that by their terms clearly apply; it is a determination that certain requirements are written so as to be operative only if the area is not attaining the standard. If, prior to the redesignation of such an area to attainment, the area violates the ozone NAAQS, that determination will no longer apply. That area, by virtue of its continuing designation and classification as a moderate ozone nonattainment area, will once again be faced with an obligation to submit SIP revisions pursuant to sections 172(c)(9) and 182(b)(1).

Moreover, other requirements of part D that are not written in such a way as to require submissions only if an area is not attaining the standard continue to apply solely by virtue of the area's classification and designation as a moderate ozone nonattainment area. For example, the Volatile Organic Compound (VOC) Reasonably Available Control Technology (RACT) requirements of section 182(a)(2) and 182(b)(2) apply regardless of whether an area is attaining the standard. Similarly, the requirements of part D new source review (e.g., sections 182(a)(2)(C) and (b)(5)) continue to apply to areas designated nonattainment solely by virtue of their continuing nonattainment designation.

In sum, EPA disagrees with the commentors' view that this rulemaking is a de facto redesignation to attainment without complying with all of the redesignation requirements of section 107(d)(3)(E). The Salt Lake and Davis Counties area remains a moderate ozone nonattainment area and remains subject to the requirements of the CAA applicable to such areas pursuant to sections 172(c) and 182(b). These include requirements such as VOC RACT and part D new source review, whose applicability is linked solely to the area's status as a designated ozone nonattainment area that has been classified as moderate. What EPA is determining is that the SIP submission requirements of section 182(b)(1) regarding 15% reasonable further progress and attainment demonstration

plans and of section 172(c)(9) regarding contingency measures to be implemented in the event an area fails to make reasonable further progress or attain the standard by the attainment date can and should be interpreted not to apply for so long as the area continues to attain the standard. Whether the Salt Lake and Davis Counties nonattainment area may be redesignated to attainment pursuant to section 107(d)(3)(E) is a matter still pending before EPA and is not the subject of this rulemaking action.

EPA also disagrees with the commentors' contentions regarding sanctions. The basis for the initiation of a sanctions clock in this instance was a finding that plan revisions required by the CAA were not submitted (*see* section 179(a)). If EPA determines that the requirement that led to that finding no longer applies, then the basis for the initiation of the sanctions clock no longer exists and mandatory sanctions under section 179 should not apply 18 months after the finding as they would if the deficiency (the failure to make a required SIP submission) that led to the finding still existed.

Comment 2: The Sierra Club and Wasatch Coalition commented that EPA's procedure violates an important policy goal of the CAA—the assurance that standards will be maintained in the future. According to the commentors the four criteria, other than having attained the standard, that must be satisfied for an area to be redesignated to attainment are intended to assure continued attainment of the standard. The commentors stated that if EPA exempts Salt Lake and Davis Counties from the RFP and contingency plan requirements there may be little incentive for the State to proceed with redesignation of the area and the additional requirements would not be met. In addition, the commentors contend that the State is having difficulty demonstrating that the NAAQS will be maintained over the next 15 years due to anticipated growth and that some current emission reductions are not due to permanent and enforceable requirements. According to the commentors, EPA's proposed action regarding the section 182(b)(1) and section 172(c)(9) requirements and sanctions would circumvent the preventive approach of the CAA. The commentors assert that the nonconservative approach of having the excused requirements being retriggered in the event of a violation is inappropriate and inconsistent with congressional intent since it does not assure that adequate controls are in place to prevent violations; it relies on correcting inadequate programs only after harm occurs, which will result in residents being required to breathe unhealthy air that should have been prevented.

Response to Comment 2: As discussed above, this proceeding is not a redesignation and EPA is not required to apply the criteria of section 107(d)(3)(E) in determining whether the Salt Lake and Davis Counties nonattainment area has attained the standard for purposes of determining whether the area is presently required to submit SIP revisions pursuant to sections 182(b)(1) and 172(c)(9). That does not mean that EPA is not concerned with the area's ability to continue to maintain the NAAQS in the future.

First, as discussed above, EPA's action applies only to certain requirements. It does not relax any existing SIP control measures, e.g., VOC RACT requirements. Those requirements will continue to apply, as well as federal requirements such as the federal motor vehicle control program, which will produce additional emission reductions in the future due to fleet turnover, and Reid Vapor Pressure (RVP) requirements. These measures have produced permanent and enforceable emission reductions in the period leading to the area's attainment of the standard and will continue to produce such emission reductions.

Second, EPA's action is contingent upon the area continuing to attain the NAAQS. Unless the area is redesignated, it will remain an ozone nonattainment area, subject to the risk that if a violation occurs it will have to adopt and implement a 15% VOC emission reduction plan and a plan that demonstrates attainment pursuant to section 182(b)(1), as well as the section 172(c)(9) contingency measures. Thus, if it turns out that the existing SIP control measures and other requirements are not adequate to prevent a violation, additional control measures will be required.

EPA acknowledges the concern of the commentors that EPA's approach may mean that those control measures would not be adopted and implemented as quickly as they would be if EPA continued to require the section 182(b)(1) and 172(c)(9) SIP submissions at this time. EPA believes, however, that a countervailing policy objective is to reduce the burden on states and sources of adopting and implementing additional control measures that are not necessary to attain the standard. The Salt Lake and Davis Counties nonattainment area has been in attainment of the standard since the 1991–93 period and continues to be in attainment. Indeed, no exceedances of the standard have been monitored since 1991 and only one exceedance was monitored in 1991. (For a violation to occur, the expected exceedances must amount to four over a three-year period at the same monitoring location.) In such a case, where an area has attained the standard, EPA believes it appropriate and justifiable to adopt an approach that alleviates the burdens of adopting and implementing additional control measures that do not appear necessary to achieve the objective of attaining the standard.

As noted previously, the Salt Lake and Davis Counties nonattainment area will be at risk of having to adopt a 15% reasonable further progress plan, attainment demonstration, and section 172(c)(9) contingency measures unless it is redesignated to attainment. In order to be redesignated to attainment, however, the area will have to satisfy all of the criteria of section 107(d)(3)(E), including the requirement that EPA fully approve a maintenance plan satisfying the requirements of section 175A, which requires a plan to maintain the standard for a period of 10 years after an area is redesignated. As the sufficiency of the State's maintenance plan is an issue for the proceeding that evaluates the merits of the State's pending redesignation request, and not this rulemaking, the comments regarding the adequacy of that plan will be considered in the redesignation proceeding.

EPA believes that, contrary to the suggestion of the commentors, that the State will have adequate incentives to continue to seek the redesignation of the Salt Lake and Davis Counties area to attainment. Those incentives include being able to eliminate the risk of being subject to the 15% plan requirement, rather than have to address a requirement to achieve 15% VOC emission reductions in the event of a violation. Furthermore, if the area violates the standard prior to redesignation, it will be subject to the ''bump-up'' provisions of section 181(b)(2), which require the area to be ''bumped up'' to the next higher classification (serious) and subject to additional requirements above and beyond the requirements applicable to moderate ozone nonattainment areas. This provides an additional substantial incentive for the State to satisfy the requirements for redesignation to attainment. In addition, unless an area is redesignated, part D new source review, rather than part C prevention of significant deterioration requirements, must continue to apply.

Comment 3: The Sierra Club and Wasatch Coalition disagree that the

relevant data demonstrate that the Counties have attained the NAAQS for ozone. The commentors argue that the State should have to conclusively demonstrate that the NAAQS for ozone is being met, and, in their view, the State has not done so. The commentors note that EPA has expressed concern over the number and placement of monitoring stations and that studies of the monitoring network conducted in the summers of 1993 and 1994 concluded that additional monitoring stations should be established and that existing stations were not well placed to measure maximum ozone concentrations. The commentors argue that only one year of preliminary data are available from new stations established as a result of these studies and that attainment cannot be demonstrated based on only one year of data from the new sites. The commentors also cite the complexity of meteorological patterns in the affected area, which may result in variable ozone levels at different locations at different times. Because of this meteorological complexity, the commentors argue that it is inappropriate to extrapolate a finding of areawide compliance from a few monitoring sites. According to the commentors, these problems may lead to a false conclusion of attainment throughout the nonattainment area. In the commentors' view, this concern is far more serious because data from monitoring locations is so close to the applicable standard and very small increases at different locations would indicate nonattainment with the standard. The commentors feel it is premature to conclude that the standard has been met.

The Citizens Commission expresses similar concerns regarding the air quality monitoring data upon which EPA based its proposal.

Response to Comment 3: EPA has approved the monitoring network for the Salt Lake and Davis Counties nonattainment area as meeting the requirements of its regulations. EPA has not taken any action to disapprove the network but, as described in detail below, has been working with the State of Utah to improve the quality of the network. Although EPA and the State are undertaking studies that may result in improvements to the network, that does not mean that EPA views the monitoring data showing attainment of the standard as being inadequate or unreliable. EPA continually reviews the monitoring networks to determine how they can be improved. However, the fact that a monitoring network may be able to be improved does not mean that the existing network does not meet EPA's regulations, nor does it mean that the data collected from the existing network should be ignored or discounted. EPA believes that the monitoring data fully support a determination that the Salt Lake and Davis Counties area has attained the standard. That network remains a fully approved network and EPA does not believe that there is a basis for discounting the data showing attainment of the standard since 1990.

EPA further notes that no exceedances have been monitored in the area since 1991, and only one was monitored in 1991. (Contrary to the assertion of the commentors, EPA's methodology of rounding down a monitored reading of up to .124 to .12 is not inconsistent with 40 CFR Part 50, App. H. That is EPA's long-standing approach to determining whether exceedances occur and is fully justified and appropriate.) Also, not only did the existing network fail to record an exceedance in 1994, but none of the additional monitors established as part of the ongoing studies discussed below monitored an exceedance. While those monitors have yet to be in operation a full three years, those initial results support the finding that the area has attained the standard. As a violation does not occur unless four exceedances occur at a single monitor over a three-year period, the data from the Salt Lake and Davis Counties area amply support the determination that the area has attained the standard.

What follows is a more detailed explanation of EPA's reviews of the ozone monitoring network and the ongoing studies being conducted to evaluate it. The Utah Division of Air Quality conducted network reviews and submitted packages of information describing reviews of the State's air monitoring network (including ozone monitoring stations) covering the period of 1991 through 1994. EPA has reviewed the submittals.

In a letter from Marshall Payne to Burnell Cordner dated September 1, 1992 regarding the State's network review submittal of May 1 and May 15, 1992, EPA concluded the network review met the requirements of 40 CFR, Part 58.20(d). In a letter from Marshall Payne to Russell Roberts dated January 13, 1994 regarding the State's network review submittal of June 2, 1993, EPA commented on the results of the 1993 saturation study and requested that the State submit a plan to revise the ozone monitoring network. The State's response to that request was dated March 4, 1994; EPA replied in a letter from Marshall Payne and Douglas Skie dated April 13, 1994. In the April 13, 1994 letter, EPA urged the State to proceed with proposed additions to the ozone network for the 1994 ozone season. The State added several ozone stations, which collected data in the 1994 ozone season.

A letter from Douglas Skie to Russell Roberts dated May 5, 1995 regarding the State's network review submittal of September 30, 1994, stated that, in general, EPA supported the modifications to the ozone network resulting from the 1993 and 1994 saturation studies. In the same letter, EPA urged the State to designate National Air Monitoring Stations both in Ogden and the Provo-Orem area. In the May 5, 1995 letter, EPA also acknowledged the State's request to discontinue the Springville ozone station due to low observed concentrations; EPA concurred that this station, having been established based upon the saturation study of 1993, had fulfilled its purpose and was no longer needed. The Salt Lake City station (610 South Second East) was discontinued late in 1994 due to permanent structural changes on the roof of the Health Department building.

The State submitted a report, ''Wasatch Front Ozone Saturation Study, Summer, 1994'' under a letter dated April 3, 1995. The report cited limitations of the passive sampling devices used in the study; those limitations impede the ability to confidently select sites for maximum concentration stations on the basis of saturation studies alone. Because of differences in meteorological conditions between 1993 and 1994, EPA contends the results of the 1994 study suggest it is important to operate a network of ozone monitoring stations with diverse exposures in the Wasatch Front. Maximum ozone concentrations were measured relatively close to the urban core of Salt Lake City, while some high concentrations may still occur in the periphery. The report suggested the possibility of establishing an ozone monitoring station on the east bench of Salt Lake City (viz., in the vicinity of Sandy and Draper, Utah). EPA has supported the plan to install such a station and has urged the State to proceed.

Concentrations of air pollutants, particularly ozone, are dynamic and air monitoring networks should continually be reviewed and transformed to ensure pollutant concentrations are accurately reflected in the national data base. EPA has, through the network review process, examined submittals bearing upon the design of the ozone network in the Wasatch Front, made comments on changes recommended in the network design, and concurred on the design of the ozone network during the period of

1991 to 1994. Results of the saturation studies of 1993 and 1994 were also reviewed by EPA. EPA expressed concerns regarding the network design during the period 1991 to 1994 and requested that the State make modifications; however, the proposed changes evolved as part of the normal process of network design review. The State took action to address the concerns and modified the network. The ozone standard has not been violated in the Wasatch Front during the period from 1991 to 1994; there have been no exceedances since 1991. It is EPA's position that the State of Utah modified, sited, and operated the ozone monitoring network consistent with 40 CFR Part 58 during those years and that the resulting data can reasonably be relied upon to characterize the ozone attainment status of Salt Lake and Davis Counties.

Comment 4: The Citizens Commission stated that the rulemaking is an abuse of agency discretion and violates sections 172(c)(9), 179(a) and 182(b)(1) of the Act. According to the commentor, EPA may suspend the applicablility of SIP requirements only through a redesignation to attainment pursuant to section 107(d)(3)(E).

Response to Comment 4: For the reasons stated above, in the June 8, 1995, **Federal Register** notice, and in the May 10, 1995, memorandum from John Seitz, the EPA does not believe that the rulemaking violates any section of the CAA. The commentor has not offered any persuasive reasoning for EPA to depart from the rationale spelled out in the previous documents. The EPA believes that since the area has attained the ozone standard, it has achieved the stated purpose of the section 182(b)(1) reasonable further progress and attainment demonstration requirements, as well as the section 172(c)(9) contingency measures requirement. As described above, this action is not a redesignation, nor does it circumvent the requirements for a redesignation under section 107(d)(3)(E).

Comment 5: The Citizens Commission stated that EPA's action is not a reasonable interpretation of EPA's nondiscretionary mandate under section 101(b)(1) to ''protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population.''

Response to Comment 5: The EPA disagrees with the commentor's statement that its action violates section 101(b)(1). Section 101(b)(1) does not establish a nondiscretionary duty; it is a statement of purpose—a purpose that EPA is not disregarding in this action. The area has attained the primary ozone standard, a standard designed to protect public health with an adequate margin of safety (*see* section 109(b)(1)). EPA's action does not relax any of the requirements that have led to the attainment of the standard. Rather, its action has the effect of suspending requirements, for additional pollution reductions, above and beyond those that have resulted in the attainment of the health-based standard.

Comment 6: The Citizens Commission asserts that EPA's action violates the Administrative Procedure Act and the CAA through its reliance on unpublished memoranda and the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, 57 FR 13498 (April 16, 1992). According to the commentor, reliance on those documents is inappropriate and illegal since those documents were issued without opportunity for notice and comment and are not enforceable regulations. The commentor also states that EPA's action is barren of any statement of legal authority.

Response to Comment 6: EPA's reference to and reliance on those documents, all of which are either published or publicly available and a part of the record of this rulemaking, is in no way illegal under provisions of either the CAA or the Administrative Procedures Act. (The commentor cited no specific provisions of either act.) EPA agrees that such documents do not establish enforceable regulations; they do not purport to be anything but guidance. That is precisely why EPA has performed this rulemaking—a notice-and-comment rulemaking to take comment on its statutory interpretations and factual determinations in order to make a binding and enforceable determination regarding the Salt Lake and Davis Counties area. The June 8, 1995, **Federal Register** notices referred to EPA's prior policy memoranda not as binding the Agency to adopt the interpretations being proposed therein, but rather as a useful description of the rationale underlying those proposed interpretations. EPA has explained the legal and factual basis for its rulemaking in the June 8, 1995, **Federal Register** notices and afforded the public a full opportunity to comment on EPA's proposed interpretation and determination fully consistent with the applicable procedural requirements of the Administrative Procedures Act. (The procedural requirements of section 307(d) of the CAA do not apply to this rulemaking since it is not among the rulemakings listed in section 307(d)(1).)

Comment 7: The Citizens Commission states that the suspension of the contingency measure requirement is particularly inappropriate given the dubious adequacy of the monitoring network. According to the commentor, EPA's action threatens to subject citizens to acute ozone episodes to which neither the State nor EPA are likely to be able to respond effectively due to the lack of implemented measures that would otherwise have been required.

Response to Comment 7: The response to Comment 3 above contains EPA's discussion of the adequacy of the monitoring network in the Salt Lake and Davis Counties area. As noted in the response to Comment 2 above, EPA acknowledges the concerns of the commentors regarding the likelihood that additional control measures may not be adopted and implemented as quickly as if EPA continued to require their adoption and submission at this time, but believes that countervailing policy considerations exist. Moreover, EPA notes that additional emission reductions will continue to occur as existing control measures are not being relaxed and the federal motor vehicle control program will continue to produce additional reductions through fleet turnover. As the language quoted by the commentor from EPA's June 8, 1995, **Federal Register** notice indicates, EPA would take individual circumstances into account, which would include the severity of any problems, in establishing the period in which the State would have to address the SIP requirements. EPA believes that it and the State would be able to respond effectively and promptly in the event a violation occurs.

Comment 8: The Citizens Commission states that the Salt Lake and Davis Counties nonattainment area cannot be temporarily redesignated in this manner, especially solely on the basis of marginal air quality data indicating momentary achievement of the standard.

Response to Comment 8: As explained elsewhere in this notice, EPA's action is not a redesignation and is both appropriate and legally justified. Moreover, as explained above, the air quality data underlying the determination is sufficient. Finally, the data are not marginal and do not indicate ''momentary achievement'' of the standard. No exceedances have been monitored over the most recent full 3-year period and only one exceedance was monitored in 1991. Thus, the area has had clean data for an extended period of time during which emission reductions have occurred due to the

imposition of various control measures such as the federal motor vehicle control program, VOC RACT requirements, and RVP requirements.

Final Rulemaking Action

The EPA is making a final determination that the Salt Lake and Davis Counties ozone nonattainment area has attained the ozone standard and continues to attain the standard at this time. As a consequence of this determination, the requirements of section 182(b)(1) concerning the submission of the 15 percent reasonable further progress plan and ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures are not applicable to the area so long as the area does not violate the ozone standard.

The EPA emphasizes that these determinations are contingent upon the continued monitoring and continued attainment and maintenance of the ozone NAAQS in the affected area. When and if a violation of the ozone NAAQS is monitored in the Salt Lake and Davis Counties nonattainment area (consistent with the requirements contained in 40 CFR Part 58 and recorded in AIRS), the EPA will provide notice to the public in the **Federal Register**. Such a violation would mean that the area would thereafter have to address the requirements of section 182(b)(1) and section 172(c)(9) since the basis for the determination that they do not apply would no longer exist.

As a consequence of the determination that these areas have attained the NAAQS and that the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and contingency measure requirement of section 172(c)(9) do not presently apply, these are no longer requirements within the meaning of 40 CFR § 52.31(c)(1). Consequently, the sanctions clock started by EPA on January 19, 1994, for failure to submit SIP revisions required by the provisions of the CAA is hereby stopped.

Specific to the Salt Lake and Davis Counties' ozone nonattainment area, Governor Michael Leavitt submitted a Redesignation Request and Maintenance Plan on November 12, 1993. On January 13, 1995, the Governor submitted revisions to that initial submittal that included revised emission inventories.

Because the State submitted an Ozone Redesignation Request and Maintenance Plan SIP revision for Salt Lake and Davis Counties, in lieu of a 15 percent SIP revision, Salt Lake and Davis Counties have been subject to the motor vehicle emissions budget in the Ozone Redesignation Request and Maintenance Plan SIP revision for transportation conformity purposes (see 40 CFR 93.128(i)).

Pursuant to EPA's new May 10, 1995, policy, the State may continue to demonstrate conformity to this submitted motor vehicle emissions budget, or the State may choose to withdraw the applicability of the motor vehicle emissions budget in the Ozone Redesignation Request and Maintenance Plan SIP revision for transportation conformity purposes, through the submittal of a letter from the Governor. If the applicability of the submitted motor vehicle emissions budget is withdrawn for transportation conformity purposes, only the build/no-build and less-than-1990 tests will apply until the Ozone Redesignation Request and Maintenance Plan are approved. If the applicability of the submitted motor vehicle emissions budget is not withdrawn for transportation conformity purposes, it will continue to apply.

The EPA finds that there is good cause for this action to become effective immediately upon publication because a delayed effective date is unnecessary due to the nature of this action, which is a determination that certain Act requirements do not apply for so long as the areas continue to attain the standard. The immediate effective date for this action is authorized under both 5 U.S.C. § 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction'' and § 553(d)(3), which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.''

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 economic 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. Today's determination does not create any new requirements, but suspends the indicated requirements. Therefore, because this notice does not impose any new requirements, I certify that it does not have a significant impact on small entities affected.

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rulemaking that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements.

The EPA has determined that this final rule action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local or tribal governments in the aggregate, or to the private sector. This Federal action imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Under section 307(b)(1) of the Act, petitions for judicial review of this final rule action determining that the Salt Lake and Davis Counties ozone nonattainment area has attained the NAAQS for ozone and that certain reasonable further progress and attainment demonstration requirements of section 182(b)(1) and the contingency measures provisions of section 172(c)(9) no longer apply must be filed in the United States Court of Appeals for the appropriate circuit by September 18, 1995. 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 CAA section 307(b)(2)).

Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen oxides, Ozone, Volatile organic compounds,

Intergovernmental relations, Reporting and record keeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 13, 1995.

Jack W. McGraw,

Acting Regional Administrator.

40 CFR part 52, Subpart TT, 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 TT—Utah

2. Section 52.2332 is added to read as follows:

§ 52.2332 Control Strategy: Ozone.

Determinations—EPA is determining that, as of July 18, 1995, the Salt Lake and Davis Counties ozone nonattainment area has attained the ozone standard based on air quality monitoring data from 1992, 1993, and 1994, and that the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and related requirements of section 172(c)(9) of the Clean Air Act do not apply to the area for so long as the area does not monitor any violations of the ozone standard. If a violation of the ozone NAAQS is monitored in the Salt Lake and Davis Counties ozone nonattainment area, these determinations shall no longer apply.

[FR Doc. 95–17755 Filed 7–17–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[PP 3F4225/R2150; FRL–4964–7]

RIN 2070–AB78

Triasulfuron; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes tolerances for residues of the herbicide triasulfuron [3-(6-methoxy-4-methyl-1,3,5-triazin-2-yl)-1-2-(2-chloroethoxy) phenylsulfonyl)urea] in or on the raw agricultural commodities (RACs) grass forage at 7.0 parts per million (ppm) and grass hay at 2.0 ppm. This document also increases the tolerance for kidney of cattle, goats, hogs, horses, and sheep to 0.5 ppm. Ciba-Geigy Corp. requested these tolerances in a petition submitted to EPA pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA).

EFFECTIVE DATE: This regulation becomes effective July 18, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 3F4225/R2150], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing request filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 3F4225/R2150]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail, Robert J. Taylor, Product Manager (PM-25), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 241, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6027; e-mail: taylor.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 21, 1993 (58 FR 54354), EPA issued a notice announcing that Ciba-Geigy Corp., Agricultural Division, P.O. Box 18300, Greensboro, NC 27419, had submitted a pesticide petition (PP 3F4225) proposing to amend 40 CFR part 180 by establishing a regulation under section 408(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(d)) to permit residues of the herbicide triasulfuron, 3-(6-methoxy-4-methyl-1,3,5-triazin-2-yl)-1-(2-(2-chloroethoxy) phenylsulfonyl)urea, in or on the raw agricultural commodities (RACs) grass forage at 7.0 ppm and grass hay at 2.0 ppm. There were no comments or requests for referral to an advisory committee received in response to the notice of filing.

The petitioner subsequently amended the petition by submitting a revised Section F proposing to establish tolerances for residues of the herbicide triasulfuron in or on the RACs grass forage at 7.0 ppm, grass hay at 2.0 ppm, and to increase the established tolerances on kidney of cattle, goats, hogs, horses, and sheep to 0.5 ppm. In the **Federal Register** of May 24, 1995 (60 FR 27506), EPA issued an amended filing notice proposing these tolerances. There were no comments or requests for referral to an advisory committee recieved in response to the notice.

In the **Federal Register** of May 3, 1995 (60 FR 21734), EPA issued a document in the **Federal Register** which changed the current time-limited tolerances for residues of the herbicide triasulfuron to permanent tolerances.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data listed below were considered in support of these tolerances.

1. Several acute studies placing technical-grade triasulfuron in Toxicity Categories III and IV. It is not a dermal sensitizer.

2. A subchronic (90-day) feeding study in which male and female rats were fed diets containing triasulfuron yielding dose levels of 0, 9.8/12.5, 517/668, and 1,082/1,430 (male/female) milligrams/kilogram body weight/day (mg/kg/day) demonstrated a no-observable-effect level (NOEL) of 9.8/12.5 (males/ females) mg/kg/day based on decreased body weight and food intake in males and females and increased kidney atrophy and epithelial hyperplasia in females 517/668 (males/females) mg/kg/day.

3. A 1-year feeding study with male and females dogs fed diets containing triasulfuron yielding dose levels of 0, 2.5, 25, and 125/250 mg/kg/day demonstrated a NOEL of 2.5 mg/kg/day based on increased relative (organ to body weight ratio) liver weight and prostate cystic hyperplasia at 25 mg/kg/day. After 10 weeks, dogs receiving 250 mg/kg/day exhibited reduced weight

and food intake as well as hematological changes; therefore, the dose level was reduced to 125 mg/kg/day.

4. A 2-year chronic feeding/carcinogenicity study inmale and female rats fed triasulfuron in the diet yielding dose levels of 0, 0.3/0.4, 32.1/42.9, and 220.8/274.4 (males and females) mg/kg/day demonstrated that no carcinogenic effects were observed under the conditions of the study at dose levels up to and including 220.8/274.4 (males/females) mg/kg/day (highest dose tested [HDT]) and a systemic NOEL of 32.1/42.9 (males/females) mg/kg/day based upon a decrease in mean body weight gain for both sexes and in males a decrease in absolute heart and testes weight at 220.8/ 274.4 mg/kg/day (HDT).

5. A 2-year feeding/carcinogenic study in male and female mice fed diets containing triasulfuron yielding dose levels 0, 1.2/1.5, 129/158, 620/793, and 1,301/1,474 (males/females) mg/kg/day demonstrated that no carcinogenic effects observed under the conditions of the study at dose levels up to and including 1,301/1,474 (males/females) mg/kg/day (HDT) and a systemic NOEL of 1.2 mg/kg/day based on a centrilobular hepatocytomegaly in males at 129 mg/kg/day.

6. A developmental toxicity study in pregnant rats dosed orally (by gavage) with triasulfuron during days 6 through 15 at dose levels of 0, 100, 300, and 900 mg/kg/day demonstrated a developmental NOEL of 300 mg/kg/day (mid-dose tested [MDT]), based on increased incidence of dumbbell-shapped thoracic vertebrae at 900 mg/kg/day (HDT) and a maternal NOEL of 100 mg/kg/day, based on decreased body weight and body weight gain during gestation at 300 mg/kg/day (MDT).

7. A developmental toxicity study in pregnant female rabbits dosed orally (by gavage) with triasulfuron at dose levels of 0, 40, 120, and 240 mg/kg/day during days 6 through 18 of gestation demonstrated a developmental NOEL greater than 240 mg/kg/day (HDT), based on the absence of any developmental toxicity, and a maternal NOEL of 120 mg/kg/day (HDT) based on depressed body weight during the gestation period at 240 mg/kg/day (HDT).

8. A two-generation reproduction study in male and female rats fed diets of triasulfuron yielding dose levels of 0, 0.5, 50, and 250 mg/kg/day demonstrated a reproductive ($F1_a$, $F1_b$, and $F2_b$) NOEL of 50 mg/kg/day, based on reduced pup weight at birth and during lactation at 250 mg/kg/day (HDT), and a paternal ($F_0 + F_1$) NOEL of 50 mg/kg/day based on decreased body weight gain at 250 mg/kg/day (HDT).

9. Mutagenicity studies included an Ames test, a mouse lymphoma mutagenicity test, a DNA damage/repair *in vitro* (HPC/UDS) test, and a micronucleus test in Chinese hamsters (all negative).

The reference dose (RfD), based on a 2-year feeding study with mice (NOEL of 1.2 mg/kg/day) and using a hundred-fold safety factor, is calculated to be 0.01 mg/kg/day. The theoretical maximum residue contribution (TMRC) for the existing tolerances for the overall U.S. population is 0.000463 mg/kg/body weight/day and utilizes 4.63 percent of the RfD. The current action will increase the TMRC by 0.001225 mg/kg bwt/day. These tolerances and previously established tolerances will utilize a total of 11.4 percent of the RfD for the overall U.S. population. For U.S. subgroup populations, nonnursing infants and children aged 1 to 6, the current action and previously established tolerances utilize, respectively, a total of 3.23 percent and 23.2 percent of the RfD, assuming that residue levels are at the established tolerances and 100 percent of the crop is treated.

There are no desirable data lacking for this chemical. The pesticide is useful for the purposes for which these tolerances are sought. The nature of the residue is adequately understood for the purpose of establishing tolerances. Adequate analytical methodology—high performance liquidchromatography (HPLC) using column switching and ultraviolet detection—is available for enforcement purposes. Because of the long lead time from establishing these tolerances to publication, the enforcement methodology is being made available in the interim to anyone interested in pesticide enforcement when requested by mail from: Calvin Furlow, Public Response Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1130A, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5937.

There are currently no actions pending against the registration of this chemical. Any secondary residue occurring in meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep, and milk will be covered by previously established tolerances on livestock commodities except for kidney of cattle, goats, hogs, horses, and sheep which are being increased by this action. There is no reasonable expectation that finite residues of triasulfuron will occur in poultry tissues and eggs as a result of the proposed use on grasses.

Based on the information cited above, the Agency has determined that the establishment of the tolerances by amending 40 CFR part 180 will protect the public health; therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above, 40 CFR 178.20. A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. 40 CFR 178.25. Each objection must be accompanied by the fee prescribed in 40 CFR 180.33 (i). If a hearing is requested, the objections must include a statement of factual issue(s) on which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the objector, 40 CFR 178.27. A request for a hearing will be granted is the Administrator determines that the material submitted shows the following: There is a genuine as substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue (s) in the manner sought by the requestor would be adequate to justify the action requested. 40 CFR 178.32.

A record has been established for this rulemaking under docket number [PP 3F4225/R2150] (including objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 3F4225/R2150], may be submitted to the Hearing Clerk (1900), Environmental Protection

Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:
opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office Of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligation of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review. Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 21 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 28, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By revising § 180.459, to read as follows:

§ 180.459 Triasulfuron; tolerances for residues.

(a) Tolerances are established for residues of the herbicide triasulfuron [3-(6-methoxy-4-methyl-1,3,5-triazin-2-yl)-1-(2-(2-chloroethoxy)phenylsulfonyl)urea] in or on the following raw agricultural commodities:

Commodity	Parts per million
Barley, forage	5.0
Barley, grain	0.02
Barley, straw	2.0
Cattle, fat	0.1
Cattle, mbyp except kidney	0.1
Cattle, meat	0.1
Goats, fat	0.1
Goats, mbyp except kidney	0.1
Goats, meat	0.1
Hogs, fat	0.1
Hogs, mbyp	0.1
Hogs, meat	0.1
Horses, fat	0.1
Horses, mbyp except kidney	0.1
Horses, meat	0.1
Milk	0.02
Sheep, fat	0.1
Sheep, mbyp except kidney	0.1
Sheep, meat	0.1
Wheat, forage	5.0
Wheat, grain	0.02
Wheat, straw	2.0

(b) Time-limited tolerances are are established for residues of the herbicide triasulfuron [3-(6-methoxy-4-methyl-1,3,5-triazin-2-yl)-1-(2-(2-chloroethoxy)phenylsulfonyl)urea] in or on the following raw agricultural commodities:

Commodity	Parts per million	Expiration date
Cattle, kidney	0.5	July 20, 1998.
Goats, kidney	0.5	Do.
Grass, forage	7.0	Do.
Grass, hay	2.0	Do.
Horses, kidney.	0.5	Do.
Sheep, kidney.	0.5	Do.

[FR Doc. 95–17128 Filed 7–17–95; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 271

[FRL–5258–8]

Arizona: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Affirmation of immediate final rule.

SUMMARY: This document responds to the comment received on the immediate final rule published April 11, 1995 (60 FR 18356), and affirms the Agency's decision to authorize Arizona's revised program.

EFFECTIVE DATE: June 12, 1995.

FOR FURTHER INFORMATION CONTACT: April Katsura, U.S. EPA Region IX (H–4), 75 Hawthorne Street, San Francisco, CA 94105, Phone: 415/744–2030.

SUPPLEMENTARY INFORMATION: On April 11, 1995, EPA published an immediate final rule (60 FR 18356) which announced the Agency's decision to authorize Arizona's revisions to its hazardous waste program. Those revisions primarily include the Federal amendments made between July 1, 1990 and June 30, 1992. Major revisions include new rules relating to wood preserving and boilers and industrial furnaces.

One comment was received during the comment period. After considering the comment, the Regional Administrator has decided to affirm her decision to authorize the State of Arizona for the program revisions. The following is a summary of the comment and the Regional Administrator's response.

Comment: EPA should not approve the program revision because the Arizona Department of Environmental Quality (ADEQ) has shown in the specific examples given by the

commenter that ADEQ is not capable of implementing Arizona's existing hazardous waste program. The permitting and enforcement programs are inconsistent and favor violators. Permitting is also slow and unresponsive to the public.

The comment contained examples about three facilities. As to the first facility, the commenter alleged that there have been various explosions and that waste was sent off-site from the facility to a non-permitted site. Also, there was no penalty assessed despite an alleged failure to submit the facility's permit application on time. The commenter further questioned the validity of a partial facility closure that was approved after a public hearing was denied. Finally, the commenter stated that ADEQ has yet to issue a permit for this facility.

In the second case, a facility is operating on the site of a previous facility. The commenter alleged that both facilities were able to operate under interim status for over 10 years. The commenter stated that this allowed increases in storage and treatment capacity at the facilities without the public participation which would have been required under the permitting process. The commenter further alleged that the current facility has documented groundwater and soil contamination that ADEQ has not addressed.

Lastly, the commenter alleged that in conducting public participation on a permit for a facility in Phoenix, ADEQ denied a request for a public hearing on the grounds that there was not sufficient public interest despite the fact that it was the City of Phoenix that had requested the hearing.

Response: This comment does not specifically pertain to the State's program revision discussed in EPA's notice but comments more generally on the State's overall program capabilities. EPA cannot find that the examples cited demonstrate an overall lack of permitting and enforcement capability, though the comment warrants further action as detailed below.

Based on a review of Arizona's application for final authorization as well as continuing periodic comprehensive assessments of Arizona's hazardous waste program, EPA has determined that Arizona meets the RCRA requirements including those set out in 40 CFR 271.13 through 271.16. EPA has further determined that Arizona has the capability to implement these requirements. Also, EPA's oversight of the Arizona program includes monitoring of the implementation of the approved program, including permitting and enforcement, through quarterly progress reports which culminate in an annual on-site review. Arizona most recently successfully completed the program review process in November 1994, although the review did identify permits and enforcement as some areas for on-going program improvements.

Information such as that provided by this commenter is continually evaluated by EPA in these assessments of State capabilities. EPA now is following up on the commenter's examples as part of EPA's on-going evaluation of the Arizona program. Problem areas which are identified through this process will be addressed through program implementation improvement.

Finally, though the intermittent enforcement complained of does not represent a lack of program capability, it may, after further investigation, suggest the need for supplementary Federal enforcement action in some cases. Although authorized states have primary enforcement responsibility, EPA retains enforcement authority to carry out RCRA requirements. The commenter's examples will be fully evaluated and enforcement action taken, as appropriate.

In sum, EPA has evaluated the state's capability and has determined that the state has adequate capability to warrant authorization. Any member of the public, however, is at any time encouraged to raise such concerns for EPA to take into account in EPA's ongoing assessment and improvement of program capabilities.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 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 Arizona'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.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When a written statement is needed for an EPA rule, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Under the authority of RCRA section 3006(b), EPA has already approved Arizona's hazardous waste program. EPA does not anticipate that the approval of the revisons to Arizona's hazardous waste program referenced in today's notice will result in annual costs of $100 million or more. EPA estimates that it costs a state approximately $7,323 to develop and submit to EPA a revision application for approval.

EPA's approval of state programs generally have a deregulatory effect on the private sector because once it is determined that a state hazardous waste program meets the requirements of RCRA section 3006(b) and the regulations promulgated thereunder at 40 CFR Part 271, owners and operators

of hazardous waste treatment, storage, or disposal facilities (TSDFs) may take advantage of the flexibility that an approved state may exercise. Such flexibility will reduce, not increase, compliance costs for the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Agency recognizes that small governments may own and/or operate TSDFs that will become subject to the requirements of an approved state hazardous waste program. However, such small governments which own and/or operate TSDFs are already subject to the requirements in 40 CFR parts 264, 265 and 270. Once EPA authorizes a state to administer its own hazardous waste program and any revisions to that program, these same small governments will be able to own and operate their TSDFs with increased levels of flexibility provided under the approved State program.

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

Dated: July 6, 1995.

Felicia Marcus,

Regional Administrator.

[FR Doc. 95–17479 Filed 7–17–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 410 and 414

[BPD–789–CN]

RIN 0938–AG52

Medicare Program; Refinements to Geographic Adjustment Factor Values, Revisions to Payment Policies, Adjustments to the Relative Value Units (RVUs) Under the Physician Fee Schedule for Calendar Year 1995, and the 5-Year Refinement of RVUs; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction of final rule with comment period.

SUMMARY: This document is a second correction to technical errors that appeared in the final rule with comment period entitled ''Medicare Program; Refinements to Geographic Adjustment Factor Values, Revisions to Payment Policies, Adjustments to the Relative Value Units (RVUs) Under the Physician Fee Schedule for Calendar Year 1995, and the 5-Year Refinement of RVUs'' published in the **Federal Register** on December 8, 1994. The first correction notice was published in the **Federal Register** on January 3, 1995 (60 FR 46).

EFFECTIVE DATE: January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Elizabeth Holland, (410) 966–1309.

SUPPLEMENTARY INFORMATION:

Background

In the FR Doc. (94–29916) dated December 8, 1994, there were a number of technical and typographical errors in the preamble, in the regulations text, and in the addenda. To correct these errors, we published a correction notice in the **Federal Register** on January 3, 1995 (60 FR 46). Since the publication of that correction notice, we discovered additional errors, beginning on page 63417, in the preamble, in one section of the regulations text, in Addendum B (''Relative Value Units (RVUs) and Related Information''), and in Addendum F (''Procedure Codes Subject to the Site-of-Service Differential''). The corrections appear later in this document, under the heading ''Correction of Errors.''

In the preamble, on pages 63417 and 63432, we incorrectly referred to the ''American Osteopathic Association'' as the ''American Academy of Osteopathy.'' Also, on page 63425, we provided an incorrect response to one of the public comments we received.

In the regulations text set forth at § 414.39 (''Special rules for payment of care plan oversight''), on page 63463, we inadvertently failed to state, in paragraph (b)(2) concerning the conditions under which separate payment may be made, that a physician may not have an ownership interest in a home health agency.

In Addendum B, we inadvertently printed incorrect information for certain codes. In Addendum F, we should not have included HCPCS codes 29530, 95880, and 95881.

Correction of Errors

In FR Doc. 94–29916 of December 8, 1994 (59 FR 63410) make the following corrections:

A. Page 63417

On page 63417, in column one, in the second bullet point, replace the ''American Academy of Osteopathy'' with the ''American Osteopathic Association.''

B. Page 63425

On page 63425, in column three, remove the response to the second comment, and, in its place, insert the following response: ''The commenters correctly stated that psychotherapy codes are excluded from the site-of-service list; however, the two codes listed are not psychotherapy codes. They are diagnostic tests. Since these codes lack work RVUs, these codes should be treated like CPT code 90830, psychological testing. Therefore, we are modifying our proposed site-of-service list and are removing CPT codes 95880 and 95881 from the list.''

C. Page 63432

On page 63432, in column two, in the second bullet point, replace the ''American Academy of Osteopathy'' with the ''American Osteopathic Association.''

D. Page 63463

On page 63463, in column 2, in line 3, in § 414.39(b)(2), insert the phrase ''ownership interest in, or'' before the word ''financial,'' and insert a comma after the word ''with'' in line 4.

E. Page 63493, Addendum B
On page 63493, Addendum B is corrected to read as follows:

HCPCS [1]	MOD	Status	Description	Work RVUs [2]	Practice expense RVUs [3]	Mal-practice RVUs	Total	Global period	Update
31231	.....	A	Nasal endoscopy, dx	1.10	1.37	0.15	2.62	000	S
31233	.....	A	Nasal/sinus endoscopy, dx	2.18	*2.79	0.31	5.28	000	S
31235	.....	A	Nasal/sinus endoscopy, dx	2.64	2.39	0.26	5.29	000	S
31237	.....	A	Nasal/sinus endoscopy, surg	2.98	3.37	0.37	6.72	000	S

[1] All numeric CPT HCPCS Copyright 1994 American Medical Association.
[2] # Indicates RVUs are not used for Medicare payment.
[3] * Indicates reduction of Practice Expense RVUs as a result of OBRA 1993.

F. Page 63503, Addendum B
On page 63503, Addendum B is corrected to read as follows:

HCPCS [1]	MOD	Status	Description	Work RVUs [2]	Practice expense RVUs [3]	Mal-practice RVUs	Total	Global period	Update
36522	.....	A	Photopheresis	1.67	*3.31	0.37	5.35	000	S

[1] All numeric CPT HCPCS Copyright 1994 American Medical Association.
[2] # Indicates RVUs are not used for Medicare payment.
[3] * Indicates reduction of Practice Expense RVUs as a result of OBRA 1993.

G. Page 63509, Addendum B
On page 63509, Addendum B is corrected to read as follows:

HCPCS [1]	MOD	Status	Description	Work RVUs [2]	Practice expense RVUs [3]	Mal-practice RVUs	Total	Global period	Update
43847	.....	A	Gastric bypass for obesity	19.87	14.80	3.30	37.97	090	S

[1] All numeric CPT HCPCS Copyright 1994 American Medical Association.
[2] #Indicates RVUs are not used for Medicare payment.
[3] *Indicates reduction of Practice Expense RVUs as a result of OBRA 1993.

H. Page 63563, Addendum B
On page 63563, Addendum B is corrected to read as follows:

HCPCS [1]	MOD	Status	Description	Work RVUs [2]	Practice expense RVUs [3]	Mal-practice RVUs	Total	Global period	Update
78806	.....	A	Abscess imaging, whole body	0.86	6.51	0.45	7.82	XXX	N
78806	26	A	Abscess imaging, whole body	0.86	0.38	0.06	1.30	XXX	N

[1] All numeric CPT HCPCS Copyright 1994 American Medical Association.
[2] #Indicates RVUs are not used for Medicare payment.
[3] *Indicates reduction of Practice Expense RVUs as a result of OBRA 1993.

I. Page 63580, Addendum B
On page 63580, Addendum B is corrected to read as follows:

HCPCS [1]	MOD	Status	Description	Work RVUs [2]	Practice expense RVUs [3]	Mal-practice RVUs	Total	Global period	Update
90846	.....	R	Special family therapy	1.82	0.62	0.08	2.52	XXX	N
90847	.....	R	Special family therapy	2.19	0.58	0.08	2.85	XXX	N
90887	.....	R	Consultation with family	1.48	0.33	0.04	1.85	XXX	N

[1] All numeric CPT HCPCS Copyright 1994 American Medical Association.
[2] #Indicates RVUs are not used for Medicare payment.
[3] *Indicates reduction of Practice Expense RVUs as a result of OBRA 1993.

J. Page 63590, Addendum B
On page 63590, Addendum B is corrected to read as follows:

HCPCS [1]	MOD	Status	Description	Work RVUs [2]	Practice expense RVUs [3]	Mal-practice RVUs	Total	Global period	Update
95115	.....	A	Immunotherapy, one injection	0.00	0.37	0.02	0.39	000	N
95117	.....	A	Immunotherapy injections	0.00	0.48	0.02	0.50	000	N

[1] All numeric CPT HCPCS Copyright 1994 American Medical Association.

[2] #Indicates RVUs are not used for Medicare payment.
[3] *Indicates reduction of Practice Expense RVUs as a result of OBRA 1993.

K. Page 63591, Addendum *B*
On page 63591, Addendum B is corrected to read as follows:

HCPCS [1]	MOD	Status	Description	Work RVUs [2]	Practice expense RVUs [3]	Mal-practice RVUs	Total	Global period	Update
95144	.....	A	Antigen therapy services	0.06	0.13	0.01	0.20	000	N
95145	.....	A	Antigen therapy services	0.06	0.34	0.03	0.43	000	N
95146	.....	A	Antigen therapy services	0.06	0.61	0.03	0.70	000	N
95147	.....	A	Antigen therapy services	0.06	0.91	0.03	1.00	000	N
95148	.....	A	Antigen therapy services	0.06	0.91	0.03	1.00	000	N
95149	.....	A	Antigen therapy services	0.06	1.14	0.03	1.23	000	N
95165	.....	A	Antigen therapy services	0.06	0.10	0.01	0.17	000	N
95170	.....	A	Antigen therapy services	0.06	0.35	0.03	0.44	000	N
95180	.....	A	Rapid desensitization	2.01	0.14	0.01	2.16	000	N
95199	.....	C	Allergy immunology services	0.00	0.00	0.00	0.00	000	N
95807	.....	A	Sleep study	1.66	8.75	0.67	11.08	XXX	N
95807	26	A	Sleep study	1.66	2.45	0.19	4.30	XXX	N
95807	TC	A	Sleep study	0.00	6.30	0.48	6.78	XXX	N
95808	.....	A	Polysomnography, 1–3	2.65	8.75	0.67	12.07	XXX	N
95808	26	A	Polysomnography, 1–3	2.65	2.45	0.19	5.29	XXX	N
95808	TC	A	Polysomnography, 1–3	0.00	6.30	0.48	6.78	XXX	N
95810	.....	A	Polysomnography, 4 or more	3.53	8.75	0.67	12.95	XXX	N
95810	26	A	Polysomnography, 4 or more	3.53	2.45	0.19	6.17	XXX	N
95810	TC	A	Polysomnography, 4 or more	0.00	6.30	0.48	6.78	XXX	N

[1] All numeric CPT HCPCS Copyright 1994 American Medical Association.
[2] #Indicates RVUs are not used for Medicare payment.
[3] *Indicates reduction of Practice Expense RVUs as a result of OBRA 1993.

L. Page 63594, Addendum B
On page 63594, Addendum B is corrected to read as follows:

HCPCS[1]	MOD	Status	Description	Work RVUs[2]	Practice expense RVUs[3]	Mal-practice RVUs	Total	Global period	Update
97770	.....	A	Cognitive skills development	0.44	0.28	0.03	0.75	XXX	N

[1] All numeric CPT HCPCS Copyright 1994 American Medical Association.
[2] #Indicates RVUs are not used for Medicare payment.
[3] *Indicates reduction of Practice Expense RVUs as a result of OBRA 1993.

M. Page 63599, Addendum B
On page 63599, Addendum B is corrected to read as follows:

HCPCS[1]	MOD	Status	Description	Work RVUs[2]	Practice expense RVUs[3]	Mal-practice RVUs	Total	Global period	Update
A4643	.....	E	High dose contrast MRI	0.00	0.00	0.00	0.00	XXX	O

[1] All numeric CPT HCPCS Copyright 1994 American Medical Association.
[2] #Indicates RVUs are not used for Medicare payment.
[3] *Indicates reduction of Practice Expense RVUs as a result of OBRA 1993.

N Page 63614, Addendum B
On page 63614, HCPCS code Q0126 in Addendum B is corrected and HCPCS codes Q0137 and Q0138 are added to read as follows:

HCPCS [1]	MOD	Status	Description	Work RVUs [2]	Practice Expense RVUs [3]	Mal-practice RVUs	Total	Global period	Update
Q0126	.....	D	Immunoassay inf agnt antigen	0.00	0.00	0.00	0.00	000	O
Q0137	.....	E	Inj Dexamethasone Acet 8MG	0.00	0.00	0.00	0.00	XXX	O
Q0138	.....	E	Inj Dexamethasone Acet 16MG	0.00	0.00	0.00	0.00	XXX	O

[1] All numeric CPT HCPCS Copyright 1994 American Medical Association.
[2] #Indicates RVUs are not used for Medicare payment.
[3] *Indicates reduction of Practice Expense RVUs as a result of OBRA 1993.

O Page 63631, Addendum F On page 63631, Addendum F, remove HCPCS *29530, Strapping of knee. *P. Page 63632, Addendum F*

On page 63632, Addendum F, remove HCPCS *95880, Cerebral aphasia testing and HCPCS *95881, Cerebral developmental test.

(Section 1848 of the Social Security Act (42 U.S.C. 1395w–4))

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 21, 1995.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 95–17570 Filed 7–17–95; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7147

[NM–932–1430–01; NMNM 055653]

Partial Revocation of Public Land Order No. 2051; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order insofar as it affects 201.05 acres of public land withdrawn for New Mexico State University (formerly New Mexico College of Agriculture and Mechanic Arts) for research programs in connection with Federal programs. The land is no longer needed for this purpose, and the revocation is needed to permit disposal of the land through sale as directed by Public Law 100–559.

EFFECTIVE DATE: August 15, 1995.

FOR FURTHER INFORMATION CONTACT: Jeanette Espinosa, BLM New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502, 505–438–7597.

By virtue of the authority vested in the Secretary of the Interior by Section 502 of Public Law 100–559, it is ordered as follows:

1. Public Land Order No. 2051, which withdrew public land for use by the New Mexico College of Agriculture and Mechanic Arts, now New Mexico State University, for research programs in connection with Federal programs, is hereby revoked insofar as it affects the following described land:

New Mexico Principal Meridian

T. 23 S., R. 2 E.,
Sec. 35, lots 8 and 9, N½NE¼, and SE¼NE¼.

The area described contains 201.05 acres in Dona Ana County.

2. The land described above is hereby made available for conveyance as authorized and directed by Section 502 of Public Law 100–559.

Dated: July 6, 1995.

Bonnie R. Cohen,

Assistant Secretary of the Interior.

[FR Doc. 95–17513 Filed 7–17–95; 8:45 am]

BILLING CODE 4310–FB–P

43 CFR Public Land Order 7148

[ES–931–1430–01; FLES–37416]

Revocation of Executive Order Dated February 1, 1886; Florida

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes an Executive order in its entirety insofar as it affects the remaining 0.17 acre of public land withdrawn for use by the United States Coast Guard for lighthouse purposes. The land is no longer needed for lighthouse purposes. This action will open the land to surface entry, mining, and mineral leasing.

EFFECTIVE DATE: August 17, 1995.

FOR FURTHER INFORMATION CONTACT: Mary A. Weaver, Withdrawal Coordinator, BLM Jackson District Office, 411 Briarwood Drive, Suite 404, Jackson, Mississippi 39206–3039, 601–977–5400.

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. The Executive order dated February 1, 1886, which withdrew public land for use as lighthouse purposes, is hereby revoked insofar as it affects the following described land:

Tallahassee Meridian

T. 27 S., R. 15 E.,
Sec. 1, part of lot 1 described as follows:
Beginning at a point which is located by running from the center of the light tower northwesterly and parallel to the southwest side of the tower foundation a distance of 42.5 feet to the place of beginning; thence northeasterly and parallel to the northwest side of said tower foundation a distance of 42.5 feet to a point; thence southeasterly and parallel to said southwest side of the tower foundation a distance of 85.0 feet to a point; thence southwesterly and parallel to said northwest side of the tower foundation a distance of 85.0 feet to a point; thence northwesterly and parallel to said southwest side of the tower foundation a distance of 85.0 feet to a point; thence northeasterly and parallel to said northwest side of the tower foundation a distance of 42.5 feet to place of beginning.

The area described contains 0.17 acre in Pinellas County.

2. At 10:00 a.m. on August 17, 1995, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 10:00 a.m. on August 17, 1995, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10:00 a.m. on August 17, 1995, the land will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal Law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: July 6, 1995.

Bonnie R. Cohen,

Assistant Secretary of the Interior.

[FR Doc. 95–17512 Filed 7–17–95; 8:45 am]

BILLING CODE 4310–GJ–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 95–3]

Assessment and Collection of Regulatory Fees for Fiscal Year 1995; Correction

AGENCY: Federal Communications Commission.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations published in notice document FCC 95–227, Report and Order, *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1995*, MD Docket No. 95–3 (Rel. June 19, 1995) which were published Thursday, June 29, 1995 (60 FR 34004).

EFFECTIVE DATE: September 18, 1995.

FOR FURTHER INFORMATION CONTACT: Peter W. Herrick, Office of Managing Director at (202) 418–0443, or Terry D. Johnson, Office of Managing Director at (202) 418–0445.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections, revise the Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress has required the Commission to collect for fiscal year 1995. Section 9 of the Communications Act of 1934, as amended, provides for the annual assessment and collection of regulatory fees.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication on June 29, 1995 of the final regulations (MD Docket No. 95–3; FCC 95–227), which were the subject of FR Doc. 95–15827, is corrected as follows:

On page 34023 in Appendix E, Table #2, line 6, column 4, the new fee dollar amount for FM Radio (Classes C, C1, C2, B) was listed as ''1,125.'' This should be changed to read ''1,120.''

§ 1.1154 [Corrected]

On page 34031, in the first column, in § 1.1154, under the subheading Carriers, items 1 through 4, the phrase in parentheses ''per dollar contributed to TRS Fund'' should be revised to read ''per adjusted gross interstate revenue dollar.''

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–17571 Filed 7–17–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 21

[Gen. Docket No. 90–54, Gen. Docket No. 80–113; FCC 95–231]

Multipoint Distribution Service, Multichannel Multipoint Distribution Service, Instructional Television Fixed Service, Private Operational-Fixed Microwave Service, and Cable Television Relay Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; order on reconsideration.

SUMMARY: This Second Order on Reconsideration decides issues raised by a petitioner concerning the previous Order on Reconsideration, 56 FR 57596 (Nov. 13, 1991), which reevaluated a number of issues decided in the Report and Order, 55 FR 46006 (Oct. 31, 1990); Erratum, 55 FR 46513 (Nov. 5, 1990). The Order on Reconsideration and Report and Order were adopted to further enhance wireless cable service as a viable competitor in the multichannel video entertainment marketplace, by revising the rules governing the various microwave radio channels that can be used collectively to provide wireless cable service. The Second Order on Reconsideration modifies and clarifies some decisions made in the Order on Reconsideration. Rule changes include revision to the definition of the protected service area for Multipoint Distribution Service (MDS) stations, the deadline for service by MDS applicants and authorized cochannel and adjacent-channel Instructional Television Fixed Service (ITFS) stations and the deadline for ITFS stations to file petitions to deny for MDS applications. Clarifications were also made concerning transmitter frequency offset when proposed in an MDS applications as an interference abatement technique and adoption of the same calendar day cut-off rule.

EFFECTIVE DATE: October 1, 1995, except the revision of Section 21.902(d) will become effective September 18, 1995.

FOR FURTHER INFORMATION CONTACT: Lynne Milne, Mass Media Bureau, 202–416–0883.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Second Order on Reconsideration in Gen. Dockets 90–54 and 80–113, adopted June 15, 1995, and released June 21, 1995. The complete text of this Second Order on Reconsideration is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street NW., Washington, DC. The complete text also may be purchased from the Commission's copy contractor, International Transcription Service, Inc. (ITS, Inc.), at Suite 140, 2100 M Street NW., Washington, DC 20037 (202–857–3800).

Paperwork Reduction Statement

The Commission has submitted the following information collection requirements to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act, as amended (44 U.S.C. 3501, et seq.).

Title: Amendment of Parts 21, 43, 74, 78, and 94 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands Affecting: Private Operational-Fixed Microwave Service, Multipoint Distribution Service, Multichannel Multipoint Distribution Service, Instructional Television Fixed Service, and Cable Television Relay Service.

OMB Number: 3060–XXXX.

Action: New and modified collections.

Respondents: Businesses (including small businesses); individuals or households.

Frequency of Response: On occasion.

1. Section 21.902(d).

(a) Additional Engineering Studies due to Expansion of MDS Stations' Protected Service Areas.

Estimated Annual Burden: 700 responses; 3150 hours on total industry, 4.5 hours each.

(b) Maps for Waiver Requests of MDS Protected Service Area. Estimated Annual Burden: 10 responses; 10 hours on total industry, 1 hour each.

(c) Additional Cable Waivers due to Protected Service Area Expansion Affecting Cable-MDS Prohibitions. Estimated Annual Burden: 10 responses; 10 hours on total industry, 1 hour each.

(2) Section 21.902(i).

(a) ITFS Station Interference Protection Through Service of Complete MDS Application. Estimated Annual Burden: 350 responses; 175 hours on total industry, 0.5 hour each.

(b) ITFS Station Interference Protection Through Petitions to Deny, Estimated Annual Burden: 5 responses; 10 hours on total industry, 2 hours each.

Estimated public reporting burdens for the collections of information are indicated above.

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates or any other aspect of the collections of information, including suggestions for reducing the burden to the Federal Communications Commission, Records Management Branch, Room 234, Paperwork Reduction Project, Washington, DC 20554, and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

Synopsis of Second Order on Reconsideration

1. This Second Order on Reconsideration modifies and clarifies some decisions made in the previous

Order on Reconsideration, 56 FR 57596 (Nov. 13, 1991), which reevaluated a number of issues decided in the Report and Order, 55 FR 46006 (Oct. 31, 1990); Erratum, 55 FR 46513 (Nov. 5, 1990), which had revised rules governing MDS and ITFS stations. The rule revisions were made to simplify MDS rules, promote competition for cable television systems by wireless cable systems,[1] and facilitate the imminent transition from analog to digital compression technology of these microwave stations.

2. After examining the issues raised in a petition for reconsideration, it was decided to modify the shape and size of each MDS station's protected service area, as defined at 47 CFR 21.902(d). Formerly, this was a 710 square mile area. (For an MDS station with an omnidirectional antenna, the 710 square miles is a circle with a radius of 15 miles.) Now, each MDS station's protected service area will be a circle with a radius of 35 miles.

3. However, a very narrow exception was adopted to this 35-mile circle protected service area definition. The exception applies only to: (1) modification applications filed *after* the effective date of the expansion to a 35-mile circle protected service area; (2) to MDS stations which were authorized or for which there was an application pending *on or before* the effective date of this expanded protected service area rule; and (3) to the interference analysis of the protected service area of an MDS station which was authorized or for which there was an application pending *on or before* the effective date of the revision to Section 21.902(d). The exception to the 35-mile circle protected service area allows such a modification application's interference analysis to exclude, from the desired station's 35-mile circular protected service area, the area defined by the intersection of the predicted 45 dB desired-to-undesired signal ratio contour line associated with the modification applicant's previously authorized station and the 35-mile circle boundary of the desired station. However, the modification application: (1) cannot increase the size of the geographic area suffering harmful interference, and (2) cannot cause harmful interference to any new portion of the desired station's protected service area. The exception also does not apply to any point within the desired station's current 710 square mile protected service area. No proposal will be allowed which would cause existing stations to adapt to additional interference. Moreover, waiver request made in MDS modification applications filed for ITFS market settlements will be considered.

4. Unless these two exceptions apply, any modification applications or applications for new MDS stations filed *after* the effective date for the revision to Section 21.902(d), or amendments thereto, must use the expanded 35-mile circle definition of a protected service area, including the winners of competitive bidding procedures. Also, each modification application for an authorized MDS station filed *after* the effective date of the expanded protected service area rule, which requests a waiver of the expanded protected service area definition of Section 21.902(d), must contain: (1) a waiver request and waiver justification pursuant to 47 C.F.R. § 21.19, and (2) a map, 8½ by 11 inches, depicting the boundary of the 45 dB desired-to-undesired signal ratio contour, which clearly states the mileage at each radial, measured at one degree intervals, for 360 degrees, of the protected service area boundary from the desired station's transmitter site coordinates.

5. The expansion of the MDS station's protected service area may affect the prohibitions of Section 21.912 against ownership or leasing interests, direct or indirect, by cable television companies, or affiliates, in MDS stations when there is an overlap between the MDS station's protected service area and the cable company's service area. With the expansion of the MDS station protected service area, it is possible that some cable television companies, or affiliates, now might be barred, that formerly compiled with Section 21.912. Although the further restriction on cable television companies serves one of the primary purposes of the rule and the statutory restrictions of 47 USC 553(a)(2), to enhance cable competition by a wireless cable company as an alternative choice for consumers, a blanket waiver was granted until June 1, 1996 to cable companies with newly-prohibited interests in an MDS station.

6. In addition, the *Second Reconsideration Order* revises Section 21.902(i) by setting two deadlines earlier. Together, the earlier deadlines reduce from 120 days to 30 days a delay in processing MDS applications which propose locations within 50 miles of cochannel or adjacent-channel authorized ITFS stations. As the result of petitioner's request, the deadline for service by MDS applicants on specified ITFS stations was changed to the date of filing of the MDS application. In order to provide better identification and improved notice to the affected ITFS licensee or construction permittee, the MDS applicant must now serve a complete copy of its application, instead of the few pages from the middle of the application which contain the ITFS interference study. And, because the Commission adopted on June 15, 1995 in the *Report and Order* in MM Docket No. 94–131 rules for MDS competitive bidding, deadlines for ITFS service were set for winners of competitive bidding.

7. Pursuant to petitioner's request, authorized ITFS stations are required to file petitions to deny for MDS applications by the 30th day after public notice, instead of the 120th day after public notice. The earlier deadline was adopted so that MDS applications can become ripe for grant more quickly and MDS stations can begin operations as soon as possible in order to provide competition for cable television systems.

8. Two issues which had been clarified in the previous Order on Reconsideration were again the subject of clarifications in this Second Order on Reconsideration. The Commission always intended to evaluate involuntary MDS frequency offset proposals on a case by cases basis, and no changes in frequency offset rules or policies were made in the Second Order on Reconsideration. And, the order further clarifies that the adoption of the same calendar day cut-off rule, Section 21.912, in the Report and Order complies with the requirements of the Administrative Procedure Act. No changes were made in Section 21.912 in the Second Order on Reconsideration.

Regulatory Flexibility Act Analysis

1. Pursuant to the Regulatory Flexibility Act of 1980, 5 USC 605, it is certified that the adopted rules will not have a significant impact on a substantial number of small entities.

2. The Secretary shall send a copy of this Second Order on Reconsideration, including the Final Regulatory Flexibility Analysis, to the Chief

[1] A wireless cable system uses a combination of MDS 1, 2, E, F or H channels, or ITFS excess capacity to distribute video entertainment programming to subscribers. (MDS Channel 2A with only 4 MHz lacks sufficient bandwidth to transmit a standard television signal which requires 6 MHz.) It is possible for commercial companies to apply for a limited number of ITFS channels under prescribed circumstances. Second Report and Order in Docket No. 90–54, 6 FCC Rcd 6792, 6801–06 (1991). We do not restate the background of the term ''wireless cable'' here; interested parties may consult the Wireless Cable Order, 5 FCC Rcd 6410 (1990). Use of the term ''wireless cable'' does not imply that MDS, ITFS or wireless cable constitute ''cable'' service for any statutory or regulatory purpose. See Definition of a Cable Television System, 5 FCC Rcd 7638, 7639–41 (1990) (the definition of a cable television system does not include transmissions such as MDS), vacated on other grounds sub nom. *Beach Communications, Inc.* v. *FCC*, 965 F.2d 1103 (D.C. Cir. 1992), rev'd, 113 S.Ct. 2096 (1993).

Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981)).

Ordering Clauses

1. For the reasons set forth above, Part 21 of the Commission's Rules are hereby amended as discussed herein and as shown below. It is further ordered that the rule changes set forth below will become effective on October 1, 1995, except the revision of Section 21.902(d) which will become effective September 18, 1995.

2. Accordingly, it is ordered that pursuant to the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 USC 154(i) and 303(r), and Section 1.429(i) of the Commission's Rules, 47 CFR Section 1.429(i), the Partial Petition for Reconsideration filed in this proceeding is granted to the extent indicated herein, and in all other respects is denied.

List of Subjects in 47 CFR Part 21

Communications common carriers, Domestic public fixed radio services, Multipoint distribution service.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

47 CFR Part 21 is amended as follows:

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

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

Authority: Secs. 1, 2, 4, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 410, 602; 48 Stat. 1064, 1066, 1070–1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102, as amended; 47 U.S.C. 151, 154, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552, 554.

2. 47 CFR 21.902 is amended by revising paragraphs (d)(1) and (i) to read as follows:

§ 21.902 Frequency interference.

* * * * *

(d) (1) Subject to the limitations contained in paragraph (e) of this section, each MDS station licensee shall be protected from harmful electrical interference, as determined by the theoretical calculations, within a protected service area of which the boundary will be 56.3255 kilometers (35 miles) from the transmitter site.

* * * * *

(i) (1) For each initial application for a new station, or amendment thereto, or modification application, or amendment thereto, proposing Multipoint Distribution Service (MDS) facilities on E, F or H channels, filed on October 1, 1995 or thereafter, on the day the application or amendment is filed, the applicant must prepare but is not required to submit with its application or amendment, an analysis demonstrating that operation of the MDS applicant's transmitter will not cause harmful interference to each registered receive site of any existing, cochannel or adjacent-channel, D, E, F, or G channel Instructional Television Fixed Service (ITFS) station, licensed or with a construction permit authorized on the day such MDS application is filed, with an ITFS transmitter site within 50 miles of the coordinates of the MDS station's proposed transmitter site.

(i) In the alternative, an applicant for an MDS station may submit a statement from the ITFS licensee or construction permittee stating that the ITFS licensee or construction permittee does not object to operation of the MDS station.

(ii) In the alternative, an applicant for an MDS station may submit an analysis demonstrating that there are no ITFS licensees or construction permittees as described in paragraph (i)(1) of this section within 50 miles of the coordinates of the proposed transmitter site of the MDS station.

(2) For each application described in paragraph (i)(1) of this section, the applicant must serve, by certified mail, return receipt requested, on or before the day the application or amendment described in paragraph (i)(1) of this section is initially filed with the Commission, a copy of the complete MDS application or amendment, including each exhibit and interference study, described in paragraph (i)(1) of this section, on each ITFS licensee or construction permittee described in paragraph (i)(1) of this section.

(3) For each application described in paragraph (i)(1) of this section, the applicant must certify and file, with the application or amendment, its certification of its compliance with the requirements of paragraph (i)(2) of this section.

(4) For each application described in paragraph (i)(1) of this section, the applicant must file, on or before the 30th day after the application or amendment described in paragraph (i)(1) of this section is initially filed with the Commission, a written notice which contains the following:

(i) caption—ITFS Service Notice;

(ii) applicant's name, address, proposed service area and channel group, and application file number, if known;

(iii) a list of each ITFS licensee and construction permittee described in paragraph (i)(1) of this section;

(iv) the address of each ITFS licensee and construction permittee described in paragraph (i)(1) of this section used for service; and

(v) a list of the date each ITFS licensee and construction permittee described in paragraph (i)(1) of this section received a copy of the complete application or amendment described in paragraph (i)(1) of this section, or a notation of lack of receipt by the ITFS licensee or construction permittee of a copy of the complete application or amendment, on or before such 30th day, together with a description of its efforts for receipt by each such licensee or construction permittee lacking receipt of the application.

(5) The public notices described in paragraph (i)(6) of this section are as follows:

(i) For initial applications for new MDS stations which participate in a lottery, this public notice is the notice announcing the selection of the applicant's application by lottery for qualification review.

(ii) For initial applications for new MDS stations which participate in a competitive bidding process, this public notice is the notice announcing the application of the winning bidder in the competitive bidding process has been accepted for filing.

(iii) For initial applications for new MDS stations which do not participate in a lottery or a competitive bidding process, this public notice is the notice announcing that the applicant's application is not mutually-exclusive with other MDS applications.

(iv) For MDS modification applications, this public notice is the notice announcing that the modification application has been accepted for filing.

(6) (i) Notwithstanding the provisions of Sections 1.824(c) and 21.30(a)(4), for each application described in paragraph (i)(1) of this section, each ITFS licensee and each ITFS construction permittee described in paragraph (i)(1) of this section may file with the Commission on or before the 30th day after the public notice described in paragraph (i)(5) of this section, a petition to deny the MDS application.

(ii) Except for the requirements as to the filing time deadline, this petition to deny must otherwise comply with the provisions of Section 21.30.

(iii) In addition, this ITFS petition to deny must:

(A) identify the subject MDS application, including the applicant's

name, station location, channel group, and application file number;

(B) include a certificate of service demonstrating service on the subject MDS applicant by certified mail, return receipt requested, on or before the 30th day after the MDS public notice described in paragraph (i)(5) of this section;

(C) include a demonstration that it made efforts to reach agreement with the MDS applicant but was unable to do so;

(D) include an engineering analysis that operation of the proposed MDS station will cause harmful interference to its ITFS station;

(E) include a demonstration, in those cases in which the MDS applicant's analysis is dependent upon modification(s) to the ITFS facility, that the harmful interference cannot be avoided by the proposed substitution of new or modified equipment to be supplied and installed by the MDS applicant, at no expense to the ITFS licensee or construction permittee; and

(F) be limited to raising objections concerning the potential for harmful interference to its ITFS station or concerning a failure by the MDS applicant to serve the ITFS licensee or construction permittee with a copy of the complete application or amendment described in paragraph (i)(1) of this section.

(iv) The Commission will presume an ITFS licensee or construction permittee described in paragraph (i)(1) of this section has no objection to operation of the MDS station, if the ITFS licensee or construction permittee fails to file a petition to deny by the deadline prescribed in paragraph (i)(6)(1) of this section.

* * * * *

[FR Doc. 95–17373 Filed 7–17–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

48 CFR Chapter 3

Acquisition Regulation

CFR Correction

In title 48 of the Code of Federal Regulations, chapters 3 to 6, revised as of October 1, 1994, in attachment I to chapter 3 beginning on page 142 a portion of the attachment was inadvertently omitted. Following the text for the State of California which ends at the bottom of page 142, the following text should be inserted.

ATTACHMENT I TO CHAPTER 3—SINGLE LETTER OF CREDIT RECIPIENTS AND CENTRAL POINT ADDRESSES

State	Organization and payee No.	Recipient CRS–EIN [1]	Letter of credit
	* * *	* *	
Connecticut ...	Yale University, 1–060646973–A1	1–060646973–A1, 1–060646973–A2, 1–060646973–A4	75089755
	Treasurer, Yale University, Grants and Contracts, 155 Whitney Avenue, New Haven, Conn. 05611.	1–060646973–A5, 1–060646973–A6, 1–060646973–A7, 1–060646973–A8.	.....
District of Columbia.	Georgetown University, 1–530196603–A1	1–530196603–A1, 1–530196603–A2, 1–530196603–A3	75083450
	Treasurer, Georgetown University, 37th and O Streets NW., Washington, D.C. 20007.	1–530196603–A4, 1–530196603–A5, 1–530196603–A6, 1–530196603–A7.	.....
	George Washington University, 1–530196584–A1	1–530196584–A1, 1–530196584–A3	75083441
	Treasurer, George Washington University, Rice Hall, Washington, D.C. 20006.	.....	.....
	Gorgas Memorial Institute, 1–530196518–A1	1–530196518–A1	75083522
	Treasurer, Gorgas Memorial Institute, 2007 I Street NW., Washington, D.C. 20007.	.....	.....
	National Academy of Sciences, 1–530196932–A1	1–530196932–A1, 1–530196932–A2	75085992
	Treasurer, National Academy of Sciences, 2101 Constitution, Avenue NW., Washington, D.C. 20037.	.....	.....
Florida	University of Florida, 1–596001874–C7, Fiscal Contract Officer, University of Florida, Room 106, R. Johnson Hall, Gainesville, Florida 32611.	1–596001874–C7, 1–596001874–F2	75083326
	University of Miami, 1–590624458–A1	1–590624458–A1, 1–590624458–A2, 1–590624458–A3	75085253
	Chief Accountant, University of Miami, P.O. Box 9057, Coral Gables, Florida 33124.	1–590624458–A6	.....
Georgia	State of Georgia, 1–581130678–Al	1–580973190–A2, 1–581130678–A1, 1–581130678–A5,	75083462
	Director, Department of Adm. Services, Fiscal Division, Pryor-Mitchell Building, Atlanta, Georgia 30334.	1–581130678–A6, 1–586000246–A2, 1–586002042–A1, 1–586002042–A2, 1–586002042–A3, 1–586002042–A4, 1–586002042–A6, 1–900000257–A1, 1–900000648–A1.	
Guam	Territory of Guam, 1–980018947–E6	1–000040215–A1, 1–000040218–A1, 1–000040228–A1	7508B368
	* * *	* *	

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 94–56; Notice 2]

RIN 2127–AF01

Federal Motor Vehicle Safety Standards; Air Over Hydraulic Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: In response to a petition submitted by Mr. John Kourik, this final rule amends Standard No. 121, *Air Brake Systems,* to include a definition of air-over-hydraulic brake subsystems. The agency believes that this definition will clarify the classification of vehicles equipped with these subsystems and thus eliminate the need for manufacturers to request, and the agency to provide interpretations about those vehicles.

DATES: *Effective date.* The amendments in this final rule become effective August 17, 1995.

Petitions for reconsideration. Any petitions for reconsideration of this final rule must be received by NHTSA no later than August 17, 1995.

ADDRESSES: Petitions for reconsideration of this rule should refer to Docket 94–56; Notice 2 and should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Carter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202–366–5274).

SUPPLEMENTARY INFORMATION:

I. Background

Air-over-hydraulic brake systems typically consist of an air brake system from the treadle valve to an air brake chamber that provides the mechanical force to actuate a hydraulic-operated master cylinder. In turn, the hydraulic pressure from the master cylinder actuates the brake shoes or pads. The air brake chamber unit combined with the hydraulic-operated master cylinder is called the ''power cluster'' and generally serves as the separating point between the air- and hydraulic-actuated portions of the air-over-hydraulic brake system.

Air-over-hydraulic brake systems are installed on slightly more than one percent of medium and heavy trucks sold in the United States. This percentage represents about 5,000 vehicles, most of which are Class 6 vehicles with gross vehicle weight ratings (GVWRs) between 19,501 and 26,000 pounds.

Federal motor vehicle safety standard No. 121, *Air brake systems,* currently defines ''air brake system'' to mean

> A system that uses air as a medium for transmitting pressure or force from the driver control to the service brake, but does not include a system that uses compressed air or vacuum only to assist the driver in applying muscular force to hydraulic or mechanical components.

(49 CFR § 571.121) Part 570, *Vehicle In Use Inspection Standards,* defines ''Air-over-hydraulic brake system'' to mean

> *A subsystem of the air brake* that uses compressed air to transmit a force from the driver control to a hydraulic brake system to actuate the service brakes.

(49 CFR Part 570, emphasis added) The *underlined* portion of the definition of air-over-hydraulic subsystem explicitly states that an air-over-hydraulic brake subsystem means a subsystem of the air brake system.

In initially issuing Standard No. 121, NHTSA stated that

> It should be noted that the term ''air brake system'' as defined in the standard applies to the brake configuration commonly referred to as ''air-over-hydraulic,'' in which failure of either medium can result in complete loss of braking ability.

(36 FR 3817, February 27, 1971). The agency reiterated that an air-over-hydraulic brake system is subject to Standard No. 121, stating that ''Standard No. 105a [Hydraulic Brake Systems] does not apply to vehicles equipped with 'air-over-hydraulic' systems, which remain within the purview of Standard No. 121 * * *.'' (37 FR 17970, September 2, 1972.) Moreover, NHTSA has issued several interpretations stating that a vehicle equipped with an air-over-hydraulic brake system must comply with the requirements in Standard No. 121.

NHTSA received a petition from Mr. John Kourik, requesting that the agency amend Standard No. 121 to specify that an air-over-hydraulic brake subsystem is subject to that Standard. The petitioner stated that such an amendment would avoid the need for manufacturers to request interpretations about air-over-hydraulic brake systems.

II. Notice of Proposed Rulemaking and Public Comments

In response to Mr. Kourik's petition, NHTSA proposed amending Standard No. 121 by expanding the current definition of air brake system to incorporate the definition of air-over-hydraulic brake subsystem. (59 FR 35298, July 11, 1994) The agency stated that even though the definition of an air brake system currently includes a description of an air-over-hydraulic subsystem, it is not explicitly clear on the face of the standard that such a subsystem is classified as an air-braked system and that a vehicle equipped with such a subsystem would thus have to comply with the requirements in Standard No. 121. NHTSA further stated that it would be appropriate to clarify the classification of air-over-hydraulic brake systems. The agency reasoned that amending the definition of an air brake system to state explicitly that an air-over-hydraulic brake subsystem is classified as an air brake system would eliminate the need felt by some manufacturers to request interpretations regarding the standard's applicability to vehicles equipped with air-over-hydraulic brake subsystems.

NHTSA received comments from Advocates for Highway and Auto Safety (Advocates), the Heavy Duty Brake Manufacturers Council (HDBMC), WhiteGMC Volvo (WhiteGMC), Freightliner, AlliedSignal, and Mr. Robert Crail, a brake engineer. The commenters generally agreed with the proposed amendment. Some commenters raised additional questions to which the agency responds below.

III. Agency Determination

After reviewing the comments, NHTSA has decided to amend the current definition of air brake system in Standard No. 121 to incorporate the definition of air-over-hydraulic brake subsystem. The agency believes that this amendment will clarify the agency's requirements, as they apply to air-over-hydraulic brake systems. The agency is making a minor modification to the definition consistent with WhiteGMC's comment that the word ''system'' should follow ''air brake'' in the definition of air-over-hydraulic brake subsystem. NHTSA believes that adding the word ''system'' is appropriate since Standard No. 121 defines ''air brake system'' and not ''air brake.''

HDBMC expressed concern about how the recent amendment requiring antilock brake systems (ABS) would affect air-over-hydraulic subsystems. Specifically, HDBMC stated that if the agency required individual wheel

control,[1] two air to hydraulic converters would be needed on the axle providing individual wheel control. The commenter continued that this would result in ''brake pull'' which would reduce vehicle stability and cause uneven brake lining wear.

NHTSA notes that the ABS final rule does not require single unit vehicles to have independent wheel control. Instead, it requires only certain axles on truck tractors to have independent wheel control. Since air-over-hydraulic brake systems are only installed on single unit vehicles, the problem referenced by HDBMC will not affect air-over-hydraulic vehicles equipped with ABS. Therefore, no changes are necessary to satisfy HDBMC's concerns.

AlliedSignal stated that it does not consider an air-over-hydraulic brake system to be a subsystem of an air brake system. It recommended that the agency reconsider the proposed definition of air-over-hydraulic to be ''more 'in tune' with the industry accepted terminology.'' Specifically, it requested including wording to define the lack of mechanical push-through and/or the definition contained in ISO 611. The ISO definition states that an ''air-over-hydraulic system'' means

> A braking system in which the energy necessary to produce the braking force arises exclusively from compressed air. This energy is transformed to hydraulic energy by one or more air-hydraulic converter(s). The hydraulic fluid actuates the brakes.

NHTSA has determined that the suggested ISO definition would add nothing useful to the definition already proposed by the agency. AlliedSignal's concern over the phrase ''no mechanical push-through'' is addressed in the definition of ''Air Brake System,'' which clarifies that ''air-over-hydraulic'' is not the type of system which has mechanical push-through. In an ''air-assisted'' brake system, if the air or vacuum boost fails, there is still a means available to transmit force to the brakes through the brake pedal. With regard to AlliedSignal's comment on the word ''subsystem,'' Webster's Dictionary states that it is a ''secondary or subordinate system,'' which is consistent with the definition being adopted. Based on the above considerations, no change in the definition is necessary.

AlliedSignal also recommended amending the standard to require that the hydraulic master cylinders of an air-over-hydraulic brake system comply with S5.3 (Brake System Indicator Lamp) and S5.4 (Reservoirs) of Standard No. 105.

NHTSA has decided not to amend S5.3 and S5.4 of Standard 105 at this time, since it has not proposed these modifications. The agency may consider these modifications in future rulemakings.

[1] The ABS final rule did not define ''individual wheel control.'' (60 FR 13216, March 10, 1995) However, that rule defined ''Independently Controlled Wheel'' to mean a directly controlled wheel for which the modulator does not adjust the brake actuating forces at any other wheel on the same axle.

IV. Rulemaking Analyses and Notices

1. Executive Order 12866 (Federal Regulation Planning and Review) and DOT Regulatory Policies and Procedures

This rulemaking was not reviewed under E.O. 12866. NHTSA has analyzed this rulemaking and determined that it is not ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures. A full regulatory evaluation is not required because the rule will have no mandatory effects. Instead, the rule will only codify a longstanding agency interpretation of existing requirements. Therefore, this rulemaking will not have any cost impacts.

2. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the amendment will not have a significant economic impact on a substantial number of small entities. Vehicle and brake manufacturers typically do not qualify as small entities. Accordingly, no regulatory flexibility analysis has been prepared.

3. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking will not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. No State laws will be affected.

4. National Environmental Policy Act

Finally, the agency has considered the environmental implications of this rule in accordance with the National Environmental Policy Act of 1969 and determined that the rulemaking will not significantly affect the human environment.

5. Civil Justice Reform

This final rule does not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, the agency amends Standard No. 121, *Air Brake Systems*, part 571 of Title 49 of the Code of Federal Regulations as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

2. In § 571.121, S4 is amended by revising the definition of ''Air brake system'' and by adding the definition of ''Air-over-hydraulic brake subsystem'' in alphabetical order to read as follows:

§ 571.121 Standard No. 121; Air brake systems.

* * * * *

S4. *Definitions.*

* * * * *

Air brake system means a system that uses air as a medium for transmitting pressure or force from the driver control to the service brake, including an air-over-hydraulic brake subsystem, but does not include a system that uses compressed air or vacuum only to assist the driver in applying muscular force to hydraulic or mechanical components.

Air-over-hydraulic brake subsystem means a subsystem of the air brake system that uses compressed air to transmit a force from the driver control to a hydraulic brake system to actuate the service brakes.

* * * * *

Issued on: July 10, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–17453 Filed 7–17–95; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 60, No. 137
Tuesday, July 18, 1995

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 101 and 113

[Docket No. 94–051–2]

RIN 0579–AA66

Viruses, Serums, Toxins, and Analogous Products; In Vitro Potency Testing for Serial Release

AGENCY: Animal and Plant Health Inspection Service, USDA.

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

SUMMARY: We are extending by 30 days the comment period for our proposed rule that would amend the regulations regarding the use of in vitro potency testing for serial release. The regulations pertaining to in vitro testing for serial release would require that such immunoassays be parallel line assays based upon unexpired reference preparations and would specify procedures and requirements for qualifying reference preparations for inactivated products. This extension will provide interested persons with additional time to prepare comments on the proposed rule.

We are also advising the producers of veterinary biologics and other interested persons that the Animal and Plant Health Inspection Service will be holding a public hearing in Ames, IA, at our Veterinary Biologics Public Meeting to discuss issues related to in vitro potency testing.

DATES: Consideration will be given only to comments received on or before September 14, 1995. We will also consider comments made at a public hearing to be held in Ames, IA, on Tuesday, August 1, 1995, from 3:00 p.m. to 5:00 p.m.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 94–051–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 94–051–1. 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 requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room. The public hearing will be held at the Scheman Building, Iowa State Center, Ames, IA, on Tuesday, August 1, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Espeseth, Deputy Director, Veterinary Biologics, BBEP, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1237, telephone (301) 734–8245, fax (301) 734–8669.

SUPPLEMENTARY INFORMATION: On May 17, 1995, the Animal and Plant Health Inspection Service (APHIS) published in the **Federal Register** (60 FR 26381–26384, Docket No. 94–051–1) a proposed rule to amend the regulations regarding the use of in vitro tests for serial release. The proposed rule would, among other things, prescribe requirements for in vitro immunoassays used to determine the relative antigen content of inactivated biological products; require that such immunoassays be parallel line assays based upon unexpired reference preparations; and specify procedures and requirements for qualifying or requalifying reference preparations for inactivated products. Comments on the proposed rule were required to be received on or before August 15, 1995.

So that we may consider comments received after that date, we are extending the public comment period on Docket No. 94–051–1 until September 14, 1995. During this period, interested persons may submit their comments for our consideration.

APHIS is also conducting a public hearing to discuss in vitro potency testing on August 1, 1995, at the Scheman Building, Iowa State Center, Ames, IA. The public hearing is scheduled as part of the public meeting on veterinary biologics that is being held at the Scheman Building on August 1 and 2, 1995, in Ames, IA. The agenda for the public hearing will be limited to issues related to in vitro potency testing. The purpose of the hearing is to have further discussion of this topic by interested persons. We may also hold a second hearing on August 15, 1995, from 8:30 a.m. to 11 a.m. at the Holiday Inn Gateway Center, Ames, IA, in the event that additional time is needed for further discussion of the topic. We shall announce at the conclusion of the first hearing whether the second hearing shall be held. We will publish a notice in the **Federal Register** if we decide to hold the hearing on August 15, 1995. Interested persons may also call the person listed under **FOR FURTHER INFORMATION CONTACT** after August 1, 1995, to find out whether the second hearing will be held.

Persons wishing either to attend or participate in the public hearing are requested to notify the person listed under **FOR FURTHER INFORMATION CONTACT** at least two business days before the public hearing. Please indicate whether you wish to make a prepared statement at the public hearing, the subject of your remarks, and the approximate amount of time you would like to speak. APHIS welcomes and encourages the presentation of comments at the public hearing.

A representative of APHIS will preside at the public hearing. Any interested person may appear and be heard in person, by attorney, or by other representative. Persons who wish to speak at the public hearing will be asked to sign in with their name and organization, to establish a record for the hearing.

The public hearing is scheduled for the times specified under ''**DATES**.'' The hearing, however, may be terminated at any time after it begins if all persons desiring to speak 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 the 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 hearing is to give interested persons an opportunity for oral presentation of data, views, and arguments. Questions about the content of the proposed rule may be part of the commenters' oral presentations. Neither the presiding officer nor any other representative of APHIS, however, will respond to comments at the hearing,

except to clarify or explain provisions of the proposed rule.

Authority: 21 U.S.C. 151–159, 7 CFR 2.17, 2.51, and 371.2(d).

Lonnie J. King,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–17738 Filed 7–17–95; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 61

RIN 3150–AE88

Land Ownership Requirements for Low-Level Waste Sites

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking; withdrawal.

SUMMARY: The Nuclear Regulatory Commission (NRC or Commission) is withdrawing an advance notice of proposed rulemaking that presented a possible change to the NRC Federal or State land ownership requirements for low-level waste (LLW) facility sites. The Commission has decided that a rule change to allow private ownership of a LLW site is not warranted or needed. The basis for this decision is that States and compacts have generally indicated that they do not need, nor would they allow, private ownership, and that this rule change could be potentially disruptive to the current LLW program.

FOR FURTHER INFORMATION CONTACT: Mark Haisfield, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6196.

SUPPLEMENTARY INFORMATION: On August 3, 1994 (59 FR 39485), the Commission published an advance notice of proposed rulemaking (ANPRM) to consider amending its regulations to allow private ownership of LLW facility sites as an alternative to the current requirement for Federal or State ownership. In the ANPRM, the Commission requested information on specific questions that dealt with (1) the potential use of this alternative, (2) impacts to public health and safety or the environment, and (3) liability considerations.

The 60-day comment period was extended another 60 days at the request of the Nuclear Information and Resource Service (October 20, 1994; 59 FR 52941). The comment period expired on December 2, 1994. The Commission received 49 comment letters: 19 commenters were from States, compacts, or their representatives; 12 were from public organizations; 11 were from commercial/industrial organizations or their representative; 4 were from individuals; and 1 each were from a Federal agency, a national laboratory, and a professional organization. Most of the commenters took a definitive position regarding whether to initiate a proposed rule. For the most part the commenters, at a ratio of about 4 to 1, were against developing a generic rule. The Commission prepared a detailed summary of the comments received. Copies of the summary are available for inspection or copying for a fee from the NRC Public Document Room at 2120 L Street NW. (Lower Level), Washington DC; the PDR's mailing address is US NRC, Mail Stop LL–6, Washington, DC 20555–0001; telephone (202)634–3273; fax (202)634–3343.

As noted in the ANPRM, the purpose for making a generic rule change would be to facilitate the objectives of the Low-Level Radioactive Waste Policy Act of 1980, as amended. Therefore, as noted in the ANPRM, the NRC was particularly interested in determining whether Agreement States or compacts would use a provision allowing private ownership of the land for a LLW facility. The Commission believes that if there did not seem to be a significant interest or need for such a provision, addressing private ownership issues through appropriate exercise of exemption authority would be sufficient.

The Agreement State and compact commenters generally indicated that they would not allow private land ownership, and in many cases, State ownership of the land is required by State law or regulation. Of the 19 comments from States, compacts, or their representatives, only Nebraska indicated a desire to actively consider changes permitting private ownership. Nebraska and the Cortland County, New York, Low-Level Radioactive Waste Office stated that there is not an adequate basis for requiring Federal or State land ownership, which therefore would support private ownership. The Commission believes there is adequate statutory authority for the NRC to require Federal or State land ownership. Moreover, because Nebraska is the only additional State considering changes permitting private ownership, the Commission believes assisting Nebraska on a case-specific basis, if requested and appropriate, is preferable to developing a generic rule change.

Many commenters, including States and compacts, also believe that this type of change to 10 CFR part 61 is not only unnecessary but would be a significant disruption to the current siting and licensing process. As one commenter noted, this would have a negative impact on public health and safety because it would affect the timely development of new LLW disposal facilities needed to reduce on-site storage at thousands of licensee sites throughout the country. The Commission believes that these comments have merit. The Commission believes that the potential negative impact of disrupting the current process far outweighs any potential benefits that might be derived from making a generic rule change at this time.

This change could also generate significant public misunderstanding and unwarranted public concern about the potential rollback of other LLW disposal requirements. The Idaho National Engineering Laboratory's National Low-Level Waste Management Program summarized this issue, stating:

> For over three decades the public has been led to believe that all LLW disposal sites would necessarily be owned and controlled by either a Federal or State government. This, we believe, has been an important factor in convincing many proponent groups and State and local LLW advisory groups that LLW can and will be disposed of in a safe manner. To now try and convince these groups that Federal or State ownership of LLW disposal sites is not required, may be difficult and generate a significant credibility problem.

The Commission has not objected to private ownership of the Envirocare site under Agreement State authority in the State of Utah because of special reasons and provisions applicable to that site. The Commission believes that if any other State desires to use an exemption provision, a case-specific evaluation would be conducted, as was done for the State of Utah. Any evaluation would consider whether the underlying purpose of governmental ownership, assuring the existence of a responsible entity for long-term care and monitoring of the site, can be achieved.

For the reasons discussed, the Commission is withdrawing the ANPRM.

Dated at Rockville, Maryland this 12th day of July, 1995.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 95–17562 Filed 7–17–95; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

Appliance and Equipment Energy Efficiency Standards: Public Workshop to Discuss Test Procedure Issues for Fluorescent and Incandescent Lamps

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of public workshop.

SUMMARY: The Department of Energy (the Department) will hold a public workshop to discuss certain issues concerning test procedures for fluorescent and incandescent lamps. The issues for discussion and comment are the impact of measurement tolerances, testing and compliance of incandescent lamps at design voltage, voltage range of incandescent lamps, and the definitions of basic model and colored lamp. All persons are hereby given notice of the opportunity to submit written comments concerning these issues, and to attend the public workshop.

DATES: The public workshop will be held on Wednesday, July 19, 1995. Five copies of any written comments must be received by July 28, 1995.

ADDRESSES: Please label your written comments as ''Comments on the Fluorescent and Incandescent Lamp Test Procedures'' and submit them to Ms. Sandy Cooper, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone: (202) 586–7574; Telefax: (202) 586–4617.

The workshop will begin at 9:30 a.m. at the U.S. Department of Energy, Conference and Training Center, 1110 Vermont Avenue, NW., Suite 500, Room E, Washington, DC. Telephone: (202) 653–6788 or (202) 653–6789. Telefax: (202) 653–6799.

Copies of the comments on the Interim Final Rule for fluorescent and incandescent lamps are available in the DOE Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC, (202) 586–6020, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Terry Logee, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–431, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–1689

James Raba, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–431, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–8654

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–72, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION:

1. Authority

Part B of Title III of the Energy Policy and Conservation Act (EPCA), Pub. L. 94–163, as amended, created the Energy Conservation Program for Consumer Products other than Automobiles (Program). The products currently subject to this Program include certain fluorescent and incandescent lamps, and medium base compact fluorescent lamps among others. EPCA sets minimum energy conservation standards for general service fluorescent and incandescent reflector lamps, and requires the Department of Energy to develop test procedures.

2. Background

On September 28, 1994, the Department published an interim final rule defining ''basic models'' and establishing test procedures for general service fluorescent and incandescent lamps, and for medium based compact fluorescent lamps. 59 FR 49468. Also on September 28, 1994, the Department published a notice of proposed rulemaking to define colored fluorescent and incandescent lamps, and to define the exemption from energy conservation standards for a rough or vibration service incandescent reflector lamp. 59 FR 49478. The Department received eight comments on the interim final rule and the notice of proposed rulemaking, including comments from manufacturers, a national trade association, a professional society, a utility, and another Federal agency.

Certain comments included requests that: (1) The Department's test procedures be modified to make greater allowances for measurement uncertainty and manufacturing variance; (2) the Department permit testing and compliance for incandescent lamps at design voltage; (3) the Department define the term ''basic model'' as a class of lamps with similar lumen output and color rendering index; (4) the Department expand the voltage range from 115 through 130 volts in EPACT to 100 through 150 volts; (5) the Department define colored lamps as the ratio of two collinear distances on the chromaticity diagram or define colored lamps according to application specific requirements; and, (6) the Department define an exemption for the bulged reflector (BR) bulb shape incandescent reflector lamp. With respect to these points, the Department has determined that it should gather additional information and data, and further discussion should occur, before a final rule is issued.

3. Discussion

The purpose of the workshop is to gather information and data that will assist the Department in addressing the six aforementioned requests.

The National Electrical Manufacturers Association (NEMA), speaking for lamp manufacturers, claims that there are several sources of lamp testing variability. Reference lamp calibration errors and test procedure errors within and among laboratories cause measurement uncertainties. Manufacturing process and materials variations also contribute to testing variability. NEMA believes that these errors cannot be accounted for by sample size and confidence limits alone. NEMA recommends that a cumulative tolerance factor be used to determine compliance with the standard and it cites a tolerance factor of ±2.95% for general service fluorescent lamps. NEMA further recommends that the Department collaborate with industry, the National Voluntary Laboratory Accreditation Program (NVLAP) and the National Institute of Standards and Technology (NIST), to specify the applicable tolerance factors.

All parties should note that section 325(i)(1)(A) of the EPCA states that general service fluorescent lamps and incandescent reflector lamps ''shall meet or exceed * * * lamp efficacy and CRI [color rendering index] standards.'' Thus, the statute may prevent the Department from applying a negative tolerance factor to lamps. Participants at the workshop should be prepared to discuss whether the existing statistical sampling plan and confidence level approach or some other approach can provide adequate recognition of the manufacturing variances and measurement uncertainties in lamp testing and, if so, how. The Department would like to ascertain the magnitude of the measurement uncertainty in lamp testing and the magnitude of the

variability in lamp manufacturing. Those values would help the Department evaluate current and proposed approaches to account for measurement uncertainty.

NEMA, speaking for manufacturers, claims that if the Department requires all incandescent lamps to be tested or measured for compliance at 120 volts regardless of rated voltage, that would render obsolete lamps designed for operation at other than 120 volts. This is because lamps that are designed for operation at voltages greater than 120 volts may not meet the minimum efficacy standard when tested at 120 volts; lamps that are tested at 120 volts and found to comply with the energy efficiency standards will have a shorter life when operated in regions where line voltages are greater than 120 volts. According to NEMA, for those regions, an inevitable consequence of a rule requiring compliance testing at 120 volts would be the virtual elimination of existing lamp products designed for use where line voltages are greater than 120 volts. NEMA also contends that ''when EPACT was enacted, Congress and the lamp industry understood that compliance with energy efficacy standards would be determined at an incandescent reflector lamp's design voltage.''

The statute does not directly address whether testing and compliance of incandescent lamps must be fixed at one voltage or must be at the rated voltage. But section 324(a)(2)(C)(i) of the EPCA states that labeling ''shall be based on performance when operated at 120 volts input, regardless of the rated lamp voltage.'' Consistent with this language, it is at least arguable that testing and compliance of all incandescent lamps must also be at 120 volts. If the statute is read as not containing such a requirement, however, the following are possible alternatives to determining compliance of all lamps at 120 volts: (1) Incandescent lamps should be tested and comply at the rated voltage, i.e., the voltage of intended use; (2) establish several voltage classes with testing and compliance at a specific voltage in each class; or (3) in addition to 1 or 2, take steps (such as labeling requirements, for example) to assure that lamps are sold only for use at their rated voltage. The Department is seeking discussion of (1) Its authority to permit or require testing at voltages other than 120 volts, (2) the foregoing three alternatives, and (3) any other alternatives which relate to the issue of the voltage level(s) at which incandescent lamps should be tested and measured for compliance.

A NEMA comment requests that the Department treat a family of fluorescent lamps of different colors but with the same wattage and light output as a basic model. Some lamp manufacturers also claimed that it was unclear whether a basic model of lamp is an individual lamp type or a family of lamps with similar lumen output and other characteristics. This issue is critical to manufacturers because they want to assure themselves that they will not test more lamps than are necessary. The Department's interim final test procedures for lamps require testing of each ''basic model,'' and in essence define basic model for lamps as consisting of ''a given type'' or ''class'' of lamps that have ''photometric and electrical characteristics, including lumens per watt and Color Rendering Index (CRI), which are essentially identical. The Department seeks discussion on whether manufacturers believe an alternative definition is appropriate, and, if so, why and what alternatives they would propose.

NEMA suggested in its comments that the statutory limitation to a ''voltage range at least partially within 115 to 130 volts, could unintentionally create a potential for evading the standard for incandescent lamps.'' Commenters suggested that there may be some manufacturers who are preparing to build 114V lamps, and that the Department should clarify or expand what is included in the voltage range. To the extent that the ''voltage range'' of a product such as a 114 volt lamp ''lies at least partially within 115 and 130 volts,'' section 321(30)(C)(ii) of EPCA, the statue clearly covers that product. Standards and test procedures, therefore, would clearly apply to the product. Possible alternatives, however, are (1) To declare that a lamp is covered if its intended use is in the 115–130V range or (2) to expand the voltage range from 100 to 150 volts. Workshop participants should be prepared to discuss the need and means for further addressing this issue.

The definition of colored lamp in the proposed rule on lamp definitions provides two alternatives, (1) A CRI value less than 30 for fluorescent lamps or CRI values below 50 for incandescent lamps, or (2) a lamp color correlated temperature either below 2,500 °K or above 7,000 °K. Other possible alternatives suggested in the comments are to: (3) use excitation purity which is defined as the ratio of two collinear distances on the chromaticity diagram, (4) raise the CRI for fluorescent lamps to 40, or (5) base the exemption for colored lamp on the lamp application. The Department is seeking information and data on the workability and practicality of these alternatives.

4. Public Meeting Procedure

The meeting will be informal but, will be transcribed by a court reporter. Participants will receive a copy of the **Federal Register** notice of the Interim Final Rule at the meeting. 59 FR 49468. Copies of the Interim Final Rule, the Notice of Proposed Rulemaking on definitions, and this notice are available in the DOE public reading room. A copy of the meeting transcript will be available in the DOE public reading room approximately 10 days after the workshop.

Issued in Washington, DC July 11, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 95–17624 Filed 7–17–95; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR–95–2]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

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

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

DATES: Comments on petitions received must identify the petition docket number involved and must be received September 18, 1995.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket No. _____, 800 Independence Avenue SW., Washington, D.C. 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Ave., SW., Washington, D.C. 20591; telephone (202) 267–3132. Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C. on July 13, 1995.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Rulemaking

Docket No.: 28059
Petitioner: Ms. Diane R. Groswald
Sections of the FAR Affected: 14 CFR parts 121 and 135
Description of Rulechange Sought: To ban the carriage of cats and other animals in the cabin section of aircraft operated under parts 121 and 135.
Petitioner's Reason for the Request: The petitioner feels that, because many passengers may have allergies, exposure to certain animals carried in the cabin section may exacerbate their condition.

Docket No.: 28146
Petitioner: DoD Policy Board on Federal Aviations
Sections of the FAR Affected: 14 CFR part 99
Description of Rulechange Sought: To extend the inner Air Defense Identification Zone (ADIZ) to 12 nautical miles from the current 3 nautical miles, as well as the following:
1. To require activation of a flight plan;
2. To require a continuous listening watch on the aircraft radio;
3. To disallow previous exemptions for nontransponder-equipped aircraft from radar beacon and Mode C requirements, except on an individual real-time basis;
4. To specify the minimum information required on a Defense Visual Flight Rules (DVFR) flight plan;
5. To require reporting of destination airport of first intended landing and estimated time of arrival;
6. To provide a specific transponder code for use if a pilot were unable to establish communications with Air Traffic Control prior to ADIZ penetration; and
7. To allow deviation for weather.

Petitioner's Reason for the Request: The petitioner feels that this change would resolve identification problems and streamline the identification problem, as well as extend the inner ADIZ in accordance with Presidential Proclamation No. 5928, which requires compliance with the applicable provisions of the 1982 United Nations Convention on the Law of the Sea.

Docket No.: 28195
Petitioner: Kalitta Flying Service, Inc.
Sections of the FAR Affected: 14 CFR 11.1(b)
Description of Rulechange: To require that the rulemaking procedures of part 11 be applied to changes in the general wording of Air Carrier Operations Specifications.
Petitioner's Reason for the Request: The petitioner feels that since SFAR 38–2 makes FAA-generated Operations Specifications (Op Specs) a regulatory document, the wording of these Op Specs should be required to go through the entire rulemaking process specified in part 11.

Disposition of Petitions

Docket No.: 26803
Petitioner: Richard C. Bartel
Sections of the FAR Affected: 14 CFR 91.159
Description of Rulechange Sought: To add a compatible hemispherical rule for visual flight rules (VFR) operations at and below 3,000 feet above ground level (AGL).
Petitioner's Reason for the Request: The petitioner feels that the proposal makes no change to the traditional hemispherical rule between 3,000 AGL and 18,000 MSL where almost all VFR operations occur, and would address various safety issues involved in operations below 3,000 AGL. *Denial; May 9, 1995.*

Docket No.: 27005
Petitioner: John A. Cohan
Sections of the FAR Affected: 14 CFR 91.145 (proposed)
Description of Rulechange Sought: To provide for the establishment of temporary flight restrictions (TFR) through a Notice to Airmen (NOTAM) over noise-sensitive areas at the request of a bona fide homeowner's association environmental protection group, or other community organization.
Petitioner's Reason for the Request: The petitioner feels that the proposed new section will counter the large volume of complaints received by the FAA concerning aircraft being operated near areas or communities that are noise-sensitive, particularly where alternate visula flight routes are available. *Denial; April 28, 1995.*

Docket No.: 27090
Petitioner: Terry A. Batemen
Sections of the FAR Affected: 14 CFR 43.11
Description of Rulechange Sought: To require holders of an Inspection Authorization (IA) to submit an abbreviated annual inspection report to the Mike Monroney Aeronautical Center in Oklahoma City, Oklahoma 73125, when they approve an aircraft for return to service following completion of the annual inspection.
Petitioner's Reason for the Request: The petitioner feels that this rulechange is necessary to provide FAA Aviation Safety Inspectors and the aviation public with a current, easily accessed database on the inspection status of all U.S.-registered aircraft that fall within the annual inspection requirements of § 91.409. *Denial; May 1, 1995.*

Docket No.: 27736
Petitioner: City of Santa Monica
Sections of the FAR Affected: 14 CFR 91.119(d)
Description of Rulechange Sought: To establish minimum operating altitude and obstacle clearance requirements for helicopters equivalent to those currently required for all aircraft, except when operated over a congested area. Helicopters operated over a congested area would be required to maintain an altitude of 500 feet above the highest obstacle within a horizontal radius of 2,000 feet of the aircraft.
Petitioner's Reason for the Request: The petitioner feels that this change will increase the safety of helicopter operations by raising the altitude that helicopters fly; provide the FAA greater authority to enforce minimum safe altitude regulations similar to the provisions for all other aircraft; not unduly burden helicoper operators with increased costs or lost efficiency; and minimize the intrusion of helicopters in the community and mitigate noise for persons on the ground. *Denial; May 4, 1995.*

[FR Doc. 95–17585 Filed 7–17–95; 8:45 am]
BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 95–NM–92–AD]

Airworthiness Directives; Airbus Model A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Airbus Model A300–600 series airplanes. This proposal would require repetitive replacement of the universal joints and steady bearings of the flap transmission system with new parts at regular intervals. This proposal is prompted by a report of a malfunction of a universal joint in the flap transmission system on one wing due to fatigue failure. The actions specified by the proposed AD are intended to ensure replacement of universal joints and bearings of the transmission system when they have reached their maximum life limit; failure of universal joints and bearings could lead to an asymmetric condition of the flaps, which could adversely affect controllability of the airplane.

DATES: Comments must be received by August 28, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–92–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–92–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–92–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Gonorale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on all Airbus Model A300–600 series airplanes. The DGAC advises that an operator has reported a malfunction of a universal joint in the flap transmission system. The cause of this malfunction has been attributed to fatigue. The malfunction resulted in a disconnection of the flap transmission system on the right-hand wing. The disconnection triggered a flap system asymmetry warning and, as designed, the Power Control Unit (PCU) of the flap was inhibited. This prevented further movement of the transmission system on both wings. Fatigue failure of the universal joints and bearings, if not detected and corrected in a timely manner, could lead to an asymmetric condition of the flaps, which could adversely affect controllability of the airplane.

Airbus has issued All Operator Telex (AOT) 27–17, Revision 1, dated July 11, 1994, and Service Bulletin A300–27–6028, dated December 19, 1994, which establish a fatigue life limitation of 16,000 landings for certain universal joints fitted to the tee and forward bevel gearboxes of the flap transmission, and for certain steady bearings fitted to the flap transmission system. The AOT and the service bulletin describe procedures for performing an inspection to ensure the integrity of the affected bearings and bevel/tee gearboxes, and replacement of parts with new parts. The AOT and the service bulletin also describe procedures for repetitively replacing the universal joints fitted to the tee and forward bevel gearboxes of the flap transmission and the steady bearings of the flap transmission system with new universal joints and steady bearings at regular intervals. The DGAC classified the AOT and the service bulletin as mandatory and issued French airworthiness directive 94–206–167(B) R1, dated March 15, 1995, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, 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 an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive replacement of the universal joints and steady bearings with new parts at regular intervals. The actions would be required to be accomplished in accordance with either the AOT or the service bulletin described previously.

The French AD requires an inspection to ensure the integrity of the affected bearings and bevel/tee gearboxes at 500 landings after the effective date of the French AD and replacement with new parts at 600 landings after the effective date of the French AD. The time delay between issuance of this proposed AD and the French AD will have already accounted for a number of accumulated landings; therefore, this proposal will only require replacement with new parts within 16,000 total landings on the universal joints and bearings of the flap transmission system, or within 500

landings after the effective date of the AD, whichever occurs later.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long-standing requirement.

The FAA estimates that 50 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 11 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $5,000 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $283,000, or $5,660 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

Airbus Industrie: Docket 95–NM–92–AD.

Applicability: All Model A300–600 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To ensure replacement of certain universal joints and bearings of the flap transmission that have reached their maximum life limit, accomplish the following:

(a) Prior to the accumulation of 16,000 total landings on the universal joints and bearings of the flap transmission system, or within 500 landings after the effective date of this AD, whichever occurs later: Replace the universal joints and bearings of the flap transmission system with new parts, in accordance with Airbus All Operator Telex (AOT) 27–17, Revision 1, dated July 11, 1994, or Airbus Service Bulletin A300–27–6028, dated December 19, 1994. Thereafter, prior to the accumulation of 16,000 landings on the universal joints and bearings, replace them with new parts, in accordance with the AOT or the service bulletin.

(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, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished. Issued in Renton, Washington, on July 12, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–17551 Filed 7–17–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–48–AD]

Airworthiness Directives; McDonnell Douglas Model DC–10–10, –15, –30, and –40 Series Airplanes, and KC–10A (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10 series airplanes and KC–10A (military) airplanes. This proposal would require visual inspections to detect failure of the attachments located in the banjo No. 4 fitting of the vertical stabilizer. This proposal also would require an eddy current inspection to detect cracking of the flanges and bolt holes of that fitting, and repair or replacement of attachments. This proposal is prompted by reports of failed attachments of the vertical stabilizer; the failures are attributed to stress corrosion fatigue. The actions specified by the proposed AD are intended to prevent loss of the fail safe capability of the vertical stabilizer due to cracking of its attachments.

DATES: Comments must be received by September 11, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–48–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: John Cecil, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5322; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–48–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–48–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports from operators of Model DC–10 series airplanes of failed attachments on the lower vertical stabilizer. These attachments were located on the forward and aft flanges of the banjo No. 4 fitting and the pylon carry-through cap. Additionally, one operator reported finding cracks in the forward flange of banjo No. 4 at the pylon carry-through cap. The attachments on the aft flange of these airplanes also had failed. Lengths of the cracks varied from 1.0 inch to 3.75 inches on airplanes that had accumulated between 20,903 and 32,313 landings. Investigation revealed that the broken steel attachments failed due to cracking, which was caused by stress corrosion fatigue. Such cracking, if not detected and corrected in a timely manner, could result in loss of fail safe capability of the vertical stabilizer.

The FAA has reviewed and approved McDonnell Douglas DC–10 Service Bulletin 55–23, Revision 1, dated December 17, 1993, which describes procedures for accomplishing an eddy current inspection to detect cracking of the forward and aft flanges and bolt holes of the banjo No. 4 fitting, and pylon carry-through cap of the lower vertical stabilizer. The service bulletin also describes procedures for replacement of 12 attachments located on the banjo No. 4 fitting and pylon carry-through cap with new attachments for airplanes on which no cracking is found. The new attachments are made from a higher strength and more corrosion resistant material. Accomplishment of the replacement will minimize the possibility of cracking and failure of the attachments. The manufacturer recommends that these actions be accomplished within 2,200 landings (approximately 5 years).

Although the FAA has approved the technical content as well as the intent of the McDonnell Douglas service bulletin, it has determined that, prior to the time that the eddy current inspection (recommended by the manufacturer) is accomplished, visual inspections also must be accomplished to detect cracking of the 12 attachments located in the banjo No. 4 fitting. In order to ensure that any cracking is detected and corrected in a timely manner, the FAA finds that such visual inspections should be conducted annually.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require, initially, repetitive visual inspections to detect failures of the 12 attachments located in the banjo No. 4 fittings. These visual inspections would be required to be accomplished in accordance with McDonnell Douglas Nondestructive Testing Manual Chapter 20–10–00 or McDonnell Douglas Nondestructive Testing Standard Practice Manual, Part 09.

Additionally, this proposed AD would require an eddy current inspection to detect cracking of the forward and aft flanges and bolt holes of the fitting of the vertical stabilizer and pylon carry-through cap; replacement of the attachments with new attachments if no cracking is found; and repair if cracking is found. The eddy current inspection and replacement procedures would be required to be accomplished in accordance with McDonnell Douglas DC–10 Service Bulletin 55–23, described previously. Repair procedures would be required to be accomplished in accordance with a method approved by the FAA. Accomplishment of the replacement would constitute terminating action for the proposed inspections.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long-standing requirement.

There are approximately 420 Model DC–10–10, –15, –30, –40 series airplanes and KC–10A (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 237 airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that it would take approximately 1 work hour per airplane to accomplish the proposed visual inspections, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of the proposed visual inspections on U.S. operators is estimated to be $14,220, or $60 per airplane, per inspection cycle.

The FAA estimates that it would take approximately 2 work hours per airplane to accomplish the proposed eddy current inspection, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of the proposed eddy current inspection on U.S. operators is estimated to be $28,440, or $120 per airplane.

The FAA estimates that it would take approximately 6 work hours per airplane to accomplish the proposed replacement of the 12 attachments located at the banjo No. 4 fitting, at an average labor rate of $60 per work hour. Required parts would cost approximately $250 per airplane. Based on these figures, the total cost impact of the proposed replacement on U.S. operators is estimated to be $144,570, or $610 per airplane.

The total cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

McDonnell Douglas: Docket 95–NM–48–AD.

Applicability: Model DC–10–10, –15, –30, –40 series airplanes and KC–10A (military) airplanes; as listed in McDonnell Douglas Service Bulletin 55–23, Revision 1, dated December 17, 1993; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of fail safe capability of the vertical stabilizer due to cracking of its attachments, accomplish the following:

(a) Within one year after the effective date of this AD, perform a visual inspection, using a minimum 5X power magnifying glass, to detect failure of the 12 attachments located in the banjo No. 4 fitting of the vertical stabilizer (as depicted in McDonnell Douglas Service Bulletin 55–23, Revision 1, dated December 17, 1993). Perform this inspection in accordance with procedures specified in McDonnell Douglas Nondestructive Testing Manual Chapter 20–10–00 or McDonnell Douglas Nondestructive Testing Standard Practice Manual, Part 09.

(1) If no failure is detected, repeat the visual inspection thereafter at intervals not to exceed one year until the requirements of paragraph (b) of this AD are accomplished.

(2) If any failure is detected, prior to further flight, accomplish the requirements of paragraph (b) of this AD.

(b) Except as required by paragraph (a)(2) of this AD: Within 5 years after the effective date of this AD, perform an eddy current inspection to detect cracking of the forward and aft flanges and bolt holes of the banjo No. 4 fitting and the pylon carry-through cap, in accordance with McDonnell Douglas Service Bulletin 55–23, Revision 1, dated December 17, 1993.

(1) If no cracking is detected, prior to further flight, replace the 12 attachments located on the banjo No. 4 fitting in accordance with the service bulletin. Accomplishment of this replacement terminates the requirements of this AD.

(2) If any cracking is detected, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office, (ACO), FAA, Transport Airplane Directorate.

(c) 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, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 12, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–17550 Filed 7–17–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 95–AWP–6]

Proposed Realignment of V–485; CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would alter VOR Federal Airway V–485 from the Priest, CA, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) to the San Jose, CA, Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME). This action would collocate V–485 with the San Jose VOR/DME Runway 30L approach and utilize the San Jose VOR/

DME instead of the Sausalito VORTAC. This action would enhance safety while accommodating the concerns of the airspace users.

DATES: Comments must be received on or before August 23, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AWP–500, Docket No. 95–AWP–6, Federal Aviation Administration, P. O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

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:

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 above. 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. 95–AWP–6.'' 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 Rules Docket 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, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3485. 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 alter VOR Federal Airway V–485 from the Priest, CA, VORTAC to the San Jose, CA, VOR/DME. This action would collocate V–485 with the San Jose VOR/DME Runway 30L approach and utilize the San Jose VOR/DME instead of the Sausalito VORTAC. This action would enhance safety while accommodating the concerns of the airspace users. Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The airway 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 economic 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. 40103, 40113, 40120; 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 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–485 [Revised]

From Ventura, CA; Fellows, CA; Priest, CA; to San Jose, CA. The airspace within W–289, the airspace within R–2519 more than 3-statute miles W of the airway centerline and the airspace within R–2519 below 5,000 feet MSL is excluded.

* * * * *

Issued in Washington, DC, on July 6, 1995.

Nancy B. Kalinowski,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–17586 Filed 7–17–95; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket Nos. RM95–8–000 and RM94–7–001]

Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities; Notice of Intent to Prepare an Environmental Impact Statement for the Notice of Proposed Rulemaking and Request for Comments on Environmental Issues

July 12, 1995.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of intent to prepare an environmental impact statement for the notice of proposed rulemaking and request for comments on environmental issues.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has directed staff to prepare an environmental impact statement to assess the environmental impacts of the proposed rule ''Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities/Recovery of Stranded Costs by Public Utilities and Transmitting Utilities''.[1] The notice requests commenters to send relevant information that will assist the Commission in conducting an accurate and thorough analysis of the potential impacts of the proposed rule. The notice also provides for a public scoping meeting.

DATES: Scoping comments are due on or before August 11, 1995; the public scoping meeting will be held on September 8, 1995.

FOR FURTHER INFORMATION CONTACT:

Willam Meroney, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, Telephone: (202) 208–1069, Fax: (202) 208–1010

Leon Lowry, Office of Electric Power Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, Telephone: (202) 208–0919, Fax: (202) 208–0180

ADDRESSES: Comments should be filed with the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426; the scoping meeting will be held in Hearing Room 1, 810 First St., N.E., Washington, D. C.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3401, at 941 North Capitol Street, N.E., Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this document will be available on CIPS for 60 days from the date of issuance in ASCII and WordPerfect 5.1 format. After 60 days the document will be archived, but still accessible. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3104, 941 North Capitol Street, N.E., Washington, D.C. 20426.

SUPPLEMENTARY INFORMATION: The Commission has directed staff to prepare an environmental impact statement (EIS) to assess the environmental impacts of the proposed rule ''Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities/Recovery of Stranded Costs by Public Utilities and Transmitting Utilities''. In general, the proposed rule would require all public utilities owning or controlling facilities used for transmitting electric energy in interstate commerce to file non-discriminatory, open access wholesale transmission tariffs and to take transmission service (including ancillary services) for their own wholesale sales and purchases of electric energy under the open access tariffs. In addition, the proposed rule would allow public utilities to recover legitimate and verifiable stranded costs associated with transmission access. The EIS will satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA).

Introduction

The Commission's goal in the proposed rule is to encourage lower electricity rates by reducing impediments to wholesale transmission access and to promote the development of competitive bulk power markets. A key to competitive bulk power markets is the availability of transmission services on an open and non-discriminatory basis. Transmission is the vital link between buyers and sellers of electricity. All traders of bulk power must have equal access to the transmission grid if the Nation is to achieve the benefits of robust, competitive power markets. Market power over transmission service is the single greatest impediment to such competition. Limitations on transmission access by transmission owners is preventing efficient trading from taking place, resulting in consumers paying unnecessarily high electricity prices.

The Commission intends to manage the transition to competition in an orderly fashion. Moving to competitive power markets will change long-standing commercial and regulatory relationships. Utilities have invested billions of dollars to meet their existing obligations. These investments have been made under a regulatory compact whereby utility shareholders expect to recover prudently incurred costs. Competition may render some of these prudent investments uneconomic. The Commission believes that past contractual and regulatory practices must be recognized and past investment decisions made under a regulatory compact should be honored in the interim during the transition to competition.

Proposed Action and Principal Alternative

Two cases are proposed to be examined. The proposed rule includes a generic requirement for public utilities to provide open access non-discriminatory transmission service, and a framework to govern recovery of stranded costs. The alternative case involves the Commission pursuing similar policies on transmission access and stranded cost recovery, but through a case-by-case approach. The discussion below will serve as the basis for preparing the EIS. Comments are solicited on specific analytic elements of the outlined study. The proposed rule is described below along with the principal alternative to the rule. This is followed by a discussion of a study to assess the environmental impacts of the proposed rule and the alternative.

Proposed Rule

The Commission seeks to achieve increased economic efficiency in wholesale power markets through competition and to allow recovery of prudently incurred costs stranded by the use of transmission access. Increased efficiency is promoted through the requirement that all public utilities file non-discriminatory, open access transmission tariffs to make transmission service available to all wholesale market participants. The Commission intends to require all public utilities to take transmission service for their own wholesale power transactions under this tariff. Recovery of transition costs is addressed by proposing that public utilities be allowed to recover prudent, legitimate, and verifiable stranded costs and to assign directly such costs to certain departing wholesale customers.

[1] 60 FR 17662, Apr. 7, 1995.

Through the combination of open access and stranded cost policies, the Commission intends to provide a smooth transition period that takes the electricity industry from traditional regulation of localized wholesale power transactions to competitive power markets that have a regional, or perhaps national, scope. The Commission does not expect that power markets will become competitive overnight. How rapidly competition evolves will be determined, in part, by the markets themselves. The Commission cannot dictate such progress—it can only accommodate the needed changes. Consequently, the Commission believes that progress toward efficient power trading will not happen all at once and that any environmental consequences of changed trading patterns will occur at a corresponding pace.

The Commission's proposed rule will not unilaterally bring competition to an industry where it otherwise would be absent. Rather, the proposed rule will hasten and rationalize the progress toward competitive power markets already under way. Congress endorsed competition in wholesale power markets in the Energy Policy Act of 1992 (EPAct). To some extent, evolving competition is being accommodated under the Commission's authority to order transmission service under Section 211 of the Federal Power Act as modified by EPAct, and under case-by-case exercise of the Commission's authority under section 205 of the FPA to ensure that rates, terms and conditions of service are not unduly discriminatory. The proposed rule is intended to make this transition in a more consistent and non-discriminatory manner than would be possible under a case-by-case application of our authority under Section 211 or other provisions of the Federal Power Act. In addition, power markets are becoming more competitive through actions of customers desiring cheaper power. These factors must be considered when examining the environmental consequences of the proposed rule.

The proposed rule has the potential to increase the availability, diversity, and competitiveness of power. The potential benefits include:

- Reducing the cost of electricity to consumers by promoting access of buyers and sellers to one another;
- Promoting the efficient use of facilities and resources by electric utilities;
- Avoiding wasteful investments under the current system of regulation of generation; and
- Providing a number of indirect benefits, such as reducing administrative burdens and costly litigation.

Principal Alternative

The principal alternative to the proposed rule is that of no-action, i.e., case-by-case implementation by the Commission. That is, the Commission could choose not to address generically the issues raised in the proposed rule. Under this alternative, transmission users would seek transmission access under section 211 or through open access tariffs filed under Section 205. The resulting patchwork of transmission service conditions could inhibit the development of regional bulk power markets. And under this alternative, the Commission would consider whether to allow public utilities to recover stranded costs on a case-by-case basis, should they seek such recovery. Compared to a generic rule on stranded cost recovery, this could increase uncertainty for market participants.

Proposed Study and Analytic Issues

The basic approach of the analysis will be to postulate likely market responses to the proposed rule and then to analyze the resulting effects on utility decisionmaking, institutions, and the environment. The results of the analysis will be used to assess the economic and environmental impacts of the proposed rule. The analysis will have a national scope—but with significant regional detail—to assess potential environmental impacts of the proposed rule.

The principal effect of the proposed rule could be to change historical patterns of wholesale electricity trade in the United States. Buyers and sellers of bulk power will have expanded opportunities to trade with market participants that were previously not available because of a lack of transmission access. In the near term, the proposed rule may cause changes in the dispatch and operation of generators. Some regions may experience changes in fuel use. This would have certain economic consequences, as well as certain environmental consequences. In the long term, a different pattern of newly constructed generation plants and transmission lines may emerge as a result of the proposed rule.

The analysis will assess the consequences of the proposed rule in two main areas:

- Socioeconomic impacts.
- Environmental impacts of changes in fuel mix of power generation (coal, oil, gas, nuclear, wind, solar, etc.).

Potentially, the most significant of the impacts will be the level, type, and location of air emissions. Selected regions will be identified to indicate the types of changes in environmental risks attributable to the proposed rule. The analysis would be designed to assess the environmental impacts of the kinds of fuel mix changes that might result from more open generating markets.

Limits on the Analysis

We do not plan to address site-specific impacts such as cultural resources, noise levels, geology and soils, EMF effects or specific terrestrial or aesthetic resource issues. It is impossible to identify the location of individual powerplants or transmission lines that might be built as a consequence of the proposed rule. Moreover, any site-specific issues associated with siting such facilities will be subject to required environmental reviews by state and local agencies. The siting issues are not within the Commission's jurisdiction and thus are excluded from the analysis. However, if commenters believe that such impacts are identifiable and significant, the Commission requests specific information that would aid in the evaluation of such impacts.

The EIS Scoping Process

NEPA requires the Commission to review and address concerns the public may have about proposals that could result from a major Federal action having a potential for significant impact on the quality of the human environment. The main goal of issuing this ''scoping'' document is to focus the analysis in the EIS on the important issues, and to separate those issues that are insignificant and do not require detailed study.

The EIS will discuss impacts that could occur as a result of implementing the proposed rule. The Commission requests comments on the environmental impacts that may result from implementing the proposed rule. If commenters believe mitigation is necessary, commenters should recommend specific mitigation to lessen or avoid impacts.

Preparation of the EIS

Our independent analysis of the issues will result in the publication of a Draft EIS which will be mailed to federal, state and local resource agencies, industry, other interested groups and individuals, and the Commission's official service list for these proceedings.

A 45-day comment period will be provided for reviewing the Draft EIS. We will consider all comments on the Draft EIS and revise the document, as

necessary, before issuing a Final EIS. The Final EIS will include our response to each comment received. We expect the Final EIS to be completed by March 1996.

Public Participation and Scoping Meeting

All commenters should send relevant information that will assist us in conducting an accurate and thorough analysis of the potential environmental impacts of the proposed rule. You should comment on the identified environmental issues, the potential environmental effects and alternatives of the proposed rule, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be.

Please file your comment letter and only relevant studies or reports as noted below. In addition, commenters are requested to submit a copy of their comments on a 3½ inch diskette formatted for MS–DOS based computers. In light of our ability to translate MS–DOS based materials, the text need only be submitted in the format and version that it was generated (*i.e.*, MS Word, WordPerfect, ASCII, etc.). It is not necessary to reformat word processor generated text to ASCII. For Macintosh users, it would be helpful to save the documents in Macintosh word processor format and then write them to files on a diskette formatted for MS–DOS machines. All comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, and should refer to Docket Nos. RM95–8–000 and RM94–7–001.

- Send a copy of the letter to the following individuals:

William Meroney, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, Telephone: (202) 208–1069, Fax: (202) 208–1010

Leon Lowery, Office of Electric Power Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, Telephone: (202) 208–0919, Fax: (202) 208–0180

- Scoping comments must be received no later than August 11, 1995.

In addition to asking for written comments, we invite you to attend our public scoping meeting. This meeting will be held at 10:00 am, Friday, September 8, 1995 in Hearing Room 1, 810 First Street, N.E., Washington, D.C.

The public meeting will provide another opportunity to offer scoping comments. Those wanting to speak at the meeting can call the EIS Project Manager, William Meroney, to pre-register their names on the speaker list. Only those people on the speaker list prior to the date of the meeting will speak. Priority will be given to people representing groups. A transcript of the meeting will be made to accurately record your comments.

Environmental Mailing List

If you do not want to send comments at this time but still want to receive copies of the Draft and Final EIS, please return the Information Request (see appendix 1 [2]) to either William Meroney or Leon Lowery by mail or fax. If you do not return the Information Request, you will be taken off the mailing list.

Lois D. Cashell,

Secretary.

[FR Doc. 95–17523 Filed 7–17–95; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[CO–24–95]

RIN 1545–AT51

Consolidated Groups—Intercompany Transactions and Related Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that provide rules for disallowing loss and excluding gain for certain dispositions and other transactions involving stock of the common parent of a consolidated group. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by October 16, 1995. Outlines of topics to be discussed at the public hearing scheduled for November 16, 1995 must be received by October 26, 1995.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (CO–24–95), room 5228, Internal Revenue Service, P.O.B. 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (CO–24–95), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. The hearing will be held in the IRS Auditorium, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Victor Penico, (202) 622–7750; concerning submissions and the hearing, Christina Vazquez, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 1502. The temporary regulations provide rules for disallowing loss and excluding gain for certain dispositions and other transactions involving stock of the common parent of a consolidated group.

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analysis

Is has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. 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, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for November 16, 1995 at 10 a.m., in the

[2] This appendix is not being published in the **Federal Register**, but is available from the Commission's Public Reference Room.

IRS Auditorium. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit written comments by October 26, 1995 and submit an outline of the topics (signed original and eight (8) copies) to be discussed by October 26, 1995.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

These regulations were drafted by personnel from the Treasury Department and the IRS.

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. In § 1.1502–13, paragraph (f)(6) is added to read as follows:

§ 1.1502–13 Intercompany transactions.

[The text of proposed paragraph (f)(6) is the same as the text of § 1.1502–13T(f)(6) published elsewhere in this issue of the **Federal Register**].

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 95–16971 Filed 7–12–95; 12:56 pm]

BILLING CODE 4830–01–U

26 CFR Part 301

[DL–21–94]

RIN 1545–AS52

Disclosure of Return Information to the U.S. Customs Service; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations which would authorize the IRS to disclose certain return information to the U.S. Customs Service. The regulations would specify the procedure by which return information may be disclosed and describe the conditions and restrictions on the use of the information by the U.S. Customs Service.

DATES: The public hearing will be held on Thursday, August 24, 1995, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Thursday, August 3, 1995.

ADDRESSES: The public hearing will be held in the IRS Commissioner's Conference Room, Room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:DOM:CORP:T:R [DL–21–94], room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7190, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations that would implement section 6103(l)(14) of the Internal Revenue Code. The notice of proposed rulemaking by cross-reference to temporary regulations were published in the **Federal Register** on Friday, March 11, 1994 (59 FR 11566).

The rules of § 601.601 (a)(3) of the ''Statement of Procedural Rules'' (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice and who also desire to present oral comments at the hearing on the regulations should submit not later than Thursday, August 3, 1995, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

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

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

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 95–17537 Filed 7–17–95; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

29 CFR Part 9

RIN 1215–AA95

Executive Order 12933 of October 20, 1994; ''Nondisplacement of Qualified Workers Under Certain Contracts''

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Notice of proposed rulemaking, request for comments.

SUMMARY: This document proposes regulations to implement Executive Order 12933, ''Nondisplacement of Qualified Workers Under Certain Contracts,'' signed by the President on October 20, 1994 (59 FR 53560, October 24, 1994). The Executive Order requires that workers on a building service contract for a public building be given the right of first refusal for employment with the successor contractor, if they would otherwise lose their jobs as a result of the termination of the contract. The proposed rules contain a contract clause that must be incorporated into each covered contract, implementing regulations, and enforcement procedures.

DATES: Comments on the proposed rule are due on or before September 1, 1995.

ADDRESSES: Submit written comments to Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped post card or to submit them by certified mail, return receipt requested. As a convenience to commenters, comments may be transmitted by facsimile (''FAX'') machine to (202) 219–5122. This is not a toll-free number. If transmitted by FAX and a hard copy is also submitted by mail, please indicate on the hard copy that it is a duplicate copy of the FAX transmission.

FOR FURTHER INFORMATION CONTACT: William W. Gross, Office of Program Operations, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 219–8353. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

Reporting and recordkeeping requirements contained in the regulations (§ 9.9(b) and § 9.11) have been submitted to the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1990 (Pub. L. 96–511) for review.

The public reporting burden for information collection requirements contained in these regulations is estimated to average as follows:

15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The reporting requirements of § 9.11 are already required by the Service Contract Act regulations, 29 CFR 4.6(1)(2), OMB Number 1215–0150, and therefore impose no new burden. The only new requirement is the recordkeeping requirement in § 9.9.

Send comments regarding this burden to the Office of Information Management, U.S. Department of Labor, Room N–1301, 200 Constitution Avenue, NW., Washington, DC 20210; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

II. Background

Executive Order 12933 was signed October 20, 1994, by President Clinton, and published in the **Federal Register** on October 24, 1994 (59 FR 53560). The purpose and need for the Executive Order are clearly stated in the Executive Order itself:

> When a service contract for the maintenance of a public building expires and a follow-on contract is awarded for the same service, the successor contractor typically hires the majority of the predecessor's employees. On occasion, however, a follow-on contractor will hire a new work force, and the predecessor's employees are displaced.
>
> As a buyer and participant in the marketplace, the Government is concerned about hardships to individuals that may result from the operation of our procurement system.
>
> Furthermore, the Government's procurement interests in economy and efficiency benefit from the fact that a carryover work force will minimize disruption to the delivery of services during any period of transition and provide the Government the benefits of an experienced and trained work force rather than one that may not be familiar with the Government facility.

In order to address these concerns, Section 1 of the Executive Order makes the following statement of policy:

> It is the policy of the Federal Government that solicitations and building service contracts for public buildings shall include a clause that requires the contractor under a contract that succeeds a contract for performance of similar services at the same public building to offer those employees (other than managerial or supervisory employees) under the predecessor contract whose employment will be terminated as a result of the award of the successor contract, a right of first refusal to employment under the contract in positions for which they are qualified. There shall be no employment openings under the contract until such right of first refusal has been provided. Nothing in this order shall be construed to permit a contractor to fail to comply with any provision of any other Executive order or laws of the United States.

The Executive Order requires that the Secretary of Labor issue implementing regulations by April 20, 1995, and that the Federal Acquisition Regulatory Council issue regulations by that date which require inclusion of the contract clause in Federal solicitations and contracts. The Executive Order further provides that the order does not confer any right or benefit enforceable against the United States, but that it is not intended to preclude judicial review of final decisions by the Secretary of Labor in accordance with the Administrative Procedure Act, 5 U.S.C. 701 *et seq.*

Key issues addressed in the regulations on which public comment is particularly solicited are summarized and explained in this preamble. As required by the Executive Order, the Department of Labor (DOL) has consulted with the Federal Acquisition Regulatory (FAR) Council with respect to the implementation of the Executive Order.

III. Summary and Discussion

Scope of Coverage

General Coverage (9.2)

The Executive Order applies only to ''building service contracts'' for ''public buildings'' where the contract is entered into by the United States. These terms are defined elsewhere in the regulations. The Order applies only to contracts of an amount equal to or greater than the simplified acquisition threshold, set by the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)) at $100,000. Because the language of the Executive Order does not specifically reference subcontracts, the regulations contain no ''flow-down'' requirements for subcontractors.

Where a contract is for both recurring building services and some other purpose, such as construction, the building services are subject to the Order, but only with respect to the building services portion of the contract. However, where the building services are only incidental, such as incidental maintenance performed under a contract to operate a day-care center, the Order would not apply to such services. The standards used for determining when construction work performed under a mixed contract is covered by the Davis-Bacon Act are utilized in determining when building services are more than incidental. See 29 CFR 4.116(c)(2); 48 CFR 22.402(b)(ii).

It is also important to point out that the coverage principles of the Executive Order are different than those of the McNamara-O'Hara Service Contract Act (SCA), 41 U.S.C. 351 *et seq.*, although there is significant overlap between the two programs.

Building Services Contract (9.3)

Section 2(b) of the Executive Order defines the term ''building services contract'' to include contracts ''for recurring services related to the maintenance of a public building, e.g., janitorial, window washing, food service. * * *'' The regulations define ''recurring services'' to include services performed regularly or periodically throughout a contract (and its follow-on contract) at the same building. Contracts which are for non-recurring maintenance services, such as servicing of fixed equipment which is performed only one time each year, and contracts for services which are not maintenance services, such as operation of a day care center, are not subject to the Order.

Public Building (9.4)

Section 2 of the Executive Order defines the term ''public building.'' The definition is patterned after the definition of a public building in Section 13 of the Public Buildings Act of 1959, 40 U.S.C. 612, and the definition in the Executive Order is largely repeated in section 9.4 of the regulations. Generally, buildings suitable for office or storage space and administered by the General Services Administration (GSA) or by another Federal agency under a delegation from GSA are considered to be ''public buildings.''

Many buildings are specifically excluded from the term ''public building,'' including buildings on

properties of the United States Postal Service, on military installations, and on Department of Veterans Affairs installations used for hospital or domiciliary purposes. In addition, buildings ''on the public domain'' are not ''public buildings''. ''Public domain'' is commonly considered to be public lands in the West. Accordingly, ''public domain'' in these regulations is defined to include lands administered by the Department of the Interior, Bureau of Land Management, and the Department of Agriculture, U.S. Forest Service. Buildings on other Federal property are not considered to be ''on the public domain'' for purposes of the Executive Order.

A unique situation arises with respect to the Pentagon. Originally, the Pentagon was considered a ''public building'' within the scope of the Public Buildings Act. Subsequently, Section 2804 of the National Defense Authorization for FY 1991 (10 U.S.C. 2674) removed the Pentagon from GSA's authority under the Public Buildings Act; however, that legislation did not change the Public Buildings Act's definition of a public building. This, while not specifically addressed in the regulations, DOL considers the Pentagon to be a ''public building'' within the meaning of the Executive Order. Furthermore, this interpretation is consistent with the purpose of the Executive Order, to cover Government office buildings. Commenters are invited to address this issue in their comments.

Leased buildings are not public buildings covered by the Executive Order unless they are being leased pursuant to lease-purchase contracts. It should be noted, however, that building services performed on a building being leased pursuant to a lease-purchase contract would be covered only if the services are being performed under a contract directly with the Government; building services performed by the lessor would be considered incidental to the lease (see § 9.2) and would not be covered.

Coverage Limitations (9.5)

The Order does *not* apply to contracts under the simplified acquisition threshold, which is currently $100,000. In addition, contracts for commodities or services by the blind or severely handicapped awarded pursuant to the Javits-Wagner-O'Day Act, 41 U.S.C. 46–48a; contracts for certain services provided by sheltered workshops for the severely handicapped, awarded pursuant to the Edgar Amendment of the Treasury, Postal Services and General Government Appropriations Act, Public Law 103–329; and vending service contracts operated by the blind, awarded pursuant to the Randolph-Sheppard Act, 20 U.S.C. 107, are excluded from coverage pursuant to section 3(b)–(d) of the Executive Order.

The Executive Order also excludes ''services where the contractor's employees perform work at the public building and at other locations under contracts not subject to this Order (e.g., pest control or trash removal where the contractor's employees visit the site periodically and where the employees under the contract respond to service calls),'' provided that employees are not deployed in a manner designed to avoid the purposes of the Order. Thus, the manner in which the services will be performed by the successor contractor as well as the nature of the services must both be considered in determining whether a building services contract is subject to the Executive Order.

Contract Clause (9.6)

Section 4 of the Executive Order specifies the contract clause that must be included in solicitations and contracts for building services that succeed contracts for the performance of similar work at the same public building. The regulations set forth additional provisions which are necessary to implementation of the Order. In accordance with Section 5 of the Order, a provision of the clause makes it clear that disputes under the Order are to be resolved in accordance with DOL procedures rather than pursuant to the general disputes clause of the Contract Disputes Act, 41 U.S.C. 601 *et seq.* Provisions also provide for withholding of contract funds in the event the contractor is determined to have violated the provisions of the Executive Order and is found liable for lost wages or other monetary relief; and to require contractors to cooperate in investigations by DOL or the contracting agency.

Contractor Obligations

Employee Coverage/Staffing (9.7/9.8)

With certain exclusions, all employees performing recurring building services on the predecessor contract whose employment would otherwise be terminated as the result of the award of the contract to a new contractor, must in good faith be offered the right of first refusal to employment under the successor contract before any other employees may be hired. Because the successor contractor will not know whether an individual employee of the predecessor contractor will continue to be employed or will be terminated because of the change in contracts, the regulations state a presumption that all employees will be terminated when the predecessor's contract expires. This presumption can be defeated by specific evidence to the contrary, which the successor contractor could obtain through inquiries of, or contact with, the contracting officer, the employees, or the predecessor contractor after award of the contract to the successor.

The Executive Order does not require that a successor contractor perform a contract with the same number of employees as the predecessor. For example, if the predecessor employed twenty (20) custodial workers, the successor may determine it can perform the contract work with only eighteen (18) custodial workers. Thus if the contractor continues to employ five (5) of its existing workers, the offer of the right of first refusal would initially be limited to thirteen (13) employees of the predecessor. The successor contractor has complete discretion, within the constraints of these regulations, to determine which employees will first be offered a right of first refusal. If any of the predecessor's employees to whom the right of first refusal was offered decline that offer, then the successor must offer the right of first refusal to any remaining employees of the predecessor who were not originally offered the right of first refusal.

The question arises, however, whether the successor contractor's obligations continue throughout the performance of the contract. Although the language of the Executive Order could arguably suggest such a result, it would be impractical and unduly burdensome. Therefore the regulations provide that once the contract is fully staffed and contract performance has commenced, the obligation to offer the right of first refusal ceases, and any subsequent vacant positions may be filled in accordance with the successor's normal business practices. The only exception to this provision would be if the evidence shows that the successor contractor increased the initial staffing level within the first three months after commencement of the contract. Three months was selected as a reasonable period for continuing to impose an obligation to offer a right of first refusal in order to ensure that necessary staffing adjustments during the start-up period will be covered, and at the same time to discourage attempts to manipulate the work force. During this three month period the right of first refusal must be offered to any eligible employees until the final staffing level is reached.

Services at buildings not covered by the Order. The contractor is not

obligated to offer a right of first refusal to employment in any position which will perform services both at buildings covered by the Executive Order and buildings not covered by the Order.

Managerial and supervisory employees. The successor contractor is not required to offer a right of first refusal to employees who performed as managers or supervisors under the predecessor contract or to employees who are not service employees within the meaning of the SCA. Thus the regulations provide that those employees who are employed as bona fide executive, administrative, or professional employees within the meaning of the regulations issued under the Fair Labor Standards Act (FLSA) at 29 CFR Part 541 (and therefore are exempt from the provisions of the FLSA and SCA), need not be offered a right of first refusal.

The successor contractor has complete discretion to decide who will be employed as managers and supervisors on the contract. However, if a service employee of the predecessor is qualified for a management/supervisory position, an offer of employment in that exempt classification would satisfy the successor's obligation to offer the employee a right of first refusal.

Existing employees of the successor contractor. The Executive Order provides that employees who worked for the successor contractor for at least three months immediately preceding the commencement of the successor contract and who would otherwise face lay-off or discharge, may be employed on the successor contract without regard to the successor's obligation to offer the right of first refusal. The key elements are that the employee (1) must have been employed by the successor for at least three months prior to the commencement of the successor contract *and* (2) would otherwise face lay-off or discharge. Employees who had been laid-off by the successor prior to the commencement of the successor contract or existing employees of the successor who are not facing lay-off or termination because, for example, they would continue to be employed on another contract, may not be employed on the successor contract until all eligible employees of the predecessor have been offered the right of first refusal.

Unsuitable employees. The successor contractor is not required to offer the right of first refusal to any employee who the successor reasonably believes, based on the particular employee's past performance, has failed to perform suitably on the job. The regulation implementing this provision does not define what constitutes a ''reasonable belief'' or ''suitable performance''. However, the successor contractor must base the conclusion that an employee failed to perform suitably on information from a credible source relative to a particular employee's past performance on the job, such as the predecessor contractor, the employee's supervisor or foreman, or the contracting agency. Information that does not directly relate to an employee's performance on the job may not be used as a basis for failing to offer a right of first refusal.

Offer of Employment/Recordkeeping (9.9, 9.10)

The Executive Order requires the successor to make an express offer of employment to each employee and state the time within which the employee must accept such offer, which must be at least ten (10) days. The regulation at section 9.9 states that the offer may be made either in writing or orally at a meeting of the predecessor contractor's employees, and requires that the contractor keeps either a copy of the offer or minimum documentation regarding the meeting at which the offer was made, which may consist of notations on the attendance roster and a copy of any written notice distributed.

The regulations require the predecessor contractor to give the contracting officer a list of current employees at least 60 days before the end of the contract. However, the successor's obligation to extend a right of first refusal applies to all employees employed at the end of the contract, including any who may begin work after the list of employees is provided. It is not envisioned that the omission of such employees' name from the list will be unduly burdensome since successor contractors commonly hire the predecessor's work force without the convenience of such a list.

The regulations at section 9.10 discuss what is a bona fide offer of employment. In general, an offer of employment will be presumed to be bona fide. Employees need not be offered employment in the same job that they were employed in under the predecessor contract, provided the employee is qualified for the position offered. Thus an employee may be equipped by education, training or experience to perform the duties of a position to be filled by the successor contractor, even though he or she encumbered a position under the predecessor contractor that did not require or utilize such education, training or experience. However, an offer of employment at a lower level or to a different position may be a basis for closely examining whether the offer is bona fide, based on valid business reasons.

Predecessor's Obligation to Provide a List of Employees (9.11)

The Executive Order requires that, no less than 60 days before the completion of the contract, the predecessor contractor provide the contracting officer with a certified list of all service employees working at the Federal facility during the last month of the contract. The list is also required to contain anniversary dates of employment, either with the current or predecessor contractor, of each service employee. The contracting officer in turn will provide the list to the successor contractor, and it will be provided on request to employees or their representatives.

Except for the timing of submission of the list, this requirement is the same as the requirement under the SCA at 29 CFR 4.6(1)(2) that the predecessor furnish the names and anniversary dates at least ten days before contract termination. Thus the Executive Order does not create any new obligation on the predecessor, but simply moves forward the date the list must be submitted.

Because the predecessor contractor cannot know with certainty, 60 days in advance of termination, who will be performing on the contract in the final month, the regulations provide that the predecessor will provide the names of all service employees working on the contract. The successor in turn must assume the employees listed will be working during the final month of the contract unless the evidence demonstrates otherwise.

Notice to Employees (9.12)

Service employees need to be advised of their right of first refusal in the event of contract transition. Various options were considered regarding how the employees should be so advised. Notice could easily be accomplished by the predecessor contractor, but it has no substantive obligations under the Order. The Department also considered placing the obligation on the successor contractor, but concluded that it would be more efficient to require notification by the contracting agency since the predecessor's employees are working regularly at the Federal building. Therefore the regulations require that the agency either post a notice or give individual notice to the predecessor contractor's employees. An optional, prototype notice is included in an Appendix to the regulations.

Enforcement (Subpart B)

Section 5 of the Executive Order provides that the Secretary of Labor is responsible for investigating and obtaining compliance with the Executive Order. It further provides that the Secretary has the authority to issue final orders prescribing appropriate sanctions and remedies, including but not limited to, orders requiring employment and payment of wages lost.

The executive Order also requires that alternative dispute mechanisms be utilized to the maximum extent possible in resolving enforcement issues. Thus, the thrust of the Executive Order is to keep the enforcement processes as simple and timely as possible, given the immediacy of both the employee's and the contractor's need for a response.

Role of the Contracting Officer (9.100)

In developing the enforcement provisions of the regulations, we have attempted to provide a process that encourages resolution at the earliest possible stage with fairness and efficiency. For this reason, the regulations provide that complaints alleging violations shall be filed with the contracting officer, who will provide the employee and the successor contractor with information about the requirements of the Executive Order. If this is not sufficient to resolve the matter, the regulations provide that the contracting officer will obtain statements from the parties of their respective positions and submit a report to the Department of Labor.

Role of the Department of Labor (9.101, 9.102)

If the contracting officer cannot resolve the dispute, section 9.100(b) provides that the contracting officer will submit his or her report. Based on the contracting officer's report, Wage and Hour may attempt to resolve the dispute through informal negotiations; however, if that is not successful, Wage and Hour will conduct a full investigation of the facts and issue a determination as to whether a violation has occurred. The Administration also has the authority to conduct an investigation on his or her own initiative.

Hearing Procedures (9.103–9.107)

The Administrator's determination shall become a final order of the Secretary unless a request for a hearing is filed within 20 days or, where the Administrator determines that relevant facts are not in dispute, a petition for review is filed with the Board of Service Contract Appeals (BSCA), which shall have the authority to hear all appeals under the Executive Order. Section 9.103 provides the procedures and time frames for appeal to the Board. The BSCA is delegated the authority to hear and decide appeals on behalf of the Secretary under the Executive Order because it currently hears appeals under the Service Contract Act and his expertise in service contract labor standards disputes.

Consistent with the Executive Order's directive to favor the resolution of disputes by efficient and informal alternative dispute methods, section 9.104 encourages parties to utilize settlement judges to mediate settlement negotiations prior to an Administrative Law Judge (ALJ) hearing. The general ALJ regulations, 29 CFR Part 18, § 18.9, already provide settlement judge procedures, and these procedures have been expressly adopted for use under the Executive Order.

If a complaint cannot be resolved informally through the conciliation or the settlement judge process, then section 9.105 provides procedures for a hearing before an ALJ. In most cases it is envisioned that the parties to the proceeding will be the contractor and the complainant (if any). However, the Wage-Hour Administrator may appear in any proceeding as a party or as *amicus curiae,* and will appear as a party in all cases in which inegligibility sanctions are imposed. The contracting agency may also appear as *amicus curiae.*

As provided in section 9.106, the ALJ shall issue a decision within 60 days after the proceeding at which evidence was submitted. If the ALJ determines that a violation has occurred, the ALJ may order appropriate relief, and may assess against the successor contractor an amount equal to the employees' costs and expenses (§ 9.106(c)). Section 9.107 provides the procedures for appealing an ALJ decision to the BSCA.

Since the Department does not anticipate participating in most proceedings under the Executive Order where debarment is not an issue, the Department is considering providing for payment of attorney fees or costs where the complainant prevails. The Department seeks the views of commenters regarding the permissibility of such a provision in the absence of express statutory authority. In the alternative, because it is anticipated that many complainants may lack the ability to hire counsel if fees are not available,. the Department is considering providing that parties may obtain the Administrator's investigation record and submit it into evidence in proceedings where the Department is not a party.

Remedies/Ineligibility Sanction (9.108–9.109)

Section 5 of the Executive Order provides that the Secretary has the authority to prescribe appropriate remedies, including orders requiring employment and payment of wages lost. Section 9.108 also sets forth withholding procedures to obtain wages due, and a provision for suspension of payments if the predecessor fails to provide the contracting officer with a list of employees on the contract. Furthermore, where a contractor has failed to comply with any order of the Secretary or has committed willful violations of the Executive Order or its regulations, the contractor and its responsible officers, and any firm in which the contractor has a substantial interest, shall be ineligible to be awarded any contract or subcontract of the United States for a period of up to three years. Since debarment is only imposed for the most serious of violations—i.e., violations that are willful or failure to comply with an order of the Secretary, which in itself is a willful violation—the regulations at section 9.109 prescribe a three-year period for debarment in all cases.

Definitions (9.200)

The regulations include definitions of several of the important terms. The definition of ''service employee'' is based on the Service Contract Act, as the Executive Order provides, but references back to the coverage requirements of the Order (employees performing recurring building services), rather than to employees on contracts subject to the SCA.

Dates of Applicability

The regulations will apply to all contracts awarded after the effective date, and the clauses contained in section 9.6 must be included in all such contracts. In addition, in order to provide successor contractors with the convenience of a list of names from the predecessor contractor earlier than the SCA requirement of 10 days before completion of the contract, it is suggested that existing contracts be amended to include the clause in section 9.6(c).

Executive Order 12866

Because this rule provides the initial implementing regulations for an executive order issued by the President, it will be treated as a ''significant regulatory action'' within the meaning of Executive Order 12866. However, no economic analysis is required since the rule will not have a significant economic impact. The Executive Order

simply requires contractors to follow the practice which is currently followed in most cases in any event as a good business practice, and will improve Government efficiency and economy in those few cases where the practice would not otherwise have been followed by decreasing or eliminating the loss of productivity that may occur when experienced employees are terminated.

Furthermore, the total value of Federal contracts covered by Executive Order 12933 is less than $100 million, and only a small fraction of that total may involve terminations of predecessor employees. General Services Administration data for Fiscal Year 1994 indicate that no more than 88 new building service contract actions were taken, with a value of $39.2 million. Since only a very small percentage of that dollar value involves terminations, the economic impact of the Executive Order is minimal.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (RFA) requires agencies to prepare regulatory flexibility analyses, and to develop alternatives, whenever possible, in drafting regulations that will have a ''significant economic impact on a substantial number of small entities.'' The Department has determined that such an analysis is not required for this rulemaking. This conclusion is based on the fact that the Executive Order mandates a practice which is already followed in almost all cases. Accordingly, this regulation will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Therefore, no regulatory flexibility analysis is required.

Document Preparation

This document was prepared under the direction and control of Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 9

Employment, Federal buildings and facilities, Government contracts, Law enforcement, Labor.

Signed at Washington, D.C. on this 12th day of July, 1995.

Maria Echaveste,

Administrator, Wage and Hour Division.

For the reasons set out in the preamble, 29 CFR Part 9 is proposed to be added to read as follows:

PART 9—NONDISPLACEMENT OF QUALIFIED WORKERS UNDER CERTAIN CONTRACTS

Subpart A—How is Executive Order 12933 Applied?

Covered Contracts Generally

Sec.

Contract Clauses

Contractor Obligations

Notice to Employees

Subpart B—What Enforcement Mechanisms Does Executive Order 12933 Provide?

Complaint Procedures

Administrative Law Judge Procedures

Appeal Procedures

Enforcement Remedies

Subpart C—Definitions

Appendix A to Part 9—Notice to Building Service Contract Employees

Authority: Secs. 4–6, Executive Order 12933; 5 U.S.C. 301.

Subpart A—How is Executive Order 12933 Applied?

Covered Contracts Generally

§ 9.1 What is the purpose of Executive Order 12933?

The Government's procurement interests in both economy and efficiency are furthered when a successor contractor carries over an existing work force. A carryover work force minimizes disruption in the delivery of services during a period of transition and provides the Government the benefit of an experienced and trained work force. Executive Order 12933 therefore generally requires that successor contractors performing building service contracts for public buildings offer a right of first refusal to employment under the contract to those employees under the predecessor contract whose employment will be terminated as a result of the award of the successor contract.

§ 9.2 Which contracts are covered by Executive Order 12933?

(a) The Executive Order and these rules apply to ''building service contracts'' for ''public buildings'' where the contract is entered into by the United States in an amount equal to or greater than the simplified acquisition threshold of $100,000, as set forth in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)).

(b)(1) Except as provided in paragraph (b)(2) of this section, contracts which include a requirement for recurring building services are subject to the Executive Order and these regulations even if the contract also contains non-service requirements, such as construction or supplies, or requirements for other types of services, and even if the contract is not subject to the McNamara-O'Hara Service Contract Act, 41 U.S.C. 351 *et seq.* However, the requirements of the Executive Order apply only to the building services portion of the contract.

(2) The requirements of the Executive Order do not apply to building services

which are only incidental to a contract for another purpose, such as incidental maintenance under a contract to operate a day-care center. Building services performed on a building being leased pursuant to a lease-purpose contract would be considered incidental and would not be covered unless the services are being performed under a contract directly with the Government. Building service requirements will not be considered incidental, and therefore will be subject to the Executive Order, where:

(i) The contract contains specific requirements for a substantial amount of building services or it is ascertainable that a substantial amount of building services will be necessary to the performance of the contract (the word ''substantial'' relates to the type and quantity of building services to be performed and not merely to the total value of such work (whether in absolute dollars or cost percentages) as compared to the total value of the contract); and

(ii) The building services work is physically or functionally separate from, and as a practical matter is capable of being performed on a segregated basis from the other work called for by the contract.

§ 9.3 What is a ''building service contract?''

(a) A ''building service contract'' is a contract for ''recurring services'' related to the maintenance of a public building. ''Recurring services'' are services which are required to be performed regularly or periodically throughout the course of a contract, and throughout the course of the succeeding or follow-on contract at the same building. Examples of building services contracts include, but are not limited to, contracts for the recurring provision of custodial or janitorial services; window washing; laundry; food services; guard or other protective services; landscaping and groundskeeping services; and inspection, maintenance, and repair of fixed equipment such as elevators, air conditioning, and heating systems. However, as provided in section 9.5(b)(5) of this part, excluded from the Executive Order are those services where the employees work at both the public building and at other locations not subject to the Executive Order.

(b)(1) Contracts which provide maintenance services only on a non-recurring basis are not ''building service contracts'' within the meaning of the Executive Order and are not subject to its provisions. For example, a contract to perform servicing of fixed equipment once a year, or to mulch a garden on a one-time or annual basis, is a non-recurring maintenance contract that is not covered by the Executive Order.

(2) Contracts for the provision of services which may be performed in a public building but are not related to the maintenance of that public building are not ''building service contracts'' and are not covered by the Executive Order and these rules. For example, a contract for day care services in a Federal office building would not be subject to the Executive Order.

§ 9.4 What is a ''public building?''

(a) A ''public building'' is any building owned by the United States which is generally suitable for office or storage space or both for the use of one or more Federal agencies or mixed ownership corporations, together with its grounds, approaches, and appurtenances. Public buildings shall include:

(1) Federal office buildings;
(2) Customhouses;
(3) Courthouses;
(4) Border inspection facilities;
(5) Warehouses;
(6) Records centers;
(7) Appraiser stores;
(8) Relocation facilities; and
(9) Similar Federal facilities.

(b)(1) Public buildings do not include any building on the public domain, including that reserved for national forests and other purposes. The public domain includes only those lands administered by the Department of the Interior, Bureau of Land Management, and the Department of Agriculture, U.S. Forest Service.

(2) Also not covered are any buildings:

(i) On properties of the United States in foreign countries;

(ii) On Native American and Native Eskimo properties held in trust by the United States;

(iii) On lands used in connection with Federal programs for agricultural, recreational, and conservation purposes, including research in connection therewith;

(iv) On or used in connection with river, harbor, flood control, reclamation, or power objects; or for chemical manufacturing or development projects; or for nuclear production, research, or development projects;

(v) On or used in connection with housing and residential projects;

(vi) On properties of the United States Postal Service;

(vii) On military installations (including any fort, camp, post, naval training station, airfield, proving ground, military supply depot, military school, or any similar facility of the Department of Defense);

(viii) On installations of the National Aeronautic and Space Administration, except regular office buildings; and

(ix) On Department of Veterans Affairs installations used for hospital or domiciliary purposes.

(3) Buildings leased by the Government are not public buildings unless the building is leased pursuant to a lease-purchase contract.

§ 9.5 Which contracts are not covered by Executive Order 12933?

(a) A contract is not covered by the Executive Order unless it requires the provision of recurring building services, and unless the contract succeeds a contract for similar work at the same public building.

(b) The Executive Order expressly excludes:

(1) Contracts for services under the simplified acquisition threshold ($100,000);

(2) Contracts for commodities or services produced or provided by the blind or severely handicapped, awarded pursuant to the Javits-Wagner O'Day Act, 41 U.S.C. 46–48a; and any future enacted law creating an employment preference for some group of workers under building service contracts;

(3) Guard, elevator operator, messenger, or custodial services provided to the Government under contracts with sheltered workshops employing the severely handicapped as outlined in the Edgar Amendment, section 505 of the Treasury, Postal Services and General Government Appropriations Act, 1995, P.L. 103–329;

(4) Agreements for vending facilities operated by the blind, entered into under the preference provisions of the Randolph-Sheppard Act, 20 U.S.C. 107; and

(5) Services where the contractor's employees perform work at the public building and at other locations under contracts not subject to the Executive Order and these regulations, provided that the employees are not deployed in a manner that is designed to avoid the purposes of the Order. Examples include, but are not limited to, pest control or trash removal services where the employees periodically visit various Government and non-Government sites, and service calls to repair equipment at various Government and non-Government buildings.

Contract Clauses

§ 9.6 What contract clauses must be included in covered contracts?

The clauses set forth in the following paragraphs shall be included in full by the contracting agency in every solicitation and contract entered into by

the United States equal to or in excess of $100,000, where the contract requires the provision of building services and succeeds a contract for the performance of similar services at the same public building:

(a) Consistent with the efficient performance of this contract, the contractor shall, except as otherwise provided herein, in good faith offer those employees (other than managerial and supervisory employees) under the predecessor contract whose employment will be terminated as a result of award of this contract or the expiration of the contract under which the employees were hired, a right of first refusal to employment under the contract in positions for which the employees are qualified. The contractor shall determine the number of employees necessary for efficient performance of this contract and may elect to employ fewer employees than the predecessor contractor employed in connection with performance of the work. Except as provided in paragraph (b) of this section, there shall be no employment opening under the contract, and the contractor shall not offer employment under the contract, to any person prior to having complied fully with this obligation. The contractor shall make an express offer of employment to each employee as provided herein and shall state the time within which the employee must accept such offer, but in no case shall the period within which the employee must accept such offer be less than 10 days.

(b) Notwithstanding the contractor's obligation under paragraph (a) of this section, the contractor:

(1) May employ on the contract any employee who has worked for the contractor for at least 3 months immediately preceding the commencement of this contract and who would otherwise face lay-off or discharge, and

(2) Is not required to offer a right of first refusal to any employee(s) of the predecessor contractor who are not service employees within the meaning of the McNamara-O'Hara Service Contract Act, 41 U.S.C. 257(b), and

(3) Is not required to offer a right of first refusal to any employee(s) of the predecessor contractor who the contractor reasonably believes, based on the particular employee's past performance, has failed to perform suitably on the job.

(c) In accordance with Federal Acquisition Regulation 52.222–4(n) and 29 CFR 4.6(1)(2), the contractor shall, no less than 60 days before completion of this contract, furnish the Contracting Officer with a certified list of the names of all service employees working at the Federal facility during the last month of contract performance. The list shall also contain anniversary dates of employment on the contract either with the current or predecessor contractors of each service employee. The Contracting Officer will provide the list to the successor contractor and the list shall be provided on request to employees or their representatives.

(d) If it is determined, pursuant to regulations issued by the Secretary of Labor, that the contractor is not in compliance with the requirements of this clause or any regulation or order of the Secretary, appropriate sanctions may be imposed and remedies invoked against the contractor, as provided in Executive Order No. 12933, the regulations of the Secretary of Labor at 29 CFR Part 9, and relevant orders of the Secretary of Labor, or as otherwise provided by law.

(e) The Contracting Officer shall withhold or cause to be withheld from the prime contractor under this or any other Government contract with the same prime contractor such sums as an authorized official of the Department of Labor requests, upon a determination by the Administrator that the prime contractor failed to comply with the terms of this clause, and that wages lost as a result of the violations are due to employees or that other monetary relief is appropriate.

(f) The contractor shall cooperate in any investigation by the contracting agency or the Department of Labor into possible violations of the provisions of this cause and shall make records requested by such official(s) available for inspection, copying, or transcription upon request.

(g) Disputes arising out of this clause shall not be subject to the general disputes of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Part 9. Disputes within the meaning of this clause include disputes between the contractor and the contracting agency, the U.S. Department of Labor, or the employees under the contract or its predecessor contractor or their representatives.

Contractor Obligations

§ 9.7 May a contractor employ persons other than the predecessor contractor's employees?

(a) There shall be no employment openings under a contract subject to the Executive Order and the successor contractor shall not offer employment under the contract until it fully complies with its obligation to offer a right of first refusal, except as provided under paragraph (b) of this section.

(b) A successor contractor may employ on the contract any employee who has worked for that contractor for at least 3 months immediately preceding the commencement of the contract *and* who would face lay-off or discharge if not employed on the subject contract.

§ 9.8 Must the successor contractor offer a right of first refusal to all employees of the predecessor contractor?

(a)(1) Except as provided in this section, a successor contractor shall offer employment under the contract (i.e., a ''right of first refusal'') to those employees of the predecessor contractor who, in the final month of the contract, provided recurring building services similar to the services to be performed under the successor contract, and whose employment will be terminated as a result of the award of the successor contract or expiration of the contract under which the employees were hired.

(2) Unless the predecessor contractor (either directly or through the contracting agency) or the individual employee in question provides evidence to the contrary, the successor contractor must presume that *all* service employees of the predecessor contractor who are working at the same public building during the final month of contract performance will be terminated when the contract ends.

(b)(1) A successor contractor is *not* required to offer a right of first refusal to any managerial or supervisory employee or to any employee of the predecessor contractor who is not a service employee within the meaning of the McNarmara-O'Hara Service Contract Act, 41 U.S.C. 357(b). ''Managerial and supervisory'' employees and employees who are not ''service employees'' are those persons engaged in the performance of services under the contract who are employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in the Fair Labor Standards Act regulations, 29 CFR Part 541.

(2) A successor contractor is not required to offer a right of first refusal to any employee of the predecessor contractor who the successor contractor reasonably believes, based on the particular employee's past performance, has failed to perform suitably on the job. An assessment of the employee's past performance must be based on information provided by a credible source such as the predecessor contractor, the employee's supervisor, or the contracting agency.

(3) The contractor is not required to offer a right of first refusal for

employment in a position which will perform building services both at public buildings covered by the Executive Order and these regulations, and at other buildings not covered by the Executive Order.

(c) The successor contractor shall determine the number of employees necessary for the efficient performance of the contract. The contractor may, for bona fide staffing or work assignment reasons, employ fewer employees than the predecessor contractor. Thus, the successor contractor need not extend the right of first refusal to *all* employees of the predecessor contractor, but must offer employment only to the number of eligible employees it believes necessary to meet its anticipated staffing pattern, except that:

(1) Where a successor contractor offers a right of first refusal to fewer employees than were employed by the predecessor contractor, its obligation to offer employment under the contract to the predecessor's employees continues until the successor contractor reaches full staffing levels. For example, a contractor with eighteen (18) employment openings and a list of twenty (20) predecessor contractor's employees must continue to offer a right of first refusal to individuals on the list until eighteen (18) of the employees accept the contractor's employment offer, or until all of the employees have either accepted or refused the job offer.

(2) If a successor contractor raises its staffing level within three months of the commencement of contract performance, its obligation to offer employment under the contract to eligible employees continues until the higher staffing level is reached. For example, if a contractor determines two months into the contract period that it must hire an additional ten (10) employees to sufficiently perform the contract requirements, the contractor must first offer a right of first refusal to ten (10) eligible employees of the predecessor contractor (or to all of the employees of the predecessor contractor who have not previously been offered a right of first refusal if less than ten remain), and must continue to offer a right of first refusal to individuals on the list until ten (10) of the employees accept the contractor's employment offer, or until all of the employees have refused the job offer.

§ 9.9 In what manner must the successor contractor offer employment?

(a) Except as provided in sections 9.7 and 9.8 of this part, a successor contractor must make a bona-fide express offer of employment to each of the predecessor contractor's employees before offering employment on the contract to any other person. The employment offer to each employee may be either in writing on an individual basis, or orally at a meeting attended by a group of the predecessor contractor's employees.

(b) For a period of one year, the contractor must maintain copies of any written offers of employment or a contemporaneous written record of any oral offers of employment, including the date, location and attendance roster of any employee meeting(s) at which the offers were extended, a summary of each meeting and a copy of any written notice which may have been distributed, and the names of the predecessor contractor's employees to whom an offer was made. The contractor must provide copies of such documentation upon request of any authorized representative of the contracting agency or Department of Labor.

(c) The contractor shall state the time within which an employee must accept an employment offer, but in no case may the period in which the employee has to accept the offer be less than 10 days.

(d) The successor contractor's obligation to offer a right of first refusal exists even if the successor contractor has not been provided a list of the predecessor contractor's employees, or the list does not contain the names of all persons employed during the final month of contract performance.

§ 9.10 What constitutes a bona fide offer of employment?

(a) As a general matter, an offer of employment will be presumed to be a bona fide offer of employment. An offer of employment need not be to a position similar to that which the employee previously held, but the employee must be qualified for the position. Information regarding an employee's qualifications shall ordinarily come directly from the employee. If a question arises concerning an employee's qualifications, that question shall be decided based upon the employee's education and employment history with particular emphasis on the employee's experience on the predecessor contract.

(b) An offer of employment at a lower level or to different positions than employees held before may be a basis for closely examining the offers of employment to ensure they are bona fide, based on valid business reasons (not related to a desire that the employee refuse the offer, or that other employees be hired).

§ 9.11 What are the obligations of the predecessor contractor?

(a) Not less than 60 days before completion of its contract, the predecessor contractor must furnish the contracting officer with a certified list of the names of all service employees working at the Federal facility, together with their anniversary dates of employment. The contracting officer in turn shall provide the list to the successor contractor and, if requested, to employees of the predecessor contractor or their representatives.

(b) Unless the predecessor contractor (either directly or through the contracting agency) or the individual employee in question provides evidence to the contrary, the successor contractor must presume that *all* service employees of the predecessor contractor who are working at the same public building during the final month of contract performance will be terminated when the contract ends.

Notice to Employees

§ 9.12 How will employees learn of their rights?

Where the successor contract is a contract subject to the Executive Order and these regulations, the contracting officer will provide notice to service employees of the predecessor contractor who are engaged in building services of their possible right to an offer of employment. Such notice may either be posted in a conspicuous place at the worksite or may be delivered to the employees individually. Contracting officers may either use the notice set forth in Appendix A to this part or another form with the same information.

Subpart B—What Enforcement Mechanism Does Executive Order 12933 Provide?

Complaint Procedures

§ 9.100 What may employees do if they believe that their rights under the Executive Order have been violated?

(a) Any employee of the predecessor contractor who believes he or she was not offered employment by the successor contractor as required by the Executive Order and these regulations may file a complaint with the contracting officer of the appropriate Federal agency.

(b) Upon receipt of a complaint, the contracting officer shall provide information to the employee(s) and the successor contractor about their rights and responsibilities under the Executive Order. If the matter is not resolved through such actions, the contracting officer shall obtain statements of the

positions of the parties and prepare a report, including the issues and any relevant facts known to the contracting officer. The report shall promptly be forwarded to the nearest District Office of the Wage and Hour Division or to the Administrator of the Wage and Hour Division, Employment Standards Administration, Room S–3502, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

§ 9.101 What action will the Wage and Hour Division take to try to resolve the complaint?

After obtaining the necessary information from the contracting officer regarding the alleged violations, the Wage and Hour Division investigator may contact the successor contractor and attempt, through conciliation procedures, to obtain a resolution to the matter which is satisfactory to both the complainant(s) and the successor contractor and consistent with the requirements of the Executive Order and these regulations.

§ 9.102 How are complaints resolved if conciliation is unsuccessful?

(a) Upon receipt of a contracting officer's report, the Administrator shall investigate and gather data concerning such case. Where conciliation efforts have been attempted, the Administrator need not initiate the investigation unless and until the efforts fail. The Administrator may also initiate an investigation at any time on his or her own initiative. As part of the investigation, the Administrator may inspect the records of the predecessor and successor contractors (and make copies thereof), may question the predecessor and successor contractors and any employees of these contractors, and may require the production of any documentary or other evidence deemed necessary to determine whether a violation of the Executive Order (including conduct warranting imposition of ineligibility sanctions pursuant to section 9.109 of this part) has been committed.

(b) The contractor and the predecessor contractor shall cooperate in any investigation conducted pursuant to this subpart, and shall not interfere with the investigation or intimidate, blacklist, discharge, or in any other manner discriminate against any person because such person has cooperated in an investigation or proceeding under this subpart or has attempted to exercise any rights afforded under this part.

(c) Upon completion of the investigation, the Administrator shall issue a written determination of whether a violation has occurred which shall contain a statement of reasons for the findings and conclusions. A determination that a violation occurred shall address appropriate relief and the issue of ineligibility sanctions where appropriate. Notice of the determination shall be given by certified mail to the complainant (if any), the successor contractor and their representatives (if any).

(d) The Administrator may conduct a new investigation or issue a new determination if the Administrator concludes circumstances warrant, such as where the proceedings before an Administrative Law Judge reveal that there may have been violations with respect to other employees of the predecessor contractor, or that imposition of ineligibility sanctions is appropriate, or where the contractor has failed to comply with an order of the Secretary.

§ 9.103 How are decisions of the Administrator appealed?

(a) Except as provided in paragraph (b), the determination of the Administrator shall advise the parties (ordinarily the complaint (if any) and the successor contractor) that the notice of determination shall become the final order of the Secretary and shall not be appealable in any administrative or judicial proceeding unless, within 20 days of the date of the determination of the Administrator, the Chief Administrative Law Judge receives a request for a hearing. The request for a hearing shall be accompanied by a copy of the Administrator's determination and may be filed by U.S. mail, facsimile (FAX), telegram, hand delivery, or next-day delivery service. At the same time, a copy of any request for a hearing shall be sent to the complainant(s) or successor contractor, as appropriate; the Administrator of the Wage and Hour Division; and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, D.C. 20210. The Administrator's failure or refusal to seek ineligibility sanctions shall not be appealable.

(b) If the Administrator concludes that no relevant facts are in dispute, the parties will be so advised and will be further advised that the determination shall become the final order of the Secretary and shall not be appealable in any administrative or judicial proceeding unless, within 20 days of the date of the determination of the Administrator, a petition for review is filed with the Board of Service Contract Appeals pursuant to section 9.107 of this part. The determination will further advise that if an aggrieved party disagrees with the factual findings or believes there are relevant facts in dispute, the aggrieved party may advise the Administrator of the disputed facts and request a hearing by letter, which must be received within 20 days of the date of the determination. The Administrator will either refer the request for a hearing to the Chief Administrative Law Judge, or notify the aggrieved party of the Administrator's determination that there is no relevant issue of fact and that a petition for review may be filed with the Board of Service Contract Appeals within 20 days of the date of the notice, in accordance with the procedures at section 9.107 of this part.

(c) If any party desires review of the determination of the Administrator, including judicial review, a request for an administrative law judge hearing (or petition for review by the Board of Service Contract Appeals) must first be filed in accordance with paragraph (a) (or (b)) of this section. If a timely request for hearing (or petition for review) is filed, the determination of the Administrator shall be inoperative unless and until the administrative law judge or the Board of Service Contract Appeals issues an order affirming the determination.

Administative Law Judge Procedures

§ 9.104 How may cases be settled without formal hearing?

(a) In accordance with the Executive Order's directive to favor the resolution of disputes by efficient and informal alternative dispute resolution methods, the parties are encouraged to resolve disputes in accordance with the conciliation procedures set forth in sections 9.100 and 9.101 of this subpart, or, where such efforts have failed, to utilize settlement judges to mediate settlement negotiations pursuant to 29 CFR Part 18, § 18.9. At any time after commencement of a proceeding, the parties jointly may move to defer the hearing for a reasonable time to permit negotiation of a settlement or an agreement containing findings and an order disposing of the whole or any part of the proceeding.

(b) A settlement judge may be appointed by the Chief Administrative Law Judge upon a request by a party or the presiding administrative law judge. The Chief Administrative Law Judge has sole discretion to decide whether to appoint a settlement judge, except that a settlement judge shall not be appointed when a party objects to referral of the matter to a settlement judge.

§ 9.105 What procedures are followed if a complaint cannot be resolved through conciliation or settlement agreement?

(a) If the case is not stayed to attempt settlement, the administrative law judge to whom the case is assigned shall within fifteen (15) calendar days following receipt of the request for hearing, notify the parties of the day, time and place for hearing. The date of the hearing shall not be more than 60 days from the date of receipt of the request for hearing.

(b) Formal rules of evidence shall not apply, but rules or principles designed to assure production of the most probative evidence available shall be applied. The administrative law judge may exclude evidence which is immaterial, irrelevant, or unduly repetitious.

(c) The administrative law judge may, at the request of a party, or on his/her own motion, dismiss a challenge to a determination of the Administrator upon the failure of the party requesting a hearing or his/her representative to attend a hearing without good cause; or upon the failure of said party to comply with a lawful order of the administrative law judge.

(d) At the Administrator's discretion, the Administrator has the right to participate as a party or as *amicus curiae* at any time in the proceedings, including the right to petition for review of a decision of an administrative law judge in a case in which the Administrator has not previously participated. The Administrator shall participate as a party in any proceeding in which the Administrator's determination has sought imposition of ineligibility sanctions.

(e) Copies of the request for hearing and documents filed in all cases, whether or not the Administrator is participating in the proceeding, shall be sent to the Administrator, Wage and Hour Division, and to the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, D.C. 20210.

(f) A Federal agency which is interested in a proceeding may participate as *amicus curiae* at any time in the proceedings, at the agency's discretion. At the request of a Federal agency which is interested in a proceeding, copies of all pleadings in the case shall be served on the Federal agency, whether or not the agency is participating in the proceeding.

(g) The rules of practice and procedure for administrative hearings before the Office of Administrative Law Judges at 29 CFR Part 18 shall be applicable to the proceedings provided by this section. To the extent the rules in 29 CFR Part 18 are inconsistent with a rule of special application provided by these regulations or the Executive Order, these regulations and the Executive Order are controlling.

§ 9.106 What rules apply to the decision of the administrative law judge?

(a) The administrative law judge shall issue a decision within 60 days after the proceeding at which evidence was submitted. The decision shall contain appropriate findings, conclusions, and an order and be served upon all parties to the proceeding.

(b) Upon the conclusion of the hearing and the issuance of a decision that a violation has occurred, the administrative law judge shall issue an order that the successor contractor take appropriate action to abate the violation, which may include hiring the affected employee(s) in the same or a substantially equivalent position(s) to that which the employee(s) held under the predecessor contract, together with compensation (including lost wages), terms, conditions, and privileges of that employment. Where ineligibility sanctions have been sought by the Administrator, the order shall also address whether such sanctions are appropriate.

(c) If an order is issued finding that the contractor violated the Executive Order and these regulations, the administrative law judge may assess a sum equal to the aggregate amount of all costs and expenses reasonably incurred by the aggrieved employee(s) in the proceeding.

(d) The decision of the administrative law judge shall become the final order of the Secretary unless a petition for review is timely filed with the Board of Service Contract Appeals.

Appeal Procedures

§ 9.107 How may an administrative law judge's decision be appealed?

(a) The Board of Service Contract Appeals has jurisdiction to hear and decide in its discretion appeals concerning questions of law and fact from determinations of the Administrator pursuant to § 9.103(b) of this part and from decisions of administrative law judges pursuant to § 9.106 of this part.

(b) Any party desiring review of a decision of the administrative law judge (or of the Administrator, pursuant to § 9.103(b)) shall file a petition for review, in writing, with the Board of Service Contract Appeals. No administrative or judicial review shall be available unless a timely petition for review to the Board of Service Contract Appeals is first filed. To be effective, such a petition for review must be received within 20 days of the date of the decision of the administrative law judge (or Administrator) and shall be served on all parties and the Chief Administrative Law Judge (except in cases involving an appeal from a decision of the Administrator). If a timely petition for review is filed, the decision of the administrative law judge (or Administrator) shall be inoperative unless and until the Board of Service Contract Appeals issues an order affirming the decision. However, if a petition for review concerns only the imposition of ineligibility sanctions, the remainder of the decision of the administrative law judge shall be effective immediately.

(c)(1) A petition for review shall refer to the specific findings of fact, conclusions of law, or order at issue.

(2) Copies of the petition and all briefs shall be served on the Administrator, Wage and Hour Division, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, D.C. 20210.

(d) The Board's final decision shall be issued within 90 days of the receipt of the petition for review and shall be served upon all parties by mail to the last known address, and on the Chief Administrative Law Judge (except in cases involving an appeal from the determination of the Administrator).

(e) If the Board concludes that the contractor has violated the Executive Order, the final order shall order action to abate the violation, which may include hiring the affected employee(s) in the same or a substantially equivalent position(s) to that which the employee(s) held under the predecessor contract, together with compensation (including lost wages), terms, conditions, and privileges of that employment. Where the Administrator has sought imposition of ineligibility sanctions, the Board shall also determine whether an order imposing ineligibility sanctions is appropriate.

(f) If a final order finding violations of the Executive Order is issued, the Board may assess against the successor contractor a sum equal to the aggregate amount of all costs and expenses reasonably incurred by the employee(s) in the proceeding.

(g) In considering the matters within the scope of its jurisdiction the Board shall act as the authorized representative of the Secretary and shall act fully and finally on behalf of the Secretary concerning such matters. The Board shall not have jurisdiction to pass on the validity of any provision of this part. The Board is an appellate body and shall decide cases properly before it on

the basis of all relevant matter contained in the entire record before it. The Board shall not hear cases *de novo* or receive new evidence into the record.

Enforcement Remedies

§ 9.108 What are the consequences to a contractor of not complying with the Executive Order?

(a) The Executive Order provides that the Secretary shall have the authority to issue orders prescribing appropriate remedies, including, but not limited to, requiring employment of the predecessor contractor's employees and payment of wages lost.

(b) After an investigation and a determination by the Administrator that lost wages or other monetary relief is due, the Administrator may direct that so much of the accrued payments due on either the contract or any other contract between the contractor and the Government shall be withheld in a deposit fund as are necessary to pay the moneys due. Upon the final order of the Secretary that such moneys are due, the Administrator may direct that such withheld funds be transferred to the Department of Labor for disbursement.

(c) If the contracting officer or the Secretary finds that the predecessor contractor has failed to provide a list of the names of employees working under the contract in accordance with § 9.6(c), the contracting officer may take such action as may be necessary to cause the suspension of the payment of funds until such time as the list is provided to the contracting officer.

§ 9.109 Under what circumstances will ineligibility sanctions be imposed?

(a) Where the Secretary finds that a contractor has failed to comply with any order of the Secretary or has committed willful violations of the Executive Order or these regulations, the Secretary may order that the contractor and its responsible officers, and any firm in which the contractor has a substantial interest, shall be ineligible to be awarded any contract or subcontract of the United States for a period of three years.

(b) Upon order of the Secretary, the names of persons or firms found to be ineligible for contracts in accordance with this section shall be added to the ''List of Parties Excluded from Federal Procurement and Nonprocurement Programs,'' compiled, maintained and distributed by the General Services Administration in accordance with 48 CFR 9.404. No contract of the United States shall be awarded to the persons or firms appearing on this list or to any firm, corporation, partnership, or association in which such persons or firms have a substantial interest until three years have elapsed from the date the persons' or firms' name was entered on the electronic version of the list.

Subpart C—Definitions

§ 9.200 Definitions.

For purposes of this part:

Administrator means the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, and includes any official of the Wage and Hour Division authorized to perform any of the functions of the Administrator under this part.

Contract means any prime contract subject wholly or in part to the provisions of the Executive Order.

Contracting officer means the individual, a duly appointed successor, or authorized representative who is designated and authorized to enter into contracts on behalf of the Federal agency.

Executive Order or Order means Executive Order 12933 (59 FR 53559, October 24, 1994).

Federal Government means an agency or instrumentality of the United States which enters into a contract pursuant to authority derived from the Constitution and the laws of the United States.

Secretary means the Secretary of Labor or his/her authorized representative.

Service employee means any person engaged in the performance of recurring building services other than a person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in Part 541 of Title 29, Code of Federal Regulations, and shall include all such persons regardless of any contractual relationship that may be alleged to exist between a contractor and such person.

United States means the United States and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States, including corporations, all or substantially all of the stock of which is owned by the United States, by the foregoing departments, establishments, agencies, instrumentalities, and including non-appropriated fund instrumentalities.

Appendix A to Part 9—Notice to Building Service Contract Employees

The contract for (type of service) services currently performed by (predecessor contractor) has been awarded to a new contractor. (Successor contractor) will begin performance on (date successor contract begins).

As a condition of the new contract:

fl (Successor contractor) may be required to offer employment to most current contract employees.

fl If you are offered employment on the new contract, you will have at least ten (10) days to accept the offer.

The following factors are reasons why some current employees may not be offered employment on the new contract:

fl Managerial or supervisory employees on the current contract are not entitled to an offer of employment.

fl The new contractor may reduce the size of the current work force. Therefore, only a portion of the existing work force may receive employment offers.

fl The new contractor may have the right to employ some or all of its current employees on the new contract before offering employment to the existing contract employees.

fl Employees whose performance has been unsuitable on the current contract are not entitled to employment with the new contractor.

If you have any questions about your right to employment on the new contract, contact:

(Name, address, and telephone # for the contracting officer or the contracting officer's representative)

[FR Doc. 95–17611 Filed 7–17–95; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 215, 217, and 219

RIN 0596–AB20

National Forest System Land and Resource Management Planning

AGENCY: Forest Service, USDA.

ACTION: Notice; reopening of public comment period.

SUMMARY: On April 13, 1955, the Forest Service gave notice in the **Federal Register** (60 FR 18886) of a proposed rule comprehensively revising the National Forest System Land and Resource Planning regulations in 36 CFR Part 219 and invited public comment. The comment period of this proposed rule ended July 12, 1995. However, the agency has received numerous requests from reviewers for additional time to complete the review and prepare responses; accordingly, the Forest Service is granting an additional 30-day comment period during which reviewers may submit written comments on the proposed rule.

DATES: Comments must be received in writing by August 17, 1995.

ADDRESSES: Send written comments to Director, Ecosystem Management (1920), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

FOR FURTHER INFORMATION CONTACT: Peg Boland, Ecosystem Management Staff, 202–205–0917.

Dated: July 13, 1995.

Gray F. Reynolds,

Deputy Chief, National Forest System.

[FR Doc. 95–17724 Filed 7–14–95; 12:25 pm]

BILLING CODE 3410–11–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MT25–1–6541b; FRL–5251–9]

Approval and Promulgation of Air Quality Implementation Plans; Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the EPA is proposing action on the revisions to the Montana State Implementation Plan (SIP) submitted by the Governor on May 17, 1994. The submittal included, among other things, revisions to the State's nonattainment new source review (NSR) and prevention of significant deterioration (PSD) permitting regulations and revisions to address other outstanding deficiencies. In the final rules section of this **Federal Register**, the EPA is acting on the State's SIP submittal in a direct final rule without prior proposal because the Agency views this submittal as noncontroversial and anticipates no adverse comments. A detailed rationale for the partial approval/partial disapproval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, then the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this notice should do so at this time.

DATES: Comments on this proposed action must be received in writing by August 17, 1995.

ADDRESSES: Written comments should be addressed to Vicki Stamper, 8ART–AP, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations:

Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466; and Air Quality Division, Montana Department of Health and Environmental Sciences, P.O. Box 200901, Cogswell Building, Helena, Montana 59620–0901.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, 8ART–AP, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466, (303) 293–1765.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule of the same title which is located in the Rules Section of this **Federal Register**.

Dated: June 23, 1995.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 95–17213 Filed 7–17–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[PP 0F3834/P621; FRL–4964–6]

Quizalofop-P Ethyl Ester; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish a tolerance for the residues of the herbicide quizalofop-p ethyl ester [ethyl (*R*)-(2-[4-((6-chloroquinoxalin-2-yl)oxy)phenoxyl])-propanoate], and its acid metabolite quizalofop-p [*R*-(2-[4-((6-chloroquinoxalin-2-yl)oxy)phenoxy]) propanoic acid], and the *S* enantiomers of both the ester and the acid, all expressed as quizalofop-p-ethyl ester, in or on the raw agricultural commodity lentils at 0.05 part per million (ppm). The regulation was requested by the E.I. du Pont de Nemours & Co., Inc., and establishes the maximum permissible level for residues of the herbicide in or on lentils.

DATES: Comments, identified by the document control number [PP 0F3834/P621], must be received on or before August 17, 1995.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as Confidental Business Information'' (CBI). Information so marked will not be diclosed except in accordance withm procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be avialable for public notice. All written comments will be avialable for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PP 0F3834/P621]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail, Robert J. Taylor, Product Manager (PM-25), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 241, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6027; e-mail: taylor.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of February 22, 1990 (55 FR 6311), which announced that the E.I. du Pont de Nemours & Co., Inc., Walkers Mill Bldg., Barley Mill Plaza, Wilmington, DE 19880, had submitted pesticide petition (PP) 1F3951 to EPA proposing that under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a), 40 CFR 180.441 be amended by establishing a regulation to permit the combined residues of the herbicide quizalofop ethyl (ethyl-(2-[4-(6-chloroquinoxalin-2yl-oxy)phenoxy] propanoate)), its metabolite 2-[4-(6-chloroquinoxalin-2-yloxy)phenoxy] propanoic acid, and conjugates, all

expressed as quizalofop ethyl, in or on lentils, dry beans, and dry peas at 0.05 ppm.

There were no comments or requests for referral to an advisory committee received in response to the notice of filing.

The petitioner subsequently amended the petition and proposed to establish a tolerance for residues of the herbicide quizalofop-p ethyl ester [ethyl (*R*)-(2-[4-((6-chloroquinoxalin-2-yl)oxy)phenoxy])-propanoate] and its acid metabolite quizalop-p-[*R*-(2-[4-((6-chloroquinoxalin-2-yl)oxy)phenoxy]) propanoic acid], and the *S* enantiomers of both the ester and acid, all expressed as quizalofop-p ethyl ester, in or on the raw agricultural commodity lentils at 0.05 ppm.

The petitioner withdrew the proposals for dry beans and dry peas at 0.05 ppm. Because it has been longer than 5 years since the original proposal, the tolerance of 0.05 ppm for lentils is being proposed for 30 days to allow for public comment.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data listed below considered in support of this tolerance.

1. Several acute toxicology studies placing technical-grade quizalofop ethyl in toxicity Category III.

2. An 18-month carcinogenicity study with CD-1 mice fed dosages of 0, 0.2, 1.5, 12, and 48 mg/kg/day with no carcinogenic effects observed under the conditions of the study at levels up to and including 12 mg/kg/day and a marginal increase in the incidence of hepatocellular tumors at 48 mg/kg/day HDT (highest dose tested), which exceeded the maximum tolerated dose (MTD).

3. A 2-year chronic toxicity/carcinogenicity study in rats fed dosages of 0, 0.9, 3.7, and 15.5 mg/kg/day for males and 0, 1.1, 4.6, and 18.6 mg/kg/day for females, with no carcinogenic effects observed under the conditions of the study at levels up to and including 18.6 g/kg/day (HDT) and a systemic NOEL of 0.9 mg/kg/day based on altered red cell parameters and slight/minimal centrilobular enlargement of the liver at 3.7 mg/kg/day.

4. A 1-year feeding study in dogs fed dosages of 0., 0.625, 2.5, and 10 mg/kg/day with NOEL of 10 mg/kg/day (HDT).

5. A developmental toxicity study in rats fed dosage levels of 0, 30, 100, and 300 mg/kg/day (HDT), with a maternal toxicity NOEL of 30 mg/kg/day and a developmental toxicity NOEL of greater than 300 mg/kg/day (HDT).

6. A developmental toxicity study in rabbits fed dosage levels of 0, 7, 20, and 60 mg/kg/day with no developmental effects noted at 60 mg/kg/day (HDT), and a maternal toxicity NOEL of 20 mg/kg/day based on decreases in food consumption and body weight gain at 60 mg/kg/day (HDT).

7. A two-generation reproduction study in rats fed dosages of 1, 1.25, 5, and 20 mg/kg/day with a reproductive (developmental) NOEL of 1.25 mg/kg/day based on an increase in liver weight and increase in the incidence of eosinophillic changes in the liver at 5.0 mg/kg/day and a parental NOEL of 5.0 mg/kg/day based on decreased body weight and premating weight gain in males at 20 mg/kg/day (HDT).

8. Mutagenicity data included gene mutation assays with *E. coli* and *S. typhimurium* (negative); DNA damage assays with *B. subtillis* (negative) and a chromosomal aberration test in Chinese hamster cells (negative).

The Carcinogenicity Peer Review Committed (CPRC) of HED has evaluated the rat and mouse cancer studies on quizalofop along with other relevant short- term toxicity studies, mutagencity studies, and structure-activity relationships. The CPRC concluded, after three meetings and an evaluation by the OPP Science Advisory Panel, that the classification should be a category D (not classifiable as to human cancer potential). No new cancer studies were required.

The Category D classification is based on an approximate doubling in the incidence of male mice liver tumors between controls and the high dose. This finding was not considered strong enough to warrant the finding of a Category C (possible human carcinogen) since the increase was of marginal statistical significance, occurred at a high dose which exceeded the predicted MTD, and occurred in a study in which the concurrent control for liver tumors was somewhat low as compared to the historical controls, while the high dose control group was at the upper end of previous historical control groups.

Based on the NOEL of 0.9 mg/kg/bwt/day in the 2-year rat feeding study, and using a hundredfold uncertainty factor, the reference dose (RfD) for quazalofop ethyl is calculated to be 0.009 mg/kg/bwt/day. The theoretical maximum residue contribution (TMRC) is 0.000218 mg/kg/bwt/day for existing tolerances for the overall U.S. population. The current action will increase the TMRC by less than 0.000001 mg/kg/bwt/day. These tolerances and previously established tolerances utilize a total of 2.4 % of the RfD for the overall U.S. populations, with all exposure coming from published uses. For U.S. subgroup populations, nonnursing infants and children aged 1 to 6 years, the current action and previously established tolerances utilize, respectively a total of 10.2 percent and 5.76 percent of the RfD, with all exposure coming from previously established tolerances, assuming that residue levels are at the established tolerances and that 100 percent of the crop is tested.

The nature of the residue is adequately understood, and an adequate analytical methodology (high-pressure liquid chromatography using either ultraviolet or fluorescence detection) is available for enforcement purposes in Vol. II of the Food and Drug Administration Pesticide Analytical Method (PAM II, Method I). There are currently no actions pending against the registration of this chemical. No secondary residues are expected to occur in meat, milk, poultry, or eggs from this use.

Based on the information cited above, the Agency has determined that when used in accordance with good agricultural practice, this ingredient is useful and that the tolerance established by amending 40 CFR part 180 will protect the public health. It is proposed, therefore, that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration a pesticide, under the Fedral Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number [PP 0F3834/P621]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

A record has been established for this rulemaking under docket number [PP 0F3834/P621] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in

Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:
opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866. Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or food additive regulations or raising tolerance levels or food additive regulations or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 28, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.441, by revising paragraph (c), to read as follows:

§ 180.441 Quizalofop ethyl; tolerances for residues.

* * * * *

(c) Tolerances are established for the combined residues of the herbicide quizalofop-p ethyl ester [ethyl (*R*)-(2-[4-((6-chloroquinoxalin-2-yl)oxy)phenoxyl)-propanoate], and its acid metabolite quizalofop-p [*R*-(2-(4((6-chloroquinoxalin-2-yl)oxy)phenoxy]) propanoic acid], and the *S* enatiomers of both the ester and the acid, all expressed as quizalofop-p-ethyl ester, in or on the following raw agricultural commodities:

Commodity	Parts per million
Cottonseed	0.05
Lentils	0.05

[FR Doc. 95–17129 Filed 7–17–95; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 300

[FRL–5259–9]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete NAS Whidbey Island Seaplane Base (site) from the National Priorities List: Request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region 10 announces its intent to delete the NAS Whidbey Island Seaplane Base site from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR Part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the State of Washington Department of Ecology (Ecology) have determined that all appropriate CERCLA actions have been implemented and that no further cleanup is necessary. Moreover, the State and EPA has determined that the remedial activities conducted at the site to date have been protective of public health, welfare and the environment.

DATES: Comments concerning this Site may be submitted on or before August 17, 1995.

ADDRESSES: Comments may be mailed to: R. Matthew Wilkening, U.S. Environmental Protection Agency, 1200 Sixth Avenue, Mail Stop: HW–124, Seattle, Washington 98101–9797.

Comprehensive information on this Site is available through the U.S. Navy's public docket which is available for viewing at the NAS Whidbey Island Seaplane Base repositories at the following locations:

Engineering Field Activity, NW (primary Admin. Record loc.) Naval Facilities Engineering Command, 19917 7th Ave. Poulsbo, Washington

Oak Harbor Library, 7030 70th N.E., Oak Harbor, Washington

Sno-Isle Regional Library System, Coupeville Library, 788 N.W. Alexander, Coupeville, Washington

NAS Whidbey Island Library (for those with base access) 115 W. Lexington St., Oak Harbor, Washington.

FOR FURTHER INFORMATION CONTACT: R. Matthew Wilkening, U.S. Environmental Protection Agency, 1200 Sixth Avenue, Mail Stop: HW–124, Seattle, Washington 98101–9797, (206) 553–1284.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Environmental Protection Agency (EPA) Region 10 announces its intent to delete NAS Whidbey Island Seaplane Base from the National Priorities List (NPL), Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300, and requests comments on this proposed deletion. EPA identifies sites that appear to present a significant risk to human health or the environment and maintains the NPL as a list of those sites. As noted in Section 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions in the unlikely event that conditions at the site warrant such actions.

EPA will accept comments on the proposal to delete this Site for thirty days after publication of this notice in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the NAS Whidbey Island Seaplane Base Site and explains how the Site meets the deletion criteria.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that sites may be deleted from, or recategorized on the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA considers, in consultation with the state, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate fund financed response under CERCLA have been implemented, and no further action by responsible parties is appropriate, or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the site *above* levels that allow for unlimited use and unrestricted exposure, EPA's policy is that a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective of public health and the environment. In the case of this Site, where no hazardous wastes are above health based levels and future access does not require restriction, operation and maintenance activities and five-year reviews will not be conducted. However, if new information becomes available which indicates a need for further action, the federal government may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without the application of the Hazard Ranking System.

III. Deletion Procedures

The following procedures were used for the intended deletion of this Site: (1) The Navy has implemented all appropriate response actions required for the Site. The completion of this action the qualified Site for inclusion on the Superfund Site Construction Completion List and may be used to initiate Deletion from the NPL procedures. (2) The Washington State Department of Ecology concurred with the proposed deletion decision. (3) A notice has been published in the local newspaper and has been distributed to appropriate Federal, State, and local officials and other interested parties announcing the commencement of a 30-day public comment period on EPA's Notice of Intent to Delete; and, (4) All relevant documents have been made available for public review in the local Site information repositories.

Deletion of the Site from the NPL does not itself create, alter, or revoke any individual rights or obligations. The NPL is designed primarily for informational purposes to assist Agency management. As mentioned in Section II of this Notice, section 300.425(e)(3) of the NCP states that deletion of a site from the NPL does not preclude eligibility for future response actions.

For deletion of this Site, EPA's Regional Office will accept and evaluate public comments on EPA's Notice of Intent to Delete before making a final decision to delete. If necessary, the Agency will prepare a Responsiveness Summary if any significant public comments are received.

A deletion occurs when the Regional Administrator places a final notice in the **Federal Register**. Generally, the NPL will reflect deletions in the final update following the Notice. Public notices and copies of the Responsiveness Summary, if any, will be made available to local residents by the Regional office.

IV. Basis for Intended Site Deletion

The following site summary provides the Agency's rationale for the proposed deletion of this Site from the NPL.

The Seaplane Base was commissioned on September 21, 1942 along with Ault Field. Together they form the Whidbey Island Naval Air Station (NAS) encompassing approximately 7000 acres of rural land on the northern side of Whidbey Island. The NAS is located at the north end of the Puget Sound and the eastern portion of the Straight of Juan de Fuca in the State of Washington.

The Seaplane Base was used for seaplane maintenance, torpedo overhaul, rocket firing training, and patrol operations until 1945, when NAS Whidbey Island was placed on reduced operating status. Maintenance and support activities performed at the Base from the 1940s to the late 1970s generated both hazardous and non-hazardous wastes that were disposed of at their generation points or in the nearby landfill. In some cases wastes accidentally spilled have entered or were threatening to enter the environment.

In the mid 1980s the Navy identified several potentially contaminated areas on the Seaplane Base. On February 21, 1990 the EPA listed the Base on the NPL, making it a Superfund site subject to the requirements of CERCLA. On December 22, 1993, the Record of Decision was signed by the Navy, EPA, and Ecology outlining remedial action to be performed at the site. Surface soil at several localized areas were found to pose potential risks to future residential use. Excavation of this soil began during the fall of 1994 and continued until 1300 cubic yards were excavated. The final action was the disposal of the investigation-derived waste on November 29, 1994.

The remedial action that occurred at the Seaplane Base removed all contaminated soil that posed a risk to human health or the environment, thus post remediation operation and maintenance activities are not extensive. The only significant operation and maintenance activity to be performed at an area that had been used for disposal of construction debris. While there is no health risk posed by this site, Washington State requires that a notice indicating past use of this site be attached to the site. This consists of a deed notification should the Navy ever sell this property. The deed will contain a notification that the property contains a past construction and demolition debris landfill.

Human health and ecological risk assessments were performed to assess current or future potential adverse human health or ecological effects associated with exposure to chemicals detected in soils, groundwater, surface water and sediments at NAS Whidbey Island Seaplane Base. Based on comparison of site specific analytical data with EPA and State risk-based screening criteria, ecological benchmarks, toxicity values, and the detection frequency and exposure potential of chemical constituents, it was concluded that chemicals at NAS Whidbey Island Seaplane Base do not pose an unacceptable risk to human health or the environment, under any land use scenario. Accordingly, EPA will not conduct ''five-year reviews'' at this Site.

One of the three criteria for deletion specifies that EPA may delete a site from the NPL if ''the responsible parties or other persons have implemented all appropriate response actions required.'' EPA, with concurrence of Ecology, believes that this criterion for deletion has been met. Therefore, EPA is proposing deletion of this Site from the NPL. Documents supporting this action are available from the docket.

Dated: July 5, 1995.

Chuck Clarke,

Regional Administrator, Region 10.

[FR Doc. 95–17616 Filed 7–17–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 22, 90, and 94

[WT Docket No. 95–70; DA 95–1563]

Routine Use of Signal Boosters

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; comment date extension.

SUMMARY: The Commission has released an Order Extending Comment and Reply Comment Periods on a document concerning routine use of signal boosters. This action was initiated by a petition from the American Mobile Telecommunications Association (AMTA) and is necessary to provide AMTA and other commenters additional time to prepare comments.

DATES: Comments must be submitted on or before August 14, 1995, and reply comments on or before September 1, 1995.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Eugene Thomson, Private Wireless Division, Wireless Telecommunications Bureau, (202) 418–0680.

SUPPLEMENTARY INFORMATION:

Adopted: July 11, 1995.

Released: July 12, 1995.

By the Chief, Private Wireless Division, Wireless Telecommunications Bureau.

In the Matter of Amendment of Parts 22, 90, and 94 of the Commission's Rules to Permit Routine Use of Signal Boosters.

1. On June 22, 1995, the Commission released a *Notice of Proposed Rule Making* in the above-captioned proceeding 60 FR 33782, June 29, 1995. The specified dates were July 14, 1995, for comments and August 1, 1995, for reply comments.

2. On July 6, 1995, the American Mobile Telecommunications Association (AMTA), requested that we extend the comment date in this proceeding to August 14, 1995. In support of its request, AMTA states that some of its members are concerned that widespread use of signal boosters, without significant restrictions, may increase the risk of harmful interference. Accordingly, AMTA's Technology Committee is assembling technical data on the probable impact of signal booster operation. AMTA indicates that an additional thirty (30) days is necessary to complete this process and submit its findings to the Commission.

3. We believe that the public interest would be best served by compiling an accurate and complete record in this proceeding. Accordingly, IT IS ORDERED, pursuant to § 0.331 of the Commission's Rules, 47 CFR 0.331, the Motion for Extension of Comment Date filed by AMTA is GRANTED, and the deadline for filing comments and reply comments in response to the subject *Notice of Proposed Rule Making* is extended to August 14, 1995, and September 1, 1995, respectively.

Federal Communications Commission.

Robert H. McNamara,

Chief, Private Wireless Division, WTB.

[FR Doc. 95–17507 Filed 7–17–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 95–107, RM–8661]

Radio Broadcasting Services; Clark, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Brian M. Encke, d/b/a BME Broadcasting, requesting the allotment of Channel 225C2 to Clark, Colorado, as that community's first local transmission service. However, additional information is requested to determine whether Clark qualifies as a ''community'' for allotment purposes. Coordinates used for this proposal are 40–42–22 and 106–55–07.

DATES: Comments must be filed on or before September 5, 1995, and reply comments on or before September 20, 1995.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Brian M. Encke, R.R. #1, Box 225, Linden, PA 17744.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–107, adopted June 29, 1995, and released July 13, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95–17573 Filed 7–17–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–106, RM–8655]

Radio Broadcasting Services; Hayden, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Thomas Broadcasting, requesting the allotment of Channel 251A to Hayden, Colorado, as that community's second local FM service. Coordinates used for this proposal are 40–29–42 and 107–15–30.

DATES: Comments must be filed on or before September 5, 1995, and reply comments on or before September 20, 1995.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: William J. Pennington, III, Esq., 5519 Rockingham Road-East, Greensboro, NC 27407.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of*

Proposed Rule Making, MM Docket No. 95–106, adopted June 29, 1995, and released July 13, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95–17574 Filed 7–17–95; 8:45 am]

BILLING CODE 6712–01–F

Notices

Federal Register
Vol. 60, No. 137
Tuesday, July 18, 1995

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

Intergovernmental Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Intergovernmental Advisory Committee (IAC) will meet on August 3, 1995, at the Sheraton Portland Airport Hotel, 8235 N.E. Airport Way Portland, Oregon 97230. The purpose of the meeting is to continue discussions on the implementation of the Northwest Forest Plan. The meeting will begin at 9:00 a.m. on August 3 and continue until 4:30 p.m. The main agenda item will be discussions on policy agreements regarding federal watershed analysis. As time permits, other items on the agenda may include a discussion on habitat conservation plans (HCPs), and other topics relative to the Northwest Forest Plan. The IAC meeting will be open to the public. Written comments may be submitted for the record at the meeting. Time will also be scheduled for oral public comments. Interested persons are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Questions regarding this meeting may be directed to Don Knowles, Executive Director, Regional Ecosystem Office, 333 SW 1st Avenue, P.O. Box 3623, Portland, OR 97208 (Phone: 503–326–6265).

Dated: July 12, 1995.

Donald R. Knowles,

Designated Federal Official.

[FR Doc. 95–17546 Filed 7–17–95; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Hubert Maassen, Individually and Doing Business as HM–EDV With an address at: Hirmerweg 4, D800 Munich, Federal Republic of Germany Respondents; Decision and Order

[Docket Nos. 3105–01; 3105–02]

On June 27, 1995, the Administrative Law Judge (ALJ) entered his Recommended Decision and Default Order in the above-referenced matter. The Recommended Decision and Default Order, a copy of which is attached hereto and made part hereof, has been referred to me for final action. After describing the facts of the case and his findings based on those facts, the ALJ found that the Respondents on three separate occasions violated § 787.6 of the Export Administration Regulations (EAR) by reexporting from the Federal Republic of Germany through Austria to Hungary U.S.-origin computer equipment without obtaining the required reexport authorization from the Department of Commerce. The ALJ further found that the Respondents violated § 787.5(a) of the EAR by indirectly making a false or misleading representation concerning the ultimate destination of U.S.-computer equipment in connection with the preparation, submission, or use of an export license application.

The ALJ found that the appropriate penalty for the violations should be that the Respondents and all successors, assignees, officers, representatives, agents and employees be denied for a period of twenty years from this date all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving commodities or technical data exported or to be exported from the United States and subject to the Export Administration Regulations.

Based on my review of the entire record, I affirm the Recommended Decision and Default Order of the Administrative Law Judge.

This constitutes final agency action in this matter.

Dated: July 12, 1995.

William A. Reinsch,

Under Secretary for Export Administration.

Recommended Decision and Default Order

On May 4, 1993, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), issued a charging letter initiating administrative proceedings against Hubert Maassen, individually and doing business as HM–EDV (collectively referred to hereinafter as Maassen). The charging letter alleged that Maassen committed four violations of the Export Administration Regulations (currently codified at 15 CFR parts 768–799 (1995)) (the Regulations),[1] issued pursuant to the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. § § 2401–2420 (1991, Supp. 1993, and Pub. L. No. 103–277, July 5, 1994) (the Act).[2]

Specifically, the charging letter alleged that Maassen, on three separate occasions, reexported from the then-Federal Republic of Germany through Austria to Hungary U.S.-origin computer equipment, without obtaining from the Department the reexport authorization required by § 774.1 of the Regulations. The charging letter further alleged that Maassen indirectly made a false or misleading representation concerning the ultimate destination of U.S.-origin computer equipment, a material fact, in connection with the preparation, submission, or use of an export license application, an export control document. Accordingly, the Department alleged that Maassen committed three violations of § 787.6 and one violation of § 787.5(a) of the Regulations.

On May 26, 1995, in light of the fact that Maassen had not answered the

[1] The alleged violations occurred during 1988 and 1989. The Regulations governing the violations at issue are found in the 1988 version of the Code of Federal Regulations, codified at 15 CFR Parts 368–399 (1988), and the 1989 version of the Code of Federal Regulations, codified at 15 CFR Parts 768–799 (1989). Effective October 1, 1988, the Regulations were redesignated as 15 CFR Parts 768–799 (53 FR 37751, September 28, 1988). The redesignation merely changed the first number of each part from ''3'' to ''7.''

[2] The Act expired on August 20, 1994. Executive Order 12924 (59 *Fed. Reg.* 43437, August 23, 1994) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. § § 1701–1706 (1991)).

charging letter in accordance with the requirements of § 787.7 of the Regulations, I ordered the Department to file a default submission, together with supporting evidence for the allegations made, by June 26, 1995.

On the basis of the Department's submission and all of the supporting evidence presented, I have determined that Maassen violated § 787.6 and 787.5(a) of the Regulations by reexporting from the FRG through Austria to Hungary U.S.-origin computer equipment without obtaining from the Department the reexport authorization required by § 774.1 of the Regulations, and by indirectly making a false or misleading representation concerning the ultimate destination of U.S.-origin computer equipment, a material fact, in connection with the preparation, submission, or use of an export license application, an export control document, as the Department alleges.

For those violations, the Department urges as a sanction that Maassen's export privileges be denied for 20 years. I concur in the Department's recommendation.

Accordingly, it is therefore ordered, First, that all outstanding individual validated licenses in which Hubert Maassen, individually and doing business as HM–EDV, appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Exporter Services for cancellation. Further, all of Maassen's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

Second, Hubert Maassen, individually and doing business as HM–EDV, with an address at Hirmerweg 4, D8000 Munich, Federal Republic of Germany (collectively referred to hereinafter as Maassen), and all successors, assigns, officers, representatives, agents, and employees, shall, for a period of 20 years from the date of final agency action, be denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, and subject to the Regulations.

A. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) as a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization, or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

B. After notice and opportunity for comment as provided in § 788.3(c) of the Regulations, any person, firm, corporation, or business organization related to Maassen by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

C. As provided by § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Exporter Services, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export of reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) in any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

Third, that a copy of this Order shall be served on Maassen and on the Department.

Fourth, that this Order, as affirmed or modified, shall become effective upon entry of the final action by the Under Secretary for Export Administration, in accordance with the Act (50 U.S.C.A. app. § 2412(c)(1)) and the Regulations (15 CFR § 788.23).

Dated: June 27, 1995.

Edward J. Kuhlmann,

Administrative Law Judge.

To be considered in the 30 day statutory review process which is mandated by Section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Ave., N.W., Room 3898B, Washington, D.C., 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 C.F.R. § 788.23(b), 50 Fed. Reg. 53134 (1985). Pursuant to Section 13(c)(3) of the Act, the order of the final order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

[FR Doc. 95–17575 Filed 7–17–95; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

[A–549–813]

Notice of Antidumping Duty Order and Amended Final Determination: Canned Pineapple Fruit From Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 18, 1995.

FOR FURTHER INFORMATION CONTACT: Michelle Frederick or Jennifer Katt, Office of Antidumping Duty Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone (202) 482–0186 or (202) 482–0498, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

AMENDED FINAL DETERMINATION: In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), on May 26, 1995, the Department made its final determination that canned pineapple fruit (CPF) from Thailand is being, or is likely to be, sold in the United States at less than fair value (60 FR 29553 (June 5, 1995)). After publication of this determination, we received submissions, timely filed pursuant to 19 CFR 353.28(b)(1994), from The Dole Food Company, Inc., and its affiliates Dole Packaged Foods Company and Dole Thailand, Inc. (collectively Dole), Siam Agro Industry

Pineapple and Others Co., Ltd. (SAICO), Malee Sampran Factory Public Co. (Malee), and the petitioners alleging ministerial errors in the Department's final determination. We determined, in accordance with 19 CFR 353.28(d), that the following ministerial errors were committed in our margin calculations for Dole, SAICO, and Malee:

For Dole, we determined that we inadvertently relied on the original shipment data, rather than the revised shipment figures, to weight the dumping margins where Dole had shipments of both Dole-produced and purchased merchandise. In addition, we unintentionally excluded certain sales from the Department's final margin calculation. Finally, we double counted the cost of citric acid in our calculations of the cost of manufacturing.

For SAICO, we overstated the company's pineapple fruit cost through the double-counting of growing expenses and other ministerial errors.

For Malee, we erroneously relied on the submitted packing costs, rather than the amounts confirmed at verification. In addition, we inadvertently relied on the gross, rather than net, general and administrative expenses of Malee's parent company in our calculations of the cost of production and constructed value.

No ministerial errors were committed in our final margin calculation for The Thai Pineapple Public Co., Ltd. (TIPCO). For a detailed discussion of the above-cited ministerial errors see the Memorandum from The Team to Barbara R. Stafford dated June 28, 1995, on file in Room B–099 of the Main Commerce Building. In accordance with 19 CFR 353.28(c), we are amending the final result of the antidumping duty investigation of canned pineapple fruit from Thailand to correct these ministerial errors. The revised final weighted average dumping margins are as follows:

Manufacturer/producer/exporter	Original margin percent	Revised margin percent
Dole	2.36	1.73
TIPCO	38.68	38.68
SAICO	55.77	51.16
Malee	43.43	41.74
All others	25.76	24.64

Scope of Investigation and Order

The product covered by this investigation is canned pineapple fruit. For the purposes of this investigation and order, CPF is defined as pineapple processed and/or prepared into various product forms, including rings, pieces, chunks, tidbits, and crushed pineapple, that is packed and cooked in metal cans with either pineapple juice or sugar syrup added. CPF is currently classifiable under subheadings 2008.20.0010 and 2008.20.0090 of the *Harmonized Tariff Schedule of the United States* (HTSUS). HTSUS 2008.20.0010 covers CPF packed in a sugar-based syrup; HTSUS 2008.20.0090 covers CPF packed without added sugar (*i.e.*, juice-packed). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Antidumping Duty Order

On July 10, 1995, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department that imports of CPF from Thailand materially injure a U.S. industry. Therefore, in accordance with section 736 of the Act, the Department will direct United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of CPF from Thailand. These antidumping duties will be assessed on all unliquidated entries of CPF from Thailand entered, or withdrawn from warehouse, for consumption on or after January 11, 1995, the date on which the Department published its preliminary determination notice in the **Federal Register** (60 FR 2734).

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise:

Manufacturer/producer/exporter	Weighted-average margin percentage
Dole	1.73
TIPCO	38.68
SAICO	51.16
Malee	41.74
All others	24.64

This notice constitutes the antidumping duty order with respect to CPF from Thailand, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: July 11, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–17498 Filed 7–17–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–405–802]

Certain Cut-To-Length Carbon Steel Plate From Finland; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by one respondent, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on *Certain Cut-To-Length Carbon Steel Plate from Finland* (A–405–802). This review covers one manufacturer/exporter of the subject merchandise to the United States during the period of review (POR) February 4, 1993, through July 31, 1994.

We have preliminarily determined that sales have not been made below the foreign market value (FMV). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs not to assess antidumping duties.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 18, 1995.

FOR FURTHER INFORMATION CONTACT: Jeanene Lairo or Stephen Jacques, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Background

On July 9, 1993, the Department published in the **Federal Register** (58 FR 37136) the final affirmative antidumping duty determination on certain cut-to-length carbon steel plate

from Finland, for which we published an antidumping duty order on August 19, 1993 (58 FR 44172). On August 3, 1994, the Department published the notice of ''Opportunity to Request an Administrative Review'' of this order for the period February 4, 1993, through July 31, 1994 (59 FR 39543). The respondent, Rautaruukki Oy, requested an administrative review. We initiated the review on September 8, 1994 (59 FR 46391). The Department is conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

The products covered by this administrative review constitute one ''class or kind'' of merchandise: certain cut-to-length carbon steel plate. These products include hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been bevelled or rounded at the edges. Excluded is grade X–70 plate. These HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The POR is February 4, 1993, through July 31, 1994, and covers entries made of certain cut-to-length carbon steel plate by one manufacturer/exporter (Rautaruukki Oy).

United States Price

All of Rautaruukki Oy's U.S. sales were based on the price to the first unrelated purchaser in the United States. The Department determined that purchase price, as defined in section 772 of the Tariff Act, was the appropriate basis for calculating United States price (USP).

Before making adjustments to purchase price, we modified the U.S. sales database based on findings made at the sales and cost verifications. We revised technical service and ocean freight expenses, and reclassified the level of trade. Subsequently, we made adjustments to purchase price, where appropriate, for foreign brokerage and handling, and ocean freight. We disallowed advertising and technical services as U.S. direct selling expenses. These expenses were disallowed because Rautaruukki Oy failed to provide sufficient information supporting the claim that these were direct selling expenses. We also adjusted USP for taxes in accordance with our practice as outlined in various determinations, including *Silicomanganese from Venezuela; Final Determination of Sales at Less Than Fair Value,* 59 FR 55435, 55439 (November 7, 1994).

No other adjustments were claimed or allowed.

Foreign Market Value

Based on a comparison of the volume of home market and third country sales, we determined that the home market was viable. Therefore, in accordance with section 773(a)(1)(A) of the Tariff Act, we based FMV on the packed, delivered price to related and unrelated purchasers in the home market.

Based on the Department's previous determination of sales made at below the cost of production (COP) in the original less-than-fair-value (LTFV) investigation, in accordance with section 773(b) of the Tariff Act, we determined that there were reasonable grounds to believe or suspect that, for this review period, Rautaruukki Oy made sales of subject merchandise in the home market at prices less than the COP. As a result, we investigated whether Rautaruukki Oy sold such or similar merchandise in the home market at prices below the COP. In accordance with 19 CFR 353.51(c), to determine whether home market prices were below COP, we calculated COP for Rautaruukki Oy as the sum of reported materials, fabrication, labor, general, and packing expenses.

We made the following adjustments to Rautaruukki Oy's reported costs. Certain expenses incurred during the POR (e.g., a cancelled coal contract, the cost of byproducts, and an unrealized exchange gain) that were not included in Rautaruukki Oy's cost management system, but were included in the company's financial accounting system, were added to the COP. We adjusted COP for an extraordinary expense reported in Rautaruukki Oy's profit and loss statements, but not recorded in the cost management systems which were used to prepare the response. We also adjusted for changes made to interest expenses in 1993.

We compared home market selling prices, net of inland freight, discounts and rebates, credit expenses and warranty expenses as direct selling expenses, and packing expenses, to each product's COP.

In accordance with section 773(b) of the Tariff Act, in determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made in substantial quantities over an extended period of time, and whether such sales were made at prices which permitted recovery of all costs within a reasonable period of time in the normal course of trade.

In accordance with our normal practice, for each model for which less than 10 percent, by quantity, of the home market sales during the POR were made at prices below COP, we included all sales of that model in the computation of FMV. For each model for which 10 percent or more, but less than 90 percent, of the home market sales during the POR were priced below COP, we excluded those sales priced below COP, provided that they were made over an extended period of time. For each model for which 90 percent or more of the home market sales during the POR were priced below COP and were made over an extended period of time, we disregarded all sales of that model in our calculation and, in accordance with section 773(b) of the Tariff Act, we used the constructed value (CV) of those models, as described below. *See, e.g., Mechanical Transfer Presses from Japan, Final Results of Antidumping Duty Administrative Review,* 59 FR 9958 (March 2, 1994).

In accordance with section 773(b)(1) of the Tariff Act, to determine whether sales below cost had been made over an extended period of time, we compared the number of months in which sales below cost occurred for a particular model to the number of months in which that model was sold. If the model was sold in fewer than three months, we

did not disregard below-cost sales unless there were below-cost sales of that model in each month sold. If a model was sold in three or more months, we did not disregard below-cost sales unless there were sales below cost in at least three of the months in which the model was sold. We used CV as the basis for FMV when an insufficient number of home market sales were made at prices above COP. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews,* 58 FR 64720, 64729 (December 8, 1993).

In accordance with section 773 of the Tariff Act, for those models for which there was an adequate number of sales at prices above the COP, we calculated FMV based on home market prices to related and unrelated purchasers. We used prices to related purchasers only if such prices were at arm's length. In order to determine whether sales to Rautaruukki Oy's customers were at arms length, the Department compared prices to related parties and prices to unrelated parties, on a model-by-model basis and, when possible, at the same level of trade.

We reclassified the levels of trade in the home market sales database by collapsing (1) sales to and (2) sales through wholesalers together into one level of trade. The Department has preliminarily determined that this collapsed level of trade matches the level of trade reported in the U.S. market. In accordance with 19 CFR 353.58, we compared U.S. sales to home market sales made at the same level of trade, where possible. Furthermore, the Department made adjustments to the home market sales database, based on findings made at the sales and cost verifications. We revised technical service and ocean freight expenses, created a modified product control number for secondary merchandise, and made adjustments to several observations to correct minor clerical errors.

Pursuant to 19 CFR 353.56, we made circumstance-of-sale adjustments for differences in credit expenses. Furthermore, we adjusted the FMV for the Finnish value-added tax (i.e., ''turn-over tax'').

In Appendix V of the Department's questionnaire, issued on September 15, 1995, the Department established a hierarchy of product characteristics that would be used to identify individual plate products. This hierarchy was based on a draft which had been released for comment prior to issuance of the questionnaire. Each unique combination of these product characteristics is treated as a distinct product, identified by a unique control number. Likewise, all products with the same combination of these product characteristics are considered to be identical and are to be assigned the same control number. Upon review of Rautaruukki Oy's computer database, we discovered some instances of multiple control numbers being assigned to the same set of product characteristics. Consequently, we determined to collapse two control numbers in the home market sales and COP databases which had identical product characteristics and which were matched to U.S. sales in the margin calculation program.

We calculated FMV based on a weighted average of actual and theoretical weight because Rautaruukki Oy failed to provide adequate conversion data at verification. We reclassified technical services in the home market as indirect selling expenses because Rautaruukki Oy was unable to tie these expenses to specific sales. We also disallowed selling expenses for advertising and promotion costs, a claimed quantity adjustment, and another claimed adjustment because Rautaruukki Oy failed to provide sufficient information regarding these expenses to support its claims.

No other adjustments were claimed or allowed.

Currency Conversion

No certified rates of exchange, as furnished by the Federal Reserve Bank of New York, were available for the POR. In place of the official certified rates, we used the average monthly exchange rates published by the International Monetary Fund.

Preliminary Results of Review

As a result of our comparison of USP to FMV, we preliminarily determine that no margin exists for Rautaruukki Oy for the period February 4, 1993, through July 31, 1994.

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first business day thereafter. Case briefs and/or written comments from interested parties may be submitted no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication of this notice. The Department will publish the final results of these administrative reviews, including the results of its analysis of issues raised in any such written comments or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to U.S. Customs. Individual differences between the USP and FMV may vary from the percentages stated above.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided for by section 751(a)(1) of the Tariff Act. A cash deposit of estimated antidumping duties shall be required on shipments of certain cut-to-length carbon steel plate from Finland as follows: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of this review; (2) If the exporter is not a firm covered in this review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the manufacturer of the merchandise for the most recent period examined; and (3) If neither the exporter nor the manufacturer is a firm covered in this review, the cash deposit rate will be 32.25 percent. This is the ''all other rate'' established in the LTFV investigation. *See Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon Steel Plate from Finland,* 58 FR 37122 (July 9, 1993).

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative reviews and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 11, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–17499 Filed 7–17–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–549–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Thailand; Amendment to Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amendment to final results of antidumping duty administrative review.

SUMMARY: On October 8, 1993, the United States Court of International Trade (CIT), in *The Torrington Company* v. *United States* (*Torrington*), Slip Op. 93–198, entered its final judgment concerning the final results of the first administrative review of the antidumping duty order on antifriction bearings from Thailand (56 FR 11195, July 11, 1991). In so doing, the CIT ordered the Department of Commerce (the Department) to apply Thailand's indirect business and municipal tax rates to the United States price (USP) calculated at the same point in the stream of commerce as where Thailand's tax authorities apply these rates on home market sales and add the resulting amount to the United States price. The CIT then dismissed the case. The CIT's opinion has not been appealed. Therefore, in accordance with the CIT's decision, we have amended the final results of this review. The results cover the period from November 9, 1988, through April 30, 1990.

EFFECTIVE DATE: July 18, 1995.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Michael R. Rill, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On July 11, 1991, the Department published in the **Federal Register** the final results of the first administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) from Thailand (56 FR 31765). The period of review (POR) was November 9, 1988, through April 30, 1990.

In August 1991, the Torrington Company, the petitioner in the case, initiated an action in the CIT contesting the Department's final results. Among other issues, Torrington challenged the Department's adjustment to foreign market value (FMV) and USP for taxes rebated or not collected on export.

On June 8, 1993, the CIT remanded the final results to the Department. The CIT instructed the Department to add the full amount of value added tax (VAT) paid on each sale in the home market to FMV without adjustment.

The Department issued its final results of redetermination pursuant to court remand on July 22, 1993. In the final results of redetermination, the Department explained that, although there was no VAT in Thailand during the POR, there were business and municipal taxes which were not collected by reason of the export of the subject merchandise to the United States. The Department indicated that it would add the amount of these indirect taxes to FMV for sales in the home market without adjustment and also add the exact amount to the USP. However, because this would not change the calculated duty assessment rates or the cash deposit rate then in effect, no recalculations were necessary.

On October 8, 1993, the CIT, in *Torrington*, Slip Op. 93–198, entered its final judgment concerning the final results of the first administrative review of the antidumping duty order on antifriction bearings from Thailand. In rendering final judgment, the CIT ordered the Department to apply Thailand's indirect business and municipal tax rates to the USP calculated at the same point in the stream of commerce as where Thailand's tax authorities apply these rates on home market sales and add the resulting amount to the USP. The CIT dismissed the case. No party appealed this CIT decision.

In accordance with the CIT's instructions, we have changed our calculation of the adjustments for taxes made to FMV and USP. We have applied our current methodology as described in *Silicomanganese from Venezuela; Preliminary Determination of Sales at Less Than Fair Value*, 59 FR 31204 (June 17, 1994).

Amended Final Results of Review

These changes resulted in no change in NMB Pelmec's weighted-average dumping margin for ball bearings, which remains at 0.54 percent.

Because the CIT's decision has not been appealed, the Department will order the immediate lifting of the suspension of liquidation of, and instruct the U.S. Customs Service to assess antidumping duties on, entries subject to this review, as appropriate. Individual differences between FMV and USP may vary from the percentage stated above. We will adjust the antidumping duty liability to account for countervailing duties imposed to offset export subsidies. Because there was no suspension of liquidation for countervailing duty purposes from January 4, 1989, through May 2, 1989, no such adjustment will be required for entries during this period. The Department will issue appraisement instructions concerning these entries directly to the Customs Service.

This notice is published in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)(1)), and 19 CFR 353.22(c)(8).

Dated: July 5, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–17497 Filed 7–17–95; 8:45 am]

BILLING CODE 3510–DS–P

[C–549–401]

Certain Textile Mill Products From Thailand; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of the countervailing duty administrative review on noncontinuous noncellulosic yarns (NCNC Yarns) covered under the suspended investigation on certain textile mill products from Thailand.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of NCNC Yarns covered under the suspended countervailing duty investigation on Certain Textile Mill Products from Thailand (''suspension agreement''). We have preliminarily determined that for the period January 1, 1993, through December 31, 1993, the signatories were not in violation of the suspension agreement. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 18, 1995.

FOR FURTHER INFORMATION CONTACT: Lisa Yarbrough or Jackie Wallace, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of

Commerce, Washington, D.C. 20230, telephone (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Background

On February 26, 1990, the Department published in the **Federal Register** (55 FR 6669) a notice stating its intent to terminate the suspension agreement on certain textile mill products from Thailand (50 FR 9837, March 12, 1985). On March 26, 1990, the American Yarn Spinners Association (AYSA), a trade association, objected to the Department's intent to terminate the suspension agreement. As a result, on November 23, 1990, the Department terminated the suspension agreement with regard to all non-yarn products covered by the suspension agreement (55 FR 48885).

Subsequent to publication of the November 23, 1990 notice, counsel for the Royal Thai Government (RTG) filed a lawsuit in the United States Court of International Trade (CIT) challenging the Department's determination that AYSA had standing to oppose the termination of the suspension agreement. On May 17, 1991, the CIT remanded the determination to the Department for reconsideration of AYSA's standing to oppose the termination. On July 3, 1991, the Department issued remand results finding that AYSA had standing to oppose the termination vis-a-vis only one like product covered by the suspension agreement, i.e., NCNC yarns. The CIT affirmed the remand determination in its entirety on August 5, 1991. *The Royal Thai Government, et al.*, v. *United States*, Slip Op. 91–68 (August 5, 1991).

On March 16, 1994, the Department published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' (59 FR 12240) of the suspension agreement for the period January 1, 1993 to December 31, 1993. The Department received requests for an administrative review of NCNC yarns on March 31, 1994, from AYSA and certain individual producers. On April 15, 1994, the Department initiated a countervailing duty administrative review on NCNC yarns for the period January 1, 1993 to December 31, 1993 (59 FR 18099, April 15, 1994). The review covers nine programs and seven producers/exporters: Saha Union, Venus Thread, Union Thread, Union Spinning, Union Knitting, Union Industries, and Thai Melon.

Applicable Statute and Regulations

The Department is conducting this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of Review

Imports covered by this review are shipments of NCNC Yarns from Thailand. During the period of review (POR), such merchandise was classifiable under the Harmonized Tariff Schedule (HTS) item numbers 5508.10.0000, 5509.21.0000, 5509.22.0010, 5509.22.0090, 5509.32.0000, 5509.51.3000, 5509.51.6000, 5509.69.4000, 5511.10.0030, 5511.10.0060, and 5511.20.0000.

Analysis of Programs

1. Electricity Discounts

Under Section II (b) of the suspension agreement, the producers and exporters are not to apply for, or receive, any discount on electricity rates provided by the electricity authorities of Thailand (the Electricity Generating Authority of Thailand (EGAT), Metropolitan Electricity Authority (MEA) or the Provincial Electricity Authority (PEA)) for exports of subject merchandise.

EGAT is the general producing authority of electricity in Thailand selling to regional authorities such as MEA and PEA. PEA and MEA in turn sell electricity to companies in their jurisdiction. This program was terminated effective January 1, 1990. However, producers and exporters who applied for discounts on exports prior to January 1, 1990, are still eligible to receive residual benefits on those exports.

Based on our verification, we found that neither EGAT, MEA, or PEA provided residual benefits during the POR on exports of subject merchandise to the United States. *See* verification report dated June 1, 1995.

2. Repurchase of Industrial Bills

Under Section II (f) of the suspension agreement, the producers and exporters are not to apply for, or receive, any promissory notes from the Bank of Thailand (BOT) for exports of subject merchandise to the United States.

In 1988, this program was changed from ''Rediscount of Industrial Bills'' to ''Repurchase of Industrial Bills'' (*see* ''Notification of the Bank of Thailand #2531 re: Repurchase of Industrial Bills 1988''). Under this program, companies can receive discounted financing for working capital on industrial bills for a period of 120 days. This program operates similarly to the Export Packing Credit Program where companies can receive financing from a commercial bank or the Industrial Finance Corporation at interest rates of 10% or less. The BOT will then repurchase 50% of the bills from the commercial bank or Industrial Finance Corporation.

Based on our verification, we found the signatories subject to this review were not among those that applied for, or received, industrial bills for exports of subject merchandise to the United States during the POR. See verification report dated June 1, 1995.

3. Investment Promotion Act: Section 28, 31, 35, and 36

Under Section II (i) of the suspension agreement, the producers and exporters are to notify the Department in writing prior to applying for, or receiving, benefits under the Investment Promotion Act on shipments exported to the United States.

The Investment Promotion Act of 1977 (IPA) is a general act, administered by the Board of Investment (BOI), that allows for the promotion of different industries selected for development assistance by the BOI. Under this program, producers and exporters must be granted a BOI license which enables them to receive various IPA benefits. Such benefits include the following:

Section 28–IPA Section 28 provides an exemption from payment of import duties on imported machinery.

Section 31–IPA Section 31 provides an exemption of juristic person income tax on the net profit derived from the promoted activity.

Section 35–IPA Section 35 provides certain income tax benefits to firms located in investment promotion zones.

Section 36–(1) IPA Section 36(1) allows companies an exemption from import duties on raw and essential materials used to produce goods for export.

Section 36–(4) IPA Section 36(4) grants companies permission to deduct from taxable income an amount equal to 5% of the increase in export earnings over the previous year.

Based on our verification, we found no indication of signatories receiving benefits under these programs during the POR. *See* verification report dated June 1, 1995.

4. International Trade Promotion Fund

Under Section II (h) of the suspension agreement, the producers and exporters are to notify the Department in writing prior to applying for or accepting any new benefit which is, or is likely to be, a countervailable bounty or grant on

shipments of subject merchandise exported, directly or indirectly, to the United States. Although the Department has never determined this program to be countervailable, we reviewed this program in the administrative review.

This program, governed by the ''Rule on Administration of the International Trade Promotion Fund (ITPF), B.E. 2532 (1989),'' promotes and develops Thai exports worldwide through incoming and outgoing trade missions. The ITPF provides training and seminars for exporters, and publicity through public advertisements.

Based on our verification, we confirmed that Saha Union and its relateds (Union Spinning, Union Thread, and Venus Thread) participated in a trade fair promoting subject merchandise. Saha Union and its related companies paid their own expenses to participate in the trade fair. *See* verification report dated June 1, 1995.

5. Export Processing Zones

Under Section II (i) of the suspension agreement, producers and exporters shall notify the Department in writing prior to making an application to locate in an Export Processing Zone.

This program is governed by the ''Industrial Estates Authority of Thailand Act, B.E. 2522, 1979.'' Under this program, a company must apply to the Industrial Estate Authority of Thailand (IEAT) for permission to locate in an export processing zone (EPZ). All EPZ's are located inside an industrial estate. Companies located within an EPZ can receive import duty exemptions on equipment and raw materials, and exemption of export duties on exported goods.

Based on our verification, we found no use of this program by signatories to the suspension agreement. *See* verification report dated June 1, 1995.

6. Duty Drawback

Under Section II (c) of the suspension agreement, exporters and producers are not to apply for, or receive, rebates on shipments of subject merchandise in excess of the import duties paid on items that are physically incorporated into exported products.

Under this program, Thai Customs will refund import duties paid on imported goods used in the production of an exported product. In order to qualify for duty drawback, the goods must be exported through an authorized port, the exports must be shipped within one year of the date of importation of the goods on which drawback is claimed, and the producer/exporter must request drawback within six months of the date of exportation of the goods.

During the POR, Saha Union, Union Spinning, Union Thread, Venus Thread, and Thai Melon used duty drawback on exported goods of subject merchandise to the United States. Based on our verification, we found that the amount of drawback received was not in excess of the items physically incorporated into the exported product. *See* verification report dated June 1, 1995.

7. Double Deduction for Foreign Marketing Expenses

Under Section II (e) of the suspension agreement, the producers and exporters are not to apply for, or receive, the double deduction of foreign marketing expenses for income tax purposes or financing on concessionary terms from the BOT on exports of subject merchandise.

From 1978 through 1981, the BOI granted trading companies a benefit on the double deduction of foreign marketing expenses from taxable income. In order to receive this benefit, a company had to be promoted through the BOI. This program was terminated in 1981 ''BOI Announcement No. 1/2524.''

Based on our verification, we found no use of this benefit. *See* verification report dated June 1, 1995.

8. Tax Certificates

Under Section II (c) of the suspension agreement, the producers and exporters can apply for or receive tax certificates on shipments of subject merchandise exported directly or indirectly to the United States for import duties paid on items that are physically incorporated into exported products. If the producers and exporters apply for tax certificates in excess of the items physically incorporated, the suspension agreement requires that the producers and exporters repay to the RTG, in an annual adjustment, the amount in which the tax certificates exceed the import duties on physically incorporated inputs.

Tax certificate applications are made on a shipment by shipment basis after the producer/exporter receives payment for its shipment. The application can include up to 10 shipments and must be submitted within one year of the shipment date. Exporters can apply for an extension if they do not meet the one year deadline.

The law governing this program is the ''Tax and Duty Compensation of Exported Goods Produced in the Kingdom Act, B.E. 2524 (1981).'' Effective January 1, 1992, new nominal rebate rates were established for all products by the Committee on Tax and Duty Rebates for Exported Goods Produced in the Kingdom. The new nominal rates applicable to signatories are categorized by the following sectors: spinning, weaving, made-up textile goods, and knitting. Because nominal rates are in excess of the physically incorporated inputs, the Department has calculated, and requested that the RTG implement, non-excessive rates. *See* verification report dated September 15, 1994, and letter from Roland L. MacDonald to Arthur J. Lafave III dated November 15, 1994.

Thai Melon applied for one tax certificate at a nominal rate during the POR. The Department will require that Thai Melon repay the RTG, in an annual adjustment, the amount in which the tax certificate exceeds the import duties paid on physically incorporated inputs. *See* verification report dated June 1, 1995.

9. Export Packing Credits

Under Section II (a) of the suspension agreement, the producers and exporters are not to apply for, or receive, Export Packing Credits (EPCs) from the BOT that permit the rediscounting of promissory notes arising from shipments of subject merchandise to the United States.

EPCs are pre-shipment short-term loans available to exporters for a maximum of 180 days from the date of issuance. Under the EPC program, commercial banks issue loans based on promissory notes from creditworthy exporters. Such notes have to be supported by an irrevocable letter of credit, a sales contract, a purchase order, or a warehouse receipt. The commercial bank will then resell 50% of the promissory note to the BOT at a lower interest rate. The maximum interest rate a commercial bank can charge the exporter is 10% per annum.

If an exporter does not fulfill the contract by the due date of the EPC, the BOT will automatically charge the commercial bank a penalty interest rate. The commercial bank will then pass this penalty on to the exporter. The penalty interest rate is 6.5% per annum calculated over the full term of the loan. However, penalties can be refunded if the exporter ships the merchandise within 60 days after the due date. If only a portion of the goods is shipped by the due date, the exporter receives a partial refund in proportion to the value of the goods shipped.

Based on our verification, we found that this program was not used by the signatories during the POR. *See* verification report dated June 1, 1995.

Preliminary Results of Review

As a result of our review, we preliminarily determine that for the period January 1, 1993 through December 31, 1993, the signatories are not in violation of the suspension agreement within the meaning of 19 CFR Section 355.19(1994). However, we will require that Thai Melon repay to the RTG, in an annual adjustment, the amount by which the tax certificate on NCNC yarns exceeds the amount of import duties paid on physically incorporated inputs. The annual adjustment will be calculated in accordance with Section II c(i)(ii) of the suspension agreement.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice.

Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication, in accordance with 19 CFR 355.38(c)(ii)(1994). Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief, in accordance with 19 CFR 355.38(d)(1994). Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs (19 CFR 355.38(f)(1994)). Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e)(1994). Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 355.38(c)(1994), are due. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief, or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)(1994)) and 19 CFR 355.22(1994).

Dated: July 6, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–17496 Filed 7–17–95; 8:45 am]

BILLING CODE 3510–DS–P

Environmental Technologies Trade Advisory Committee (ETTAC)

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Environmental Technologies Trade Advisory Committee will hold its third plenary meeting to discuss future projects and current issues which influence the export of U.S. environmental technologies. The ETTAC was created on May 31, 1994, to promote a close working-relationship between government and industry and to expand export growth in priority and emerging markets for environmental products and services.

DATES: July 31, 1995 from 9 a.m to 3 p.m.

ADDRESSES: Hyatt Regency, 17900 Jamboree Blvd., Irvine, California 92714. This program is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Jane Siegel, Department of Commerce, Room 1002, Washington DC 20230. Seating is limited and will be on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: The Office of Environmental Technologies Exports, Room 1003, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, phone (202) 482–5225, facsimile (202) 482–5665, TDD 1–800–833–8723.

Dated: July 11, 1995.

Anne Alonzo,

Deputy Assistant Secretary for Environmental Technologies Exports.

[FR Doc. 95–17630 Filed 7–17–95; 8:45 am]

BILLING CODE 3510–DR–P

Notice of Scope Rulings

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of scope rulings and anticircumvention inquiries.

SUMMARY: The Department of Commerce (the Department) hereby publishes a list of scope rulings and anticircumvention inquiries completed between April 1, 1995, and June 30, 1995. In conjunction with this list, the Department is also publishing a list of pending requests for scope clarifications and anticircumvention inquiries. The Department intends to publish future lists within 30 days of the end of each quarter.

EFFECTIVE DATE: July 18, 1995.

FOR FURTHER INFORMATION CONTACT: Ronald M. Trentham, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 482–3931.

Background

The Department's regulations (19 CFR 353.29(d)(8) and 355.29(d)(8)) provide that on a quarterly basis the Secretary will publish in the **Federal Register** a list of scope rulings completed within the last three months.

This notice lists scope rulings and anticircumvention inquiries completed between April 1, 1995, and June 30, 1995, and pending scope clarification and anticircumvention inquiry requests. The Department intends to publish in October 1995 a notice of scope rulings and anticircumvention inquiries completed between July 1, 1995, and September 30, 1995, as well as pending scope clarification and anticircumvention inquiry requests.

The following lists provide the country, case reference number, requester(s), and a brief description of either the ruling or product subject to the request.

I. Scope Rulings Completed Between April 1, 1995, and June 30, 1995

Country: Canada

A–201–805 *Steel Jacks from Canada*
Whiting Equipment Canada Inc.—Whiting's rail vehicle electric jacks are outside the scope of the finding. 6/22/95.

Country: Brazil

A–351–503 *Iron Construction Castings*
C–351–504 Southland Marketing—DGO700 frame and DG0641 grate are outside the scope of the order. 4/28/95.

Country: People's Republic of China

A–570–504 *Petroleum Wax Candles*
Sun It Corporation (Sun)—Sun's candles, model 271ND (Flag Lites), model 259NDA (Porch Torch) and model 281N (Gigantic fruit), are outside the scope of the order. 5/16/95.

A–570–804 *Sparklers*
Fritz Companies, Inc.—Fritz's 14 inch Morning Glorys are outside the scope of the order. 5/19/95.

Country: Japan

A–588–405 *Cellular Mobile Telephones and Subassemblies*
Fujitsu Ltd., Fujitsu America, Inc., and Fujitsu Network Transmission Systems, Inc. (Fujitsu)—Fujitsu

models F80P–173, 3625, and 3635 portable cellular telephones (PCTs) are outside the scope of the order. 5/30/95.

A–588–055 *Acrylic Sheet*
Sumitomo Chemical America, Inc.—Sumitomo's acrylic sheet with light scattering properties is outside the scope of the finding. 5/18/95.

A–588–804 *Antifriction Bearings and Parts Thereof*
Nakanishi Manufacturing Corp.—Nakanishi's stamped steel washer with a zinc phosphate and adhesive coating used in the manufacture of a ball bearing is within the scope of the order. 5/16/95.

A–588–809 *Small Business Telephone Systems*
Iwatsu America, Inc. and Iwatsu Electric Co.—Certain circuit cards are outside the scope of the order. 5/16/95.

Country: Argentina

C–357–803 *Leather*
Petitioners—Upper bovine leather without hair on, not whole, prepared after tanning and not exceeding 28 square feet is within the scope of the order. 5/16/95.

Country: Taiwan

A–583–603 *Stainless Steel Cookware from Taiwan*
Max Burton Enterprises, Inc.—Max Burton's StoveTop Smoker is within the scope of the order. 5/16/95.

Country: Germany

A–428–801 *Antifriction Bearings and Parts Thereof*
Consolidated Saw Mill International (CSMI) Inc.—Cambio bearings contained in CSMI's sawmill debarker are within the scope of the order. 5/1/95.

II. Anticircumvention Rulings Completed Between April 1, 1995, and June 30, 1995

None.

III. Scope Inquiries Terminated Between April 1, 1995 and June 30, 1995

Country: People's Republic of China

A–570–504 *Petroleum Wax Candles*
Kmart Corporation—Clarification to determine whether novelty pillar Halloween and novelty pillar Christmas candles are within the scope of the order. Scope inquiry terminated on 6/26/95.

Country: Korea

A–580–812 *Dynamic Random Access Memory Semiconductors of One Megabit and above (DRAMs)*
Kingston Technology Corporation—Clarification to determine whether certain single in-line memory and other boards manufactured in the United States from DRAMs produced in Korea, and reimported into the United States as defective products or as inventory rotation are within the scope of the order. Scope inquiry terminated on 6/26/95.

Country: Taiwan

A–583–603 *Stainless Steel Cookware*
Sheason Co., Inc.—Clarification to determine whether the ''Momy Bear Auto Cooker'' is within the scope of the order. Scope inquiry terminated on 6/8/95.

IV. Anticircumvention Inquiries Terminated Between April 1, 1995 and June 30, 1995

None.

V. Pending Scope Clarification Requests as of June 30, 1995

Country: Canada

A–122–823 *Certain Cut-to-Length Carbon Steel Plate*
Sidbec-Dosco Inc., and Canberra Industries—Clarification to determine whether hot-rolled carbon steel plate containing little or no Cobalt 60 is within the scope of the order.

Country: Mexico

A–201–805 *Circular Welded Non-Alloy Steel Pipe*
Allied Tube & Conduit Corp., American Tube Co., Century Tube Corp., CSI Tubular Productions, Inc., Laclede Steel Co., LTV Tubular Productions Co., Sawhill Tubular Division, Sharon Tube Co., Tex-Tube Division, Western Tube & Conduit Corp., Wheatland Tube Co.—Clarification to determine whether pipe produced to API 5L line pipe specifications or to both ASTM A–53 standard pipe specification and the API 5L line pipe specification (dual-certified pipe), when intended for use as standard pipe or when actually used as standard pipe, is within the scope of the order. Affirmative preliminary scope ruling issued on January 13, 1994.
Tubacero International Corporation—Clarification to determine whether circular welded carbon steel piping, 16 inches in outside diameter with 3/8 inch wall thickness, for use in extremely heavy load bearing applications, is within the scope of the order.

A–201–802 *Gray Portland Cement and Cement Clinker*
Cementos de Chihuahua S.A. de C.V. and Mexcement, Inc.—Clarification to determine whether masonry cement is within the scope of the order.

Country: Brazil

A–351–809 *Circular Welded Non-Alloy Steel Pipe*
Allied Tube & Conduit Corp., American Tube Co., Century Tube Corp., CSI Tubular Productions, Inc., Laclede Steel Co., LTV Tubular Productions Co., Sawhill Tubular Division, Sharon Tube Co., Tex-Tube Division, Western Tube & Conduit Corp., Wheatland Tube Co.—Clarification to determine whether pipe produced to API 5L line pipe specifications or to both ASTM A–53 standard pipe specification and the API 5L line pipe specification (dual-certified pipe), when intended for use as standard pipe or when actually used as standard pipe, is within the scope of the order. Affirmative preliminary scope ruling issued on January 13, 1994.

Country: France

A–427–078 *Sugar*
Boiron-Borneman, Inc.—Clarification to determine whether manufactured homeopathic sugar pellets are within the scope of the finding.

Country: Italy

A–475–401 *Certain Brass Fire Protection Products*
Giacomini, S.p.A.—Clarification to determine whether pressure control (or regulating valves), Models A201, A202, A203, and A204 and leader line siamese (Model A99) are within the scope of the order.

Country: Turkey

A–489–501 *Welded Carbon Steel Standard Pipe and Tube Products*
Allied Tube and Conduit Corporation, Wheatland Tube Company, Laclede Steel Company, Sharon Tube Company, and Sawhill Tubular Division of Armco, Inc.—Clarification to determine whether pipe and tube which meets the order's physical specifications, when intended for or actually used as standard pipe and tube, is included within the scope of the order.

Country: People's Republic of China

A–570–504 *Petroleum Wax Candles*
Concept Marketing—Clarification to determine whether Concept's Safe-

2-Lite candle is within the scope of the order.

Mervyn's—Clarification to determine whether candle, article no. 20172, in the shape of a cube is within the scope of the order.

Boomster Imports Inc.—Clarification to determine whether Boomster's three-inch cube candles are within the scope of the order.

A–570–502 *Iron Construction Castings*

Jack's International—Clarification to determine whether certain cast iron area drains are within the scope of the order.

A–570–808 *Chrome-Plated Lug Nuts*

Consolidated International Automotive, Inc.—Clarification to determine whether certain nickel-plated lug nuts are within the scope of the order.

A–570–820 *Certain Compact Ductile Iron Waterworks (CDIW) Fittings and Glands*

Star Pipe Products, Inc.—Clarification to determine whether ''retainer glands'' are within the scope of the order.

Country: Korea

A–580–809 *Circular Welded Non-Alloy Steel Pipe*

Allied Tube & Conduit Corp., American Tube Co., Century Tube Corp., CSI Tubular Productions, Inc., Laclede Steel Co., LTV Tubular Productions Co., Sawhill Tubular Division, Sharon Tube Co., Tex-Tube Division, Western Tube & Conduit Corp., Wheatland Tube Co.—Clarification to determine whether pipe produced to API 5L line pipe specifications or to both ASTM A–53 standard pipe specification and the API 5L line pipe specification (dual-certified pipe), when intended for use as standard pipe or when actually used as standard pipe, is within the scope of the order. Affirmative preliminary scope ruling issued on January 13, 1994.

A–580–811 *Steel Wire Rope*

TSK Korea and Hi-Lex Corp.—Clarification to determine whether certain motion control cables are within the scope of the order.

Country: Japan

A–588–802 *3½″ Microdisks*

TDK Inc., TDK Electronics Co.—Clarification to determine whether certain web roll media are within the scope of the order.

3M—Clarification to determine whether 3.5″ Rewritable Magneto-Optical Disks are within the scope of the order.

A–588–804 *Antifriction Bearings (Other Than Tapered Roller Bearings), and Parts Thereof*

Dana Corporation—Clarification to determine whether an automotive component known variously as a center bracket assembly, center bearing assembly, support bracket, or shaft support bearing, is within the scope of the order.

A–588–405 *Cellular Mobile Telephones and Subassemblies*

TDK Corporation of America—Clarification to determine whether Duplexers, Voltage Control Oscillators, and Isolators are within the scope of the order.

Mitsubishi Electric Corporation, Mitsubishi Electronics America, Inc., and Mitsubishi Consumer Electronics America, Inc. (Mitsubishi)—Clarification to determine whether the Mitsubishi MT1516FOR6A model of portable cellular telephone (PCT) is within the scope of the order.

A–588–702 *Stainless Steel Butt-Weld Pipe Fittings from Japan*

Fujikin of America, Inc. (Fujikin)—Clarification to determine whether certain gasket raised face seal sleeves and certain stainless steel ''fine-fit'' tube fittings are within the scope of the order.

A–588–823 *Professional Electric Cutting Tools*

Makita Inc., Makita U.S.A.—Clarification to determine whether Planer-Jointer model 2030SC is within the scope of the order.

Makita Inc., Makita U.S.A.—Clarification to determine whether Chain Morticer model 7104L is within the scope of the order.

Makita Inc., Makita U.S.A.—Clarification to determine Concrete Planer Model PC1100 is within the scope of the order.

A–588–809 *Small Business Telephone Systems and Subassemblies and Parts Thereof*

Iwatsu America, Inc. and Iwatsu Electric Co.—Clarification to determine whether certain dual use subassemblies (a caller ID trunk unit and a station interface circuit card) are within the scope of the order.

Country: Venezuela

A–307–805 *Circular Welded Non-Alloy Steel Pipe*

Self-initiation. Clarification to determine whether pipe produced to API 5L line pipe specifications or to both ASTM A–53 standard pipe specification and the API 5L line pipe specification (dual-certified pipe), when intended for use as standard pipe or when actually used as standard pipe, is within the scope of the order. Affirmative preliminary scope ruling issued on January 13, 1994.

Country: Sweden

A–401–040 *Stainless Steel Plate*

Armco, Inc., G.O. Carlson, Allegheny Ludlum Corp., and Washington Steel Corp.—Clarification to determine whether Stavax, Ramax, and 904L are within the scope of the finding. Affirmative preliminary scope ruling issued on November 16, 1994.

Country: Germany

A–428–801 *Antifriction Bearings (other than Tapered Roller Bearings) and Parts Thereof*

Marquart Switches—Clarification to determine whether certain steel balls are within the scope of the order.

Country: Taiwan

A–583–810 *Chrome-Plated Lug Nuts*

Consolidated International Automotive, Inc.—Clarification to determine whether certain nickel-plated lug nuts are within the scope of the order.

A–583–508 *Porcelain-on-Steel Cookware*

Blair Corp.—Clarification to determine whether product number 271911, eight-quart stock pot and product number 271921, twelve-quart stock pot are within the scope of the order.

C–583–508 Blair Corp.—Clarification to determine whether product number 1001, seven piece cookware set is within the scope of the order.

A–583–816 *Certain Stainless Steel Butt-Weld Pipe Fittings*

Top Line Process Equipment Corporation—Clarification to determine whether various stainless steel tube fittings with non-welded end-connections, and other products, are within the scope of the order.

VI. Pending Anticircumvention Inquiry Requests as of June 30, 1995

Country: Japan

A–588–602 *Carbon Steel Butt-Weld Pipe Fittings*

U.S. Fittings Group—Anticircumvention inquiry to determine whether a producer of carbon steel butt-weld pipe fittings in Japan is circumventing the antidumping duty order by shipping parts to Thailand for processing and importing the finished product into the United

States.

Country: Germany

A–428–811 *Hot-Rolled Lead and Bismuth Carbon Steel Products*
Inland Steel Bar Company and USS Kolbe Steel Company—Anticircumvention inquiry to determine whether a producer of steel in Germany is circumventing the antidumping duty order by shipping leaded steel billets to its wholly-owned subsidiary in the Netherlands, hot-rolling the billets into bars and rods, and then exporting them to the United States.

Interested parties are invited to comment on the accuracy of the list of pending scope clarification requests. Any comments should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Dated: July 11, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–17495 Filed 7–17–95; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Costa Rica

July 12, 1995.

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

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: July 13, 1995.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

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

The current limits for certain categories are being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 59 FR 62715, published on December 6, 1994; and 60 FR 17320, published on April 5, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 12, 1995.

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

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 1994, as amended on March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Costa Rica and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on July 13, 1995, you are directed to increase the limits for the following categories, in accordance with the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit
340/640	918,181 dozen.
342/642	338,952 dozen.
347/348	1,454,100 dozen.
443	213,570 numbers.
447	12,363 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

The guaranteed access levels remain unchanged.

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

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–17632 Filed 7–17–95; 8:45 am]

BILLING CODE 3510–DR–F

Amendment and Adjustment of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in the Arab Republic of Egypt

July 12, 1995.

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

ACTION: Issuing a directive to the Commissioner of Customs amending and adjusting limits.

EFFECTIVE DATE: July 13, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6717. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

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

Since the Arab Republic of Egypt is now a member of the World Trade Organization, pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round Agreements Act, the limits agreed upon by the Governments of the United States and the Arab Republic of Egypt, as notified to the Uruguay Round Textiles Monitoring Body (TMB), are being amended to establish limits for the period beginning on January 1, 1995 and extending through December 31, 1995. Pursuant to the ATC, these limits supersede those notified to the TMB contained in the Bilateral Textile Agreement of March 7 and May 4, 1995, between the Governments of the United States and the Arab Republic of Egypt.

The limit for Categories 340/640 was previously adjusted for carryforward used during 1994. The current amended limit for Category 448 is being increased for swing and carryforward. The limit for Category 224 in the Fabric Group is being reduced to account for the swing being applied.

A description of the textile and apparel categories in terms of HTS

numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the ATC, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 12, 1995.

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

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 13, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, and man-made fiber textiles and textile products in the following categories, produced or manufactured in the Arab Republic of Egypt and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following limits. These limits supersede those contained in the Bilateral Textile Agreement of March 7 and May 4, 1995 between the Governments of the United States and the Arab Republic of Egypt.

Category	Twelve-month restraint limit [1]
Fabric Group 218–220, 224–227, 313–317 and 326, as a group.	84,407,961 square meters.
218	2,508,000 square meters.
219	19,863,202 square meters.
220	19,863,202 square meters.
224	19,846,657 square meters.
225	19,863,202 square meters.
226	19,863,202 square meters.
227	19,863,202 square meters.
313	36,474,532 square meters.
314	19,863,202 square meters.
315	23,325,537 square meters.
317	19,863,202 square meters.
326	2,508,000 square meters.
369–S [5]	254,782 kilograms.
Levels not in a Group	
300/301	7,796,723 kilograms of which not more than 2,445,327 kilograms shall be in Category 301.
369–S [2]	1,184,317 kilograms.
338/339	2,257,500 dozen.
340/640	883,050 dozen.
448	20,593 dozen.

[1] The limits have not been adjusted to account for any imports exported after April 18, 1995.

[2] Category 369–S: Only HTS number 6307.10.2005.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

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

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–17631 Filed 7–17–95; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in the United Arab Emirates

July 11, 1995.

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

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: July 17,1995.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

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

The current limits for certain categories are being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 17339, published on April 5, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 11, 1995.

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

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the United Arab Emirates and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995.

Effective on July 17, 1995, you are directed to amend the directive dated March 30, 1995 to increase the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the United Arab Emirates:

Category	Adjusted level [1]
219	1,093,313 square meters.
226/313	1,869,594 square meters.
317	30,160,362 square meters.
338/339	551,095 dozen of which not more than 330,987 dozen shall be in Categories 338–S/339–S [2].
340/640	310,390 dozen.
341/641	299,166 dozen.
342/642	237,670 dozen.
347/348	387,740 dozen of which not more than 203,332 dozen shall be in Categories 347–T/348–T [3].

Category	Adjusted level [1]
352	314,911 dozen.
847	200,533 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020.

[3] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2010, 6104.62.2025, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6304.69.9010. 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

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

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–17501 Filed 7–17–95; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in the United Arab Emirates

July 12, 1995.

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

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 19, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

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

The current limits for Categories 369–S, 369–O and 336/636 are being increased by application of swing, reducing the limits for Categories 352 and 847 to account for the increases. As a result of the increases, the limits for Categories 369–S and 369–O, which are currently filled, will re-open.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 17339, published on April 5, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 12, 1995.

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

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the United Arab Emirates and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995.

Effective on July 19, 1995, you are directed to amend the directive dated March 30, 1995 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the United Arab Emirates:

Category	Adjusted level [1]
369–S [2]	73,284 kilograms.
369–O [3]	532,408 kilograms.
336/636	184,407 dozen.
352	250,200 dozen.
847	154,110 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 369–S: only HTS number 6307.10.2005.

[3] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S).

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

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–17500 Filed 7–17–95; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Applications of the New York Cotton Exchange as a Contract Market in Futures and Options on the Deutsche Mark/Swiss Franc Cross Rate

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and option contracts.

SUMMARY: The New York Cotton Exchange (NYCE or Exchange) has applied for designation as a contract market in futures and options on the Deutsche Mark/Swiss Franc cross rate. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before August 17, 1995.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW, Washington, DC 20581. Reference should be made to the NYCE Deutsche Mark/Swiss Franc cross rate contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Steve Sherrod of the Division of Economic Analysis,

Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone 202–254–7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the NYCE in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 C.F.R. Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 C.F.R. 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 C.F.R. 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the NYCE, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on July 12, 1995.

Blake Imel,

Acting Director.

[FR Doc. 95–17545 Filed 7–17–95; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group (Electro-Optics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Thursday, 20 July 1995.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Elise Rabin, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. II § 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: July 10, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–17647 Filed 7–17–95; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Corps of Engineers; Intent to Prepare an Environmental Impact Statement (EIS) for the Norco Bluffs Streambank Stabilization Project Feasibility Study

AGENCY: U.S. Army Corps of Engineers, Los Angeles District, DOD.

ACTION: Notice of intent.

SUMMARY: The Los Angeles District intends to prepare an EIS to support a cost shared feasibility study with Riverside County Flood Control and Water Conservation District, California for streambank stabilization along the Norco Bluffs portion of the Santa Ana River in the City of Norco, California. The purpose of the feasibility study is to evaluate alternatives for reduction of streambank erosion in the City of Norco. The proposed project alternatives would include a structural solution, including toe protection, buttress backfilling, and other construction methods, as well as non-structural solutions. The EIS will analyze potential impacts on the environment of a range of alternatives, including the recommended plan.

SCOPING: The Army Corps of Engineers will conduct a scoping meeting prior to preparing the Environmental Impact Statement to aid in determining the significant environmental issues associated with the proposed action. The public, as well as Federal, State, and local agencies are encouraged to participate in the scoping process by submitting data, information, and comments identifying relevant environmental and socioeconomic issues to be addressed in the environmental analysis. Useful information includes other environmental studies, published and unpublished data, alternatives that should be addressed in the analysis, and potential mitigation measures associated with the proposed action.

The location, date, and time of the public scoping meeting will be announced in the local news media. A separate notice of this meeting will be sent to all parties on the project mailing list. Individuals and agencies may offer information or data relevant to the environmental or socioeconomic impacts by attending the public scoping meeting. Comments, suggestions, and requests to be placed on the mailing list for announcements and for the Draft EIS, should be sent to Alex Watt, U.S. Army Corps of Engineers, Los Angeles District, Attn: CESPL–PD–RQ, P.O. Box 2711, Los Angeles, CA 90053.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Burton, U.S. Army Corps of Engineers, Los Angeles District, Planning Division at (213) 894–4352.

SUPPLEMENTARY INFORMATION: The Army Corps of Engineers intends to prepare an EIS to assess the environmental effects associated with the streambank stabilization proposed for Norco Bluffs. The public will have the opportunity to comment on this analysis before any action is taken to implement the proposed action.

Availability of the Draft EIS

The Draft EIS is expected to be published and circulated in January 1996, and a Public hearing will be held after it is published.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–17511 Filed 7–17–95; 8:45 am]

BILLING CODE 3510–KF–M

DEPARTMENT OF EDUCATION

National Educational Research Policy and Priorities Board; Meeting

AGENCY: National Educational Research Policy and Priorities Board, Education.

ACTION: Notice of committee meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Committee on Research Standards, National Educational Research Policy and Priorities Board. This notice also describes the functions of the Committee. Notice of this meeting is required under Section 10 (a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

DATE AND TIME: August 4, 1995, 8:30 a.m. to 4:30 p.m..

ADDRESSES: Association of American Railroads Conference Center, 80 F Street NW., Fourth Floor, Washington, D.C., 20001.

FOR FURTHER INFORMATION CONTACT: John Christensen, Designated Federal Official, National Educational Research Policy and Priorities Board, 555 New Jersey Avenue NW, Washington, D.C. 20208–7564. Telephone: (202) 219–2065; Fax: (202) 219–1528.

SUPPLEMENTARY INFORMATION: The National Educational Research Policy and Priorities Board is authorized by Section 921 of the Educational Research, Development , Dissemination, and Improvement Act of 1994 (the Act). The Board works collectively with the Assistant Secretary for the office of Educational Research and Improvement (the Office) to forge a national consensus with respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office.

The Act directs the Assistant Secretary to develop, in consultation with the Board, such standards as may be necessary to govern the conduct and evaluation of all research, development, and dissemination activities carried out by the Office to ensure that such activities meet the highest standard of professional excellence. The Board, in turn, has created a Committee on Research Standards to act on its behalf in this matter, in the interval between full meetings of the Board.

The meeting of the Committee on Research Standards is open to the public. The agenda for the meeting includes a discussion of the public's comments on proposed research standards for the evaluation of applications for grants and cooperative agreements and proposals for contracts **Federal Register**, Vol. 60, No. 109, Wednesday, June 7, 1995) and the drafting of final proposed research standards. In addition, the Committee will examine steps to be taken by the Office of Educational Research and Improvement to arrive at proposed standards for the evaluation of exemplary programs and promising practices for dissemination.

A final agenda will be available from the Board's office on July 28, 1995.

Records are kept of all Board proceedings, and are available for public inspection at the office of the National Educational Research Policy and Priorities Board, 555 New Jersey Avenue, NW, Washington, D.C. 20208–7564.

Dated: July 12, 1995.

Sharon P. Robinson,

Assistant Secretary, Office of Educational Research and Improvement.

[FR Doc. 95–17506 Filed 7–17–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Environmental Management Site Specific Advisory Board, Hanford Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Hanford Site

DATES: Thursday, August 3: 9:00 a.m.–5:00 p.m.; Friday, August 4: 8:30 a.m.–4:00 p.m.

ADDRESS: Cavanaugh's River Inn, North Division, Spokane, Washington.

FOR FURTHER INFORMATION CONTACT: Jon Yerxa, Public Participation Coordinator, Department of Energy Richland Operations Office, P.O. Box 550, Richland, WA, 99352.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

August Meeting Topics

The Hanford Advisory Board will receive information on and discuss issues related to: Assessing FY '94 and '95 Environmental Management Site-Specific Advisory Board, Hanford workload and planning workload '96, DOE's Risk Report to Congress, and a Review of 100 Area Action. The Committee will also receive updates from various Subcommittees, including reports on: M33 Milestone, Plutonium Disposition, and a Draft Public Participation Plan.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Jon Yerxa's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. Due to programmatic issues that had to be resolved, the **Federal Register** notice is being published less than fifteen days before the date of the meeting.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Jon Yerxa, Department of Energy Richland Operations Office, P.O. Box 550, Richland, WA 99352, or by calling him at (509) 376–9628.

Issued at Washington, DC on July 13, 1995.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer

[FR Doc. 95–17622 Filed 7–17–95; 8:45 am]

BILLING CODE 6450–01–P

DOE Response to Recommendation 95–1 of the Defense Nuclear Facilities Safety Board, Improved Safety of Cylinders Containing Depleted Uranium

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Defense Nuclear Facilities Safety Board published Recommendation 95–1, concerning

Improved Safety of Cylinders Containing Depleted Uranium, in the **Federal Register** on May 15, 1995 (60 FR 25893). Section 315(b) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(b) requires the Department of Energy to transmit a response to the Defense Nuclear Facilities Safety Board by June 29, 1995. The Secretary's response follows.

DATES: Comments, data, views, or arguments concerning the Secretary's response are due on or before August 17, 1995.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, D.C. 20004.

FOR FURTHER INFORMATION CONTACT: Mr. Ray Hunter, Deputy Director of the Office of Nuclear Energy, Science and Technology, Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585.

Issued in Washington, D.C., on July 11, 1995.

Mark B. Whitaker,

Departmental Representative to the Defense Nuclear Facilities Safety Board.

June 29, 1995.

The Honorable John T. Conway,
Chairman, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, N.W., Suite 700, Washington, D.C. 20004

Dear Mr. Conway: On May 5, 1995, you provided Defense Nuclear Facilities Safety Board Recommendation 95–1 concerning improved safety of cylinders containing depleted uranium. Before receiving your recommendation, we were reviewing actions to be taken with respect to the safe storage of the inventory of depleted uranium hexafluoride. This material is stored at Portsmouth, Ohio; Paducah, Kentucky, and Oak Ridge, Tennessee.

The elements of your recommendation that relate to renewing the protective coating of the depleted uranium hexafluoride cylinders and the exploration of additional measures to protect and handle these cylinders represent one part of the actions necessary for the program. The Department will focus on the following activities:

- Relocating cylinders from contact with the ground and keeping all cylinders from further ground contact;
- Relocating all cylinders into adequate inspection configuration, and maintaining them as such;
- Repainting cylinders as needed to avoid excessive corrosion;
- Updating handling and inspection procedures and site-specific Safety Analysis Reports; and
- Completion of an ongoing study that will include an analysis of alternative chemical forms for the material.

With respect to the last item, the Department began the long-term strategy selection process in November 1994. This process includes engineering and cost analyses of various alternatives and appropriate documentation under the National Environmental Policy Act. As part of this effort, safety analyses of alternative chemical forms will be performed.

We have identified a plan for the cylinders containing the depleted uranium hexafluoride that will protect public health and safety and lead to an environmentally sound long-term strategy for managing the material. We also have a good understanding of the cost of this program. We accept Recommendation 95–1.

Mr. Ray Hunter, Deputy Director of the Office of Nuclear Energy, Science and Technology, is the responsible senior manager for the preparation of the implementation plan. He can be reached at (202) 586–2240.

Sincerely,

Hazel R. O'Leary.

[FR Doc. 95–17621 Filed 7–17–95; 8:45 am]

BILLING CODE 6450–01–P

Golden Field Office; Notice of Federal Assistance Award to DynaMetrix Corporation

AGENCY: Department of Energy.

ACTION: Notice of financial assistance award in response to an unsolicited financial assistance application.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.14, is announcing its intention to enter into a cooperative agreement with DynaMetrix Corporation (DMX), to conduct research, design, and demonstration of a refiner GAP and WEAR measurement system that will be used in the pulp and paper industry. The DMX project represents an innovative, commercially viable technology that will result in increased paper quality and increased use of recycled paper in the manufacturing of paper.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: John Lewis, Contract Specialist. The telephone number is 303–275–4739.

SUPPLEMENTARY INFORMATION: This award is a result of a DOE published Notice of Program Interest for the Pulp and Paper Industry. The DOE has evaluated the unsolicited application according to paragraphs 600.14 of the DOE Assistance Regulations, 10 CFR 600, and the criteria for selection in paragraph 600.14(e)(1). Based on this evaluation, it is recommended that the unsolicited application for Federal Assistance entitled, ''Refiner Disc GAP and WEAR Measurement Method,'' submitted by DMX, be accepted for support.

The DMX project is a four-phased program proposed to span 3.5 years. Phase I will be completed during the first year. Phase II will be completed during the first two years. Phases III and IV will be accomplished during the final two years. The work scope includes: Phase I—Measurement Technique Feasibility, Phase II—Design, Construct, and Write Software for the Measurement System, Phase III—Evaluate the First Prototype Measurement System, and Phase IV—Testing and Demonstration.

The objective of Phase I is to study the feasibility of the proposed measurement technique. DMX will work with the Oregon Graduate Institute (OGI) in selecting the possible materials to be examined for production of the measurement sensor. Accelerated wear tests on the selected materials will be performed by the OGI. Phase II of the project encompasses the building of three test systems. DMX will employ a contractor to develop the written specification, system design, and software program. This system will be connected to the Phase I refiner simulator and thoroughly tested in a lab environment. Phase III evaluates the prototype measurement system in a designed experiment using low consistency refining. After software modification from the first experiment, the improved system will undergo a designed experiment using a ThermoMechanical refinery at the Georgia Institute of Technology testing facility. The final Phase has two components. The first provides real world testing at Boise Cascade Corporation's West Tacoma Pulp and Paper Plant in Washington. In the second, DMX will join with J&L Fiber Services, Beloit Corporation, and Measurex Corporation to establish the manufacturing and marketing of the systems for commercial application.

The proposal has been found to be meritorious, and it is recommended that the unsolicited application be accepted for support. The DMX program represents a new technology that could result in reduced cost and improved efficiencies for the pulp and paper industry. DMX has demonstrated capabilities in the technologies directly related to the proposed project and personnel that should provide a basis for a successful project.

The proposed project is not eligible for financial assistance under a recent, current, or planned solicitation. This award will not be made for at least 14 days, to allow for public comment.

The project cost over 3.5 years (including four phases) is estimated to be $1,770,926 total, with the DOE share being $1,343,497.

Issued in Golden, Colorado, on July 10, 1995.

John W. Meeker,

Chief, Procurement, GO.

[FR Doc. 95–17620 Filed 7–17–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. RP95–305–001]

Canyon Creek Compression Company; Notice of Proposed Changes in FERC Gas Tariff

July 12, 1995.

Take notice that on July 7, 1995, Canyon Creek Compression Company (Canyon Creek) tendered for filing to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, Third Revised Sheet No. 142, to be effective July 10, 1995.

Canyon Creek states that the purpose of the filing is to conform with the Commission's Order No. 577–A, which changed the Commission's Rules and Regulations so that prearranged releases of up to thirty-one (31) days (the current limit is one calendar month or less) are no longer required to have open seasons.

Canyon Creek requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheet to become effective July 10, 1995, effective date of the Commission's Order No. 577.

Canyon Creek states that a copy of the filing was mailed to Canyon Creek's jurisdictional transportation customers, interested state regulatory agencies and all parties set out on the official service list at Docket No. RP95–305.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before July 19, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–17526 Filed 7–17–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–26–000; Docket No. CP94–762–000]

MIGC, Inc. Colorado Interstate Gas Company; Notice of Technical Conference

July 12, 1995.

Take notice that a technical conference has been scheduled in the above proceeding for 10 a.m. on August 15, 1995, at the office of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. The purpose of the conference is to discuss matters of concern relating to Colorado Interstate Gas Company's proposal to lease capacity to MIGC, Inc. and MIGC Inc.'s corresponding proposal to provide this capacity to shippers on a 4.4-mile segment of the Powder River Basin Lateral. All interested parties are invited to attend. For additional information, call Ron Giusti at (202) 208–1036.

Lois D. Cashell,

Secretary.

[FR Doc. 95–17524 Filed 7–17–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–307–001]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

July 12, 1995.

Take notice that on July 7, 1995, Natural Gas Pipeline Company of America (Natural) tendered for filing to be a part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Third Revised Sheet No. 289, to be effective July 10, 1995.

Natural states that the purpose of the filing is to conform with the Commission's Order No. 577–A, which changed the Commission's Rules and Regulations so that prearranged releases of up to thirty-one days (currently the limit in one calendar month or less) are no longer required to have open seasons.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheet to become effective July 10, 1995, the effective date of the Commission's Order No. 577–A.

Natural states that a copy of the filing was mailed to Natural's jurisdictional transportation customers, interested state regulatory agencies and all parties set out on the official service list at Docket No. RP95–307.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 925 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before July 19, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–17528 Filed 7–17–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–383–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

July 12, 1995.

Take notice that on July 7, 1995, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets listed on Appendix A to the filing. The proposed effective date of these revised tariff sheets is August 7, 1995.

Panhandle states that the revised tariff sheets listed on Appendix A to the filing reflect certain limited technical changes to its tariff which Panhandle believes are desirable and appropriate for more efficient and effective operations. Panhandle states that several of the changes are proposed due to customers' requests, one is in response to a Commission order and others are those that Panhandle believes are required in light of its operating experience under Order No. 636.

Panhandle states that copies of this filing have been served on all customers subject to the tariff sheets and applicable state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 19, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are

available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–17531 Filed 7–17–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–382–000]

Riverside Pipeline Company L.P.; Notice of Proposed Changes in FERC Gas Tariff

July 12, 1995.

Take notice that on July 7, 1995, Riverside Pipeline Company, L.P. (Riverside) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, with the proposed effective date of July 7, 1995:

Second Revised Sheet No. 107

Second Revised Sheet No. 108

Second Revised Sheet No. 109

Second Revised Sheet No. 113

Riverside states that the purpose of the instant filing is to revise its capacity release tariff provisions set forth in Section 18 of the General Terms and Conditions of its Volume No. 1 Tariff to comply with Order No. 577–A issued May 31, 1995 in Docket No. RM95–5–001.

Riverside is also serving copies of the instant filing on its customers, State Commissions and other interested parties.

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, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 19, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–17530 Filed 7–17–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–306–001]

Stingray Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 12, 1995.

Take notice that on July 7, 1995, Stingray Pipeline Company (Stingray) tendered for filing to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, Third Revised Sheet No. 150, to be effective July 10, 1995.

Stingray states that the purpose of the filing is to conform with the Commission's Order No. 577–A, which changed the Commission's Rules and Regulations so that prearranged releases of up to thirty-one days (currently the limit is one calendar month or less) are no longer required to have open seasons.

Stringray requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheet to become effective July 10, 1995, the effective date of the Commission's Order No. 577–A.

Stingray states that a copy of the filing was mailed to Stingray's jurisdictional transportation customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before July 19, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–17527 Filed 7–17–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–308–001]

Trailblazer Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 12, 1995

Take notice that on July 7, 1995, Trailblazer Pipeline Company (Trailblazer) tendered for filing to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, Third Revised Sheet No. 149, to be effective July 10, 1995.

Trailblazer states that the purpose of the filing is to conform with the Commission's Order No. 577–A, which changed the Commission's Rules and Regulations so that prearranged releases of up to thirty-one (31) days (the current limit is one calendar month or less) are no longer required to have open seasons.

Trailblazer requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheet to become effective July 10, 1995, the effective date of the Commission's Order No. 577–A.

Trailblazer states that a copy of the filing was mailed to Trailblazer's jurisdictional transportation customers, interested stated regulatory agencies and all parties set out on the official service list at Docket No. RP95–308.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before July 19, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–17529 Filed 7–17–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–3–49–001]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

July 12, 1995.

Take notice that on July 7, 1995, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing a revised tariff sheet to Second Revised Volume No. 1 of its FERC Gas Tariff.

Williston Basin states that, in accordance with the Commission's June 29, 1995 Order, the revised tariff sheet reflects the continuation of the currently effective one-part volumetric rate structure for service under Rate Schedule ST–1.

Williston Basin has requested that the Commission accept this filing to become effective July 1, 1995.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR

385.211). All such protests should be filed on or before July 19, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–17532 Filed 7–17–95; 8:45 am]

BILLING CODE 6717–01–M

Williams Natural Gas Company; Notice of Request Under Blanket Authorization

[Docket No. CP95–590–000]

July 12, 1995.

Take notice that on June 29, 1995, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP95–590–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to utilize facilities originally installed for the delivery of NGPA Section 311 transportation gas to Western Resources, Inc. (WRI) for purposes other than NGPA Section 311 transportation, under WNG's blanket certificate issued in Docket No. CP82–479–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

WNG proposes to utilize existing metering and appurtenant facilities to deliver transportation gas to WRI for redelivery to a new Wal-Mart distribution center. The facilities are located in Section 32, Township 16 South, Range 20 East, Franklin County, Kansas. WNG states that this point will be used for deliveries of gas other than NGPA Section 311 transportation and is seeking authorization to perform those deliveries. This requested authorization will allow WRI receipt point flexibility in the future. The operation of these facilities will have no impact on WNG's peak day or annual deliveries. The cost to construct the facilities was $25,480. WNG states that since this request is to utilize existing NGPA Section 311 transportation facilities for other purposes, this change is not prohibited by its existing tariff and there is sufficient capacity to accomplish specified deliveries without detriment or disadvantage to its other customers.

WNG began delivering gas to WRI pursuant to NGPA Section 311 for redelivery to Wal-Mart on December 2, 1994. The initial delivery was 128 Dth with an annual volume estimated to be 63,234 Dth the first year increasing to 100,996 Dth by the fifth year. The peak day volume is estimated at 1,056 Dth. WNG reported the initial firm transportation of gas for WRI in Docket No. ST95–831–000.

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 Section 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. 95–17525 Filed 7–17–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Civilian Radioactive Waste Management; Safe Transportation and Emergency Response Training; Technical Assistance and Funding

AGENCY: Office of Civilian Radioactive Waste Management, Department of Energy.

ACTION: Notice of inquiry; supplemental information.

SUMMARY: The Department of Energy (the Department) intends to implement a program of technical assistance and funds to States for training for public safety officials of appropriate units of local government and Indian tribes through whose jurisdiction the Secretary of Energy plans to transport spent nuclear fuel or high-level radioactive waste. The training would cover both safe routine transportation procedures and emergency response procedures. The Department issued a Notice of Inquiry in the **Federal Register** on January 3, 1995 (60 FR 99) which briefly describes various options to delineate Section 180(c) of the Nuclear Waste Policy Act policy and procedures. Members of the public were invited to submit comments on the Notice of Inquiry. In the March 14, 1995, **Federal Register** (60 FR 13715) the Department extended the deadline for comments to May 18, 1995. In a continuing effort to include stakeholders in pre-decisional discussions, the Department has developed additional information, presented below, that discusses options for policy and procedures and their applicability to the Section 180(c) mandate. The discussion below does not reflect final Departmental policy. The Department welcomes comments in response to this **Federal Register** notice on how best to implement the Section 180(c) program. Comments to the previous notice will also be considered.

The Department intends to prepare a Notice of Proposed Policy and Procedures for the Section 180(c) program in 1996.

DATES: Written comments should be sent to the Department and must be received on or before September 30, 1995.

ADDRESSES: Written comments should be directed to: Corinne Macaluso, U.S. Department of Energy, c/o Lois Smith, TRW Environmental Safety Systems, Inc., 600 Maryland Avenue S.W., Suite 695, Washington, D.C. 20024, ATTN: Section 180(c) Comments.

Persons submitting comments should include their names and addresses. Receipt of comments in response to this Notice will be acknowledged if a stamped, self-addressed postal card or envelope is enclosed.

FOR FURTHER INFORMATION CONTACT: For further information on the transportation of spent fuel and high-level radioactive waste under the Nuclear Waste Policy Act, please contact: Ms. Corinne Macaluso, Operational Activities, Office of Civilian Radioactive Waste Management (RW–45), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Telephone: 202–586–2837.

Information packets are available for interested persons who want background information about the Office of Civilian Radioactive Waste Management (OCRWM) transportation program and the Section 180(c) program prior to providing comments. To receive an information packet, please call: 1–800–225–NWPA (or call 202–488–6720 in Washington, D.C.) or write to the OCRWM Information Center, Post Office Box 44375, Washington, D.C. 20026.

Copies of comments received will be available for examination and may be photocopied at the Department's Public Reading Room at 1000 Independence Avenue, S.W., Room 1E–190, Washington, D.C.

SUPPLEMENTARY INFORMATION:

I. Purpose and Need for Agency Action

Under the Nuclear Waste Policy Act of 1982, as amended (42 U.S.C. 10101 et seq.) (NWPA or ''the Act''), the Department of Energy is responsible for disposal of civilian spent nuclear fuel and high-level radioactive waste in a deep geologic repository. The Department is also responsible for managing the disposal of spent nuclear fuel from civilian nuclear power plants and high-level nuclear waste, and for possible monitored retrievable storage of spent nuclear fuel prior to disposal. Additionally, the Department is responsible for transportation of spent nuclear fuel and high-level waste to the Department's disposal or storage sites. To carry out these responsibilities, the Department needs to implement Section 180(c) of the Act. Section 180(c) of the Act states:

> The Secretary [of Energy] shall provide technical assistance and funds to States for training for public safety officials of appropriate units of local government and Indian tribes through whose jurisdiction the Secretary plans to transport spent nuclear fuel or high-level radioactive waste under subtitle A or under subtitle C. Training shall cover procedures required for safe routine transportation of these materials, as well as procedures for dealing with emergency response situations. The Waste Fund shall be the source of funds for work carried out under this subsection. [42 U.S.C. 10175]

In the interest of obtaining input from the broadest range of stakeholders, the Department began to develop the Section 180(c) program by publishing a Notice of Inquiry in the **Federal Register** on January 3, 1995 (60 FR 99). The Notice of Inquiry briefly described various policy and administrative options the Department was considering and invited members of the public to submit comments. In response to comments requesting more information on these options, the Department is presenting additional information in this Notice of Inquiry.

The analysis presented here contains three main sections: Guiding Principles for Section 180(c) Policy and Procedures, Options for Section 180(c) Policy and Procedures, and Summary of Public Comments received in response to the January 3, 1995, Notice of Inquiry.

II. Guiding Principles for Section 180(c) Policy and Procedures

Section 180(c) requires the Department to provide financial and technical assistance for training. Within this mandate, specific training elements must be addressed. Training must encompass procedures for both emergency response and safe routine transportation for public safety officials and appropriate units of local government and Indian tribes through whose jurisdiction the Secretary plans to transport fuel or high-level radioactive waste.

While the mechanism for distributing the funding and technical assistance for training is not specifically provided for in the Act, the legislative history (S. Rep. No. 152, 100th Cong., 1987) of this section suggests that Congress intended for the Department to provide direct funding to States and they, rather than the Department, would determine how best to allocate the funds. The Department will retain the responsibility of ensuring that Section 180(c) funds are distributed consistent with the NWPA.

In addition, the Department has identified several guiding principles that it intends to follow in carrying out the requirements of Section 180(c). The following are not listed in any particular order.

- The Department recognizes that State, tribal, and local jurisdictions vary in organizational and staffing structures, philosophies on roles and responsibilities of public safety officials, and levels of preparedness and training. The Department will strive to develop a program with enough flexibility to accommodate the wide variety of State, tribal, and local assistance needs associated with NWPA shipments and Departmental responsibilities under Section 180(c).
- Where possible, the Section 180(c) program should be integrated into established Federal, State, and tribal training structures.
- The Department's responsibilities under other statutory authorities must be considered in the Department's options evaluation. These Departmental responsibilities exist under the Federal Radiological Emergency Response Plan (FRERP), coordinated by the Federal Emergency Management Agency, the Department's 5500 series Orders, and other radiological emergency preparedness and response programs.
- The Department will strive to minimize the Section 180(c) program's administrative burden on the Department and recipient jurisdictions.
- Distribution or use of Section 180(c) funds must be in accordance with restrictions applicable to the Nuclear Waste Fund as indicated in the NWPA.

III. Options For Section 180(c) Policy and Procedures

This section is divided into two parts. The first part discusses a range of policy options that, when defined, will largely characterize the scope of the Section 180(c) program. These policy options are inextricably linked to how the Department will define the training goals and terms relevant to Section 180(c). Therefore, the policy options are discussed in terms of: (1) Emergency response training goals, (2) Safe routine transportation training goals and definitions, (3) Technical assistance definitions, (4) Eligibility criteria, (5) Funding allocation formulas, and (6) Restrictions on use of funds.

Second part discusses the procedural options through which Section 180(c) assistance might be administered. These options include other Federal training programs that the Department may be able to use to meet Section 180(c) requirements and funding mechanisms that may be used to distribute assistance.

A. Discussion of Policy Options

Emergency Response Training Goals

Jurisdictions have differences in philosophy, in division of responsibility, and in levels of resources when planning for hazardous materials emergency response procedures. Some jurisdictions want those officials responsible for initial response action (''first responders'') at the local level to have the highest levels of training and equipment to prepare for all events. Conversely, other jurisdictions direct resources to more specialized response capabilities of regional or State hazardous materials response teams and provide first-on-scene personnel and first responders with only awareness training. The Department will take both these positions into account when delineating the scope of the Section 180(c) program.

Safe Routine Transportation Definitions and Training Goals

The Federal government and State, tribes and local governments currently engage in a range of activities related to safe routine transportation and accompanying training. Part of setting the scope of Section 180(c) will be identifying what in the existing range is appropriate for NWPA shipments. Most safe transportation activities are designated the responsibility of the shipper and carrier by Federal regulatory action. However, States and tribes, in varying degrees, perform conveyance inspections and impose restrictions and penalties as part of safe transportation and its enforcement. The Federal government carries out three types of activities related to safe routine transportation. The Department of Transportation sets regulations for driver qualifications, hours of operation,

labeling and placarding and related activities. They also conduct the Motor Carrier Safety Assistance Program discussed later in this paper that provides funding to encourage States to enforce uniform motor carrier safety and hazardous materials regulations. In addition, the Department of Energy has implemented stringent driver qualifications and vehicle inspection standards for the eventual shipments to the Waste Isolation Pilot Plant near Carlsbad, New Mexico. State and tribal regulatory authority for safe transportation inspections or enforcement is much more limited for rail transportation than for highway transportation.

Some potential definitions of safe, routine transportation have been developed by the Department and stakeholder groups. The two definitions listed below may not be comprehensive and additional activities will be considered when defining safe routine transportation. Through such definitions, training needs may be better identified and provided for in a Section 180(c) program.

Proposed definition from Strategy [1] document: ''Safe, routine transportation is the condition of incident-free transportation. It involves the inspection and enforcement of shipments through State, Tribal, and local jurisdictions. Safe routine highway transportation is characterized by adequate vehicle, driver, and package inspection, and enforcement of the Federal Motor Carrier Safety Regulations and the Hazardous Materials Regulations. Rail and barge transportation regulations include the Federal Railroad Administration and Coast Guard regulations. Compliance with Nuclear Regulatory Commission requirements for prenotification and physical protection also contributes to safe, routine transportation.''

Proposed definition from Transportation External Coordination Working Group [2]: ''Safe Routine Transportation is the uneventful movement, from origin to destination, of hazardous materials in a manner that does not present an undue risk to human health or the environment and is in compliance with applicable Federal, State, tribal and local laws and regulations.'' If this definition is chosen, the word ''hazardous'' will be replaced by the words ''radioactive waste''.

Technical Assistance Definitions

The Department needs to determine what constitutes ''technical assistance'' as it applies to the Section 180(c) program. As with safe routine transportation, technical assistance has been widely discussed in the Transportation External Coordination Working Group and other forums where the Department and stakeholders discuss transportation issues. The following illustrate a range of possible definitions of the term ''technical assistance''.

Proposed definition from Strategy document: ''Technical assistance is assistance that the Secretary of Energy can provide that is unique to the Department to aid training that will cover procedures for the safe, routine transportation and emergency response situations during the transport of spent nuclear fuel and high-level radioactive waste. If a definition of technical assistance is provided in the implementation of Section 117 of the Hazardous Materials Transportation Uniform Safety Act (HMTUSA), OCRWM will use that definition for future planning regarding emergency situations.''

Note: The Department of Transportation (DOT) does not provide a definition of technical assistance in the HMTUSA regulations.

Proposed definition from Transportation External Coordination Working Group: ''The term Technical Assistance as it is used in Section 180(c) implies that the Department of Energy will, in general, provide planning guidance, training support, available definitions of technical standards and criteria, practical support, and expertise to ensure that State and tribal governments are trained for safe routine transportation practices as well as capable of responding to spent nuclear fuel and high-level waste transportation emergencies within their jurisdictions. More specifically, activities may include aid in developing, implementing, and evaluating readiness and response plans; assistance in developing, conducting and evaluating exercises and training programs, support for coordination between neighboring groups, coordination between other government agency programs, and for public information and education efforts; on-site response support in the event of an accident or incident; and logistical and scientific expertise for recovery, reentry, and remediation activities at an emergency site. Technical assistance may include activities that monitor and assess the capabilities of groups in order to make funding decisions. Financial assistance or direct funding, however, is considered to be beyond the scope of this definition.''

Proposed definition from the Council of State Governments Midwestern Office: ''The term Technical Assistance as it is used in Section 180(c) of the Nuclear Waste Policy Act means a variety of activities designed to ensure that state, tribal, and local governments are trained for safe routine transportation practices as well as responding to transportation emergencies within their jurisdictions, including but not limited to planning guidance, training support, practical support, funding of pre-identified equipment, and expertise.''

Eligibility Criteria

While the NWPA clearly directs the Department to provide technical assistance and funds to States for training for public safety officials of appropriate units of local government and Indian tribes through whose jurisdiction the Secretary plans to transport spent nuclear fuel or high-level radioactive waste, a key determination is the eligibility of jurisdictions in light of the shipment schedule throughout the life of the shipment program.

The Department has stated previously that implementation of the Section 180(c) program will begin three to five years prior to shipments. Although the Department has not yet selected routes or final disposal or interim storage sites, current contracts with utilities identify a sequence of acceptance from utility sites. Eligibility may be tied to transportation activity within a jurisdiction. Alternatively, all jurisdictions could receive assistance in the first year and throughout a Section 180(c) program. The Department must consider how eligibility may be tied to transportation activity both before shipments begin and in those cases of years where there is no transportation activity planned through a particular jurisdiction.

Funding Allocation Formulas

A funding allocation formula is another element of the Section 180(c) program whose definition might assist in establishing the scope of the program. A funding allocation formula is often the primary tool in a grants program

[1] U.S. Department of Energy, 1992 Strategy for OCRWM to Provide Training Assistance to State, Tribal, and Local Governments, Office of Civilian Radioactive Waste Management, DOE/RW–0374P, November 1992, Washington, D.C.

[2] The Transportation External Coordination Working Group is a group of national and regional organizations that participates in the Department's efforts to identify significant issues related to the transportation of hazardous and radioactive materials, recommend activities to resolve those issues, and implement appropriate activities as Transportation External Coordination Working Group tasks. All meetings are open to the public.

identifying the variables that affect the amount of funding to go to a particular recipient. A formula may identify a percentage of a pool that has been appropriated for an entire program or identify qualification for predetermined amounts. The formula may identify a single amount for each recipient or a series of smaller amounts for the recipient to use toward specified goals.

For the implementation of Section 180(c), funding allocation may be based on a variety of factors. Some of these factors include the following:

Shipment miles. This is an estimation of miles that a shipment would cover through a jurisdiction combined with the frequency of shipments. A slightly different approach would include route miles. This estimation is a measure of the length of a route through a jurisdiction but does not include frequency of shipments. The two measurements produce different results. Using shipment miles would imply that two jurisdictions with routes of equal length would receive different funding levels if one jurisdiction experienced a higher number of shipments compared to the other.

Number of affected jurisdictions. Because training is targeted for people rather than mileage, the identification of the number of groups at the State, local, or tribal level that should receive assistance may be an effective way to determine funding. Using this measure, allocation could effectively mirror highly populated metropolitan areas and less populated rural areas. However, the number of affected jurisdictions may prove too difficult to defend, particularly when considering the differing training goals of dissimilar areas. As an example, areas of higher population may have more emergency response personnel to train, but in general they may already be better trained and have considerably smaller response areas. Rural emergency response jurisdictions may cover considerably wider areas with a much smaller response group.

Population may be a factor in funding allocation as it indicates the number of people along a route of a particular shipment. However, this implies areas of lower population would receive lower levels of assistance and those with higher populations would receive more. Including a measure of population in an allocation formula may be more effective if used in conjunction with other measures.

Agreements between neighboring jurisdictions. In some cases, a State or tribe not receiving funding in a given year may still share some responsibility with neighboring States or tribes that do receive funding. An allocation may include a provision for additional cooperative activities in these cases. However, it is also conceivable that States and tribes would be asked to rely on their existing cooperative agreements.

Annual timing of funding. The Department has stated that implementation should begin three to five years prior to shipments but some recipients may want to apply the bulk of assistance closer to a potential shipment date to ensure the highest possible training retention. Assistance may be provided at the start of the program to all recipients or it may be linked to transportation activity in a recipient's jurisdiction. A combination of these two possibilities may provide basic assistance for all recipients at the program's start and additional, more specific assistance based on transportation activity within the jurisdictions.

Designation of a proportion of the assistance for training in specific areas. For example, funding could be divided by the formula for training in each mode of transportation, i.e., rail or highway. Likewise, it could be divided into assistance for routine transportation training and assistance for emergency response training. The Department may also choose to leave decisions to recipients on the specific areas of funding.

Restrictions on Use of Funds

A Section 180(c) program may include some restrictions on the use of funds to ensure that the Department's intentions for direction and administration of the program are met. Any restrictions will also impact the program's scope.

Funding restrictions may affect the choice of training courses, division of funds for local governments, or coordination activities. Training costs may be limited to tuition for Department-approved courses, or recipients may be able to develop or choose their own training programs with their funding allocation. The Department might simply suggest a course list to recipients. The Department may limit the percentage of an allocation to be spent on administrative activities or specify a percentage that must reach a local or regional level. Some specification for sharing funds with neighboring jurisdictions may be included, particularly where Memoranda of Understanding (MOU) or mutual aid agreements exist between jurisdictions for emergency response activities.

Some direction may be included governing the use of funds to purchase equipment. While the Act states that financial assistance is for training, some have argued that training is only valuable in conjunction with equipment that will be used. The Department may develop a list of approved equipment for use, develop a list of approved equipment for training, or restrict equipment purchase to a percentage of discretionary funding. Similar choices may be made regarding travel costs for training of individuals and travel and salary costs for trainers.

Restrictions may be identified that address the timing of funding use. For example, recipients may be required to use allocated funds within each year, within some specified time, or within the life of the program. An alternate option is to annually reimburse approved expenses by each recipient.

B. Discussion of Procedural Options

The following section discusses the Department's current research on procedural options for a Section 180(c) program and the existing Federal programs that could be used as funding mechanisms or to provide technical assistance. Also, the section discusses ways to combine elements of existing options to create new programs for funding and training. An analysis of each procedural option is included in terms of the intent of the NWPA and the stated goals of the Section 180(c) program. The options can be considered either as avenues through which to administer Section 180(c) or as models that the Department could emulate.

The existing Federal training programs are discussed in terms of their safe routine transportation and emergency preparedness activities, and ways in which they are administered. Options discussed include: (1) the Department of Transportation's Hazardous Materials Transportation Act grants, (2) the Department of Transportation's Motor Carrier Safety Assistance Program, (3) the Department of Transportation's Federal Railroad Administration's State Participation Program, (4) current DOE training programs, (5) the Federal Emergency Management Agency's Comprehensive Cooperative Agreement program, (6) cooperative agreements and grants, (7) Department-wide or OCRWM assistance programs, and (8) combinations of options from previous groups.

1. Department of Transportation, Research and Special Programs Administration,

Interagency Hazardous Materials; Public Sector Training and Planning Grants

This program of Federal grants is primarily considered in this document for its applicability to emergency response training for highway shipments.

DOT's Research and Special Programs Administration (RSPA) has developed a program for reimbursable training and planning grants (49 CFR Part 110). The program was established by the Hazardous Materials Transportation Act (HMTA), as amended by the Hazardous Materials Transportation Uniform Safety Act of 1990. It is intended to enhance existing State, tribal, and local hazardous materials transportation emergency preparedness and response programs by providing financial and technical assistance, national direction, and guidance that enhances overall implementation of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). The program scope is broader than that of Section 180(c), covering all hazardous materials, not just radioactive materials. The program is supported by fees collected from a registration program for shippers and carriers of certain hazardous materials.

RSPA has issued a list of activities eligible for funding under this program. States and tribes must complete application packages which require specific information on the intended use of a proposed grant. Applications are reviewed semi-annually and approved or declined by an RSPA grants administrator.

Applications include detailed descriptions of proposed programs of planning or training. For training grants, the application includes a letter from the governor of the State or from the tribal government with authorization for a particular State agency or tribal organization to receive or administer the grant; a statement explaining current practices for collecting fees on the transportation of hazardous materials and whether such fees are used to support hazardous materials transportation; a statement outlining individuals who will be responsible for coordinating and administering the program; a detailed narrative of goals and objectives; a statement of work, associated costs, and schedule; and a description of major costs.

For planning grants, the application includes a certification for compliance with EPCRA; a statement of aggregate expenditures for the previous two fiscal years; an agreement to make 75% of the grant available to Local Emergency Preparedness Committees (LEPC) or their designees; other specifics on who will administer the grant and how; and a statement that the State Emergency Response Commission has reviewed the grants application.

The recipient agency is required to provide 20% of direct and indirect costs, acceptable in funds or in labor and equipment equivalents. Although limited needs-based advances are allowable in some cases, in general the grants are reimbursed. An existing grant is not a commitment of future Federal funding. Training and/or planning grants have been awarded to 50 States, 5 territories, and 11 Indian tribes. Indian tribes had been restricted to only receiving planning grants, but as of 1995 will also be eligible for training grants.

As directed within the HMTA, allocation criteria for both training and planning grants are based on the needs of applicants. A portion of the grants is set aside for separate distribution to tribes. Allocation factors include objective criteria and criteria based on performance, compliance, and innovation. Some factors considered in allocating funds include: number of hazardous materials facilities, types and amounts of hazardous materials transported, population at risk, frequency and number of incidents reported in past years, high mileage transportation corridors, whether fees are collected on transportation of hazardous materials, and whether such fees are used to carry out purposes related to this activity. This places the burden on RSPA to identify the most needy applicants in the application review process and reflect their assessment in each award.

Assistance under Section 180(c) is not needs-based but provided to each jurisdiction along NWPA transportation routes. The Department will identify a program-specific basis for Section 180(c) funding allocation.

2. DOT, Federal Highway Administration, Office of Motor Carriers, Motor Carrier Safety Assistance Program

The Motor Carrier Safety Assistance Program (MCSAP) is primarily considered in this document for its applicability to training for safe routine transportation procedures for highway shipments.

DOT provides Federal funds to the States for a variety of commercial motor vehicle activities that encourage each State to enforce uniform motor carrier safety and hazardous materials regulations through MCSAP. The program was established in the Surface Transportation Assistance Act of 1982 and reauthorized in the Motor Carrier Act of 1991 (Title IV of the Intermodal Surface Transportation Efficiency Act of 1991). Present funding levels exceed $80 million.

The objective of MCSAP is to reduce the number and severity of accidents and hazardous materials incidents involving commercial motor vehicle carriers by substantially increasing the level and effectiveness of enforcement activity and the likelihood that problems affecting, or potentially affecting, safe vehicle operations will be detected and corrected. More specifically, States use MCSAP funds to train personnel to inspect vehicles and driver records, conduct reviews of carrier operations, and promote public awareness of commercial vehicle laws and safety. Also, States may use funds to support truck weight enforcement, drug interdiction activities, uniform truck and bus accident reporting, Commercial Drivers License enforcement, hazardous materials requirements training, research and development, public education, and enforcement of State traffic laws in conjunction with MCSAP roadside inspections.

Uniformity and compatibility of State regulatory requirements affecting interstate and intrastate carriers is a primary goal of the MCSAP. As a prerequisite for MCSAP funding, the Federal Highway Administration requires that States adopt or agree to adopt interstate and intrastate regulations which are compatible with Federal safety regulations. Currently, 48 States and 4 Territories actively participate in MCSAP but not Indian tribes.

To receive basic MCSAP funding, a State must first agree to adopt and assume responsibility for enforcing the Federal Motor Carrier Safety Regulations (49 CFR parts 390–399) and highway related portions of the Federal Hazardous Materials Regulations (49 CFR parts 107, 171–173, 177, 178 and 180) or compatible State regulations. Each State must also submit annually a State Enforcement Plan for the conduct of an effective safety program. The Federal Highway Administration uses this plan as a basis for monitoring and evaluating performance of the State.

The Federal Highway Administration, through regulations in 40 CFR 350, lists other specifics for basic grant approval and identifies in more detail the contents of the State Enforcement Plan including requirements of State participation in North American Uniform Driver/Vehicle Inspection

standards and other Commercial Vehicle Safety Alliance programs. (The Commercial Vehicle Safety Alliance is a national organization that has developed uniform inspection procedures, and trains inspectors in these procedures.)

Available MCSAP funds are distributed in three separate grants: Basic, Supplemental, and Special. *Basic* grants are given to each State with an approved State Enforcement Plan according to an allocation formula based on the most recent reliable data concerning the following factors in equal proportion: road mileage, vehicle miles traveled, number of commercial vehicles over 10,000 pounds, population, and special fuel consumption. *Supplemental* grants are used to encourage innovative, successful, cost efficient or cost effective programs and may include emphasis areas identified through consultation between the Federal Highway Administration and States. To be eligible for a supplemental grant, a State must qualify for a basic grant. *Special* grants are awarded for activities that help States meet the requirements of eligibility for basic grants; or for States already participating in the basic program, to develop the prerequisites for expanded activities not presently part of their basic programs. Special grants are also available for research or data collection activities. To be eligible for a special grant, a State need not qualify for a basic grant.

MCSAP reimburses States for 80% of eligible costs identified in the State's State Enforcement Plan. The other 20% must be provided by the State. Eligible costs are defined in 49 CFR 350.29 but include salaries and benefits of inspection and enforcement personnel, recruitment costs, training, equipment, vehicles, uniforms, motor fuel and oil, communications equipment, travel costs and per diem, and special inspection equipment, among others.

3. DOT, Federal Railroad Administration, State Participation Program

The Department has studied this program as a possible avenue to provide training for safe routine transportation procedures for rail transportation.

Initial responsibility for the inspection of hazardous material shipments by rail, which travel on private property, historically has been placed with the railroads. Government oversight of these type of inspections has been shared by both the Interstate Commerce Commission and the Federal Railroad Administration. To date, States and tribes have played a limited role in these inspections and no monetary Federal assistance is currently provided in regard to the performance of the inspections. Following passage of HMTUSA, the Federal Railroad Administration promulgated regulations on State participation in railroad safety inspections and investigations concerning transportation of hazardous materials.

The State Participation Program (49 CFR Part 212) for inspector training began in 1992. State participation is voluntary. The Federal Railroad Administration pays for each State participant's travel expenses, per diem allowance, and course tuition associated with any conferences, seminars, workshops or classroom training. The State is then required to provide salary and benefits for the trained inspector who is expected to spend fifty percent of his/her time conducting Federal Railroad Administration-related inspections. Federal Railroad Administration training does not include provision of gear or equipment.

The Federal Railroad Administration trains inspectors in five disciplines: track, motive power and equipment, operating practices, signal and train control, and hazardous materials. In 1995 there are 283 Federal Inspectors and 60 safety discipline specialists spread across the eight standard Federal regions. Currently, 30 States participate in the program with 134 State inspectors encompassing all five safety disciplines.

The number of both Federal and State inspectors who receive training in any given fiscal year is dependent upon two factors. These factors are the training budget allocated to the Federal Railroad Administration as an agency and the reallocation of the training funds within the Federal Railroad Administration which determines the training offered and the number of inspectors, both State and Federal, who will attend the training. If the cost of training all the perspective Federal and State inspectors in a single fiscal year would place a drain on the training budget, then the participation in training is limited.

Prior to applying for the Federal Railroad Administration inspector training program, a State employee must meet the minimum apprentice level requirements as stated in 49 CFR Part 212. The Federal Railroad Administration will work with the apprentice applicant to gain the necessary field experience in order to become certified as a Federal Railroad Administration inspector under the auspices of the State Participation Program.

4. Current DOE Training Programs

Current Department training programs are considered in this document as possible sources of training for all aspects required of a Section 180(c) program, regardless of chosen funding mechanisms.

The Department of Energy has an extensive infrastructure with which to train personnel for safe transportation of radioactive materials, compliance with Federal regulations, and preparedness and response to radiological materials accidents at fixed facilities and during shipment. The following discussion describes the current divisions of responsibility within the Department for transportation and emergency response policy, current training programs for transportation-related activities, and the applicability of these to a Section 180(c) program. This is not a comprehensive description of the Department's programs but rather an outline of those training programs with potential relevance to a Section 180(c) program.

The Department maintains a radiological accident response capability for the Federal government. The Department's Assistant Secretary for Defense Programs manages the Radiological Assistance Program and ensures that the necessary emergency plans, procedures, and resources are developed and maintained. Qualified Radiological Assistance Program teams are located in ten regions of the United States ready to respond when summoned by any other Federal agency, State, tribe, local government official, private industry representative, or private citizen. The Department's Office of Nonproliferation and National Security is responsible for coordinating the development and operation of the overall Departmental Emergency Management System, including maintenance of an Emergency Operations Center. The Department also provides this capability in support of the Federal Radiological Emergency Response Plan, which outlines the roles and responsibilities of all Federal agencies in situations involving radioactive materials.

Within the Office of Environmental Management, the Office of Transportation, Emergency Management, and Analytical Services is responsible for setting Departmental policy on transportation matters. As part of this responsibility, the Office of Emergency Management (EM–26) Emergency Management Team administers the Transportation Emergency Preparedness Program, to coordinate all non-weapons transportation emergency preparedness

across the DOE complex. The Transportation Emergency Preparedness Program was established in 1991 to coordinate the development and maintenance of uniform policies and approaches for Department programs and field offices responsible for transportation emergency preparedness activities.

The Department is also involved in activities at national laboratories and regional operations offices around the country that require employees and contractors to be trained in proper handling/treatment of radioactive materials in routine and emergency situations. Transportation operations personnel must be trained to meet the same Department of Transportation, Environmental Protection Agency, and Nuclear Regulatory Commission regulations required of all shippers of hazardous materials. Because of the variety and magnitude of such activities, the Department has developed a number of training courses that deal with radioactive materials. Many are offered to State, tribal, and local public safety officials as well as Department and contractor personnel.

Section 180(c) program development could use existing Departmental courses in several ways. Whether funding were received through the Federal Emergency Management Agency, DOT, the Department, or some combination, the training programs could be modified to accept State and tribal members and train for NWPA shipments. The courses may be required, approved, or simply suggested by Section 180(c) policy. Department training may provide the added benefit of consistent, accurate training. The Department offices that share responsibilities for the Department's transportation and preparedness policies and infrastructure, Defense Programs, National Security and Non-Proliferation, and Environmental Management Offices, will be consulted as the Section 180(c) program is developed. Any training that is provided under Section 180(c) will be most effective when it enables civil safety officials understand and work better within the existing Departmental and Federal systems.

5. Federal Emergency Management Agency, Comprehensive Cooperative Agreements

The Department has studied this program as a possible avenue to channel financial and technical assistance for all aspects of the Section 180(c) mandate.

The Federal Emergency Management Agency has been charged with building and supporting the nation's emergency management system. The Federal Emergency Management Agency is responsible for coordinating emergency planning, preparedness, mitigation, and assistance functions for the Federal government. As part of that mission, the Comprehensive Cooperative Agreement mechanism channels financial and technical assistance to State, tribal and local governments. The Comprehensive Cooperative Agreement program (Public Law 95–224, Federal Grant and Cooperative Agreement Act of 1977) is a possible mechanism through which Section 180(c) assistance could be administered.

Each Comprehensive Cooperative Agreement program (the Federal Emergency Management Agency currently administers about fifteen different Comprehensive Cooperative Agreement programs) can be tailored to meet specific needs of the recipients and the requirements of the authorizing legislation. Other agencies, including the Department of Defense and the Environmental Protection Agency, have used Comprehensive Cooperative Agreements to deliver funding and technical assistance to meet the needs of their programs and their statutory obligations.

There is considerable flexibility in the Comprehensive Cooperative Agreement and Cooperative Agreement programs that would help cover several of the statutory mandates of Section 180(c). The money could be sent to a designated State or tribal emergency response agency and then passed through to the agency responsible for safe transport activities. The Federal Emergency Management Agency already has the means to earmark funds as Nuclear Waste Fund money, making it easier to monitor proper use and effectiveness of the program. Lastly, the Comprehensive Cooperative Agreement program allows each statement of work to be different to suit recipients' unique needs within the program's parameters.

Whether the Department uses the Comprehensive Cooperative Agreement process as a funding mechanism, the Federal Emergency Management Agency's lead agency responsibility for coordinating Federal emergency management makes it a candidate source for technical assistance under Section 180(c). The Federal Emergency Management Agency has lead agency responsibility for monitoring hazardous materials planning and training under the Hazardous Materials Transportation Uniform Safety Act of 1992, for the Federal Radiological Preparedness Coordinating Committee, and for the Radiological Assistance Committees.

The Federal Emergency Management Agency submitted a proposal to the Department for administration of the Section 180(c) program. Their proposal is referred to in the Summary of Public Comments in this notice and will be considered along with other comments received in response to the January 1995 notice.

6. Cooperative Agreements and Grants

Two basic mechanisms are used by Federal agencies to distribute funds to State and tribal governments: cooperative agreements and grants. The Federal Grant and Cooperative Agreement Act (P.L. 95–224) outlines the proper use of each type of mechanism. Grants primarily indicate a transfer of funds, while cooperative agreements imply more substantial involvement between parties. Grant mechanisms can be further subdivided into categorical grants, block grants, and direct payments for a specified use. A Section 180(c) program may make use of any of these mechanisms.

Cooperative agreements reflect a more interactive relationship between the Federal government and a State or local government or other recipient. As with grants the principal purpose of the cooperative agreement relationship is the transfer of money, property, or services to the State or local government or other recipient to accomplish a public purpose of support authorized by Federal statute. But unlike grants, substantial involvement is anticipated between the Federal agency and the State or local government or other recipient during the planned activity.

Although grants usually present less of an administrative burden than cooperative agreements, Section 180(c) policy may require increased interaction between some recipients and the Department. Cooperative agreements generally require more communication between the Department and the recipient jurisdiction to develop scope of work, monitor activities, and complete reporting requirements. Grants can be narrowly focused in purpose and well defined so that once an application has been approved the Department's role is limited with the recipient jurisdiction having more flexibility and fewer record keeping and monitoring requirements.

The Office of Civilian Radioactive Waste Management currently has cooperative agreements with ten regional and national organizations. A cooperative agreement mechanism could be utilized to administer Section 180(c) funds to State and tribal recipients. While it might add a layer of bureaucracy and increase administrative costs, it may reduce the long range costs to the Department.

The Department could use a combination of grants and cooperative agreements based on the recipient jurisdiction's level of preparedness. In general, cooperative agreements could be established with recipients who lacked basic public safety infrastructure, while a grant program could be established for recipients with more developed infrastructures. This approach could help address the lack of working infrastructure for safe routine transportation and emergency response in some jurisdictions and the fact that many existing Federal programs do not currently fund tribes as they do States.

The combination of cooperative agreements and grants would allow for increased involvement between the Department and the recipient jurisdiction when necessary while not requiring it of all participants. Once a basic level of preparedness had been reached, a jurisdiction could transfer to the grant program. With this option the Department could define a basic level of preparedness and identify applicants accordingly, or allow each applicant to determine the type of funding mechanism most appropriate to them.

7. Department-Wide Assistance Program or OCRWM Assistance Program

The options discussed above can be considered either as avenues through which to administer Section 180(c) or as models that the Department could emulate. If none of the options are seen as sufficient to meet the statutory requirements of Section 180(c), it is possible that the Department could develop an assistance program to consolidate all activities of similar nature. In a more directed approach, OCRWM could create its own assistance program tailored for Section 180(c).

Under a Department-wide program, OCRWM would participate with other Departmental offices in establishing a program to coordinate provision of financial and technical assistance across all Department of Energy programs. The assistance could be designed to address training needs for both emergency response and safe routine transportation of radioactive materials for States and Indian tribes for the whole range of DOE nuclear shipments. These shipments include NWPA shipments, transuranic waste shipments to the Waste Isolation Pilot Plant, defense, and other Departmental shipments.

This approach presents a comprehensive program covering both safe routine transportation and emergency response for both States and tribes. It would promote coordination, increase efficiency, consistency and uniformity throughout the Department; and allow for a high degree of Departmental control and oversight. One potential difficulty with this approach would be that different Departmental offices responsible for shipping work under different legal requirements that may not be compatible. A Departmental assistance program would also require a commitment of resources to consolidate the functional programs that have traditionally operated relatively independently. A Departmental program may also adversely impact the current schedule for developing the Section 180(c) program.

OCRWM could develop and implement its own program, specifically tailored to Section 180(c) requirements. The benefits of this approach are that OCRWM could develop a program focusing solely on NWPA requirements. This offers greater flexibility in designing funding mechanisms and funding formulas. The disadvantages include duplication of State and tribal training within the Department and overlap efforts of other Federal agencies.

8. Combination of Elements from the Previous Groups

In order to encompass safe routine transportation and emergency response training, for rail transportation and highway transportation, and for State and tribal recipients, a combination of procedural options may be most effective. There are many ways to combine the options to meet the Section 180(c) requirements.

Some options discussed above have the potential to meet all of a Section 180(c) program's mandates while others have the potential to cover only a portion. If the Federal Railroad Administration and the Motor Carrier Safety Assistance Program are used to implement Section 180(c) safe routine transportation training, then a further combination of options will be necessary. Emergency response training procedures and tribal government participation requirements would be met through other avenues.

Current Department programs, the Federal Emergency Management Agency's Comprehensive Cooperative Agreements, a Department-wide program, or an OCRWM-wide program offer the best choices for implementing a complete Section 180(c) program through a single option, but even here combinations are possible. If funding and technical assistance are distributed through the Federal Emergency Management Agency, current Departmental training programs could supply the necessary training courses.

Other combinations are certainly possible and may include options not discussed in this paper, such as using funds to obtain training from private sources and from carriers of hazardous materials.

IV. Summary of Public Comments

The Department received 36 comments in response to the January 3, 1995, Notice of Inquiry. Comments were received from several State agencies, an Indian tribal government, a tribal organization, county governments, national transportation safety organizations, national and regional state government organizations, one Federal agency, a nuclear energy business organization, a utility and two citizens. The commenters held very diverse opinions; no single theme for implementing Section 180(c) was apparent.

The following section discusses general categories and summarizes major points of comments and the Department's response, where appropriate. The Department will provide more-detailed responses to these comments and any additional comments resulting from this Notice of Inquiry; Supplemental Information when the Notice of Proposed Policy and Procedures is issued in early 1996.

Major Issues

A. Section 180(c) Policy

The commenters raised many topics related to defining final Section 180(c) policy. Although the Department recognizes that these topics are closely related and overlap each other, this section divides those topics into the following subsections: general themes for a Section 180(c) program, safe routine transportation, emergency response procedures, technical assistance and equipment, and funding eligibility, allocation and restrictions.

General Themes

A number of commenters offered ideas about the philosophy and general structure of the program. These ranged from developing a needs-based type of program to one that offers assistance for an additional incremental level of training in existing hazardous materials transportation training.

Several commenters requested a program that assesses the current capabilities of jurisdictions, assesses the needed level of readiness for NWPA shipments, and then provides Section 180(c) assistance to make up the difference. They suggested that planning grants could fund jurisdictions to complete the capabilities assessment.

Then, implementation grants could be provided to carry out the identified activities.

Another general theme urged the Department to take into account the low level of risk presented by spent nuclear fuel and high-level radioactive waste shipments and proportion the assistance and training accordingly. They maintained that current hazardous materials transportation training for safe routine and emergency response procedures is sufficient to handle any situation that may occur. Creating a Section 180(c) program that went beyond the current hazardous materials transportation training would send a message that the NWPA shipments are more hazardous than they really are.

Separate from the issue over the basis for distributing assistance, several commenters recommended using the State Emergency Planning Committees and the Local Emergency Planning Committees as points of contact to decide who should receive assistance and to determine the needed level of training.

Other frequently occurring comments urged the Department not to ship or to limit the number of shipments until a Section 180(c) program is in place. This comment was often made in conjunction with the comment that the Department has an obligation to accept waste in 1998, and if Congress identifies a storage facility, shipping may well begin in 1998 or shortly thereafter. In addition, these commenters urged the Department to accelerate Section 180(c) implementation and to ask for a Section 180(c) budget allocation in the 1996 budget request to Congress.

Several commenters encouraged the Department to quickly announce potential routes. They argued that jurisdictions need to know as soon as possible what routes will be used so that they may begin planning immediately for shipments and be prepared if shipping occurs prior to the year 2010 currently targeted by the Department.

Safe Routine Transportation

Several definitions of safe routine transportation were offered. These often included activities commenters thought should be included in training for safe routine transportation. One commenter endorsed the Transportation External Coordination Working Group definition while two commenters wrote more expansive definitions to include combinations of: alternate route analysis, inspection and enforcement training, en route contingency plans, transportation infrastructure improvements, shipment notification and tracking, escorts, public information, and development and distribution of training curricula and course materials.

Not all comments referred to safe routine transportation directly, but identified the need for escorts and a satellite tracking system. The Conference of Radiation Control Program Directors questioned the need for escorts as an expensive option considering the actual level of risk compared to other hazardous material shipments. The National Conference of State Legislatures called for the Department to examine the possibility of response teams travelling with the shipments. The tracking system was encouraged as a way to build trust in the safety of the shipments and work more closely with the corridor jurisdictions.

Emergency Response Procedures

Several commenters offered either definitions of emergency response procedures or offered activities that they thought should be covered by training for emergency response procedures. Frequently, the Department was asked to delineate the responsibilities of each response level in case of a spent nuclear fuel transportation incident or accident. Only then would the best funding mechanism be identified.

It was frequently commented that emergency response training for local public safety officials should be integrated into existing hazardous materials training. A couple of comments pointed out that current hazardous materials training was sufficient for local responders because the response requirements for radiological incidents fall within the requirements for other hazardous materials shipments.

Contradictory comments were received concerning training for hospital personnel. One commenter argued that training for hospital personnel was not necessary, while others comments ranged from the need to provide simple awareness training to specialized decontamination equipment and training.

Eligibility Criteria

Comments on eligibility criteria focused on which jurisdictional level should be eligible to apply for funds. Some argued that local governments should be eligible to receive funds directly. They argued that this would reduce administrative costs and give local governments more control over the assistance. Several counties simply requested that they be guaranteed an amount of funding and given some discretion in using the assistance. Other commenters said only States and tribal agencies are eligible to apply for assistance.

Some commenters made suggestions regarding how the timing of NWPA shipments through a jurisdiction impacts eligibility. The Western Interstate Energy Board defined an eligible state or tribe as host and corridor states or tribes through which shipments under the NWPA are planned within six years. Others said training should begin one to three years prior to shipment.

The point was also raised that tribes near corridor jurisdictions should be eligible for assistance, since their lands and people would be at risk in case of a transportation accident or incident.

Funding Allocation Formula

Once eligibility criteria are determined, the total assistance available will have to be allocated among the eligible parties. Commenters were fairly specific in their views of how funds should be allocated. A frequent comment was that funds should be allocated according to the shipment miles through a jurisdiction. The Western Interstate Energy Board commented that annual implementation grants should have 75% of the funds allocated according to shipment miles and 25% allocated to ensure minimum funding levels and program capabilities. They defined shipment miles as the product of the expected number of shipments multiplied by the distance of such shipments. The Nuclear Energy Institute countered that the number of shipment miles through a jurisdiction does not automatically make a jurisdiction more impacted and therefore does not qualify them for additional assistance. They requested that the Department allocate funding to incrementally increase preparedness above what exists, rather than build a new radiological response capability.

The Southern States Energy Board suggested that funding should be allocated to each eligible jurisdiction based on a formula that includes both the number of routes miles in the jurisdiction and the population at risk along the shipment route(s), with consideration given to existing capabilities.

The HMTA Training and Planning Grants approach (discussed on pages 8 and 9 of this notice) to allocating funds was also suggested as a model.

Allowable Use of Funds

The Notice asked stakeholders what types of activities should be allowed once funding has been allocated. This discussion often overlaps with the discussion of program scope and the

definition of key terms. Several State agencies and organizations said that States and tribes should be the ones to prioritize needs and decide who needs training. They argued that recipients need wide latitude in deciding how to spend funds because of the varying levels of preparedness, divisions of responsibility, and other differences among jurisdictions. Many commenters, however, said that the final allocation of funding should guarantee a specific portion of the funding for local governments to use as they see best.

Another comment argued that the DOT Research and Special Programs Administration grants program provides a good model for allowable activities. These regulations require recipient jurisdictions to describe existing programs and explain how the requested funds supply necessary improvements to the existing capabilities. They also provide for monitoring of the program's effectiveness.

Another frequently mentioned point was that the Section 180(c) program should not require any matching funds from the jurisdiction in order to receive assistance.

The final Section 180(c) program will indicate what, if any, restrictions there will be on the use of funds. Most likely, the types of activities that the Department will consider in this area include: what, if any, equipment a jurisdiction could purchase; what, if any, training courses would be mandated or recommended; and what, if any, percentage of funds would have to be distributed to local public safety officials as opposed to State, tribal, and regional officials.

Technical Assistance and Equipment

Several commenters discussed the definition of technical assistance in addition to equipment issues. All the comments that included definitions of technical assistance identified the need for equipment in that definition. Therefore, these topics are being discussed together in this section.

Some commenters suggested that the Department use the Transportation External Coordination Working Group definition of technical assistance cited in the text above. Another suggested using the Department's 1992 Draft Options Paper definition, also cited above. Other suggestions were more broad in their application, encompassing such things as emergency response equipment, inspection equipment, assistance in route planning, emergency response plan development, course development and exercises, tracking capability, equipment and training for hospital personnel, 24-hour access to Federal radiological safety personnel, carrier qualifications, and funding, among others.

The Conference of Radiation Control Program Directors questioned the need for equipment, especially for local responders. They argued that the low risk of these shipments does not justify a response capability beyond what currently exists. The Federal Emergency Management Agency, on the other hand, offered their assistance to the Department in providing technical assistance and equipment to responders through their role as providers of emergency and disaster preparedness for State, tribal, and local governments.

One of the broader views on equipment came from the Council of State Governments-Midwestern Office. They believe the Department should supply funding for equipment, its maintenance and calibration, and that States should have funding to purchase computer software and hardware to assist with monitoring and response activities.

Concerns of Rural and Tribal Governments

Many comments reflected concerns of jurisdictions in rural parts of the country and of tribal governments. Issues of concern to tribal governments are often very separate because of their sovereign nation status. However, in many instances, concerns overlap with those of rural jurisdictions.

Comments received that dealt directly with tribal issues reiterated the Department's responsibility to work with tribes on a government-to-government basis and to fulfill the Department's Trust responsibility towards tribal governments. One comment encouraged the Department to begin direct communications with tribal governments near reactor locations to address their particular concerns. The Department was also encouraged to contact tribal governments who may not know they could have NWPA shipments crossing their lands.

The Department was also encouraged to take extra steps to address the lack of infrastructure and resources on many of the tribal lands that will be crossed by NWPA shipments. This should include providing resources to allow tribes to participate in the OCRWM program and to begin early to build an emergency response infrastructure for those tribes lacking basic infrastructure. One comment urged expansion of the cooperative agreement with the National Congress of American Indians to help facilitate communication with tribal governments.

Other commenters made suggestions about how a Section 180(c) program could address the concerns specific to rural areas. Rural jurisdictions often rely heavily on volunteer public safety personnel with high turnover rates, they serve large areas with few staff, have few resources for training, and little or no ability to travel to obtain training. The commenters encouraged the Department to offer training in the community where the local responders reside and to guarantee that certain levels of training and equipment would be supplied.

Both tribal governments and rural local and state governments expressed concern about lack of infrastructure or basic funding and personnel to build infrastructure. The transportation emergency response workshops sponsored by the National Congress of American Indians through their cooperative agreement with the Department of Energy, are a way to address tribal concerns. This preliminary type of awareness training may help provide some of the basic knowledge and know-how commenters mentioned as lacking.

How much training and assistance is available for any eligible jurisdiction will depend on how Section 180(c) policy is defined. What training goals are set for what level of public safety official will give an indication of the assistance available at various governmental levels. These types of decisions will also determine whether the Department provides funding for the State and tribe to distribute as they see fit, whether certain portions of funding are required to be spent at the local level, whether training is proscribed at one or two locations around the country, or whether the Department sends materials to the local jurisdiction for their own self-study.

The Department has made no decisions regarding Section 180(c) policy or the associated definitions and activities discussed above. These comments and others received throughout the development of the Policy and Procedures will be considered in the Department's decisions.

B. Section 180(c) Procedures

Of the options for implementation outlined in the Preliminary Draft Options paper and the January Notice of Inquiry, no clear-cut choice was identified in the comments. Some commenters suggested additional sources to consider for implementation procedures, and a few suggested new combinations of existing options.

One theme found among comments on procedural options was the request to minimize the administrative burden on all parties. Depending on the perspective of the commenter, this appeared as requests to either enhance or avoid existing programs. The theme also surfaced as requests to limit layers of bureaucracy and administration through which funding must be passed.

(1) Use Established Federal Agency Programs Other Than the Department's

From the State perspective, the Texas Department of Public Safety, Division of Emergency Management commented that receiving additional assistance through an existing and familiar program would be the least administratively burdensome. The Federal Emergency Management Agency Comprehensive Cooperative Agreement program, and the Research and Special Programs Administration program, under the Hazardous Materials Transportation Act were both mentioned as good options to avoid multiple Federal agency coordination requirements. New assistance programs, some felt, would create new administrative burdens.

The Federal Emergency Management Agency commented extensively with descriptions of their current regulatory authority to monitor and assess emergency plans and preparedness and a proposal for how they could administer the Section 180(c) program. This agency has current training programs and expertise in the emergency management field. Although a commenter criticized the agency for placing emphasis on preparations for nuclear attacks rather than transportation incidents, the Federal Emergency Agency stressed their all-hazards approach to preparedness that includes radioactive materials shipments within the larger scope of emergency preparedness.

The Nuclear Energy Institute commented that a separate program for Section 180(c) in addition to the Research and Special Programs Administration under the Hazardous Materials Transportation Act program will force utilities to pay twice for emergency preparedness. They suggested that working with RSPA could address this issue.

Both tribal and non-tribal commenters identified problems associated with existing Federal programs and a dissimilar approach to tribal assistance. Many concluded that the Department will need to address tribes in separate agreements. Also, it was suggested that the Department explore more current funding mechanisms used by tribes such as the Department of Housing and Urban Development Community Development and Block Grant Program.

Many county commenters expressed concern that any additional involvement of the Federal government would detract from the amount of funding ultimately destined for training costs and equipment. Others cited a diminished focus on NWPA shipments, Nuclear Waste Fund issues, government downsizing, or added administration as negative aspects of this option. The Commercial Vehicle Safety Association also pointed out that it may put expertise and training further away from the intended delivery point.

(2) Establish Agreements With State, Local, Tribal, and Other Organizations

This option prompted a variety of interpretations. Some identified the potential improvements in regional cooperation and efficiency as the biggest benefit to establishing agreements with organizations. Agreements or Memoranda of Understanding between recipients, agreements between the Department and recipients, or agreements between the Department and regional or national coordinating organizations were all discussed. Overall, State and regional coordination was identified as a benefit.

This option, specifically through an additional agreement with the National Congress of American Indians, was indicated as a potential solution to the Department ensuring up front consultation with tribal recipients. It was suggested that expansion of cooperative agreements with tribes would be beneficial, particularly in light of the differences between tribes and other recipients governments.

Many commenters, however, after praising the benefits of cooperative agreements pointed out that their development is a lengthy, involved process and may take too long to implement effectively. Two specifically cited the Waste Isolation Pilot Plant program, which has developed over six years and only involves seven States substantively. Also, this option was named as an unnecessary administrative layer that would take away from total funding to be spent on training.

Some other organizations were suggested for total or partial implementation or training support. The Association of American Railroads' Technical Training Center in Pueblo, Colorado is well suited to train emergency responders for rail incidents and is currently in operation. The Commercial Vehicle Safety Alliance has worked closely with the Department to develop enhanced uniform inspection standards and train inspectors.

(3) Establish a Department-Wide Grant Program

Response to this option was mixed. Some called it inappropriate or difficult, citing the Nuclear Waste Fund issues of commingling funds or the inability to coordinate with the diverse shipping campaigns of the Department in a timely manner. Another commenter noted that the fewer points-of-contact between the Department and stakeholders would be beneficial.

One comment praised the current training courses offered at the Nevada Test Site and encouraged the Department to include them in Section 180(c) training. Another commenter suggested a review of the Waste Isolation Pilot Plant project as an effective implementation of similar goals. However, it was noted that this project targeted a smaller and better identified group, and modifications would be necessary.

(4) Establish an OCRWM Grant Program

Many commenters saw this option as the most direct funding option. Some pointed to a minimized bureaucracy and administration, increased flexibility, and a resultant reduction in competition with other funding priorities as benefits of distributing Section 180(c) assistance without involving other programs. Also, the diversity of recipients and increased Department control and accountability were mentioned as benefits.

The Western Interstate Energy Board commented on this option favorably, provided that such a grant program incorporates flexibility to allow States to coordinate the training and funding. The Southern States Energy Board and the National Conference of State Legislatures both identified this option as favorable if additional national or regional coordination efforts were also supported.

Many county commenters interpreted this option as similar to the direct payments made to local governments through Yucca Mountain oversight programs. They were generally in favor of options that assist local governments as directly as possible.

(5) Use Elements From the Previous Four Groups

Two commenters agreed that a combination of OCRWM grants and regional/national group cooperative agreements would be best. This could provide the proper degree of direct contact between the Department and recipient governments while also

encouraging national or regional planning, coordination, and uniformity.

It may be necessary to apply a combination of options to encompass the wide array of objectives outlined in the NWPA. This range was discussed above in part III.B.8, Combination of Elements from the Previous Groups.

C. Applicability of Section 180(c) to Private Shipments

Many States, counties, and regional groups urged that the Section 180(c) program should apply to all commercial spent nuclear fuel or defense high-level radioactive waste shipments ultimately destined for a NWPA facility, whether or not those shipments are transported to and stored on an interim basis at a private facility. Commenters cited that any large-scale shipping campaign of such materials will have virtually the same impact on States and tribes as that envisioned in the NWPA.

The Department does not currently have the legal authority to implement a program of financial and technical assistance for shipments other than those outlined by the NWPA. However, the many comments on this issue have been noted.

D. Policy Development Process

A few commenters questioned the Department's plans to issue a Notice of Policy and Procedures rather than establish the program in regulations. They voiced concern that implementation of Section 180(c) through regulations is necessary to ensure stability through changes of leadership within the Department and that an interpretation of policy and procedures is ''less robust.'' An expedited rulemaking process was suggested to accommodate time constraints.

The Department's response to these comments is that development of the Interpretation of Policy and Procedures has followed and will continue to follow Notice and Comment Procedures of the Federal Rulemaking process. At some future date the option of converting Policy and Procedures to a rulemaking may be acted upon. In development, however, it was the Department's intent to remain flexible in order to work through unforeseen problems without rulemaking requirements.

V. Conclusion and Request for Submission

This paper has presented a discussion of options for Section 180(c) policy and procedures. The subjects discussed here should not be viewed as the only potential options for the program. Comments received on this Notice and continuing research on these options may still identify aspects of the program not discussed here that will be included in the Notice of Proposed Policy and Procedures, which the Department intends to publish in 1996. The purpose of this document has been to share with stakeholders the research to date and request additional comments from interested parties.

The Department solicits comments from the public on all aspects of Section 180(c) implementation.

Issued in Washington, D.C., July 12, 1995.

Daniel A. Dreyfus,

Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 95–17627 Filed 7–17–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Fossil Energy

National Petroleum Council; Notice of Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: National Petroleum Council (NPC).

Date and Time: Wednesday, August 9, 1995 at 9:00 am.

Place: Four Seasons Hotel, Corcoran Ballroom, 2800 Pennsylvania Avenue NW., Washington, DC.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–5), Washington, DC. 20585, Telephone: 202/586–3867.

Purpose

To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industry.

Tentative Agenda

—Call to order and introductory remarks by H. Laurance Fuller, Chair of the NPC.
—Consider and approve the proposed report of the NPC Committee on Research and Development.
—Consider and approve the proposed report of the NPC Committee on Future Issues.
—Remarks by the Honorable Hazel R. O'Leary, Secretary of Energy.
—Administrative matters.
—Discussion of any other business properly brought before the NPC.
—Public comment (10-minute rule).
—Adjournment.

Public Participation

The meeting is open to the public. The chairperson of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. This notice is being published less than 15 days in advance of the meeting due to certain programmatic issues which had to be resolved prior to publication in the **Federal Register**.

Transcripts

Available for public review and copying at the Public Reading Room, Room IE–190, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C., between 9:00 am and 4:00 pm, Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on July 13, 1995.

Rachel M. Samuel,

Acting Deputy Advisory Committee, Management Officer.

[FR Doc. 95–17623 Filed 7–17–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5259–8]

Common Sense Initiative Council, Iron and Steel Sector Subcommittee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Common Sense Initiative Council, Iron and Steel Sector Subcommittee; notice of meeting.

SUMMARY: The Environmental Protection Agency established the Common Sense Initiative Council (CSIC)—Iron and Steel Sector Subcommittee (CSIC-ISS) on October 17, 1994, to provide independent advice and counsel to EPA on policy issues associated with the iron and steel industry. The Subcommittee is currently working on projects that the Subcommittee has approved, reviewing work plans for a small number of pending projects, and exploring issues related to the iron and steel industry. The Subcommittee will next meet on Thursday, August 24, 1995.

OPEN MEETING NOTICE: Notice is hereby given that the Environmental Protection Agency is convening an open meeting of the Iron and Steel Sector Subcommittee on Thursday, August 24, 1995 from 8:00 a.m. to 4:00 p.m. central daylight savings time at the Ambassador West Hotel, 1300 N. State Parkway, Chicago, IL 60610. Seating will be available on a first come, first served basis.

The Iron and Steel Subcommittee has created four workgroups which are

responsible for proposing to the full Subcommittee for its review and approval potential activities or projects that the Iron and Steel Sector Subcommittee will undertake, and for carrying out projects once approved. The Subcommittee has approved six projects and their workplans, and is considering two additional projects. Workgroups will be meeting on Wednesday preceding the meeting at the same hotel to discuss further pending projects and to continue working on workplans and implementation of approved projects. The purpose of the Subcommittee meeting will for the Subcommittee to consider the pending projects as well as any proposed changes to approved projects, to make any needed implementation decisions, and to discuss issues relevant to the iron and steel industry.

INSPECTION OF SUBCOMMITTEE DOCUMENTS: Documents relating to the above topics will be publicly available at the meeting. Thereafter, these documents and the minutes of the meeting will be available for public inspection in room 2417M of EPA Headquarters, 401 M Street SW., Washington, D.C. 20460, telephone number 202–260–7417.

FOR FURTHER INFORMATION: For more information about this meeting, please call either Ms. Mary Byrne at 312–353–2315 in Chicago, Illinois or Ms. Judith Hecht at 202–260–5682 in Washington, D.C.

Dated: July 6, 1995.

Mahesh Podar,

Designated Federal Officer.

[FR Doc. 95–17617 Filed 7–17–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5260–4]

Government Information Locator Service (GILS)

AGENCY: U.S. Environmental Protection Agency.

ACTION: Public notice announcement of second focus group meeting.

SUMMARY: All Federal agencies and departments must create locators (i.e., electronic card catalogues) for their publicly-available information, and must make these locators available in a standard format. The collection of all the Federal agencies' and departments' locators is termed the Government Information Locator Service (GILS), which is more fully described in the Office of Management and Budget Bulletin 95–01, ''Establishment of Government Information Locator Service.''

The Environmental Protection Agency (EPA) is convening several focus group meetings to confirm and expand our understanding of our customers' needs for a locator to EPA information. The purpose of the meetings is to engage EPA's constituencies in dialogue about their specific requirements for EPA's GILS, so that EPA can better tailor its GILS to fit customer needs.

This second public focus group is designed to include any likely users of EPA's GILS, and any interested parties, except for EPA staff (EPA staff will attend separate sessions). Diverse interest groups and varied perspectives are welcome.

Results of the focus group meetings will be combined with results from internal EPA meetings, and will be used to help set the near- and long-term agenda for development, enhancement, and sustainability of GILS at EPA.

The meeting will take place on Tuesday, July 18, 1995, from 9:00 am to noon at Hall of the States, 444 North Capitol Street NW., Washington, DC. The meeting will be held in Room 333 and there is no cost to participate.

To keep the focus group attendance to a workable size (i.e., one in which voices can be readily heard and thoughts recorded), advance registration is required. To register, please contact one of the following by July 17, and let them know your name, company or affiliation (if any), telephone and fax numbers.

Brenda Selden, EPA Headquarters, 202–260–5142 fax: 202–260–3923 electronic mail: selden.brenda@epamail.epa.gov

Mary Gedney, DynCorp, 703–222–1491 fax: 703–222–1542 electronic mail: gedney.mary@epamail.epa.gov

If you have special needs for accessibility, please let us know so we can do our best to accommodate you.

If you cannot participate in the focus group, but want to contribute your perspectives, please contact us to obtain a GILS questionnaire, to be filled out at your convenience.

Dated: July 12, 1995.

Stephen S. Hufford,

Chief, Information Management Branch.

[FR Doc. 95–17619 Filed 7–17–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5260–1]

Government Information Locator Service (GILS)

AGENCY: U.S. Environmental Protection Agency.

ACTION: Public notice announcement of third focus group meeting.

SUMMARY: All Federal agencies and departments must create locators (i.e., electronic card catalogues) for their publicly-available information, and must make these locators available in a standard format. The collection of all the Federal agencies' and departments' locators is termed the Government Information Locator Service (GILS), which is more fully described in the Office of Management and Budget Bulletin 95–01, ''Establishment of Government Information Locator Service.''

The Environmental Protection Agency (EPA) is convening several focus group meetings to confirm and expand our understanding of our customers' needs for a locator to EPA information. The purpose of the meetings is to engage EPA's constituencies in dialogue about their specific requirements for EPA's GILS, so that EPA can better tailor its GILS to fit customer needs.

This third public focus group is designed to include any likely users of EPA's GILS, and any interested parties, except for EPA staff (EPA staff will attend separate sessions). Diverse interest groups and varied perspectives are welcome.

Results of the focus group meetings will be combined with results from internal EPA meetings, and will be used to help set the near- and long-term agenda for development, enhancement, and sustainability of GILS at EPA.

The meeting will take place on Wednesday, July 26, 1995, from 9:00am to noon at EPA's Region 5 Office, 77 West Jackson Blvd., Chicago, Illinois. The meeting will be held in the 12th floor Conferencing Center Lake Erie Room and there is no cost to participate.

To keep the focus group attendance to a workable size (i.e., one in which voices can be readily heard and thoughts recorded), advance registration is required. To register, please contact one of the following by July 25, and let them know your name, company or affiliation (if any), telephone and fax numbers.

Susanne Buthman-Salcido, EPA Region 5, 312–886–6708 fax: 312–886–1515 electronic mail: Buthman-Salcido.Susanne@epamail.epa.gov

Mary Gedney, DynCorp, 703–222–1491 fax: 703–222–1542 electronic mail: gedney.mary@epamail.epa.gov

If you have special needs for accessibility, please let us know so we can do our best to accommodate you.

If you cannot participate in the focus group, but want to contribute your perspectives, please contact us to obtain

a GILS questionnaire, to be filled out at your convenience.

Dated: July 12, 1995.

Stephen S. Hufford,

Chief, Information Management Branch.

[FR Doc. 95–17618 Filed 7–17–95; 8:45 am]

BILLING CODE 6560–50–P

[OPPTS–62148; FRL–4964–8]

Notice of Intent to Form Dialogue Group on Identification of Lead-Based Paint Hazards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is planning to establish a Dialogue Group on the forthcoming rulemaking under section 403 of the Toxic Substances Control Act (TSCA). Section 403 directs the Agency to ''. . . promulgate regulations which shall identify. . . lead-based paint hazards, lead contaminated dust and lead contaminated soil.'' The purpose of the Dialogue Group is to provide a forum where interested parties can contribute information and give individual perspectives on specific policy questions related to this forthcoming rulemaking. Agency staff may also ask participants to give their individual reactions to specific proposals and questions.

FOR FURTHER INFORMATION CONTACT: For information on substantive matters, contact: Jonathan Jacobson, Chemical Management Division (7404), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202–260–3779, e-mail: jacobson.jonathan@epamail.epa.gov. For information on administrative matters, contact: Andrea Yang, Chemical Management Division (7404), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202–260–4918, e-mail: yang.andrea@epa.mail.epa.gov.

SUPPLEMENTARY INFORMATION: Section 403 of TSCA, 15 U.S.C. 2683, directs EPA to promulgate regulations that identify lead hazards in paint, household dust, and bare residential soil. Title IV of TSCA, titled ''Lead Exposure Reduction,'' which includes section 403, was added to TSCA by the Residential Lead-Based Paint Hazard Reduction Act of 1992. This latter Act is Title X of the ''Housing and Community Development Act of 1992.'' On occasion, therefore, TSCA section 403 may be referred to as a section of ''Title X'' or the ''Housing and Community Development Act of 1992.''

Establishing the technical basis for this rulemaking has presented a significant challenge to the Agency, particularly in the area of assessing the impacts of defining various levels of lead in dust and soil as ''hazardous.'' While the Agency continued to work on these and related questions, the Agency issued interim guidance on July 14, 1994, to meet an immediate and growing need among Federal, state, and local officials, property owners, and other decision makers for advice on potential hazards from lead-based paint and lead-contaminated dust and soil.

EPA is beginning an examination of a broad range of policy and regulatory issues to help it develop the section 403 rule. Because the forthcoming regulation will have broad and significant impacts, the Agency believes it would be beneficial to involve interested parties in this stage of the regulatory development process. EPA, therefore, has decided to establish a dialogue process to obtain input from knowledgeable individuals who represent groups that would be affected by forthcoming regulation (e.g., lead-poisoning prevention advocates, housing providers, banking and insurance industries, the lead industry, and state and local governments). To ensure that EPA assembles a representative range of knowledgeable experts and that meetings are productive, the Agency is engaging professional contract support to facilitate the meetings.

The Dialogue Group will examine the following issues: standards for paint, dust, and soil; property owners response to standards; and implementation issues. Although there will be some discussion of the scientific and technical approach for standard setting, EPA would like the group to focus on policy questions (e.g, establishing a *de minimis* area of deteriorated lead-based paint).

The Agency will implement the convening process during July and August 1995 and expects that the first meeting of the group will take place during September or October 1995. EPA is currently planning to hold four monthly meetings, completing the dialogue in early 1996. All meetings will be held in Washington, DC and will be open to the public.

Dated: July 10, 1995.

William H. Sanders III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 95–17601 Filed 7–17–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Network Reliability Council Meeting

July 13, 1995.

AGENCY: Federal Communications Commission.

ACTION: Notice of rescheduling of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the rescheduling of the twelfth meeting of the Network Reliability Council (''Council''). The twelfth meeting of the Council, originally scheduled for July 21, 1995 from 1:30 to 3:30, will instead be held at the Federal Communications Commission in Washington, D.C. on October 26, 1995. The agenda for the twelfth meeting will be expanded to accommodate a broader range of topics.

DATES: Thursday, October 26, 1995 from 1:00 to 3:30 p.m.

ADDRESSES: Federal Communications Commission, Room 856, 1919 M Street NW., Washington, D.C. 20554.

SUPPLEMENTARY INFORMATION: The Council was established by the Federal Communications Commission to bring together leaders of the telecommunications industry and telecommunications experts from academic, consumer and other organizations to explore and recommend measures that would enhance network reliability.

The agenda for the rescheduled and expanded twelfth meeting will include review, for Council approval, of three of the five final focus group reports, and updates on best practice implementation, network reliability performance and data collection and funding.

Members of the general public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. The public may submit written comments to the Council's designated Federal Officer before the meeting.

FOR ADDITIONAL INFORMATION CONTACT: Jim Keegan at (202) 634–1867.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–17572 Filed 7–17–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

Clearinghouse on Election Administration; Notice of Meeting

In accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I) and Office of Management and Budget Circular A–63, as revised, the Federal Election Commission announces the following Advisory Panel meeting.

Name: Federal Election Commission Clearinghouse Advisory Panel.

Date: 4–5 August 1995.

Place: The ANA Westin Hotel 2401 M Street NW., Washington DC 20037.

Time: 0900–1200; 1300–1500 on 4 August 1995, 0900–1200 on 5 August 1995.

Proposed Agenda: Clearinghouse priorities in information and research services, plans for database development, and report on current research efforts. Open discussion.

Purpose of the Meeting: The Panel will present their views on problems in the administration of Federal elections, and formulate recommendations to the Federal Election Commission Clearinghouse for its future program development.

The Advisory Panel meeting is open to the public, dependent on available space. Any member of the public may file a written statement with the Panel before, during or after the meeting. To the extent that time permits, the Panel Chairman may allow public presentation or oral statements at the meeting.

All communications regarding the Advisory Panel should be addressed to Penelope Bonsall, National Clearinghouse on Election Administration, Federal Election Commission, 999 E Street NW Washington DC 20463.

Dated: April 13, 1995.

Marjorie W. Emmons,

Secretary to the Commission.

[FR Doc. 95–17612 Filed 7–17–95; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

FCNB Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 1, 1995.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. FCNB Corp, Frederick, Maryland; to acquire Laurel Bancorp, Inc., Laurel, Maryland, and indirectly acquire Laurel Federal Savings Bank, Laurel, Maryland, and thereby engage in acquiring a savings and loan holding company and its subsidiary federal savings bank, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 12, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-17558 Filed 7-17-95; 8:45 am]

BILLING CODE 6210-01-F

Peter J. Mehlhaff, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 1, 1995.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Peter J. Mehlhaff, Sioux Falls, South Dakota; to acquire an additional 47.87 percent, for a total of 70.22 percent, and Patrick O. Mehlhaff, Eureka, South Dakota, to acquire an additional 14.98 percent, for a total of 29.78 percent, of the voting shares of Great Plains Bank Corporation, Eureka, South Dakota, and thereby indirectly acquire Eureka State Bank, Eureka, South Dakota and First National Bank of Eden, Eden, South Dakota.

Board of Governors of the Federal Reserve System, July 12, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–17559 Filed 7–17–95; 8:45 am]

BILLING CODE 6210–01–F

Olympia Bancorporation, Inc. Employee Stock Ownership Plan, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 11, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Olympia Bancorporation, Inc. Employee Stock Ownership Plan, Chicago Heights, Illinois; to become a bank holding company by acquiring 50.01 percent of the voting shares of Olympia Bancorporation, Inc., Chicago Heights, Illinois, and thereby indirectly acquire Heritage Olympia Bank, Chicago Heights, Illinois.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. FCT Bancshares, Inc., Mart, Texas; to become a bank holding company by acquiring 100 percent of First Central Holdings, Inc., Dover, Delaware, and thereby indirectly acquire The First National Bank of Mart, Mart, Texas.

In connection with this application, First Central Holdings, Inc., Dover, Delaware; also has applied to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Mart, Mart, Texas.

Board of Governors of the Federal Reserve System, August 12, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-17560 Filed 7-17-95; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95N–0200]

Public Hearing: Products Comprised of Living Autologous Cells Manipulated ex vivo and Intended for Implantation for Structural Repair or Reconstruction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public hearing to discuss the regulation of products that are comprised of living autologous cells manipulated ex vivo and intended for implantation for structural repair or reconstruction of the source tissue or other tissue, including products used for cosmetic reconstruction and augmentation. The products to be discussed at this hearing are described in further detail in this document.

In view of the emergence of new autologous cell products and the potential enhancement to the public health, the purpose of the hearing is to solicit information and views from interested persons, including scientists, clinical investigators, professional groups, trade groups, commercial enterprises, and consumers, on the issues and concerns relating to regulation of such products.

Preregistration by written notice is advised to ensure participation. The procedures governing the hearing are found in 21 CFR part 15.

DATES: Submit written notices of participation by October 26, 1995. The public hearing is scheduled for November 16 and 17, 1995, from 9 a.m. to 5 p.m. Written comments will be accepted until February 16, 1996.

ADDRESSES: The public hearing will be held at the Gaithersburg Hilton, 620 Perry Pkwy., Gaithersburg, MD 20877, 301–977–8900. Submit written notices of participation and comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. 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. Comments may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. Transcripts of the hearing also will be available for review at the Dockets Management Branch.

FOR FURTHER INFORMATION CONTACT: Andrea E. Chamblee, Office of the Commissioner (HF–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1306.

SUPPLEMENTARY INFORMATION:

I. Background

Over the last several years, FDA has worked to clarify its approach to the regulation of products that are comprised in whole or in part of living cellular materials. The agency's approach has been embodied in several recent policy statements. The agency's statement on somatic cell therapy was published in a notice in the **Federal Register** of October 14, 1993 (58 FR 53248). The agency's position on banked human tissue was outlined in an interim rule published in the **Federal Register** on December 14, 1993 (58 FR 65514).

As noted, the agency described its policies for the regulation of somatic cell therapies in an October 1993 notice. The somatic cell statement defined somatic cell therapy products as autologous (i.e., self), allogeneic (i.e., intra-species), or xenogeneic (i.e., inter-species) cells that have been propagated, expanded, selected, pharmacologically treated, or otherwise altered in biological characteristics ex vivo (i.e., outside the body) to be administered to humans and applicable to the prevention, treatment, cure, diagnosis, or mitigation of disease or injuries. FDA defined ''manipulation'' as the ex vivo propagation, expansion, selection, or pharmacological treatment of cells, or other alteration of their biological characteristics.

The statement outlined the regulatory controls over somatic cell therapy products, and explained that the degree of regulatory control reflected the extent and intent of cell processing ex vivo. Thus, in accordance with the statement, cells manipulated in a way that changed the biological characteristics of the cell population would be subject to product licensure as final biological products. The statement also made clear that such products would be subject to all other pertinent regulatory requirements, including provisions governing drug listing and registration, and rules governing misbranding and adulteration.

In contrast, the October 1993 notice on somatic cell products stated that applications for premarket approval were not presently required for certain other cellular products, including minimally manipulated or purged bone marrow, and certain minimally processed cell transplants.

The statement also indicated that the field of somatic cell therapy was dynamic and rapidly expanding, and stated that, ''[a]s scientific knowledge in the area of somatic cell therapy continues to accumulate and evolve, the agency's approach may also evolve'' (58 FR 53248). The agency also acknowledged the need to reconsider periodically its approach to these evolving products in an article by FDA's Commissioner David Kessler, entitled ''Regulation of Somatic-Cell Therapy and Gene Therapy by the Food and Drug Administration'' that published in the *New England Journal of Medicine* on October 14, 1993. That article observed that, ''[a]s these novel therapeutic applications are explored and knowledge about risks and benefits accumulates, the FDA's regulatory approach may be modified.''

In the **Federal Register** of December 14, 1993 (58 FR 65514), FDA established certain requirements for banked human tissue intended for transplantation. Banked human tissue products are described in the interim final rule as

any tissue derived from a human body which: (1) Is intended for administration to another human for the diagnosis, cure, mitigation treatment, or prevention of any condition or disease; (2) is recovered, processed, stored, or distributed by methods not intended to change tissue function or characteristics; (3) is not currently regulated as a human drug, biological product, or medical device; (4) excludes kidney, liver, heart, lung, pancreas, or any other vascularized human organ; and (5) excludes semen or other reproductive human tissues, human milk, and bone marrow. The interim final rule specifically excluded autologous products.

Thus, the agency's policies on somatic cell therapy, gene therapy, and banked human tissue for transplantation contemplated that changes in the products, and greater understanding of the benefits and risks of new products, might lead to modifications in the agency's regulatory approach.

II. Development of Autologous Cellular Products for Structural Repair and Reconstruction

The agency is aware of an increasing number of reports in the scientific literature of the clinical use of autologous cells manipulated ex vivo that are intended for implantation. One recent article reported a Swedish study of autologous chondrocyte transplantation in 23 patients with deep cartilage defects in the knee (Ref. 1). Another article reported that mesenchymal cells harvested for expansion ex vivo and implanted in experimental animals can differentiate into bone, muscle, cartilage, and other mesenchymal tissues (Ref. 2). In recent years, other articles have described the use of autologous skin cells for burns and wounds (Refs. 3 and 4), and the use of cultured melanocytes for vitiligo (Refs. 5 and 6). Still other articles reported the ex vivo culturing of autologous skin to treat burns and vitiligo (Refs. 7 and 8).

References

1. Brittberg, M. et al., ''Treatment of Deep Cartilage Defects in the Knee With Autologous Chondrocyte Transplantation,'' *New England Journal of Medicine*, 331:889–895.

2. Mesenchymal Stem Cells in Bone Development, Bone Repair, and Skeletal Regeneration Therapy, *Journal of Cellular Biochemistry* 56:283–294, 1994.

3. Navsaria, H. A., S. R. Myers, I. M. Leigh, and I. A. McKay, ''Culturing Skin In Vitro for Wound Therapy,'' *Trends in Biotechnology*, 13(3): 91–100, March 1995.

4. Malakhov, S. F., B. A. Paramonov, A. V. Vasiliev, and V. V. Terskikh, ''Preliminary Report of the Clinical Use of Cultured Allogeneic Keratinocytes,'' *Burns*, 20(5):463–466, October 1994.

5. Olsson, M. J., G. Moellmann, A. B. Lerner, and L. Juhlin, ''Vitiligo: Repigmentation With Cultured Melanocytes After Cryostorage,'' *Acta Dermato-Venereologica*, 74(3):226–228, May 1994.

6. Zachariae, H., C. Zachariae, B. Deleuran, and P. Kristensen, ''Autotransplantation in Vitiligo: Treatment With Epidermal Grafts,'' *Acta Dermato-Venereologica*, 73(1):46–48, February 1993.

7. Navsaria, H. A., S. R. Myers, I. M. Leigh, and I. A. McKay, ''Culturing Skin In Vitro for Wound Therapy,'' *Trends in Biotechnology*, 13(3):91–100, March 1995.

8. Tissue Engineering and the Human Body Shop: Encapsulated-cell Transplants Enter the Clinic, *Journal of NIH Research*, 47–51, 1995.

In addition to these reports from the scientific literature, the agency has received an increasing number of inquiries from companies about the regulation of autologous products intended for implantation. The inquiries have been made for a variety of products intended to replace or repair tissue that is nonfunctioning or diseased, including cosmetic augmentation, dermal wound healing, and cartilage replacement for damaged knees. The products may have characteristics of drugs, biological products, and devices, and some may be combination products. (See 21 CFR part 3.)

These reports in the literature and inquiries to the agency may reflect changes in what is understood about the science of autologous cell transplantation. The reports also signal a significant evolution in the nature of the products. As technologies are developing, these products increasingly are being commercialized and made available on a larger scale to patients.

III. Purpose and Scope of the Hearing

The promise of products that use autologous cells for implantation is great, and the demand for them is expected to be correspondingly high. Successful development and marketing of these products may be slowed by questions about the scope of regulatory requirements. In light of the potential public health significance of the new products, the growth of a commercial industry, and the need to develop an appropriate regulatory framework for products comprised of autologous cells for implantation for repair or reconstruction, the agency has decided to hold a public hearing to solicit information on the nature and diversity of these products, and comments on the formulation and implementation of appropriate regulatory requirements.

The hearing will be limited to discussion of autologous cells manipulated ex vivo, and intended for implantation for structural repair or reconstruction of the source tissue or other tissue, including products intended for cosmetic reconstruction and augmentation. Examples of these products include cartilage, fat, and skin cells, removed, manipulated ex vivo, and implanted in the patient, either at the site where the cellular material was removed or at another site. These products will be referred to hereinafter as ''manipulated autologous structural cells (MAS cells).''

Allogeneic and xenogeneic products are beyond the scope of the hearing. In addition, the hearing will not consider products intended for nonstructural purposes, including, for example, autologous pancreatic cells to produce insulin following total pancreatectomy, autologous stem cells for functional replacement of muscle, and autologous lymphocytes activated to induce immune function.

Gene therapy products also are beyond the scope of this hearing. Gene therapy products are products containing genetic material administered to modify or manipulate the expression of genetic material or to alter the biological properties of living cells.

IV. Issues for Discussion

The agency recognizes the importance of facilitating the introduction of useful new technologies while minimizing regulatory burdens. The agency notes that there are a variety of products covered by this hearing (see section III. of this document) and that different regulatory approaches may be appropriate for different types of MAS cells. Participants should address appropriate distinctions among MAS cells. To assist in the development of an appropriate regulatory strategy, the agency invites information and comments on the following:

(a) What are the public health benefits of products in this group? What alternative therapies exist?

(b) What are the public health risks of products in this group? What are the risks of contamination associated with the ex vivo processing of the cellular material? What other potential risks exist?

(c) Some of the MAS cells may have characteristics of biological products, drugs, or devices. What are the mechanism(s) of action of these products?

(d) The 1993 interim final rule for banked human tissue did not require premarket review and approval or provide for FDA oversight of tissue as regulated drugs, devices, or biological

products. In contrast, many somatic cell products are subject to premarket review and approval and to all other pertinent requirements, including provisions governing misbranding and adulteration. The agency is interested in information and views on the relative strengths and weaknesses of these approaches as they relate to the regulation of MAS cells. In particular, the agency is interested in the following:

(1) What are the advantages and disadvantages of an approach that would require premarket product approval?

(2) If premarket approval is not required, what would be the advantages and disadvantages of an approach that required licensing of each establishment involved in the processing of the material?

(3) If premarket product approval is required, what safety and efficacy information should the agency seek in a premarket submission? What issues are important in clinical trial design (e.g., efficacy measurements, endpoints)?

(4) What role should institutional review boards or other third party review organizations play in the oversight of these products?

(e) Autologous cells manipulated ex vivo for implantation for structural repair or reconstruction may involve intraoperative procedures to remove the cellular material from the patient, shipment of the cellular material to a distant site, processing of the material at that site, and the return of the processed material to the physician for implantation. In light of these practices, the agency seeks comment on the need for the following:

(1) Recordkeeping, to enable audits, tracking, or recall, if necessary;

(2) Precautions to help prevent errors and accidents, such as wrong-donor infusion, or potential infectious disease transmission;

(3) Process controls and validation, to help ensure the appropriate characterization of the product before, during and after processing;

(4) Labeling, to help ensure that users are adequately informed of uses and risks associated with the product;

(5) Current good manufacturing practices (CGMP's), to help ensure the consistency and control of the process and product;

(f) What amount of time should be allowed for compliance after adoption of new regulatory frameworks? Are there widely-practiced procedures, e.g., recordkeeping or other GMP's, that could be implemented sooner than others?

V. Current Regulatory Status of Pending and Approved Applications

This notice is not intended to affect the status of any approved or pending investigational or marketing application. Pending the hearing and its outcome, FDA does not at this time intend to actively regulate products comprised of human living autologous cells manipulated ex vivo and intended for implantation for structural repair or reconstruction.

The agency recommends that any facility that currently distributes or plans to distribute such products pending the outcome of this hearing use appropriate process controls and validation and adhere to current good manufacturing practices. Informed consent from the patient should be obtained, and labeling should be truthful and not misleading.

In addition, recordkeeping and tracking should be performed to facilitate the distribution of any appropriate information, and recall if indicated. To guard against transmission of infectious disease, the facilities should take precautions to prevent errors and accidents such as wrong-donor infusion.

VI. Outcome of the Hearing

After the hearing, FDA will consider the information presented at the hearing, all written comments submitted to the docket, and all other relevant information in determining the appropriate regulation of these products. As the agency has indicated, FDA will provide appropriate time for compliance with any regulatory requirements.

VII. Notice of Hearing Under 21 CFR Part 15

For the reasons stated above, the Commissioner of Food and Drugs is announcing that a public hearing will be held in accordance with 21 CFR part 15. The purpose of hearing is to solicit information and views, under § 15.1(a), from interested persons on the public health issues and concerns relating to regulation of products that are comprised of living autologous cells manipulated ex vivo and intended for implantation for structural repair or reconstruction, including repair or reconstruction of the source tissue.

Every effort will be made to accommodate each person who wants to participate in the public hearing. However, those who want to ensure participation in the hearing are encouraged to submit: (1) A written notice of participation containing the name, address, phone number, facsimile number, affiliation (if any), topic of the presentation, and approximate amount of time requested for the presentation; and (2) a brief description or outline of their presentation. The information should be submitted to the Dockets Management Branch (address above) by close of business on the date specified above. Interested persons attending the public hearing who did not request in advance an opportunity to make a presentation will have an opportunity to be heard as time permits and at the discretion of the presiding officer.

After reviewing the notices of participation and accompanying information, FDA will schedule each appearance and notify each participant by letter, telephone, or facsimile, with the amount of time assigned to each person and the approximate time his or her presentation is scheduled to begin. A hearing schedule will be available at the hearing and will be filed with the Dockets Management Branch (address above).

In order to enable all interested persons to submit data, information, and views on this subject, the administrative record of the hearing will remain open until February 16, 1996. Any person may submit written comments to the Dockets Management Branch (address above) no later than February 16, 1996. The agency will consider these comments in formulating its conclusions. In formulating the appropriate regulatory framework for products involving MAS cells, the agency may also consider information that cannot be made public by the agency, e.g., confidential commercial information. The agency does not intend to respond to or summarize the comments received.

The presiding officer will be the Chief Mediator and Ombudsman. The presiding officer will be accompanied by a panel of Public Health Service employees with relevant expertise.

Under § 15.30, the hearing is informal, and the rules of evidence do not apply. No participant may interrupt the presentation of another participant. Only the presiding officer or members of the panel may question any person during or at the conclusion of the presentations.

Public hearings, including hearings under part 15, are subject to FDA's guideline on the policy and procedures for electronic media coverage of FDA's public administrative proceedings (21 CFR part 10, subpart C). Under § 10.205, representatives of electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants. The hearing will be transcribed as stipulated in § 15.30(b). Orders for copies of the transcript can be placed at the meeting, or through the Dockets Management Branch (address above).

Any handicapped persons requiring special accommodations in order to attend the hearing should inform the contact person listed in order for FDA to be prepared to meet those needs.

To the extent that the conditions for the hearing as described in this notice, conflict with any provisions set out in part 15, this notice acts as a waiver of those provisions as specified in § 15.30(h)

Dated: July 10, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–17535 Filed 7–17–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95F–0174]

H.B. Fuller Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that H.B. Fuller Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of nonanoic acid, lactic acid, citric acid, sodium 1-octane sulfonate, tertiary butylhydroquinone, and the sodium salt of tetrapropylene-1,1-oxybis-benzenesulfonic acid as components of a sanitizing solution intended for general use on food-contact surfaces.

DATES: Written comments on the petitioner's environmental assessment by August 17, 1995.

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: Diane E. Robertson, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3089.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 5B4462) has been filed by H.B. Fuller Co., c/o SRS International Corp., 1625 K St. NW., suite 1000, Washington, DC 20006–1604. The petition proposes to amend the food additive regulations in § 178.1010 *Sanitizing solutions* (21 CFR 178.1010) to provide for the safe use of nonanoic acid, lactic acid, citric acid, sodium 1-octane sulfonate, tertiary butylhydroquinone, and the sodium salt of tetrapropylene-1,1-oxybis-benzenesulfonic acid as components of a sanitizing solution intended for general use on food-contact surfaces.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before August 17, 1995, submit to the Dockets Management Branch (address above) written comments. 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. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: July 5, 1995.

Alan M. Rulis,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–17639 Filed 7–17–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95N–0206]

Richmar International, Inc., et al.; Withdrawal of Approval of 2 Abbreviated Antibiotic Applications and 15 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 2 abbreviated antibiotic applications (AADA's) and 15 abbreviated new drug applications (ANDA's). The holders of the applications notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

EFFECTIVE DATE: AUGUST 17, 1995.

FOR FURTHER INFORMATION CONTACT: Lola E. Batson, Center for Drug Evaluation and Research (HFD–360), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1038.

SUPPLEMENTARY INFORMATION: The holders of the applications listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their request, waived their opportunity for a hearing.

Application No.	Drug	Applicant
AADA 60–446.	Tetracycline Oral Suspension, U.S.P	Richmar International, Inc., 1706 Birch Rd., McLean, VA 22101.
AADA 62–502.	Nystatin Vaginal Tablets, U.S.P., 100,000 units	Lemmon Co., 650 Cathill Rd., Sellersville, PA 18960.
ANDA 70–438.	Propranolol Hydrochloride Tablets, U.S.P., 10milligrams (mg)	Warner Chilcott, 201 Tabor Rd., Morris Plains, NJ 07950.
ANDA 70–439.	Propranolol Hydrochloride Tablets, U.S.P., 20 mg	Do.
ANDA 70–440.	Propranolol Hydrochloride Tablets, U.S.P., 40 mg	Do.
ANDA 70–441.	Propranolol Hydrochloride Tablets, U.S.P., 60 mg	Do.

Application No.	Drug	Applicant
ANDA 70–442.	Propranolol Hydrochloride Tablets, U.S.P., 80 mg	Do.
ANDA 72–289.	Sulfamethoxazole and Trimethoprim Oral Suspension, U.S.P., 200 mg/40 mg per 5 milliliters (mL).	Barre-National, Inc., 333 Cassell Dr., suite 3500, Baltimore, MD 21224.
ANDA 80–397.	Prednisone Tablets, U.S.P., 5 mg	Lemmon Co.
ANDA 80–398.	Prednisolone Tablets, U.S.P.,5 mg	Do.
ANDA 84–389.	Propantheline Bromide Tablets, U.S.P., 15 mg	Do.
ANDA 86–490.	Chlordiazepoxide Hydrochloride Capsules, U.S.P., 10 mg	Do.
ANDA 86–769.	Lindane Lotion, U.S.P., 1%	Stiefel Laboratories, Inc., Route 145, Oak Hill, NY 12460.
ANDA 87–126.	Phentermine Hydrochloride Capsules, U.S.P., 30 mg (Brown/Clear).	Lemmon Co.
ANDA 87–777.	Phentermine Hydrochloride Capsules, U.S.P., 30 mg	Do.
ANDA 87–940.	Lindane Shampoo, U.S.P., 1%	Stiefel Laboratories, Inc.
ANDA 88–785.	Hydroxyzine Hydrochloride Syrup, U.S.P., 10 mg/5 mL	Barre-National, Inc.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of the applications listed above, and all amendments and supplements thereto, is hereby withdrawn, effective August 17, 1995.

Dated: July 5, 1995.

Murray M. Lumpkin,

Deputy Director, Center for Drug Evaluation and Research.

[FR Doc. 95–17641 Filed 7–17–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95E–0089]

Determination of Regulatory Review Period for Purposes of Patent Extension; NAVELBINE® Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for NAVELBINE® Injection and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product NAVELBINE® Injection (vinorelbine tartrate). NAVELBINE® Injection is indicated as a single agent or in combination with cisplatin for the first-line treatment in patients with unresectable, advanced nonsmall lung cancer. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for NAVELBINE® Injection (U.S. Patent No. 4,307,100) from Burroughs Wellcome Co., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated April 18, 1995, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of NAVELBINE® Injection represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for NAVELBINE® Injection is 1,621 days. Of this time, 1,137 days occurred during the testing phase of the regulatory review period, while 484 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug,*

and Cosmetic Act (21 U.S.C. 355(i)) became effective: July 18, 1990. The applicant claims June 18, 1990, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was July 18, 1990, which was 30 days after FDA receipt of the IND.

2. *The date the human drug was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: August 27, 1993. FDA has verified the applicant's claim that the new drug application (NDA) for NAVELBINE® Injection (NDA 20–388) was initially submitted on August 27, 1993.

3. *The date the application was approved*: December 23, 1994. FDA has verified the applicant's claim that NDA 20–388 was approved on December 23, 1994.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,067 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before September 18, 1995, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before January 15, 1996, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 30, 1995.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 95–17503 Filed 7–17–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95E–0075]

Determination of Regulatory Review Period for Purposes of Patent Extension; LAMICTAL®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for LAMICTAL® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product LAMICTAL® (lamotrigine). LAMICTAL® is indicated as adjunctive therapy in the treatment of partial seizures in adults with epilepsy. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for LAMICTAL® (U.S. Patent No. 4,602,017) from Burroughs Wellcome Co., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated April 12, 1995, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of LAMICTAL® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for LAMICTAL® is 3,703 days. Of this time, 2,693 days occurred during the testing phase of the regulatory review period, while 1,010 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: November 8, 1984. The applicant claims March 14, 1984, as the date the investigational new drug application (IND) for LAMICTAL® (IND 23,793) was submitted. However, FDA records indicate that IND 23,793 was placed on clinical hold on April 12, 1984, and removed from hold by a letter dated November 8, 1984, which is the IND effective date.

2. *The date the human drug was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: March 23, 1992. The applicant claims March 20, 1992, as the date the new drug application (NDA) for LAMICTAL® (NDA 20–241) was initially submitted. However, FDA records indicate that NDA 20–241 was submitted on March 23, 1992.

3. *The date the application was approved*: December 27, 1994. FDA has verified the applicant's claim that NDA 20–241 was approved on December 27, 1994.

This determination of the regulatory review period establishes the maximum potential length of a patent extension.

However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,825 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before September 18, 1995, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before January 15, 1996, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 30, 1995.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 95–17504 Filed 7–17–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95M–0178]

Polymer Technology Division of Wilmington Partners L.P.; Premarket Approval of Boston Simplicity™

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Polymer Technology Division of Wilmington Partners L.P., Wilmington, MA, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of BOSTON Simplicity™. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter on June 9, 1995, of the approval of the application.

DATES: Petitions for administrative review by August 17, 1995.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1744.

SUPPLEMENTARY INFORMATION: On March 6, 1995, Polymer Technology Division of Wilmington Partners L.P., Wilmington, MA 01887, submitted to CDRH an application for premarket approval of BOSTON Simplicity™. The device is a cleaning, rinsing, disinfecting and conditioning solution and is indicated for cleaning, rinsing, disinfecting and conditioning fluoro silicone acrylate and silicone acrylate rigid gas permeable contact lenses.

In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this premarket approval application (PMA) was not referred to the Ophthalmic Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel.

On June 9, 1995, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 17, 1995, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: July 10, 1995.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 95–17642 Filed 7–17–95; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Program Announcement for Scholarships for Disadvantaged Students

The Health Resources and Services Administration (HRSA) announces that applications for fiscal year (FY) 1995 Scholarships for Disadvantaged Students (SDS) program are being accepted under the authority of section 737 of the Public Health Service Act (the Act), title VII, Part B, as amended by the Health Professions Education Extension Amendments of 1992, Pub. L. 102–408, dated October 13, 1992. Schools that received funds for academic year 1994–95 will be funded based on the information provided in last year's application, and do not need to reapply.

Purpose

The SDS program is a program of grants to health professions and nursing schools for the purpose of assisting such schools in providing scholarships to individuals from disadvantaged backgrounds who are enrolled (or accepted for enrollment) as full-time students in the schools, as well as to undergraduate students who have demonstrated a commitment to pursuing a career in health professions.

For purposes of the SDS program in FY 1995, an ''individual from disadvantaged background'' is defined in 42 CFR 57.1804, subpart S, as one who:

(1) Comes from an environment that has inhibited the individual from obtaining the knowledge, skill, and abilities required to enroll in and graduate from a health professions school, or from a program providing education or training in allied health professions; or

(2) Comes from a family with an annual income below a level based on low-income thresholds according to family size published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index, and adjusted by the Secretary for use in all health professions and nursing programs. The Secretary will periodically publish these low-income levels in the **Federal Register**.

The following income figures determine what constitutes a low-income family for purposes of the Scholarships for Disadvantaged Students program for FY 1995.

Size of parents' family [1]	Income level [2]
1	$10,000
2	12,900
3	15,400
4	19,700
5	23,200
6 or more	26,100

[1] Includes only dependents listed on Federal income tax forms.

[2] Adjusted gross income for calendar year 1994, rounded to nearest $100. These low income figures are published in this issue of the FEDERAL REGISTER.

Approximately $18 million is available in FY 1995 for competing applications for the SDS Program from eligible health professions and nursing schools. Of the funds available, 30 percent shall be made available to schools agreeing to expend the grants only for nursing scholarships. An estimated $5.4 million will support approximately 3,600 scholarships averaging $1,500 for students at schools of nursing. The balance of $12.6 million will support approximately 5,040 scholarships averaging $2,500 for eligible health professions students. The period of fund availability will be for one academic year.

Use of Funds

Funds awarded to a school under this program may be used as follows:

(1) To award scholarships to eligible students enrolled in the school, to be expended only for tuition expenses, other reasonable educational expenses, and reasonable living expenses (as defined by the school for all students attending the school) incurred while enrolled in a school as a full-time student. The amount of the scholarship may not, for any year of attendance, exceed the total amount required for the year for the expenses specified above.

(2) To provide financial assistance to undergraduate students who have demonstrated a commitment to pursuing a career in the health professions, in order to facilitate the completion of the educational requirements for such careers, provided that the total amount used for this purpose may not exceed 25 percent of the funds awarded to the school under this program.

Any school receiving SDS funds will be required to maintain separate accountability for these funds.

School Eligibility

Grants under this program will be made available to accredited public or nonprofit private health professions schools. For purposes of the SDS program, as defined in section 737(a)(3) of the Act, the term ''health professions schools'' means schools of medicine, nursing, osteopathic medicine, dentistry, pharmacy, podiatric medicine, optometry, veterinary medicine, public health, or allied health or schools offering graduate programs in clinical psychology and which are accredited as provided in section 799(1)(E) of the Act, schools of allied health as defined in section 799(4) of the Act, and which are located in States as defined in section 799(9) of the Act, and schools of nursing as defined in section 853 of the Act.

As required by statute, to qualify for participation in the SDS program, a school must be:

(1) carrying out a program for recruiting and retaining students from disadvantaged backgrounds, including racial and ethnic minorities; and

(2) carrying out a program for recruiting and retaining minority faculty.

In addition, each school that received funds in FY 1994 must be carrying out all of the statutory requirements listed below:

(1) Ensure that adequate instruction regarding minority health issues is provided for in the curricula of the school. This does not include normal course work, that by definition includes minority health issues (e.g., sickle cell anemia in a pathology class), but refers to course work reflecting an institutional awareness of the special health needs of minority populations;

(2) Enter into arrangements with one or more health clinics providing services to a significant number of individuals who are from disadvantaged backgrounds, including members of minority groups, for the purpose of providing students of the school with experience in providing clinical services to such individuals;

(3) Enter into arrangements with one or more public or nonprofit private secondary educational institutions and undergraduate institutions of higher education (feeder schools), for the purpose of carrying out programs regarding:

(a) the educational preparation of disadvantaged students, including minority students, to enter the health professions; and

(b) the recruitment of disadvantaged students, including minority students, into the health professions; and

(4) Establish a mentor program for assisting disadvantaged students, including minority students, regarding the completion of the educational requirements for degrees from the school. This program may include the involvement of students, community health professionals, faculty, alumni, past recipients of Health Career Opportunity Program (HCOP) funds, faculty/staff of feeder schools, etc., in institutionally organized activity (e.g., tutoring, counseling, and summer/bridge programs).

Each school funded for the first time in FY 1995 will also be required to carry out each of the activities specified above by not later than 12 months from receipt of award. Funds awarded to a school under the SDS program may not be used to carry out any of the above activities which the school must be doing, or must agree to do. In addition, a school will be required to continue to carry out all described activities, and also the student/faculty recruitment and retention activities, for as long as the SDS program is in operation in the school.

Evaluation Criteria for Fiscal Year 1995

For FY 1995, applications from newly participating schools will be evaluated on the degree to which the schools meet

the statutory requirements listed above. Guidance for presenting the information will be provided in the FY 1995 application materials. Schools that received funds for academic year 1994–95 will be funded based on the information provided in last year's application, and do not need to reapply.

Student Eligibility

As required by statute, to qualify for the SDS program, a student must:

(1) be a citizen, a U.S. national, an alien lawfully admitted for permanent residency in the U.S., or a citizen of the Commonwealth of the Northern Mariana Islands, a citizen of the Commonwealth of Puerto Rico, a citizen of the Republic of Palau, or a citizen of the Republic of the Marshall Islands or the Federated States of Micronesia;

(2) meet the definition of an ''individual from a disadvantaged background'' as defined above; and

(3)(a) be enrolled in or accepted by an eligible school for enrollment as a full-time student; or

(b) be an undergraduate student who has demonstrated a commitment to pursuing a career in health professions, including nursing.

Statutory Preference

The law requires that in providing SDS scholarships, the school give preference to students who are from disadvantaged backgrounds and for whom the cost of attending an SDS school would constitute a severe financial hardship. Severe financial hardship will be determined by the school in accordance with standard need analysis procedures prescribed by the Department of Education for its Federal student aid programs.

The following Criteria for Undergraduate Students, Definitions, Methodology for Implementing the Statutory Special Consideration, the Nonstatutory Special Consideration for Baccalaureate Nursing Programs, and the Procedures for Calculating Scholarship Awards were established in FY 1991 after public comment (at 57 FR 49779) on October 1, 1991, and are being extended in FY 1995. The Funding Preference and Priority were established in FY 1994 after public comment (at 59 FR 44740) on August 30, 1994, and are being extended in FY 1995.

Criteria for Undergraduate Students

In the instance of (3)(b) above, it has been established that the undergraduate students eligible for scholarships must be at feeder schools and have signed statements that they are interested in health professions or nursing careers.

Definitions

''Black'' means a person having origins in any of the black racial groups of Africa.

''Hispanic'' means a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

''American Indian or Alaskan Native'' means a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

Definitions listed above are contained in Directive No. 15 of Office of Management and Budget Circular No. A–46, dated May 3, 1974.

''Native American'' as defined in Pub. L. 101–527, means American Indian, Alaskan Native, Aleut, or Native Hawaiian.

''Minority'' with respect to faculty, refers to Blacks, Hispanics, Native Americans, Filipinos, Koreans, Pacific Islanders, and Southeast Asians whose percentage among the total supply of practitioners in the applicable health profession is below that group's percentage in the total population.

Methodology for Implementing the Statutory Special Consideration

In accordance with the statute, in making awards under section 737(a), the Secretary shall give special consideration to eligible schools that have enrollments of underrepresented minorities above the national average for its particular discipline.

For purposes of determining eligibility of a school, Asians will not be included in the definition of underrepresented minorities for the school. Although certain Asian subgroups (i.e, Filipinos, Koreans, Pacific Islanders, and Southeast Asians) are considered to be underrepresented in the health professions and are included as minorities for purposes of program requirements relating to faculty recruitment and retention (see above), national data on these subgroups are not available as a basis for establishing national average enrollment of underrepresented minorities.

For purposes of the FY 1995 award cycle, the national average enrollments of Blacks, Hispanics, and Native Americans (in combination) are: for medicine 13.3 percent; osteopathic medicine 7.7 percent; nursing (RN only) 12.2 percent; dentistry 13.4 percent; pharmacy 10.6 percent; optometry 9.4 percent; podiatric medicine 17.9 percent; veterinary medicine 5.9 percent; public health 15.7 percent; allied health 17.3 percent; and clinical psychology 13 percent.

Nonstatutory Special Consideration for Baccalaureate Nursing Programs

Among schools of nursing, additional special consideration will be given to baccalaureate programs. One of the distinguishing features of baccalaureate education is the substantial focus on preparation for community health practice. Training nurses for community health practice is an integral component of the Department's access strategy.

It is not required that new applicants request consideration for a funding factor. Applications from new schools which do not request consideration for funding factors will be reviewed and given full consideration for funding.

Procedures for Calculating Awards

Awards to eligible schools will be calculated by comparing the enrollment of disadvantaged students in each eligible school with the total enrollment of the disadvantaged students in all eligible schools.

A school with an enrollment of underrepresented minority students which is above the national average (for each discipline) will be given double credit (i.e., its enrollment of disadvantaged students would be doubled for awarding purposes). A baccalaureate nursing school will be given double credit. A baccalaureate nursing school with an underrepresented minority enrollment above the national average will be given quadruple credit (i.e., its enrollment of disadvantaged students will be multiplied by four for awarding purposes).

Other Considerations

Other funding factors may be applied in determining the funding of eligible schools.

A funding preference is defined as the funding of a specific category or group of eligible schools ahead of other categories or groups of eligible schools.

A funding priority is defined as the favorable adjustment of aggregate review scores of individual approved applications when applications meet specified criteria.

It is not required that new applicants request consideration for a funding factor. Applications from new schools which do not request consideration for funding factors will be reviewed and given full consideration for funding.

Funding Preference and Priority

For fiscal year 1995, among allied health schools or programs, preference will be given to the following baccalaureate and graduate programs: dental hygiene, medical laboratory technology, occupational therapy,

physical therapy and radiologic technology. In addition, priority among allied health applicants will be given to dental hygiene. A priority for dental hygiene will be implemented by taking the total funds allocated to the allied health disciplines in the initial allocation and recalculating this part of the allocation. Dental hygiene schools will receive double credit for their disadvantaged enrollments in the reallocation of the allied health funds.

National Health Objectives for the Year 2000

The Public Health Service is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The Scholarships for Disadvantaged Students program is related to the priority area of Educational and Community-Based Programs. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 (Telephone (202) 783–3238).

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Paperwork Reduction Act

The application form and instructions for this program have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The OMB clearance number is 0915–0149.

Application Requests

Applications are not required from schools of medicine, osteopathic medicine, dentistry, pharmacy, optometry, podiatric medicine, veterinary medicine, nursing, public health, clinical psychology and allied health which received SDS awards in FY 94. Upon request, applications will be mailed to schools in the disciplines identified above which did not participate in the SDS program in FY 94.

Requests for grant application materials and questions regarding business management and program policy should be directed to: Mr. Bruce Baggett, Chief, Student and Institutional Support Branch, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8–34, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone: (301) 443–4776; FAX: (301) 594–6911.

The application deadline date for new schools is August 17, 1995. Applications shall be considered as meeting the deadline if they are either:

(1) *Received on or before* the established deadline date, or

(2) *Sent on or before* the established deadline and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications not accepted for processing will be returned to the applicant.

The *Catalog of Federal Domestic Assistance* Number for the Scholarships for Disadvantaged Students program is 93.925. This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

This program is not subject to the Public Health System Reporting Requirements.

Dated: July 12, 1995.

Ciro V. Sumaya,

Administrator.

[FR Doc. 95–17556 Filed 7–17–95; 8:45 am]

BILLING CODE 4160–15–P

''Low Income Levels'' for Health Professions and Nursing Programs

The Health Resources and Services Administration (HRSA) is updating income levels used to identify a ''low income family'' for the purpose of providing training for individuals from disadvantaged backgrounds under various health professions and nursing programs included in titles VII and VIII of the Public Health Service Act (the Act).

The Department periodically publishes in the **Federal Register** low income levels used by the Public Health Service for grants and cooperative agreements to institutions providing training for individuals from disadvantaged backgrounds. A ''low income level'' is one of the factors taken into consideration to determine if an individual qualifies as a disadvantaged student for purposes of health professions and nursing programs.

The programs under the Act that use ''low income levels'' as one of the factors in determining disadvantaged backgrounds include the Health Careers Opportunity Program, section 740, the Program of Financial Assistance for Disadvantaged Health Professions Students, section 740(a)(2)(F), and Nursing Education Opportunities for Individuals from Disadvantaged Backgrounds, section 827. Loans to Disadvantaged Students, section 724, Scholarships for Health Professions Students from Disadvantaged Backgrounds, section 737, Disadvantaged Health Professions Faculty Loan Repayment and Fellowships Program, section 738 were added to title VII by the Disadvantaged Minority Health Improvement Act of 1990 (Pub. L. 101–527) and are also using the low income levels. Other factors used in determining ''disadvantaged backgrounds'' are included in individual program regulations and guidelines.

Health Careers Opportunity Program (HCOP), Section 740

This program awards grants to accredited schools of medicine, osteopathic medicine, public health, dentistry, veterinary medicine, optometry, pharmacy, allied health, podiatric medicine, chiropractic and public or nonprofit private schools which offer graduate programs in clinical psychology, and other public or private nonprofit health or educational entities to assist individuals from disadvantaged backgrounds to enter and graduate from health professions schools.

Financial Assistance for Disadvantaged Health Professions Students (FADHPS), Section 740(a)(2)(F)

This program awards grants to accredited schools of medicine, osteopathic medicine, and dentistry to provide financial assistance to individuals from disadvantaged backgrounds who are of exceptional financial need, to help pay for their health professions education. The provision of these scholarships shall be subject to section 795 relating to residency training and practice in primary health care.

Nursing Education Opportunities for Individuals From Disadvantaged Backgrounds, Section 827

This program awards grants to public and nonprofit private schools of nursing and other public or nonprofit private entities to meet costs of special projects to increase nursing education opportunities for individuals from disadvantaged backgrounds.

Loans to Disadvantaged Students, Section 724

This program makes awards to certain accredited schools of medicine, osteopathic medicine, dentistry, optometry, pharmacy, podiatric medicine, and veterinary medicine for financially needy students from disadvantaged backgrounds.

Scholarships for Health Professions Students From Disadvantaged Backgrounds, Section 737

This program awards grants to schools of medicine, nursing, osteopathic medicine, dentistry, pharmacy, podiatric medicine, optometry, veterinary medicine, allied health, or public health, or schools that offer graduate programs in clinical psychology for the purpose of assisting such schools in providing scholarships to individuals from disadvantaged backgrounds who enrolled (or are accepted for enrollment) as full-time students.

Disadvantaged Health Professions Faculty Loan Repayment and Fellowship Program, Section 738

This program awards grants to repay the health professions education loans of disadvantaged health professionals who have agreed to serve for at least 2 years as a faculty member of a school of medicine, nursing, osteopathic medicine, dentistry, pharmacy, podiatric medicine, optometry, veterinary medicine, public health, or a school that offers a graduate program in clinical psychology. Section 738(a) allows loan repayment only for an individual who has not been a member of the faculty of any school at any time during the 18-month period preceding the date on which the Secretary receives the request of the individual for repayment contract (i.e., ''new'' faculty).

The following income figures were taken from low income levels published by the U.S. Bureau of the Census, using an index adopted by a Federal Interagency Committee for use in a variety of Federal Programs. That index includes multiplication by a factor of 1.3 for adaptation to health professions and nursing programs which support training for individuals from disadvantaged backgrounds. The income figures have been updated to reflect increases in the Consumer Price Index through December 31, 1994.

Size of parents family [1]	Income level [2]
1	$10,000
2	12,900
3	15,400
4	19,700
5	23,200
6 or more	26,100

[1] Includes only dependents listed on Federal income tax forms.

[2] Rounded to the nearest $100. Adjusted gross income for calendar year 1994.

Dated: July 12, 1995.

Ciro V. Sumaya,

Administrator.

[FR Doc. 95–17555 Filed 7–17–95; 8:45 am]

BILLING CODE 4160–15–P

Availability of Funds for Grants to Provide Health Care for the Homeless and Health Care Services for Homeless Children

AGENCY: Health Resources and Services Administration.

ACTION: Notice of available funds.

SUMMARY: The Health Resources and Services Administration (HRSA) is announcing the availability of approximately $65.3 million for fiscal year (FY) 1996 for competing applications for the Health Care for the Homeless program. Although the President's FY 1996 budget includes this program as part of the health services cluster, it is anticipated that funding for FY 1996 for each of the programs in the cluster will be proportionate to its FY 1995 funding level. Grants will be awarded under Section 340 of the Public Health Service (PHS) Act, 42 U.S.C. 256. This announcement is made prior to an appropriation of funds to allow applicants sufficient time to prepare applications and to enable timely award of the grants in consideration of the special needs of homeless individuals.

The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting health priorities. This grant program is related to the objectives cited for special populations, particularly people with low income, minorities, and the disabled, which constitute a significant portion of the homeless population. Potential applicants may obtain a copy of *Healthy People 2000* (Full Report; Stock No. 017–001–00474–0) or *Healthy People 2000* (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 (telephone 202–783–3238).

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

DUE DATES: Applications are due 120 days prior to project end date, with the first date being August 1, 1995 and the last date being December 1, 1995. Applications will be considered to have met the deadline if they are: (1) received on or before the deadline date; or (2) postmarked on or before the established deadline date and received in time for orderly processing. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing. Applications received after the announced closing date will not be considered for funding.

ADDRESSES: Application kits (Form PHS 5161–1) with revised face sheet DHHS Form 424, as approved by the Office of Management and Budget under control number 0937–0189 may be obtained from, and completed applications should be mailed to the appropriate PHS Regional Grants Management Officer (RGMO) (see Appendix A). The RGMO can also provide assistance on business management issues.

FOR FURTHER INFORMATION CONTACT: For general program information and technical assistance, contact Ms. Joan Holloway, Director, Division of Programs for Special Populations, or Mr. Charles Woodson, Acting Chief, Health Care for the Homeless Branch, Division of Programs for Special Populations, Bureau of Primary Health Care (BPHC), at 4350 East-West Highway, Bethesda, Maryland 20814 (telephone 301–594–4430).

ELIGIBLE APPLICANTS: It is the intent of HRSA to continue to support health services to the homeless populations currently being served given the needs of this medically underserved population. Any nonprofit private organization or public entity may apply to serve the homeless population currently served by a grantee whose project period is expiring. For a list of service areas with expiring project periods, see **Federal Register** notice published on May 25, 1995 at 60 FR 27767.

SUPPLEMENTARY INFORMATION: It is anticipated that approximately 130 competing grants will be awarded to serve homeless individuals in urban and rural areas. Grants will range from approximately $58,000 to approximately $2.2 million for primary health and substance abuse services for one year budget periods and up to five year project periods.

Grants Awarded Under Section 340(a)

Section 340(a) of the PHS Act authorizes the Secretary to award grants to enable grantees, directly or through contracts, to provide for the delivery of primary health services to homeless individuals. Eligible applicants are nonprofit private organizations and public entities, including State and local governmental agencies. Grantees and organizations with whom they may contract for services under this program must have an agreement with a State under its Medicaid program, title XIX of the Social Security Act (if they provide services that are covered under the title XIX plan for the State), and be qualified to receive payments under the agreement. This requirement may be waived if the organization does not in providing health care services, impose a charge or accept reimbursement available from any third-party payor including reimbursement under any insurance policy or under any Federal or State health benefits program.

For grantees not previously funded under section 340(a), the amount of Federal grant funds awarded may not exceed 75 percent of the costs of providing primary health and substance abuse services under the grant. Such newly funded grantees must make available non-Federal contributions to meet the remainder of the costs. Existing 340(a) grantees, if funded, must make available 33⅓ percent non-Federal contributions to meet the remainder of the costs. Non-Federal contributions may be in cash or in-kind, fairly evaluated, including plant, equipment or services. Funds provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of the non-Federal contributions. Such determination may not include any cash or in-kind contributions that, prior to February 26, 1987, were made available by any public or private entity for the purpose of assisting homeless individuals (including assistance other than the provision of health services). The Secretary may waive the matching requirement if the grantee is a nonprofit private entity and the Secretary determines that it is not feasible for the grantee to comply with the requirement.

The grant may be used to continue to provide services listed below for up to 12 months to individuals who have obtained permanent housing if services were provided to these individuals when they were homeless. For the purpose of this program, the term ''homeless individual'' means an individual who lacks housing (without regard to whether the individual is a member of a family), including an individual whose primary residence during the night is a supervised public or private facility that provides temporary living accommodations, or an individual who is a resident in transitional housing.

Project Requirements

a. The following services must be provided, directly or through contract:

1. Primary health care and substance abuse services at locations accessible to homeless individuals;

2. 24-hour emergency primary health and substance abuse services to homeless individuals;

3. Referral of homeless individuals as appropriate to medical facilities for necessary hospital services;

4. Referral of homeless individuals who are mentally ill to entities that provide mental health services, unless the applicant will provide such services directly;

5. Outreach services to inform homeless individuals of the availability of primary health and substance abuse services;

6. Aid to homeless individuals in establishing eligibility for assistance, and in obtaining services, under entitlement programs.

7. Podiatry, dental (including dentures), and vision services are supplemental services and may be provided where medically necessary, to the extent that the level of delivery of the required services is not diminished.

Grants Awarded Under Section 340(s)

Section 340(s) of the PHS Act authorizes the Secretary to carry out demonstration programs to enable entities, either directly or through contracts, to provide for the delivery of comprehensive primary health services to homeless children and to children at imminent risk of homelessness. Eligible applicants are grantees funded under 340(a) of the PHS Act, other public and nonprofit private entities that provide primary health services and substance abuse services to a substantial number of homeless individuals, and public nonprofit private children's hospitals that provide primary health services to a substantial number of homeless individuals. Grantees and organizations with which they may contract for services under this program must have an agreement with a State under its Medicaid program, title XIX of the Social Security Act (if they provide services that are covered under the title XIX plan for the State), and be qualified to receive payments under the agreement. This requirement may be waived if the organization does not, in providing health care services, impose a charge or accept reimbursement available from any third-party payor, including reimbursement under any insurance policy or under any Federal or State health benefits program.

For grantees under this program which are children's hospitals, the amount of Federal grant funds awarded may not exceed 50 percent of the costs of providing primary health and substance abuse services under the grant. Grantees which are children's hospitals must make available non-Federal contributions to meet the remainder of the costs. Non-Federal contributions may be in cash or in-kind, fairly evaluated, including plant, equipment or services. Funds provided by the Federal Government or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of the non-Federal contributions.

Project Requirements

a. The following services must be provided directly or through contract:

1. Comprehensive primary health services, including such services provided through mobile medical units;

2. Referrals for provision of health services, social services, and education services, including referral to hospitals, community and migrant health centers, Head Start and other education programs, and programs for prevention and treatment of child abuse; and

3. Outreach services to identify children who are homeless or at imminent risk of homelessness and to inform parents/guardians of the availability of services directly from the grantees and through the referral mechanism.

Other Grant Requirements Applicable to Both Section 340(a) and 340(s) Grantees

a. Restrictions on the use of grant funds are as follows:

1. Grant funds may not be used to pay for inpatient services, except for residential treatment for substance abuse provided in settings other than hospitals.

2. Grant funds may not be used to make cash payments to intended recipients of primary health and substance abuse services or mental health services.

3. Grants funds may not be used to purchase or improve real property (other than minor remodeling of existing improvements to real property) or to purchase major medical equipment, including mobile medical units. However, upon request by an applicant demonstrating that the purposes of the project cannot otherwise be carried out, the Secretary may waive this restriction.

b. The grantee must, directly or through contract, provide services without regard to ability to pay for the services. If a charge is imposed for the delivery of services, such charge (1) will be made according to a schedule of charges that is made available to the public; (2) will not be imposed on any homeless individual with an income less than the official poverty level (the nonfarm income official poverty line defined by the Office of Management and Budget); (3) will be adjusted to reflect the income and resources of the homeless individual involved.

Additional Grant Requirements for Section 340(a) Only

a. The grantee may not expend more than 10 percent of grant funds for the purpose of administering the grant.

b. The grantee may, with respect to title I of the Protection and Advocacy for Mentally Ill Individuals Act of 1986, expend amounts received for the purpose of referring homeless individuals who are chronically mentally ill, and who are eligible under the Act, to systems that provide advocacy services under the Act.

c. The grantee may provide services through contracts with nonprofit selfhelp organizations that are established and managed by current and former recipients of mental health or substance abuse services, who have been homeless individuals; and that have an agreement with a State under its Medicaid program, title XIX of the Social Security Act (if they provide services that are covered under the title XIX plan for the State), and qualify to receive payments under the agreement.

Criteria for Evaluating Applications for Sections 340(a) and 340(s)

Competing Applications 340(a)

These competitive applications for grant support will be reviewed based upon the following evaluation criteria:

a. Compliance with the requirements of section 340 of the PHS Act and other programmatic requirements;

b. Experience in providing primary health or substance abuse services to homeless individuals or medically underserved populations.

c. Extent to which the applicant has identified the homeless population in the service area, including the social and demographic characteristics of the population and the extent to which their health needs are not being met;

d. Adequacy of the applicant's outreach plan to serve the homeless population;

e. Extent to which primary health and substance abuse services are to be provided to homeless individuals in a manner that demonstrates program linkages and services integration;

f. Adequacy of the applicant's referral arrangement to appropriate medical facilities for hospitalization and, for individuals who are mentally ill, to entities that provide mental health services, unless the applicant will provide such services directly;

g. Extent to which the applicant has the ability to involve appropriate community representatives to ensure that the program is culturally appropriate and accommodates the needs of homeless individuals in the service area;

h. Extent to which the applicant has engaged or plans to engage with other entities in an integrated service system in the community;

i. Qualifications and experience of the proposed project staff; i.e., the staff size and skills necessary to carry out an effective program;

j. Adequacy of the proposed budget; i.e., detailed estimates of revenue and costs in accordance with grant application instructions;

k. Evidence of administrative procedures for fiscal control and fund accounting procedures which provide for reasonable financial administration of Federal and non-Federal funds;

l. Evidence of an ongoing program of quality assurance with respect to health services provided under the grant;

m. Evidence of a reasonable plan for communicating with non-English speaking homeless individuals provided health services under the grant;

n. Indication of strategies for collaborative relationships and linkages which maximize effective use of existing health and social service resources, especially those of state and local health department, primary care providers to the underserved, and academic institutions; and

o. A current grantee's progress in achieving stated goals and objectives for the previous year's grant.

Competing Applications 340(s)

These competitive applications for grant support will be reviewed based upon the following evaluation criteria:

a. Compliance with the requirements of section 340(s) of the PHS Act and other programmatic requirements;

b. Experience in providing primary health or substance abuse services to homeless individuals or medically underserved populations;

c. Extent to which the applicant has identified homeless children and children at imminent risk of homelessness within the service area, including the social and demographic characteristics of these children and the extent to which their health needs are not being met;

d. Proposal of an innovative approach to meeting the health care needs of homeless children and children at imminent risk of homelessness, which can be utilized as a demonstration site for other programs nationally;

e. Adequacy of the applicant's outreach plan to identify homeless children and children at imminent risk of homelessness and inform their parents/guardians of the availability of services;

f. Extent to which primary health services are to be provided to homeless children in a linked and integrated manner;

g. Adequacy of the applicant's referral arrangements for the provision of health services, social services, and education services, including referral to hospitals, community and migrant health centers, Head Start and other educational programs, and programs for prevention and treatment of child abuse;

h. Extent to which the applicant has the ability to involve appropriate community representatives to ensure that the program accommodates the needs of homeless children and children at imminent risk of homelessness in the service area;

i. Extent to which the applicant has engaged or plans to engage with other entities in an integrated service system in the community;

j. Qualifications and experience of the proposed project staff; i.e., the staff size and skills necessary to carry out an effective program;

k. Adequacy of the proposed budget; i.e., detailed projections of revenue and costs in accordance with grant application instructions;

l. Evidence of administrative procedures for fiscal control and fund accounting procedures which provide for reasonable financial administration of Federal and non-Federal funds;

m. Evidence of an ongoing program of quality assurance with respect to health services provided under the grant;

n. Evidence of a reasonable plan for communicating with non-English speaking children provided health services under the grant and their parents/guardians; and

o. Indication of strategies for collaborative relationships and linkages which maximize effective use of existing health and social service resources, especially those of state and local health department, primary care providers to the underserved, and academic institutions.

p. A current grantee's progress in achieving stated goals and objectives for the previous year's grant.

Other Award Information

The Health Care for the Homeless program has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs by appropriate health planning agencies, as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available under this notice will contain a listing of States which have chosen to set up a review system and will provide a State point of contact (SPOC) in the State for the review. Applicants (other than federally-recognized Indian tribal governments) should contact their SPOC as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the appropriate deadline dates. The BPHC does not guarantee that it will accommodate or explain its responses to State process recommendations received after the date. (See ''Intergovernmental Review of Federal Programs'', Executive Order 12372, and 45 CFR part 100 for a description of the review process and requirements.)

The OMB *Catalog of Federal Domestic Assistance* number for this program is (93.151).

Dated: July 13, 1995.

Ciro V. Sumaya,

Administrator.

Appendix A

Region I

(CT, ME, MA, NH, RI, VT)

Grants Management Officer, PHS Office of Grants Management, John F. Kennedy Federal Bldg. #1400, Boston, Massachusetts 02203, (617) 565–1482

Region II

(NJ, NY, PR, VI)

Grants Management Officer, PHS Office of Grants Management, 26 Federal Plaza #3337, New York, New York 10278, (212) 264–4496

Region III

(DE, DC, MD, PA, VA, WV)

Grants Management Officer, PHS Office of Grants Management, 3535 Market Street #10–140, Philadelphia, Pennsylvania 19101, (215) 596–6653

Region IV

(AL, FL, GA, KY, MS, NC, SC, TN)

Grants Management Officer, PHS Office of Grants Management, 101 Marietta Tower, Suite 1121, Atlanta, Georgia 30323, (404) 331–2597

Region V

(IL, IN, MI, MN, OH, WI)

Grants Management Officer, PHS Office of Grants Management, 105 West Adams, 17th Floor, Chicago, Illinois 60603, (312) 353–8700

Region VI

(AR, LA, NM, OK, TX)

Grants Management Officer, PHS Office of Grants Management, 1200 Main Tower Bldg. #1800, Dallas, Texas 75202, (214) 767–3885

Region VII

(IA, KS, MO, NE)

Grants Management Officer, PHS Office of Grants Management, 601 East 12th Street #501, Kansas City, Missouri 64106, (816) 426–5841

Region VIII

(CO, MT, ND, SD, UT, WY)

Grants Management Officer, PHS Office of Grants Management, 1961 Stout St., Fed. Bldg. #492, Denver, Colorado 80294, (303) 844–4461

Region IX

(AS, AZ, CA, GU, HI, NV, TT)

Grants Management Officer, PHS Office of Grants Management, 50 United Nations Plaza #331, San Francisco, California 94102, (415) 556–2595

Region X

(AK, ID, OR, WA)

Grants Management Officer, PHS Office of Grants Management, 2201 6th Avenue, #710, Seattle, Washington 98121, (206) 442–7997

[FR Doc. 95–17557 Filed 7–17–95; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Clinical Sciences.
Date: July 28, 1995.
Time: 2:00 p.m.
Place: NIH, Rockledge II, Room 4104 Telephone Conference.
Contact Person: Dr. Priscilla Chen, Scientific Review Administrator, 6701 Rockledge Drive, Room 4104, Bethesda, MD 20892, (301) 435–1787.

Name of SEP: Multidisciplinary Sciences.
Date: July 31–August 1, 1995.
Time: 8:30 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Houston Baker, Scientific Review Administrator, 6701 Rockledge Drive, Room 5208, Bethesda, MD 20892, (301) 435–1175.

Name of SEP: Multidisciplinary Sciences.
Date: August 1, 1995.
Time: 2:00 p.m.
Place: NIH, Rockledge II, Room 5108 Telephone Conference.
Contact Person: Dr. Anthony Carter, Scientific Review Administrator, 6701 Rockledge Drive, Room 5108, Bethesda, MD 20892, (301) 435–1167.

Name of SEP: Multidisciplinary Sciences.
Date: August 1, 1995.
Time: 4:00 p.m.
Place: NIH, Rockledge II, Room 5108 Telephone Conference.
Contact Person: Dr. Anthony Carter, Scientific Review Administrator, 6701 Rockledge Drive, Room 5108, Bethesda, MD 20892, (301) 435–1167.

Name of SEP: Multidisciplinary Sciences.
Date: August 2, 1995.
Time: 3:00 p.m.
Place: NIH, Rockledge II, Room 5108 Telephone Conference.
Contact Person: Dr. Anthony Carter, Scientific Review Administrator, 6701 Rockledge Drive, Room 5108, Bethesda, MD 20892, (301) 435–1167.

Name of SEP: Chemistry and Related Sciences.
Date: August 4, 1995.
Time: 9:00 a.m.
Place: Omaha, NE.
Contact Person: Dr. Zakir Bengali, Scientific Review Administrator, 6701 Rockledge Drive, Room 5150, Bethesda, MD, (301) 435–1742.

Name of SEP: Behavioral and Neurosciences.

Date: August 10, 1995.
Time: 8:30 a.m.
Place: Bethesda Marriott, Bethesda, MD.
Contact Person: Dr. Leonard Jacubczak, Scientific Review Administrator, 6701 Rockledge Drive, Room 5172, Bethesda, MD 20892, (301) 435–1247.

Name of SEP: Chemistry and Related Sciences.
Date: August 17, 1995.
Time: 8:30 a.m.
Place: Hyatt, Arlington, VA.
Contact Person: Dr. Alex Liacouras, Scientific Review Administrator, 6701 Rockledge Drive, Room 5154, Bethesda, MD 20892, (301) 435–1740.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets of commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 11, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–17543 Filed 7–17–95; 8:45 am]

BILLING CODE 4041–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. FR–3917–08–N]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (7) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 10, 1995.

David S. Cristy,

Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Requirements for Single Family Mortgage Instruments.
Office: Housing.
Description of the Need for the Information and Its Proposed Use: As the insurer for single family mortgages, HUD must ensure that the mortgage instruments have provisions that are compatible with the Department's requirements. In addition, these instruments must contain the specific provisions necessary to accomplish program objectives.
Form Number: None.
Respondents: Individuals or Households and Business or Other For-Profit.
Reporting Burden:

	Number of respondents	×	Frequency of Response	×	Hours per response	=	Burden hours
Mortgage Instruments	8,300		90		.25		186,750

Total Estimated Burden Hours: 186,750.

Status: Extension, no changes.

Contact: Susan Hoyer, HUD, (202) 708–2700, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: July 10, 1995.

[FR Doc. 95–17538 Filed 7–17–95; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. FR–3917–N–09]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (7) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 10, 1995.

David S. Cristy,

Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Notice of Termination, Suspension, or Reinstatement of Assistance Payments Contract.

Office: Housing.

Description of the Need for the Information and its Proposed Use: The Department will use form HUD–93114 to document, for review and audit, each Section 235 mortgage serviced by lenders where HUD's financial assistance to qualified low- and moderate-income families are terminated, suspended, and/or reinstated.

Form Number: HUD–93114.

Respondents: Individuals or Households and Business or Other For-Profit.

Reporting Burden:

	Number of respondents	×	Frequency of responses	×	Hours per response	=	Burden hours
HUD–93114	962		40		.5		19,240

Total Estimated Burden Hours: 19,240.

Status: Extension, no changes.

Contract: Florence B. Brooks, HUD, (202) 708–1719; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: July 10, 1995.

[FR Doc. 95–17539 Filed 7–17–95; 8:45 am]

BILLING CODE 4310–01–M

Office of the Assistant Secretary for Policy Development and Research

[Docket No. N–95–3907; FR–3870–N–02]

Notice of Funding Availability (NOFA) for the Joint Community Development Program; Reopening of Application Period

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of Funding Availability (NOFA) for Fiscal Year 1995; reopening of application period.

SUMMARY: This notice reopens the application period published in the **Federal Register** on April 7, 1995, at 60 FR 17960, for funding under the Joint Community Development Program. Due to certain delivery problems, the application submission period is being reopened for one week.

DATE: The new application deadline for the NOFA is July 25, 1995.

FOR FURTHER INFORMATION CONTACT: Jane Karadbil, Office of University Partnerships, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, 451 7th Street, SW., Room 8110, Washington, DC 20410. Telephone number (202) 708–1537; TDD: (202) 708–1455. These numbers are not toll-free. [Because this is simply a limited reopening of the application deadline because of delivery problems, no technical questions about the original NOFA or application preparation may be asked.]

SUPPLEMENTARY INFORMATION: The Fiscal Year (FY 1995) Notice of Funding Availability (NOFA) for the Joint Community Development Program was published in the **Federal Register** on April 7, 1995, at 60 FR 17960. Applications were originally due on July 5, 1995. However, recent mail delivery problems in California due to bomb threats may have caused some applications to be delivered late, even when timely delivery was guaranteed. While only institutions of higher education in California may have been affected by this problem, the Department has decided, in fairness to other applicants, to reopen the application period for all applicants. The new deadline for applications is July 25, 1995. There will be no extensions for any reason after this deadline. Because this reopening is designed to remedy only delivery problems, new application kits will not be made available, nor will technical questions be answered. Applications faxed to the Department will not be accepted. An original and four copies are still needed.

Applicants who have already submitted their applications on time but omitted some documentation (e.g., a budget form, letters of commitment for matching funds) are also permitted to submit this information before the due date. An original and four copies of any additional documentation should be submitted along with a letter noting the correct placement of this documentation in the application. Resubmission of the entire application is not necessary.

Dated: July 11, 1995.

Michael A. Stegman,

Assistant Secretary for Policy Development and Research.

[FR Doc. 95–17536 Filed 7–17–95; 8:45 am]

BILLING CODE 4210–62–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–964–1410–00–P]

Notice for Publication, AA–12373; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Section 14(h)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(1), will be issued to Doyon, Limited, for a portion of land located within Sec. 30, T. 22 N., R. 59 W., Seward Meridian, containing approximately 16.06 acres, in the vicinity of Holy Cross, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Tundra Drums. Copies of the decision may be obtained by contacting the Alaska State Office, Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until August 17, 1995, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Nora A. Benson,

Land Law Examiner, Branch of Northern Adjudication.

[FR Doc. 95–17547 Filed 7–17–95; 8:45 am]

BILLING CODE 4310–JA–P

Notice of Intent To Prepare an Environmental Impact Statement Analyzing the Impacts of a Proposed Expansion of Castle Mountain Mine, San Bernardino County, California

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, the Bureau of Land Management will be directing preparation of a joint Environmental Impact Statement (EIS)/Environmental Impact Report (EIR) in conjunction with San Bernardino County's administration of the California Environmental Quality Act. The EIS/EIR will be prepared by a third party contractor on the impacts of the proposed mine expansion and ten year extension of mining and processing activities at the Castle Mountain open pit, heap leach gold mine located in northeastern San Bernardino County, California. Public scoping meetings will be held in connection with the document's preparation.

DATES: The public is invited to participate in defining the scope of analysis. Public meetings will be held at the following times and locations: 7 p.m., Wednesday, August 2, 1995, at the Searchlight Community Center, Parks and Recreation Department, 200 Michael Wendall Way, Searchlight, Nevada; 7 p.m., Thursday, August 3, 1995, at the Holiday Inn, 1511 East Main Street, Barstow, California. Written comments will be accepted through August 14, 1995.

ADDRESSES: Written comments should be addressed to U.S.D.I., Bureau of Land Management, Needles Resource Area, 101 W. Spikes Road, Needles, California 92363.

FOR FURTHER INFORMATION CONTACT: George R. Meckfessel, Planning and Environmental Coordinator, telephone (619) 326–3896.

SUPPLEMENTARY INFORMATION: Viceroy Gold Corporation has proposed expanded development of additional ore deposits adjacent to deposits currently being mined at the Castle Mountain open-pit, heap-leach gold mine. Under the mine's present permits, mining and processing activities could continue through December 31, 2010. Under the proposed expansion, these activities could continue through December 31, 2020. The proposal consists of expanding existing and planned open pit areas, consolidating two heap leach pads and eliminating two others, creating a new overburden storage area as well as expanding existing overburden piles, expanding growth media storage areas and partially backfilling the Jumbo South/Lesley Ann open pits. The proposed ten-year extension of the mining and processing phases of the mine would ultimately affect up to 1,437 acres of public and private lands, as compared to a total of 890 acres presently authorized.

The EIS/EIR will consider alternative sitings of heap-leach pads and waste dumps, and backfilling alternatives. The EIS/EIR will examine potentially significant impacts to visual resources, air quality, cultural resources, groundwater quality/quantity, land use, vegetation, wildlife and cumulative effects.

Richard E. Fagan,

Area Manager.

[FR Doc. 95–17664 Filed 7–17–95; 8:45 am]

BILLING CODE 4310–40–M

[OR–014–95–1610–00: G5–166]

Notice of Availability

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability, Proposed Final Upper Klamath Basin and Wood River Wetland Resource Management Plan and Environmental Impact Statement.

SUMMARY: The U.S. Department of the Interior, Bureau of Land Management (BLM), gives notice of the availability of the proposed Upper Klamath Basin and Wood River Wetland Resource Management Plan and final Environmental Impact Statement (PRMP/FEIS). The FEIS was prepared pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as amended, section 202(f) of the Federal Land Policy and Management Act of 1976, and the BLM's planning procedures (43 CFR 1610). The PRMP/FEIS describes and analyzes the effects of restoring land of the acquired Wood River property, approximately 3,220 acres in Klamath County, Oregon, to a functioning wetland community.

Preparation of the proposed final Upper Klamath Basin and Wood River Wetland Resource Management Plan and Environmental Impact Statement (PRMP/FEIS) is a separate process from the recently completed Klamath Falls Resource Area Resource Management Plan and Environmental Impact Statement process. Although both plans are comparable (that is, guiding future management actions in specified areas), they were prepared separately due to the geographical distance between the Wood River property and the rest of the BLM-administered lands in the Resource Area.

PUBLIC PARTICIPATION: Public participation has occurred throughout the planning process. A Notice of Intent was filed in the **Federal Register** in October 1993. Since that time, many public meetings, mailings, and briefings were conducted to solicit comments and ideas. The draft RMP/EIS was available for public review from March 1, 1994 to June 17, 1994. Written comments were received from agencies, organizations, and individuals. Oral comments were also heard in eighteen public meetings with interested groups, organizations,

government agencies, and individuals. All comments provided were considered during the preparation of the PRMP/FEIS.

Copies of the PRMP/FEIS and a summary of it may be obtained from the Klamath Falls Resource Area office. Public reading copies will be available for review at the public libraries in Klamath Falls (Oregon) and Redding (California), the Klamath County Office Building, all government document depository libraries, BLM Oregon/Washington State Office, BLM District Offices in Oregon/Washington, and at the following BLM locations:

Office of External Affairs, Main Interior Building, Room 5600, 18th and C Streets, NW., Washington, DC 20240

Public Room, Oregon State Office, 1515 SW. 5th, 7th floor, Portland, Oregon 97201

A public meeting on the proposed plan will be announced in the local print media. Information on the public meeting can also be obtained by calling Wedge Watkins at (503) 885–4110.

Anyone adversely affected by the proposed plan may file a protest. Protests should be sent to the Director, Bureau of Land Management, U.S. Department of the Interior, Resource Planning (480), P.O. Box 65775, Washington D.C. 20235, within the 30-day protest period. The period for filing a protest begins on the date the Environmental Protection Agency publishes its Notice of Availability of the final environmental impact statement concerning the proposed resource management plan and will end 30 days after the publication of this notice in the **Federal Register**. To be considered complete, a protest must contain the following information: The name, mailing address, telephone number, and interest of the person filing the protest; a statement of the issue or issues being protested; a statement of the part or parts of the plan being protested; a copy of all documents addressing the issue or issues that were submitted during the planning process, or a reference to the date the issue or issues were discussed for the record; a concise statement explaining why the BLM State Director's decision is believed to be incorrect.

At the end of the 30-day protest period, the BLM may issue a Record of Decision approving implementation of any portions of the proposed plan not under protest. Approval will be withheld on any portion of the plan under protest, until the protest has been resolved.

FOR FURTHER INFORMATION CONTACT: A. Barron Bail, Area Manager, Klamath Falls Resource Area Office, Phone (503) 883–6916.

SUPPLEMENTARY INFORMATION: The PRMP/FEIS describes and analyzes four alternatives for BLM-administered lands in the Upper Klamath Basin near the Wood River to address the goals of wetland restoration and water quality improvement. The alternatives include a No Action alternative (continuation of current management) which does not include wetland restoration, and three alternatives that do include wetland restoration. In all four alternatives the following issues were addressed: water resources (quality and quantity), wetland restoration, special status species habitat, fish and wildlife habitat, recreation opportunities, access, livestock grazing, and public involvement.

The No Action Alternative would maintain the current use of the property as predominantly for livestock grazing in an irrigated pasture. Livestock grazing would be limited to a maximum of 3,600 animal unit months per year. Water would be pumped off in the spring at current schedules. The amounts of upland, wet meadow, and marsh habitat would remain constant. Recreation facilities would not be developed. Recreation use, limited to day use only, would neither be encouraged nor restrained and the area would remain closed to motorized vehicles.

Alternative B would restore the Wood River property to a functioning wetland with diverse plant communities and healthy, productive vegetation. Initial management actions could require highly engineered techniques, such as restoring the Wood River and Sevenmile Creek to their historic meandering channels; however, in the long term, wetland restoration systems and methods would be designed for minimum maintenance using the existing landscape features. The minimum maintenance methods used would vary, but could include such tools as prescribed fire, and mechanical vegetation manipulation. Some recreation facilities would be developed. Recreation use and some motorized access would be allowed, but would be limited to certain areas and times of day.

Alternative C would also restore the Wood River property to a functioning wetland with diverse plant communities and healthy, productive vegetation. Initial and long-term restoration actions could involve highly engineered techniques and could include experimental techniques, such as artificial water circulation, or other constructed wetlands. General design principles could be complex. The research would encompass both the methods used for wetland restoration and the examination of the effects of restoration on water quality and quantity, fish and wildlife habitat, etc. Recreation would be limited to day use only. Development of recreation facilities would emphasize wetland restoration education. Various tools, such as grazing, prescribed fire, mechanical manipulation of vegetation, chemical manipulation, and water level fluctuations could be used to meet the goals of this alternative.

The Preferred Plan, Alternative D, would restore the Wood River property to its previous form and function as a wetland community, within unalterable constraints (such as water rights, land ownership patterns, and funds). Labor-intensive, highly engineered wetland restoration methods using complex designs would be allowed; however, the preference would be to use wetland restoration systems and methods that were designed with less labor-intensive practices using the existing landscape features. Long-term improvements in water quality entering Agency Lake would be a goal. Adaptive management, the process of changing land management as a result of monitoring or research, would be used.

The Preferred Plan would emphasize improving and increasing wetland/riparian habitat to benefit federally listed fish species. It would also protect habitats of federally listed or proposed threatened or endangered species to avoid contributing to the need to list category 1 and 2 federal candidate, state-listed, and Bureau sensitive species. This alternative would emphasize management of special status species, including completing inventories for these species and maintaining a diversity of habitats. Other wildlife species would have habitat improved within the constraints of other resource objectives. Recreation would be managed for low to moderate use levels, with roaded natural and semi-primitive recreation experiences provided. Vehicles would be limited to designated, signed roads. The area would be identified as a Watchable Wildlife site.

The Wood River property, approximately 3,220 acres, would be designated an Area of Critical Environmental Concern to protect the area's relevant and important values (cultural, fish, and wildlife values, and natural processes and systems). Off-highway vehicle use will be prohibited; mining location will be prohibited; mineral leasing will be restricted; and

rights-of-way will be restricted in the ACEC. The Wood River and Seven Mile Creek were studied for eligibility under the National Wild and Scenic Rivers Act. Neither the Wood River nor Sevenmile Creek were found eligible or suitable for designation under any of the alternatives for inclusion in the National Wild and Scenic Rivers System. This notice meets the requirements of 43 CFR 1610.7–2 for designation of areas of critical environmental concern and the requirements of the final revised Department of the Interior—Department of Agriculture Guidelines for Eligibility, Classification, and Management of Rivers (**Federal Register** Vol. 47, No. 173, page 39454).

M. Joe Tague,

District Manager, Acting.

[FR Doc. 95–17510 Filed 7–17–95; 8:45 am]

BILLING CODE 4310–84–P

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application To Amend the San Bruno Mountain Habitat Conservation Plan Pursuant to Section 10(a) of the Endangered Species Act

AGENCY: Fish and Wildlife, Interior.

ACTION: Notice.

SUMMARY: The County of San Mateo (County) has applied to the U.S. Fish and Wildlife Service (Service) for an amendment to the San Bruno Mountain Habitat Conservation Plan (Plan) and incidental take permit PRT 2–9818 pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The proposed amendment, the Watson Communications System 1994 Master Plan project, would authorize the incidental take of the endangered mission blue butterfly (*Icaricia icarioides missionensis*) in an area of the Plan originally designated as conserved habitat. The proposed amendment was necessitated by revision of the 1983 development plan for the Radio Ridge. An environmental assessment (EA) is available for the project. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the EA and the application should be received on or before August 17, 1995.

ADDRESSES: Comments regarding the adequacy of the EA and the application should be addressed to: Field Supervisor, Sacramento Field Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E–1823, Sacramento, California 95825–1846. All comments should reference the permit number PRT 2–9818. All comments, including names and addresses, received will become part of the administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Michael Horton at the above address or telephone 916–979–2725. Individuals wishing a copy of the application or EA should contact the above individual.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the ''taking'' of endangered species, like the mission blue butterfly. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species may be found in 50 CFR 17.22.

In 1983, the Service issued the County of San Mateo (County), California a permit for the incidental take of mission blue butterfly on San Bruno Mountain. The County has requested an amendment to section 10(a)(1)(B) permit No. PRT 2–9818 for the San Bruno Mountain Habitat Conservation Plan (SBM HCP). The SBM HCP currently reflects a 1983 development plan for the Radio Ridge, which would allow the construction of 7 structures, 6 additional earth/satellite stations, and associated facilities, and would conserve 15 acres as conserved habitat. Watson Communications Systems, the property owner has proposed a number of construction activities that differ from the 1983 SBM HCP. This includes construction of 2 dwelling units, relocation of a tower, and construction of 2 new buildings, installation of 40 new dish antennae, and associated facilities. Aside from increasing the amount of habitat that would be lost by 1.2 acres, the new proposal reconfigures the developed areas. The applicant has proposed minimization measures and would provide additional funds to the HCP Trust Fund as mitigation. The County approved the 1994 Master Plan project and certified an Environmental Impact Report prepared for the project on December 20, 1994.

On August 23, 1994, the County applied to the Service for an amendment to the SBM HCP and permit PRT 2–9818. The proposed Radio Ridge amendment includes the above Watson Communications Systems project and would authorize the incidental take of the mission blue butterfly in an area originally designated in the SBM HCP as conserved habitat. In addition to the proposed amendment, (the proposed action), the No Action Alternative was considered.

Dated: July 12, 1995.

Thomas Dwyer,

Deputy Regional Director, Region 1, Portland, Oregon.

[FR Doc. 95–17549 Filed 7–17–95; 8:45 am]

BILLING CODE 4310–55–P

National Park Service

Final Environmental Impact Statement/ General Management Plan Haleakala National Park, Maui County, Hawaii; Record of Decision

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190 as amended) and regulations promulgated by the Council on Environmental Quality (40 CFR 1505.2), the Department of the Interior, National Park Service has approved a Record of Decision on the Final Environmental Impact Statement/General Management Plan (FEIS/GMP) for Haleakala National Park.

The National Park Service will implement the selected plan, identified as the proposal in the Final Environmental Impact Statement for the General Management Plan, issued in March, 1995.

Copies of the approved Record of Decision may be obtained from the Superintendent, Haleakala National Park, Box 369, Makawao, Maui, HI 96768; or by calling the park at (808) 572–9230.

Dated: June 27, 1995.

Patricia L. Neubacher,

Field Director, Pacific West Field Area.

[FR Doc. 95–17638 Filed 7–17–95; 8:45 am]

BILLING CODE 4310–70–P

Acadia National Park Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App. 1, Sec. 10), that the Acadia National Park Advisory Commission will hold a meeting on Monday, August 14, 1995.

The Commission was established pursuant to Pub. L. 99–420, Sec. 103. The purpose of the commission is to consult with the Secretary of the Interior, or his designee, on matters relating to the management and development of the park, including but not limited to the acquisition of lands and interests in lands (including conservation easements on islands) and

termination of rights of use and occupancy.

The meeting will convene park headquarters, Acadia National Park, Rt. 233, Bar Harbor, Maine, at 1 p.m. to consider the following agenda:

1. Review and approval of minutes from the meeting held May 15, 1995.
2. Report of the Conservation Easement Subcommittee.
3. Report of the Acquisition Subcommittee.
4. Superintendent's report.
   A. Update on status of park operations.
   B. Overview of resource protection program.
   C. Executive summary of biological effects of ozone research.
5. Public comments.
6. Proposed agenda and date of next Commission meeting.

The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Acadia National Park, PO Box 177, Bar Harbor, Maine 04609, tel: (207) 288–3338.

Dated: July 12, 1995.

Robert W. McIntosh,

Acting Deputy Field Director.

[FR Doc. 95–17636 Filed 7–17–95; 8:45 am]

BILLING CODE 4310–70–P

Notice of Inventory Completion for Native American Human Remains From the State of Maine in the Possession of the Robert S. Peabody Museum of Archaeology, Andover, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003(d), of completion of the inventory of human remains presently in the possession of the Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA, from one site in the State of Maine.

A detailed inventory and assessment of these human remains has been made by the Robert S. Peabody Museum of Archaeology and representatives of the Penobscot Indian Nation, the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians, and the Aroostook Band of Micmac Indians, known collectively as the Wabanaki Confederacy.

The isolated human remains from a male between 25 and 30 years old were recovered in 1921 from the Ludlow's Point Shellheap in Penobscot, ME. The Ludlow's Point Shellheap is believed to have been occupied between A.D. 900 and 1500. The individual from this site is believed to have been interred during that occupation.

The Ludlow's Point Shellheap is located within the aboriginal territory of the people known historically as the Etchemin. The Etchemin are considered ancestral to the Penobscot Indian Nation and the Passamaquoddy Tribe.

Inventory of the human remains from Ludlow's Point Shellheap, results of the consultation with the Wabanaki Confederacy, and review of the accompanying documentation indicates that no known individuals were identifiable.

Based on the available archaeological and ethnohistorical evidence, as well as the geographical and oral tradition evidence provided by the tribes of the Wabanaki Confederacy during consultation, officials of the Robert S. Peabody Museum have determined that pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity which can be reasonably traced between these human remains from the Ludlow's Point Shellheap and the Penobscot Indian Nation and the Passamaquoddy Tribe.

This notice has been sent to officials of the Wabanaki Confederacy (the Penobscot Indian Nation, the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians, and the Aroostook Band of Micmac Indians). Representatives of any other Indian tribe which believes itself to be culturally affiliated with these human remains should contact James W. Bradley, Director of the Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA 01810; telephone: (508) 749–4490, before August 17, 1995. Repatriation of these human remains to the Penobscot Indian Nation and the Passamaquoddy Tribe may begin after that date if no additional claimants come forward.

Dated: July 10, 1995.

Francis P. McManamon,

Departmental Consulting Archeologist, Chief, Archeological Assistance Division.

[FR Doc. 95–17544 Filed 7-17–95; 8:45 am]

BILLING CODE 4310–70–F

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before JULY 8, 1995. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by August 2, 1995.

Carol D. Shull,

Keeper of the National Register.

CALIFORNIA

Los Angeles County

Miss Orton's Classical School for Girls (Dormitory), 154 S. Euclid Ave., Pasadena, 95000998

Marin County

San Francisco and North Pacific Railroad Station House—Depot, 1920 Paradise Dr., Tiburon, 95000997

Mendocino County

Olinsky Building, 401 N. Main St., Fort Bragg, 95000995

Sacramento County

Chung Wah Cemetery, Mormon St. vicinity, near Lake Natoma, Folsom, 95000999

Santa Clara County

Gilroy Yamato Hot Springs, 9 ½ mi. NE of jct. of New Ave. and Roop Rd., Gilroy vicinity, 95000996

COLORADO

Weld County

Dearfield, Along CO 34, 11 mi. W of Wiggins, Wiggins vicinity, 95001002

FLORIDA

Hillsborough County

Tampa Heights Historic District, Roughly bounded by Adalee St., I–275, 7th Ave. and N. Tampa Ave., Tampa, 95000979

ILLINOIS

Bond County

Greenville Public Library (Illinois Carnegie Libraries MPS), 414 W. Main Ave., Greenville, 95000991

Coles County

Health Education Building, 1611 4th St., Charleston, 95000993

Crawford County

Palestine Commercial Historic District, 101–223 and 106–322 S. Main St., Palestine, 95000985

De Kalb County

Ashelford Hall, 566 Eychaner Rd., Esmond, 95000990

Iroquois County

Smith, A. Herr and E.E., Public Library, 105 Adams St., Loda, 95000992

Kankakee County

Kankakee State Hospital Historic District, 100 E. Jeffery St., Kankakee, 95000987

La Salle County

Hegeler—Carus Mansion, 1307 Seventh St., La Salle, 95000989

Peoria County

Peoria Automobile Club, 100 Park Blvd., Chillicothe, 95000984

Sangamon County

Oak Ridge Cemetery, 1441 Monument Ave., Springfield, 95000986

Whiteside County

Malvern Roller Mill, 18858 Clover Rd., Morrison vicinity, 95000988

IOWA

Polk County

Sylvan Theater Historic District, In Greenwood Park on W side of 45th St., 1 block S of jct. with Grand Ave., Des Moines, 95000965

Wapello County

Benson Building (Ottumwa MPS), 214 E. Second St., Ottumwa, 95000969
First National Bank (Ottumwa MPS) 131 E. Main St., Ottumwa, 95000970
Jay Funeral Home (Ottumwa MPS), 220 North Ct., Ottumwa, 95000971
Ottumwa Cemetery Historic District (Ottumwa MPS), 1302 North Ct., Ottumwa, 95000968
Vogel Place Historic District (Ottumwa MPS), Roughly bounded by Ottumwa Country Club, Court St., Ottumwa Cemetery and former St. Joseph Hospital, Ottumwa, 95000967

Woodbury County

Fourth Street Historic District, 1002–1128 Fourth St., Sioux City, 95000966

NEW JERSEY

Camden County

Glendale Methodist Episcopal Church, 615 Haddonfield—Berlin Rd. (Rt. 561), at jct. with White Horse Rd., Voorhees Township, Glendale, 95001000

Cape May County

Saint Peter's-By-The-Sea Episcopal Church, Jct. of Ocean Ave. and Lake Dr., Cape May Point, 95000978

Monmouth County

Court Street School, Jct. of Court St. and Holmes Terr., Freehold, 95001003

NEW YORK

Columbia County

Church of St. John in the Wilderness, Jct. of NY 344 and Valley View Rd., Copake Falls, 95000963

Franklin County

Merrillsville Cure Cottage, Jct. of Co. Rt. 99 and Old NY 3, Merrillsville, 95000947

Greene County

Commercial Building at 32 West Bridge Street, 32 W. Bridge St., Catskill, 95000961
District School No. 11, S. Jefferson Ave., Catskill, 95000964
Hallock, Joseph, House, 241 W. Main St., Catskill, 95000958
Hop-O-Nose Knitting Mill, 130 W. Main St., Catskill, 95000959
Lampman, William, House, 147 Grandview Ave., Catskill, 95000960
Wiley Hose Company Building, 30 W. Bridge St., Catskill, 95000962

Ulster County

Barley, Zachariah, Stone House (Rochester MPS), 193 Whitfield Rd., Rochester, 95000951
DuPuy, Ephriam, Stone House (Rochester MPS), 193 Whitfield Rd., Rochester, 95000952
Hornbeck Stone House (Rochester MPS), 149 Whitfield Rd., Rochester, 95000957
Krom Stone House and Dutch Barn (Rochester MPS), Airport Rd., Rochester, 95000955
Krom Stone House at 45 Upper Whitfield Road (Rochester MPS), 45 Upper Whitfield Rd., Rochester, 95000950
Krom Stone House at 31 Upper Whitfield Road (Rochester MPS), 31 Upper Whitfield Rd., Rochester, 95000954
Krom, Lucas, Stone House (Rochester MPS), 286 Whitfield Rd., Rochester, 95000953
Markle, Jacob F., Stone House (Rochester MPS), 335 Whitfield Rd., Rochester, 95000948
Rider, Johannes, Stone House (Rochester MPS), 7 Upper Whitfield Rd., Rochester, 95000956
Westbrook, Dirck, Stone House (Rochester MPS), 18 Old Whitfield Rd., Rochester, 95000949

OHIO

Lucas County

Lasalle, Koch and Company Department Store, 513 Adams St., at jct. with Huron St., Toledo, 95001001

TENNESSEE

Maury County

Scott, Andrew, House, 3991 Pulaski Hwy., Culleoka, 95000976

Obion County

Bransford, Thomas Leroy, House, 815 N. Ury St., Union City, 95000977

UTAH

Salt Lake County

Walton, Wesley and Frances, House, 5197 S. Wesley Rd., Salt Lake City, 95000983

Wasatch County

Midway Social Hall, 71 E. Main St., Midway, 95000981

Washington County

Hurricane Historic District, Roughly bounded by 300 South, 200 West, State St. and the Hurricane Canal, Hurricane, 95000980
Rockville Bridge, Bridge St. over E. Fork, Virgin R., Rockville, 95000982

VIRGINIA

Albemarle County

Malvern, VA 708 W side, 1250 ft. N of jct. with VA 637, Charlottesville vicinity, 95000974

Isle of Wight County

Poplar Hill, 7968 Purvis Ln. (VA 673), 0.9 mi. NW of jct. with VA 677, Smithfield vicinity, 95000975

Rockbridge County

Hays Creek Mill, VA 724, 0.1 mi. N of jct. with VA 726, Brownsburg vicinity, 95000973

Newport News Independent City

Dam No. One Battlefield Site, 13560 Jefferson Ave., Newport News (Independent City), 95000972

[FR Doc. 95–17628 Filed 7–17–95; 8:45 am]
BILLING CODE 4310–70–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32596]

Cen-Tex Rail Link, Ltd.—Lease and Operation Exemption—Texas Central Railroad Company

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 11343–45 the lease and operation by Cen-Tex Rail Link, Ltd. of Texas Central Railroad Company's 24.9-mile rail line between milepost 129.5 at Gorman, TX, and milepost 104.6 at Dublin, TX, subject to standard employee protective conditions.

DATES: This exemption is effective on August 17, 1995. Petitions to stay must be filed by August 2, 1995. Petitions to reopen must be filed by August 14, 1995.

ADDRESSES: Send pleadings referring to Finance Docket No. 32596 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, DC 20423; (2) Kevin M. Sheys, Oppenheimer Wolff & Donnelly, Suite 400, 1020 Nineteenth Street, N.W., Washington, DC 20036; and (3) John D. Downey, McQuire, Craddock, Strother & Lutes, P.C., 4301 Thanksgiving Tower, 1601 Elm Street, Dallas, TX 75201.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. (TDD for the hearing impaired: (202) 927–5721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, 1201 Constitution Avenue, NW, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927–5721.)

Decided: July 5, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–17599 Filed 7–17–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32741]

Southeastern International Corporation—Acquisition Exemption—Lines of The Atchison, Topeka and Santa Fe Railway Company

Southeastern International Corporation has filed a verified notice under 49 CFR part 1150, Subpart D—*Exempt Transactions* to acquire portions of two railroad lines totaling approximately 25 miles from The Atchison, Topeka and Santa Fe Railway Company from (1) milepost 62 + 3010 feet on the Silsbee Subdivision, near the railway station grounds of Fannett, Jefferson County, TX, to milepost 49 + 0 feet near Stowell, in Jefferson and Chambers Counties, TX; and (2) from milepost 42 + 1260 near the railway station of Wharton and milepost 54.0 near Lane City, in Wharton County, TX. The transaction was scheduled to be consummated on or about July 1, 1995.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to reopen will not stay the exemption's effectiveness. An original and 10 copies of all pleadings, referring to Finance Docket No. 32741, must be filed with the Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423. In addition, a copy of each pleading must be served on Richard H. Streeter, Barnes, & Thornburg, 1401 Eye Street, NW., Suite 500, Washington, DC 20005.

Decided: July 11, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–17600 Filed 7–17–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than July 28, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 28, 1995.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 1st day of May, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Organik Technologies/Big Sky Wash. (Wkrs).	Tacoma, WA	05/01/95	04/11/95	30,966	Fleece Ware.
Oxford of Hickory Grove (Co)	Hickory Grove, SC	05/01/95	04/19/95	30,967	Ladies Skirts & Pants.
Superior Technology (IBEW)	Paris, TX	05/01/95	04/12/95	30,968	Electrical Meter Boxes.
Cooper Power Systems (Wkrs)	Coraopolis, PA	05/01/95	04/17/95	30,969	Power Transformers.
Kennecott Utah Copper (USWA)	Bingham Canyon, UT.	05/01/95	04/10/95	30,970	Copper.
Kennecott Utah Copper-Smelter Div. (USWA).	Salt Lake City, UT	05/01/95	04/10/95	30,971	Copper.
Kennecott Utah Copper-Refinery Div. (USWA).	Salt Lake City, UT	05/01/95	04/10/95	30,972	Copper.
Esselte Pendaflex Corp. (GCIU)	Syracuse, NY	05/01/95	04/19/95	30,973	Pads, Books and Binders.
Tidewater Compression Service, Inc. (Wkrs).	Houston, TX	05/01/95	04/11/95	30,974	Natural Gas.
Halliburton (Wkrs)	Midland, TX	05/01/95	04/11/95	30,975	Natural Gas.
Hudson Valley Tree, Inc. (Wkrs)	Newburgh, NY	05/01/95	04/20/95	30,976	Artical Christmas Trees, Wreaths, etc.
Hudson Valley Tree, Inc. (Wkrs)	Evansville, ID	05/01/95	04/20/95	30,977	Artificial Christmas Trees, Wreaths, etc.
Scout Trucking Co. (Co)	Spring City, PA	05/01/95	04/07/95	30,978	Service-Trucking Goods.
Unitcast Corp (UAW)	Toledo, OH	05/01/95	04/21/95	30,979	Steel Castings.

[FR Doc. 95–17604 Filed 7–17–95; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–30,923]

Angel Knitwear, Incorporated; South Hackensack, New Jersey; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Program Manager of the Office of Trade Adjustment Assistance for workers at Angel Knitwear, Inc., South Hackensack, New Jersey. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–30,923; Angel Knitwear, Incorporated, South Hackensack, NJ (July 5, 1995)

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–17609 Filed 7–17–95; 8:45 am]
BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 28, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 28, 1995.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 8th day of May, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
(The) Boeing Company (IAM&AW)	Seattle, WA	05/08/95	04/20/95	30,980	Aircraft Parts Assembly.
Contintental Emsco Co./Duratech Div. (Co.).	Garland, TX	05/08/95	04/24/95	30,981	Crude Oil Artificial Lift Pumps.
Linea Aeropostal Venezolana (Wkrs)	Miami, FL	05/08/95	04/18/95	30,982	Airline Services.
Junior Gallery, Ltd. (ILGWU)	Clifton, NJ	05/08/95	04/17/95	30,983	Women's Coats.
Chun King Corp (Wkrs)	Cambridge, MD	05/08/95	04/20/95	30,984	Oriental Foods.
FHF Apparel (Wkr)	Miami, FL	05/08/95	04/24/95	30,985	Men's Jackets.
Varco Logging, Inc. (Wkrs)	Superior, MT	05/08/95	04/24/95	30,986	Softwood Logs.
Wind-A-Way Concepts (Wkrs)	Livingston, TN	05/08/95	04/20/95	30,987	Ladies Apparel.
C. Walker & Co. (Wkrs)	Corning, AR	05/08/95	04/20/95	30,988	Small Pine Accessory Pieces.
Duncan Energy Co. (Wkrs)	Denver, CO	05/08/95	04/21/95	30,989	Oil and Gas.
Haskon International, Inc. (UERM)	Taunton, MA	05/08/95	04/18/95	30,990	Seals for Aerospace.
Paragon Trade Brands, Inc. (Wkrs)	City of Industry, CA	05/08/95	04/20/95	30,991	Disposable Baby Diapers.
General Electric Co. (IUE)	Murfreesboro, TN	05/08/95	04/26/95	30,992	Small Fractional Electric Motors.
Alsy Lighting, Inc. (Wkrs)	Ellwood City, PA	05/08/95	04/25/95	30,993	Portable Floor & Table Lamps.
Cable Mfg. Co. (Wkrs)	Rockaway, NJ	05/08/95	04/25/95	30,994	Cable.
Elizabeth Fashions, Inc. (ILGWU)	Northport, AL	05/08/95	04/19/95	30,995	Ladies Coats and Suits.
Luna Creations (Wkrs)	Providence, RI	05/08/95	04/27/95	30,996	Costume Jewelry.
Nabors Drilling USA, Inc. (Wkrs)	New Braunfels, TX	05/08/95	04/20/95	30,997	Oil, Gas Drilling.
Studley Products, Inc. (Co)	Newark, NJ	05/08/95	04/24/95	30,998	Vacuum Filter Bags.
Phillips-Van Heusen—Exec. Div. (Wkrs)	New York, NY	05/08/95	04/26/95	30,999	Men and Women Sports Clothes.
Phillips-Van Heusen—Retail Div. (Wkrs).	Reading, PA	05/08/95	04/26/95	31,000	Men and Women Sports Clothes.
Phillips-Van Heusen—Van Jeusen-Sportswear Div. (Wkrs).	Allentown, PA	05/08/95	04/26/95	31,001	Men and Women Sports Clothes.
Phillips-Van Heusen—Dist. Center (Wkrs).	Reading, PA	05/08/95	04/26/95	31,002	Men and Women Sports Clothes.
Garan, Inc. (Wkrs)	Adamsville, TN	05/08/95	04/25/95	31,003	Fashion Collars.
J & R Creations, Inc. (ILGWU)	Hoboken, NJ	05/08/95	04/26/95	31,004	Women's Coats.
Quebecor Printing (Wkrs)	Depew, NY	05/08/95	04/25/95	31,005	Printed Matter.

[FR Doc. 95–17603 Filed 7–17–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,068; TA–W–31,068A]

Clinton Swan Clothes, Inc.; Bon Vivant Coll. Ltd.; Carlstadt, NJ; Amended Certification Regarding Eligibility To Apply for Workers Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 9, 1995, applicable to all workers of Clinton Swan Clothes, Incorporated, located in Carlstadt, New Jersey. The notice will soon be published in the **Federal Register**.

At the request of the company, the Department is amending the certification to include workers of Bon Vivant Coll. Ltd., Carlstadt, New Jersey, an affiliate of Clinton Swan Clothes, Incorporated. The Department's review of the certification, revealed that workers of Bon Vivant were inadvertently excluded from the certification.

The intent of the Department's certification is to include all workers of Clinton Swan Clothes, Incorporated who were adversely affected by imports.

The amended notice applicable to TA–W–31,068 is hereby issued as follows:

All workers of Clinton Swan Clothes, Incorporated and Bon Vivant Coll. Ltd., located in Carlstadt, New Jersey who became totally or partially separated from employment on or after April 25, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 5th day of July 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–17608 Filed 7–17–95; 8:45 am]

BILLING CODE 4510–30–M

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

Dual Marine Drilling Company, TA–W–30,914, Dallas, Texas.

Dual Marine Drilling Company, TA–W–30,914A, Broussard, Louisiana.

A/K/A Dual Drilling Texas, Inc., a/k/a Dual Drilling Services, Inc., a/k/a Dual Marine Company, a/k/a Dual Marine Co. Inc., a/k/a Perserv Company, a/k/a Perserv Co. Inc., a/k/a Dual Marine Drilling Co., DTD 688.

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on May 3, 1995, applicable to all workers at Dual Marine Drilling Company. The amended notice was published in the **Federal Register** on May 17, 1995 (60 FR 26459).

New information received from the company and the State Agency, show that some of the workers at Dual Marine Drilling Company, in Dallas, Texas, and Broussard, Louisiana had their unemployment insurance (UI) taxes paid to Dual Drilling Texas, Inc., Dual Drilling Service, Inc., Dual Marine Company, Dual Marine Co. Inc., Perserv Company, Perserv Co. Inc., and Dual Marine Drilling Co. DTD 688.

The intent of the Department's certification is to include all workers of Dual Marine Drilling Company.

The amended notice applicable to TA–W–30,914 is hereby issued as follows:

All workers of Dual Marine Drilling Company, Dallas, Texas, and Broussard, Louisiana, a/k/a Dual Drilling Texas, Inc., a/k/a Dual Drilling Services, Inc., a/k/a Dual Marine Company, a/k/a Dual Marine Co. Inc., a/k/a Perserv Company, a/k/a Perserv Co. Inc., and a/k/a Dual Marine Drilling Co. DTD 688 who became totally or partially separated from employment on or after March 1, 1994, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 5th day of July 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–17607 Filed 7–17–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,029]

OSRAM Sylvania, Incorporated; Camillus, NY; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Program Manager of the Office of Trade Adjustment Assistance for workers at Osram Sylvania, Inc., Camillus, New York. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–31,029; Osram Sylvania, Incorporated, Camillus, New York (July 7, 1995)

Signed at Washington, DC, this 11th day of July, 1995.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–17605 Filed 7–17–95; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 28, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 28, 1995.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 3rd day of July, 1995.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade, Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Robertshaw Controls Company (Wkrs)	El Paso, Texas	07/03/95	06/12/95	31,188	Water Heating Controls.
Cuddle Teens Frocks, Inc. (Wkrs)	New York, NY	07/03/95	06/21/95	31,189	Children's Clothing.
ITT Marlow Pumps (Co.)	Midland Park, NJ	07/03/95	06/01/95	31,190	Fluid Pumps.
Ottenheimer & Co. (Co.)	Hillsville, VA	07/03/95	06/09/95	31,191	Nurses Uniforms.
Salmon Intermountain Sawmill, Inc. (Wkrs).	Salmon, ID	07/03/95	06/22/95	31,192	Softwood Dimensional Lumber.
Telxon Corp. (Wkrs)	Houston, TX	07/03/95	06/02/95	31,193	Hand Held Computers.
Angelica Uniform Group (Wkrs)	Marquand, MO	07/03/95	06/20/95	31,194	Uniforms, Surgical Drapes, Gowns.
Belden Wire & Cable Co. (Co.)	Bensenville, IL	07/03/95	06/15/95	31,195	Power Supply Cords & Electrical Cordsets.
Cornik Fashion (Wkrs)	Jersey City, NJ	07/03/95	05/16/95	31,195	Ladies' Coats.
H.H. Cutler—Sewing Plant (Wkrs)	Statesboro, GA	07/03/95	06/01/95	31,197	Children's Sportswear.
Laurelle Manufacturing (Co.)	New York, NY	07/03/95	06/20/95	31,198	Blouses.
Lee Manufacturing (ILGWU)	Pittston, PA	07/03/95	06/20/95	31,199	Dresses.
Louisiana Land & Exploration Co. (Co.)	New Orleans, LA	07/03/95	06/23/95	31,200	Crude Oil & Natural Gas.
Louisiana Land & Exploration Co. (Co.)	Houston, TX	07/03/95	06/25/95	31,201	Crude Oil & Natural Gas.
Louisiana Land & Exploration Co. (Co.)	Denver, CO	07/03/95	06/25/95	31,202	Crude Oil & Natural Gas.
Louisiana Land & Expl. Petro. Mktg. (Co.)	Saraland, AL	07/03/95	06/25/95	31,203	Crude Oil & Natural Gas.
Valmont Electric, Inc. (Co.)	El Paso, TX	07/03/95	06/15/95	31,204	Electrical Parts for Lamps.
Huls America, Inc. (OCAW)	Elizabeth, NJ	07/03/95	06/01/95	31,205	Paint Thinners, Chemicals, Additivies.
Anchor Glass Container Plant (GMP)	Gurnee, IL	07/03/95	06/16/95	31,206	Glass Containers.
Anchor Glass Container Plant (GMP)	Huntington Park, CA	07/03/95	06/16/95	31,207	Glass Containers.
Delta Castings (Co.)	Cooper, TX	07/03/95	06/19/95	31,208	Aluminum Ornamental Picket Castings.
M&V Aquisition (Wkrs)	Buffalo, NY	07/03/95	06/19/95	31,209	Jewelry.
Tampella Power Corp. (IUE)	Williamsport, PA	07/03/95	06/08/95	31,210	Industrial Boilers.
J.M. Huber Corp. (Co.)	Amarillo, TX	07/03/95	06/27/95	31,211	Crude Oil & Natural Gas.
J.M. Huber Corp. (Co.)	Midland, TX	07/03/95	06/27/95	31,212	Crude Oil & Natural Gas.
NQ II Ltd. (Wkrs)	Mifflinburg, PA	07/03/95	06/22/95	31,213	Ladies' Sleepwear, Loungewear.

[FR Doc. 95–17606 Filed 7–17–95; 8:45 am]

BILLING CODE 4510–30–M

[TA-W-30,521]

Xerox Corporation, Manufacturing and Resource Team of Office Document Products, Office Document Systems Division, Cross Keys Office Park, Fairport, New York; Notice of Revised Determination on Reopening

On June 30, 1995, the Department, on its own motion, reopened its investigation for the former workers of the subject firm.

The initial investigation resulted in a negative determination on January 27, 1995. The denial was published in the **Federal Register** on February 14, 1995 (60 FR 8414).

The Department's review of this investigation revealed that, although the subject workers did not produce an article, they were engaged in planning and engineering development work, and supported the company's production of copiers and printers. The trade adjustment assistance certification of workers at the company's production facility in Webster, New York (TA-W-29, 744) provides a basis for certifying the workers of the subject location.

Conclusion

After careful consideration of these facts, it is concluded that increased imports of articles like or directly competitive with copiers and printers produced by Xerox Corporation contributed importantly to the decline in sales or production and to the total or partial separation of the subject workers. In accordance with the provisions of the Act, I make the following revised determination:

All workers of Xerox Corporation's Manufacturing and Resource Team of Office Document Products, Office Document Systems Division in Cross Keys Office Park, Fairport, New York who became totally or partially separated from employment on or after November 4, 1993 through two years from the date of certification are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, D.C. this 30th day of June 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–17610 Filed 7–17–95; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (95–056)]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made submission.

Copies of the proposed forms, the requests for clearance (OMB 83–1), supporting statements, instructions, transmittal letters, and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by August 17, 1995. If you anticipate commenting on a form but find that time to prepare will prevent you from

submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Donald J. Andreotta, NASA Agency Clearance Officer, Code JT, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700–0017), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Bessie B. Berry, NASA Reports Officer, (202) 358–1368.

Reports

Title: Report of Government-Owned/Contractor Property.
OMB Number: 2700–0017.
Type of Request: Extension.
Frequency of Report: Annually.
Type of Respondent: Business or other for profit, Not-for-profit institutions.
Number of Respondents: 1,900.
Responses Per Respondent: 1.
Annual Responses: 1,900.
Hours Per Request: 4.
Annual Burden Hours: 7,600.
Number of Recordkeepers: 0.
Annual Hours Per Recordkeeping: 0.
Annual Recordkeeping Burden Hours: 0.
Total Annual Burden Hours: 7,600.
Abstract-Need/Uses: NASA is required to account for Government-owned/Contractor-held property. The NASA Form 1018 submitted by contractors provides data necessary to ensure that the Agency's assets are accurately reflected on its audited financial statements and property management information.

Dated: July 11, 1995.

Donald J. Andreotta,

Deputy Director, IRM Division.

[FR Doc. 95–17578 Filed 7–17–95; 8:45 am]

BILLING CODE 7510–01–M

[Notice (95–055)]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made submission.

Copies of the proposed forms, the requests for clearance (OMB 83–1), supporting statements, instructions, transmittal letters, and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by August 17, 1995. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Donald J. Andreotta, NASA Agency Clearance Officer, Code JT, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700–0003), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Bessie B. Berry, NASA Reports Officer, (202) 358–1368.

Reports

Title: NASA Contractor Financial Management Reports.
OMB Number: 2700–0003.
Type of Request: Extension.
Frequency of Report: As required.
Type of Respondent: Business or other for profit, Not-for-profit institutions.
Number of Respondents: 900.
Responses Per Respondent: 12.
Annual Responses: 10,800.
Hours Per Request: 10.
Annual Burden Hours: 108,000.
Number of Recordkeepers: 0.
Annual Hours Per Recordkeeping: 0.
Annual Recordkeeping Burden Hours: 0.
Total Annual Burden Hours: 108,000.
Abstract-Need/Uses: Contractors must report planned and actual costs on NASA Forms 533M/533Q so NASA can plan, monitor, and control program/project resources, evaluate contractor performance, and accurately accrue cost in the accounting system and financial statements.

Dated: July 11, 1995.

Donald J. Andreotta,

Deputy Director, IRM Division.

[FR Doc. 95–17579 Filed 7–17–95; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Task Force on the Future of the NSF Supercomputer Centers Program; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Task Force on the Future of the NSF Supercomputer Centers Program (#1982).
Date and Time: August 3, 1995 9:00 am–5:00 p.m., August 4, 1995 9:00 a.m.–3:00 p.m.
Place: Room 1120, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.
Type of Meeting: Open
Contact Person: Dr. Robert Borchers, Director, Division of Advanced Scientific Computing, Directorate for Computer and Information Science and Engineering, NSF 4201 Wilson Boulevard, Arlington, VA 22230, 703/306–1970.
Minutes: May be obtained from the contact person listed above.
Meeting Purpose: The objective of the Task Force is to advise the NSF on the future of its Supercomputing Centers Program considering the changing nature of computing and information science and technology. Its scope will be limited to NSF's support for advanced computational science. This meeting is to approve draft sections of the final report and decide on the Task Force's recommendations.

Agenda

Thursday, August 3, 1995

0900–0930 Organizational Material and procedures
0930–1030 Background Material—Section 1
1030–1100 Break
1100–1200 Background Materials—Appendix A, B, C, D
1200–1330 Lunch
1330–1530 Issues—Section 2
1530–1600 Break
1600–1700 Factors—Section 3

Friday, August 4, 1995—NSF 1120

0900–1030 Options—Section 4
1030–1100 Break
1100–1230 Recommendations—Section 5
1230–1330 Lunch
1330–1500 Mission Statement—Section 6
1530 Adjourn

Dated: July 13, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–17577 Filed 7–17–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a guide planned for its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and

data needed by the staff in its review of applications for permits and licenses.

The draft guide is a proposed Revision 2 to Regulatory Guide 1.149, and it is temporarily identified as DG–1043, ''Nuclear Power Plant Simulation Facilities for Use in Operator License Examinations.'' The guide will be in Division 1, ''Power Reactors.'' This regulatory guide is being revised to describe methods acceptable to the NRC staff for complying with those portions of the Commission's regulations regarding (1) certification of a simulation facility consisting solely of a plant-referenced simulator and (2) application for prior approval of a simulation facility for testing. This guide endorses, with clarifications and exceptions, an American National Standards Institute/American Nuclear Society standard, ANSI/ANS–3.5–1993, ''Nuclear Power Plant simulators for use in Operator Training and Examination.''

The draft guide has not received complete staff review and does not represent an official NRC staff position.

Public comments are being solicited on the guide. Comments should be accompanied by supporting data. Written comments may be submitted to the Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by September 15, 1995.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Comments may be submitted electronically, in either ASCII text or Wordperfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet.

If using a personal computer and modem, the NRC subsystem on FedWorld can be accessed directly by dialing the toll free number: 1–800–303–9672. Communications software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). using ANSI or VT–100 terminal emulation, the NRC NUREGs and RegGuides for Comment subsystem can then be accessed by selecting the ''Rules Menu'' option from the ''NRC at FedWorld, consult the ''Help/Information Center'' from the ''NRC Main Menu.'' Users will find the ''FedWorld Online user's Guides'' particularly helpful. Many NRC subsystems and data bases also have a ''Help/Information Center'' option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS, 703–321–3339, or by using Telnet via Internet, fedworld.gov. If using 703–321–3339 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the ''Regulatory, Government Administration and State Systems,'' then selecting ''Regulatory Information Mall.'' At that point, a menu will be displayed that has an option ''U.S. Nuclear Regulatory Commission'' that will take you to the NRC Online main menu. The NRC Online area also can be accessed directly by typing ''/go nrc'' at a FedWorld command line. If you access NRC from FedWorld's main menu, you may return to FedWorld by selecting the ''Return to FedWorld'' option from the NRC Online Main Menu. However, if you access NRC at FedWorld by using NRC's toll-free number, you will have full access to all NRC systems but you will not have access to the main FedWorld system.

If you contact FedWorld using Telnet, you will see the NRC area and menus, including the Rules men. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact FedWorld using FTP, all files can be accessed and downloaded but uploads are not allowed; all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is included. There is a 15-minute time limit for FTP access.

Although FedWorld can be accessed through the World Wide Web, like FTP that mode only provides access for downloading files and does not display the NRC Rules menu.

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–5780; e–mail AXD3@nrc.gov. For more information on this draft regulatory guide, contact F. Collins at the NRC, telephone (301) 415–3173, e–mail JFC1@nrc.gov; or R. Auluck, telephone (301) 415–6608, e–mail RCA@nrc.gov.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Distribution and Mail Services Section; or by fax at (301) 415–2260. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 29th day of June 1995.

For the Nuclear Regulatory Commission.

Sher Bahadur,

Chief, Waste Management Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 95–17563 Filed 7–17–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–295]

Commonwealth Edison Co. (Zion Nuclear Power Station, Unit 1); Exemption

I

Commonwealth Edison Company (ComEd or the licensee) is the holder of Facility Operating License No. DPR–39, which authorizes operation of the Zion Nuclear Power Station, Unit 1, at a steady-state reactor power level not in excess of 3250 megawatts thermal. The facility is a pressurized water reactor located at the licensee's site in Lake County, Illinois. The license provides, among other things, that the Zion Nuclear Power Station is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect.

II

Section III.D.1.(a) of appendix J to 10 CFR part 50 requires the performance of three Type A containment integrated leakage rate tests (ILRTs) at approximately equal intervals during each 10-year inservice inspection period. Furthermore, the third test of each set is to be conducted during the shutdown for the 10-year plant inservice inspections.

III

In a letter dated May 12, 1995, the licensee requested relief from the requirement to perform a set of three Type A tests at approximately equal intervals during each 10-year inservice

inspection period. The requested exemption would permit a one-time interval extension of the third Type A test of the second 10-year inservice inspection period by approximately 18 months and would result in the interval between successive Type A leakage rate tests being approximately 60 months. If the revised 10 CFR part 50 requirements are approved and implemented, the next Type A test could be deferred up to an additional 60 months.

The licensee's request justified the proposed change, on the following basis.

In the Type A test conducted in the RFO in March 1988, the leakage rate was below the maximum allowable. In the Type A test conducted during the RFO in March 1992, after adding all required penalties associated with local leakage rate tests (LLRTs), the as-found Type A test result was a failure. However, the majority of the leakage in the LLRTs was due to a valve in one penetration. Prior to repairing the valve, a leakage rate that was double the allowed limit was measured. The licensee's corrective maintenance on the valve and its post-repair leakage rate testing resulted in a Type A test leakage rate that was about 20 percent of the allowable limit.

The licensee stated that there are no mechanisms which would adversely affect the structural integrity of the containment or that would be a factor in evaluating the extension of the test interval by 18 months. However, as a preventive maintenance measure, the visual containment inspection currently required by 10 CFR part 50, appendix J, prior to a Type A test, will be conducted during the September 1995 RFO to verify that there are no apparent signs of containment degradation and to provide added confidence that the containment structural integrity was not affected during the period since the last visual inspection. Any additional risk created by the longer interval between Type A testing is considered by the licensee to be negligible, primarily because all Type B and Type C leakage rate testing will continue to be performed in accordance with the requirements of 10 CFR part 50, appendix J, Sections III.B and III.C.

To justify granting an exemption to the requirements of 10 CFR Part 50, a licensee must show that the requirements of 10 CFR 50.12(a)(1) are met. The licensee stated that its exemption request meets the requirements of 10 CFR 50.12(a)(1), for the following reasons:

(1) The requested one time exemption and the associated activities are authorized by law.

There are no prohibitions of law which preclude the activities which would be authorized by the requested exemption. Similar exemptions have been granted for ComEd's Zion Station and other utilities. Therefore, the NRC is authorized by law to approve the proposed exemption.

(2) The requested exemption will not present undue risk to the public.

An exemption from the requirements of 10 CFR 50 Appendix J to perform reactor containment leakage testing will not present undue risk to the health and safety of the public. Past testing has demonstrated the leak tight nature of the primary reactor containment structure and systems and components penetrating the primary containment and the ability to maintain total leakages, including conservatisms, within required limits. A more detailed discussion of the past reactor containment integrated leakage rate test results is included below.

(3) The requested exemption will not endanger the common defense and security.

The common defense and security are in no way compromised by this proposed exemption since approval of the exemption would in no way alter the plant in any physical manner.

In addition, the licensee must show that at least one of the special circumstances, as defined in 10 CFR 50.12(a)(2), is present. One of the special circumstances that a licensee may show to exist is that the application of the regulation in the particular circumstances is not necessary to achieve the underlying purposes of the rule. The purposes of the rule, as stated in section I of 10 CFR part 50, appendix J, are to ensure that: 1) leakage through the primary reactor containment and systems and components penetrating containment shall not exceed allowable values, and 2) periodic surveillance of reactor containment penetrations and isolation valves is performed so that proper maintenance and repairs are made. The licensee presented the following discussion to show that the requirement to perform the third Type A leakage rate test during the September 1995 RFO is not necessary to achieve the underlying purpose of the rule.

Type A tests are intended to measure the primary reactor containment overall integrated leakage rate after the containment has been completed and is ready for operation, and at periodic intervals. The performance of a periodic ILRT (Type A) and local penetration tests (Type B and C) during containment life provides a current assessment of potential leakage from the containment during accident conditions. The periodic tests are performed at a pressure sufficiently high to provide an accurate measurement of the leakage rate. This pressure is at least 50 percent of design accident pressure for the Type A tests and at least design accident pressure for the Type B and C tests.

Application of the regulation is not necessary to achieve the underlying purpose of the rule because:

(1) Prior testing has verified the ability of the reactor containment to maintain leakage below the limits set forth in the Technical Specifications and the regulation:

(2) Type B & C testing, which detects the majority of containment leakage, will continue to be performed as required;

(3) The availability of the seal water and penetration pressurization systems provides added confidence that leakage would be maintained below the limits in the unlikely event of a LOCA; and

(4) There is no significant impact on risk to the public associated with extending the period of time between successive Type A tests on Unit 1 by approximately 18 months.

IV

Section III.D.1.(a) of appendix J to 10 CFR part 50 states that a set of three Type A leakage rate tests shall be performed at approximately equal intervals during each 10-year inservice inspection period.

The licensee proposes an exemption to this section which would provide a one-time interval extension for the Type A test of approximately 18 months.

The Commission has determined that, pursuant to 10 CFR 50.12(a)(1), this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determined, for the reasons discussed below, that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption; namely, that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule.

The underlying purpose of the requirement to perform Type A containment leakage rate tests at intervals during the 10-year inservice inspection period, is to ensure that any potential leakage pathways through the containment boundary are identified within a time span that prevents significant degradation from commencing or continuing without the knowledge of the licensee. The stafff has reviewed the basis and supporting information provided by the licensee in the exemption request and considers that the licensee has a good record of ensuring a leak-tight containment. The one Type A test that did not pass was shown to be due to a leaking valve. The licensee took aggressive and appropriate corrective action that resulted in a final as-left leakage rate that was significantly below the maximum allowable value. Therefore, the containment was shown to be leak tight, the licensee demonstrated that it has an effective

corrective action program and the results of the Type A test were confirmatory of the Type B and Type C tests rather than providing information that would otherwise not have been available. The licensee has stated that the visual containment inspection will be performed during the September 1995 RFO although it is only required by 10 CFR part 50, appendix J, to be performed in conjunction with Type A tests. The staff considers that these inspections, though limited in scope, provide an important added level of confidence in the continued structural integrity of the containment boundary.

The staff has also made use of the information in a draft stafff report, NUREG–1493, which provides the technical justification for the present Appendix J rulemaking effort which also includes a 10-year test interval for Type A tests. The ILRT, or Type A test, measures overall containment leakage. However, operating experience with all types of containments used in this country demonstrates that essentially all containment leakage can be detected by LLRT (Type B and Type C). According to results given in NUREG–1493, out of 180 ILRT reports covering 110 individual reactors and approximately 770 years of operating history, only five ILRT failures were found which local leakage rate testing could not detect. This is 3 percent of all failures. This study agrees with previous staff studies which show that Type B and Type C testing detect a very large percentage of containment leaks. The Zion Station, Unit 1, experience has also been consistent with these results.

The Nuclear Management and Resources Council (NUMARC), now the Nuclear Energy Institute (NEI), collected and provided the staff with summaries of data to assist in the 10 CFR part 50, appendix J, rulemaking effort. The NEI collected results of 144 ILRTs from 33 units of which 23 ILRTs exceeded $1.0L_a$. Of these, only nine were not due to Type B or C leakage penalties. The NEI data also added another perspective. The NEI data show that in about one-third of the cases exceeding allowable leakage, the as-found leakage was less than $2L_a$; in one case the leakage was found to be approximately $2L_a$; in one case the as-found leakage was less than $3L_a$; one case approached $10L_a$; and in one case the leakage was found to be approximately $21L_a$. For about half of the failed ILRTs, the as-found leakage was not qualified. These data show that, for those ILRTs for which the leakage was quantified, the leakage values are small when compared to the leakage value at which the risk to the public starts to increase over the value of risk corresponding to L_a (approximately $200L_a$, as discussed in NUREG–1493). Therefore, based on these considerations, it is unlikely that an extension of 18 months for the performance of the appendix J, type A tests at Zion would result in significant degradation of the overall containment integrity. Thus, the application of the regulation in these particular circumstances is not necessary to achieve the underlying purpose of the rule.

Based on generic and plant-specific data, the staff finds the licensee's proposed one-time exemption to permit a schedular extension of one cycle for the performance of the 10 CFR part 50, appendix J, type A test, provided that the visual containment inspection is performed, to be acceptable.

Pursuant to 10 CFR 51.32, the Commission has determined that granting this exemption will not have a significant impact on the human environment (60 FR 34305).

This exemption is effective upon issuance and shall expire at the completion of the Type A test scheduled to be performed during the March 1997 refueling outage.

Dated at Rockville, Maryland this 12th day of July 1995.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–17564 Filed 7–17–95; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Updated Statistical Definitions of Metropolitan Areas (MAs)

AGENCY: Statistical Policy Office, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB).

ACTION: Updated statistical definitions of Metropolitan Areas as of June 30, 1995.

SUMMARY: Under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504) and 31 U.S.C. 1104(d) and E.O. No. 10253 (June 11, 1951), the Office of Management and Budget (OMB) defines Metropolitan Areas (MAs) for statistical purposes in accordance with a set of standards published in the **Federal Register** (55 FR 12154–12160, March 30, 1990).

On June 30, 1995, OMB updated the MA definitions in OMB Bulletin No. 95–04. Two new Metropolitan Statistical Areas (MSAs) were defined based on the standards and the 1992 and 1994 official population estimates. Flagstaff, Arizona-Utah MSA (FIPS Code 2620) was defined as of June 30, 1995, comprising Coconino County, Arizona and Kane County, Utah. Grand Junction, Colorado MSA (FIPS Code 2995) was defined as of June 30, 1995, comprising Mesa County, Colorado. A new central city was defined in the Hickory-Morganton NC MSA (FIPS Code 3290). Lenoir, North Carolina is the additional central city and the title for the MSA becomes Hickory-Morganton-Lenoir, NC MSA.

The complete announcement presenting all MA definitions can be obtained through the National Technical Information Service (NTIS) by calling (703) 487–4650 and ordering Accession Number PB95–208880.

For further information on the statistical uses of MA definitions please call Maria E. Gonzalez (202–395–7313). For information concerning the use of MA definitions in a particular Federal agency program, please contact the sponsoring agency directly.

Sally Katzen,

Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 95–17568 Filed 7–18–95; 8:45 am]

BILLING CODE 3110–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Identification of Priority Practices; Request for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Request for written submissions from the public on practices that should be considered with respect to the identification of priority practices pursuant to section 310 of the Trade Act of 1974, as amended (Super 301).

SUMMARY: Section 310 of the Trade Act of 1974, as amended (Trade Act) (19 U.S.C. 2420), requires the United States Trade Representative (USTR) to review United States trade expansion priorities and to identify priority foreign country practices, the elimination of which is likely to have the most significant potential to increase United States exports, either directly or through the establishment of a beneficial precedent. USTR is requesting written submissions from the public concerning foreign countries' practices that should be considered by the USTR for this purpose.

DATES: Submissions must be received on or before 12:00 noon on Friday, August 4, 1995.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, NW, Washington, D.C. 20508.

FOR FURTHER INFORMATION CONTACT: Irving Williamson, Deputy General Counsel, Office of the United States Trade Representative, (202) 395–3432.

SUPPLEMENTARY INFORMATION: Section 314(f) of the Uruguay Round Agreements Act amended section 310(a) of the Trade Act to require the USTR, within 180 days of the submission in calendar year 1995 of the National Trade Estimate (NTE) report, to review United States trade expansion priorities and identify foreign country practices, the elimination of which is likely to have the most significant potential to increase United States exports, either directly or through the establishment of a beneficial precedent. A report on the review and the practices identified must be submitted to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, and published in the **Federal Register**. In addition, the USTR must initiate investigations under section 302(b)(1) of the Trade Act (19 U.S.C. 2412(b)(1)), no later than 21 days after submission of the report, with respect to all of the foreign country practices so identified. The USTR may also cite in the report practices that may warrant identification in the future or that were not identified because they are already being addressed and progress is being made toward their elimination.

Requirements for Submissions

The USTR invites submissions on foreign country practices that should be considered for identification pursuant to section 310 of the Trade Act. Submissions should indicate whether the foreign policy or practice at issue was identified in the 1995 NTE report published on March 31, 1995 by USTR (U.S. Government Printing Office: 1995–392–760/30253), and if so, should cite the page number(s) where it appears in the NTE and provide any additional information considered relevant. If the foreign practice was not identified in the NTE Report, submissions should (1) include information on the nature and significance of the foreign practice; (2) identify the United States product, service, intellectual property right, or foreign direct investment matter which is affected by the foreign practice; and (3) provide any other information considered relevant. Such information may include information on the trade agreements to which a foreign country is a party, and its compliance with those agreements; the medium- and long-term implications of foreign government procurement plans; and the international competitive position and export potential of United States products and services. Because submissions will be placed in a public file, open to the public inspection at USTR, business-confidential information should not be submitted.

Interested persons must provide twenty copies of any submission to Sybia Harrison, Staff Assistant to the Section 301 Committee, Room 222, 600 17th Street, NW, Washington, D.C. 20508, by no later than 12:00 noon on Friday, August 4, 1995.

Public Inspection of Submissions

Within one business day of receipt, submissions will be placed in a public file, open for inspection at the USTR Reading Room, in Room 101, Office of the United States Trade Representative, 600 17th Street, NW, Washington, D.C. An appointment to review the file may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 10:00 a.m. to 12:00 noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday.

Irving A. Williamson,

Chairman, Section 301 Committee.

[FR Doc. 95–17484 Filed 7–17–95; 8:45 am]

BILLING CODE 3190–01–M

PENSION BENEFIT GUARANTY CORPORATION

Assessment of Penalties for Failure to Provide Required Information

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Statement of Policy.

SUMMARY: The Pension Benefit Guaranty Corporation is revising its policy on penalties for failure to provide required information in a timely manner. The revised policy is designed to promote voluntary compliance. It provides for lower penalties for plans of small businesses and for violations that are speedily corrected.

DATES: The revised policy takes effect on July 18, 1995 with respect to any matter for which a notice of final penalty assessment has not been issued as of that date.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: Section 4071 of the Employee Retirement Income Security Act of 1974 authorizes the PBGC to assess a penalty of up to $1,000 per day for failure to provide any required notice or other material information within the specified time limit. A decision to assess a penalty under section 4071 does not preclude other enforcement or remedial action by the PBGC.

On March 3, 1992, the PBGC issued its first statement of policy on how it would exercise this penalty authority. Pursuant to the President's April 21, 1995, directive on penalties, the PBGC has reviewed its experience under this penalty policy and has concluded that a revised policy statement is appropriate to promote voluntary compliance. This replaces the March 1992 statement, and applies to any notice or other material information required to be provided to the PBGC or other parties to which section 4071 penalties may apply (other than premium-related submissions).

The PBGC will amend Chapter 8, Section 1 of the PBGC Operating Policy Manual (and related departmental manuals) to reflect these general guidelines. The PBGC may amend these guidelines through changes to the Manual as the PBGC gains experience with the new policy.

Penalty Guidelines

The PBGC will continue to consider the facts and circumstances of each case to assure that the penalty fits the violation. Among the factors the PBGC will consider are the importance and time-sensitivity of the required information, the extent of the omission of information, the willfulness of the failure to provide the required information, the length of delay in providing the information, and the size of the plan. In most cases, the PBGC will: (1) increase penalties as the period of delinquency increases; (2) reduce penalties for small plans; and (3) limit total penalties based on plan size.

In general, the PBGC will assess a penalty of $25 per day for the first 90 days of delinquency, and $50 per day thereafter. In addition, the penalty will be proportionately reduced in accordance with the number of participants in the case of plans with fewer than 100 participants,[1] subject to a floor of $5 per day. For example, the penalty for a plan with 25 participants

[1] The participant count calculation will be tied to the appropriate participant count. Thus, in the case of a post-distribution certification, the appropriate participant count will be the number of participants entitled to a distribution in the termination. Where there is no clearly appropriate participant count, the participant count generally will be determined using the most recently filed Form 1 for the relevant plan or plans.

would be $6.25 per day (25% of $25 per day) for the first 90 days, and $12.50 per day (25% of $50 per day) thereafter.

Under these general guidelines, the total penalty for any violation would not exceed $100 times the number of plan participants. In the above example, because the plan has 25 participants, the total penalty would not exceed $2,500.

The PBGC may assess a penalty larger than the general penalty if there is a willful failure to comply (e.g., where a plan administrator willfully fails to issue a notice to participants required under section 4011 of ERISA) or if there is a pattern or practice of failure to provide material information. Similarly, the PBGC may assess a penalty larger than the general penalty if the harm to participants or the PBGC resulting from a failure to timely provide material information is substantial. For example, a larger penalty may apply where there is a failure to provide the PBGC with timely post-event notice of a reportable event involving a large company or plan or with annual information required by section 4010 of ERISA.

The PBGC will generally assess the full $1,000 per day penalty for failure to provide an advance notice of a reportable event under ERISA section 4043(b) or a notice to the PBGC of a missed contribution under ERISA section 302(f)(4). This information is so time sensitive and significant that a larger penalty is warranted.

Reasonable Cause Guidelines

The PBGC will waive all or part of a section 4071 penalty where reasonable cause is shown. The PBGC will evaluate each request for a waiver to determine whether the responsible person exercised ordinary business care and prudence and delay resulted from circumstances beyond that person's control.

Other Matters

The PBGC will continue to review initial penalty assessments if requested in writing within 30 days of the date of the notice of initial penalty assessment. Assignment of penalty assessment and review functions remains unchanged.

Issued in Washington, DC, this 12th day of July 1995.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 95–17629 Filed 7–17–95; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35956; File No. SR–NASD–95–16]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Amendment of the NASD Rules of Fair Practice Relating to a Customer Complaint Reporting Rule

July 11, 1995.

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 July 6, 1995,[1] the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. 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 NASD is proposing to amend the NASD Rules of Fair Practice to require NASD members to report to the NASD the occurrence of certain specified events and quarterly summary statistics concerning customer complaints. Below is the text of the proposed rule change. Proposed new language is italicized and deleted language is bracketed.

Rules of Fair Practice

Article III

Reporting Requirements

Section

(a) Each member shall promptly report to the Association whenever such member or person associated with the member:

(1) has been found to have violated any provision of any securities law or regulation, any rule or standards of conduct of any governmental agency, self-regulatory organization, or financial business or professional organization, or engaged in conduct which is inconsistent with just and equitable principles of trade; and the member knows or should have known that any of the aforementioned events have occurred;

(2) is the subject of any written customer complaint involving allegations of theft or misappropriation of funds or securities or of forgery;

(3) is named as a defendant or respondent in any proceeding brought by a regulatory or self-regulatory body alleging the violation of any provision of the Securities Exchange Act of 1934, or of any other federal or state securities, insurance, or commodities statute, or of any rule or regulation thereunder, or of any provision of the By-laws, rules or similar governing instruments of any securities, insurance or commodities regulatory or self-regulatory organization;

(4) is denied registration or is expelled, enjoined, directed to cease and desist, suspended or otherwise disciplined by any securities, insurance or commodities industry regulatory or self-regulatory organization or is denied membership or continued membership in any such self-regulatory organization; or is barred from becoming associated with any member of any such self-regulatory organization;

(5) is indicted, or convicted of, or pleads guilty to, or pleads no contest to, any criminal offense (other than traffic violations);

(6) is a director, controlling stockholder, partner, officer or sole proprietor of, or an associated person with, a broker, dealer, investment company, investment advisor, underwriter or insurance company which was suspended, expelled or had its registration denied or revoked by any agency, jurisdiction or organization or is associated in such a capacity with a bank, trust company or other financial institution which was convicted of or pleaded no contest to, any felony or misdemeanor;

(7) is a defendant or respondent in any securities or commodities-related civil litigation or arbitration which has been disposed of by judgement, award, or settlement for an amount exceeding $15,000. However, when the member is the defendant or respondent, then the reporting to the Association shall be required only when such judgement, award, or settlement is for an amount exceeding $25,000;

(8) is the subject of any claim for damages by a customer, broker, or dealer which is settled for an amount exceeding $15,000. However, when the claim for damages is against a member, then the reporting to the Association shall be required only when such claim

[1] The proposed rule change was initially submitted on May 1, 1995, but was amended twice prior to publication of this Notice; once on May 25, 1995, and again on July 6, 1995. The first amendment was a technical amendment intended to clarify the scope of the rule change. The second amendment added a time frame within which members would be responsible to report certain information. Both amendments are incorporated herein and are available for copying in the Commission's Public Reference Room.

is settled for an amount exceeding $25,000;

(9) is associated in any business or financial activity with any person who is subject to a ''statutory disqualification'' as that term is defined in the Securities Exchange Act of 1934, and the member knows or should have known of the association. The report shall include the name of the person subject to the statutory disqualification and details concerning the disqualification;

(10) is the subject of any disciplinary action taken by the member against any person associated with the member involving suspension, termination, the withholding of commissions or imposition of fines in excess of $2,500, or otherwise disciplined in any manner which would have significant limitation on the individual's activities on a temporary or permanent basis.

(b) Each person associated with a member shall promptly report to the member the existence of any of the conditions set forth in paragraph (a) of this rule. Each member shall report to the Association not later than 10 business days after the member knows or should have known of the existence of any of the conditions set forth in paragraph (a) of this rule.

(c) Each member shall report to the Association statistical and summary information regarding customer complaints in such detail as the Association shall specify by the 15th day of the month following the calendar quarter in which customer complaints are received by the member. For the purposes of this paragraph, ''customer'' includes any person other than a broker or dealer with whom the member has engaged, or has sought to engage, in securities activities, and ''complaint'' includes any written grievance by a customer involving the member or person associated with a member.

(d) Nothing contained in paragraphs (a), (b) and (c) of this rule shall eliminate, reduce, or otherwise abrogate the responsibilities of a member or person associated with a member to promptly file with full disclosure, required amendments to Form BD, Forms U–4 and U–5, or other required filings, and to respond to the Association with respect to any customer complaint, examination, or inquiry.

(e) Any member subject to substantially similar reporting requirements of another self-regulatory organization of which it is a member is exempt from the provisions of this rule.

* * * * *

Schedule C

Part V

[Disciplinary Actions]

[Every member shall promptly notify the Corporation in writing of any disciplinary action, including the basis therefor, taken by any national securities exchange or association, clearing corporation, commodity futures market or government regulatory body against itself or its associated persons, and shall similarly notify the Corporation of any disciplinary action taken by the member itself against any of its associated persons involving suspension, termination, the withholding of commissions or imposition of fines in excess of $2,500, or any other significant limitation on activities.]

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 NASD 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 NASD 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 adopt an enabling rule which requires NASD members to report certain information on a timely basis to the NASD so that the NASD can more aggressively detect and investigate sales practice violations.

In furtherance of the NASD's varied initiatives to address sales practice abuses and supervisory concerns, the NASD is proposing an amendment to Article III of the Rules of Fair Practice (Rules) to require members to report to the NASD the occurrence of specified events and quarterly summary statistics concerning customer complaints. The proposed rule would provide important new regulatory information that will assist the NASD in the timely identification of problem members, branch offices, and registered representatives in order to more aggressively detect and investigate sales practice violations. If adopted, the proposed rule would significantly parallel comparable provisions of existing Rule 351 of the New York Stock Exchange (NYSE).

The NASD is concerned that critical material information identified in the proposed rule, such as reports on statutory disqualifications, internal disciplinary actions, and quarterly statistical data regarding customer complaints received by a member is not now required by Form U–4 or other forms to be reported to the NASD. As such, this information is not available to the NASD staff on a routine, systematic, or timely basis. In this regard, the NASD believes that the affirmative obligation of members to provide the NASD with notice of certain events concerning member firms or their associated persons will significantly enhance the NASD's ability to quickly identify problem representatives and appropriately respond in a timely manner.

The SEC supported the NASD adoption of a customer complaint reporting rule similar to NYSE Rule 351 in its Large Firm Project Report issued in conjunction with a cooperative effort involving the NASD, SEC, and NYSE that examined the hiring and retention practices of nine of the largest broker-dealers in the United States. Similarly, the General Accounting Office (GAO) in its report titled Securities Markets: Actions Needed to Better Protect Investors Against Unscrupulous Brokers, recommended that member firms' customer complaint information be computer captured and utilized as an additional tool by regulators for identifying potentially problem firms.

As proposed, Subsection (a) of the rule requires member firms to file a report with the NASD when any of 10 different specified events occurs. These 10 events vary significantly, ranging from situations where a court, government agency, or self-regulatory organization (SRO) has determined there has been a violation of the securities laws, to circumstances where a firm has received a written customer complaint alleging theft or misappropriation of funds or securities, or forgery. Subsection (b) of the proposed rule requires each person associated with an NASD member to properly report to the member the existence of any of the 10 conditions set forth in Subsection (a) of the proposed rule. Subsection (b) also requires members to report to the NASD the existence of any of the conditions set forth in Subsection (a) not later than 10 business days after the member knows or should have known of the existence of such conditions.

Subsection (c) of the rule further requires members to report to the NASD statistical and summary information regarding written customer complaints received by the member firm or relating to the firm or any of its associated persons. Importantly, Subsection (e) of the proposed rule eliminates the possibility of unnecessary regulatory duplication by providing an exemption from filing with the NASD for members already subject to similar reporting requirements of another SRO. NYSE Rule 351 is the only such rule in place at this time.

Currently, Part V of Schedule C to the NASD By-Laws requires members to promptly notify the NASD in writing of any disciplinary action that the member takes against any of its associated persons involving suspension, termination, the withholding of commissions, or imposition of fines in excess of $2,500, or any other significant limitation on activities. As this existing disclosure requirement is incorporated into the proposed rule in Subsection (a)(10), the NASD is proposing to rescind this part of Schedule C with the adoption of the new rule.

Members will file the information required by this rule through the same data entry mechanism that is used for the electronic filing of FOCUS reports. The NASD will distribute to the members the software which will allow the members to file this information electronically.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act in that the proposed new Rule of Fair Practice will improve the NASD's ability to detect and investigate sales practice violations. Pursuant to this statutory obligations, the NASD has proposed this rule change in order to establish a reporting mechanism for certain specified events which will enhance the NASD's regulatory efforts.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Association received 25 letters commenting on Notice to Members 94–95 (''the Notice''), the proposed amendment to the Rules of Fair Practice. Below is a summary of the more significant and/or recurring issues raised in the letters and the NASD's position in connection with the same.

The NASD published Notice to Members 94–95 on December 15, 1994. The Notice requested member comment on a new Rule of Fair Practice which would require NASD members to report to the NASD the occurrence of certain specified events and quarterly summary statistics concerning customer complaints.

Twenty-five comment letters have been received. Twenty-four of these are from NASD member firms or associations representing certain industry segments; e.g., the Securities Industry Association. One letter was received from a former registered person. Eight responses were against the rule proposal with comment, fifteen responses were in general agreement with the concept of the proposal, but with suggested modifications, and one letter supported the proposal. The remaining response requested a continuance to comment.

Overview of Comments

I. Form U–4 Reporting and the CRD System

The common general criticism was that the proposed rule is somewhat duplicative of current reporting to the CRD through Form U–4. Also, a majority of commenters questioned the manner in which the required information would be collected and reported to the NASD. Similar comments were also made that the proposal is premature in view of the other ongoing initiatives involving the CRD redesign. As a result, some commenters suggest that this rule proposal be postponed until such time as the CRD redesign project is completed.

Additionally, one commenter suggested that it seems overburdensome for members to provide another reporting channel for customer complaints under the proposed rule. Another commenter was concerned that the proposed rule would create a parallel database of the disciplinary history of registered representatives separate and distinct from the CRD system. Another commenter suggested that quarterly statistical information be reported through CRD.

II. Filing Format and Content

Several commenters observed that the proposed rule fails to disclose actual information to be filed by the member, to whom at the NASD, and in what form. Further, several commenters asked how the information should be transmitted to the NASD.

III. Separate Reporting Obligations on Members and Registered Persons

Several commenters noted that the proposed rule had separate reporting obligations for the member and the registered person. A number of commenters requested clarification on the member's obligation to independently determine the existence of any of the cited provisions regarding their registered persons, especially where the registered person may be the only known source of this information. As a result, one commenter suggested that the rule proposal should be modified to require disclosure of reported events upon ''obtaining knowledge'' and not the ''occurrence'' of the event.

IV. Public Versus Non-Public Availability of the Information

Several commenters were confused as to whether the information submitted to the NASD would immediately, or at some future date, be provided to the public. As a result consistent with their understanding of the NYSE Rule 351 information, commenters suggested that the information remain confidential.

V. Breadth and Scope of the Proposed Rule

Some commenters were concerned by the scope of the proposed rule and opined that the requested information goes beyond the state regulatory purposes.

Specific Comments

The following specific comments will highlight the comments with respect to the various provisions of the proposed rule.

Section (a)(1)

Several commenters stated that this section is overly broad by requiring reporting by any violation of ''rules or standards of conduct'' of any governmental entity, SRO, or business or professional organization. According to commenters, this would include violations of rules and regulations that have no relationship to securities activities or financial businesses. In this regard, one commenter suggested that the proposed provision should be revised to state that it only pertains to misconduct related to the financial services industry.

Section (a)(2)

Most commenters on this provision were concerned that the proposed rule required the reporting of ''allegations'' of misconduct. A general view was that requiring a report based only on allegations, without permitting some

initial evaluation or finding of reasonable cause, may lead to reports that are based on false information. This allegedly could result in damage to the reputation of members and associated persons who are innocent of wrongdoing. Therefore, commenters suggested that members be given an opportunity to screen customer complaints for veracity before filing, or to permit the filing of later reports to correct previously reported information after a member investigation.

Section (a)(3)

Four comments were made on this provision. Two commenters suggested that the reporting of prospective legal action may lend underserved credibility to the accusations and may be prejudicial. In addition, one commenter stated that the proposal does not distinguish between minor and major violations and ventures into areas that are not within the jurisdiction of the NASD (i.e., insurance regulations, bank and trust company regulations).

Lastly, one commenter suggested that the definition of ''proceedings'' be defined and suggested adopting portions of the definition found on Form BD dealing with civil proceedings. The basis for the comment was to account for the differences among the various administrative procedures and regulatory processes of the 50 states, their agencies, and federal agencies and SROs.

Section (a)(4)

Three commenters on this provision suggested that the member should not have to report these matters to a second database when the information is already reported through the CRD system. Another commenter requested clarification of whether an action had to reach a final order or adjudication before reporting to the NASD.

Section (a)(5)

The majority of commenters to this section suggested that the proposed provision be revised to narrow the nature and range of offenses to securities related activities and determine a level of progression beyond arrest and arraignment before reporting to the NASD. In addition, several commenters suggested that current reporting under CRD system through Form U–4, question 22, is sufficient and was designed to obtain information that has a direct bearing on an individual's fitness to be employed in the securities industry.

Section (a)(6)

Five commenters submitted comments on this provision. Two commenters suggested modifications to the proposed rule to restrict the provision's application to persons with a ''control relationship'' with the entity (i.e., director, controlling shareholder, partner, officer or sole proprietor). According to the commenters, it is reasonable to attribute some responsibility to the person if he or she is in a control or principal relationship with the entity, not if the person is solely ''associated'' with the entity. Another commenter suggested that, unless the registered person notified the member of its activities, it would be difficult to comply with this provision.

Sections (a)(7) and (a)(8)

The commenters suggested that this provision required clarification for a number of specific fact situations. One commenter suggested that the reporting thresholds are too low for both the individual and the firm in today's litigious society and inflationary times, but did not provide any suggestions for alternate amounts.

Section (a)(9)

Several commenters suggested that this proposed provision is too broad and does not support its stated purpose. Comments included the difficulty for registered persons and firms to make the required determination of whether a person is ''subject'' to a statutory disqualification. According to the commenters, a registered person may enter into a business relationship with an individual without knowledge that the person committed a felony, not involving securities or investments, within the past ten years.

Other commenters suggested that the proposed provision should be modified to require reporting when a member or registered person ''knows or learns'' of the relationship with a statutorily disqualified person.

Two commenters suggested that it will be difficult for the member to comply without actual knowledge conveyed to them from the registered persons. One commenter suggested that the proposed provision is inconsistent with the intent to obtain information for the timely identification of problem broker-dealers and registered persons, in that, the information requested involved *de minimis* securities activities, non-securities business relationships, and similar situations.

One commenter mentioned the proposed provision be expanded to include the requirement to report detail about the associated person's relationship with the statutorily disqualified person, such as, the nature of their business relationship.

Response to Comments

The most significant concerns of the commenters focused on (1) duplicative reporting; (2) public availability of the data to be reported; (3) the reporting of unresolved customer complaints; (4) the reporting protocol; (5) member obligations to ensure that their associated persons disclose reportable events to them; (6) the reporting of a broad array of violations; and (7) reporting arrests.

Duplicative Reporting

Many commenters did not recognize that existing reporting obligations, particularly through Form U–4, do not cover some of the most crucial information contained in the proposal. For example, Form U–4 does not and will not collect data on statutory disqualifications, internal disciplinary actions, or quarterly statistical data on customer complaints. Also, Form U–4 information is presently collected through the CRD system for registration and licensing purposes. That data is not available to the NASD staff on a routine, systematic, or timely basis for regulatory purposes and will not be available in the foreseeable future. On the other hand, the proposed rule is designed to separately collect data on a timely basis to substantially enhance regulatory initiatives relating to the detection of sales practice violations through the early identification of problem registered representatives. Significantly, the proposed rule squarely responds to SEC and GAO report recommendations. Those reports strongly urge the NASD to adopt a rule similar to NYSE Rule 351 for the purpose of enhancing sales practice initiatives and identifying problem registered representatives through the analysis of customer complaint patterns and other relevant information. Also responsive to concerns regarding duplicative reporting is the provision of the proposed rule which exempts members that have substantially similar reporting requirements to another SRO (i.e.: the NYSE under Rule 351). Further, upon implementation of the redesigned CRD which will provide more ready access to registration information, the NASD will undertake to review the proposed reporting rule to determine whether certain of the duplicative requirements may be eliminated. To the degree that such modifications are feasible, the NASD would intend to delete such provisions from the proposed rule.

Public Availability of Data

A number of commenters clearly interpreted the proposed rule as permitting public disclosure of the information to be reported. However, the NASD collected data will not be made available to the public. The data will be used solely for regulatory purposes, an approach fully consistent with NYSE practices under Rule 351. This would not be the case if, as one commenter suggested, CRD was used to collect and store the customer complaint and other information. CRD data is generally available to the public by state regulators pursuant to disclosure statues. For this reason, it is imperative that a separate and private regulatory database be developed to collect and store the information.

Customer Complaint Reporting

The proposed rule is designed to act as an early warning system for potential sales practice problems engaged in by identified registered representatives. To achieve this result, the information collected will be analyzed for, among other things, patterns of customer complaints involving member firms and registered persons, whether or not all of the complaints are ultimately substantiated. This data represents a core feature of the new rule. As highlighted in the SEC's Large Firm Project Report, identical data obtained through NYSE Rule 351 was a key component in developing the Large Firm Project's special examination list. Similar customer complaint data was also used extensively to focus the new, ongoing joint regulatory problem representative sweep. In this regard, the regulatory priorities relating to the collection of written customer complaint data outweighs concerns about reporting customer allegations of misconduct. Again, commenters are likely to be comforted on this issue once they fully recognize that unsubstantiated customer complaints will be solely used for regulatory purposes and not be made available to the public.

Reporting Protocol

Concerns regarding the mechanics of the proposed rule will be addressed in subsequent Notices to Members. The staff has developed the specifications for electronic reporting that will facilitate the ease of data transmission by members and data collection by the NASD. The system specifications and the reporting protocol will be fully reported to the members via the Notice to Members and appropriate software will be provided.

Member Responsibility to Ensure Associated Person Disclosure

Commenters expressed concern about a member's obligation to ensure compliance with the proposed rule where an associated person fails to disclose to the member the occurrence of an event specified in subsection (a)(9). A resolution surfaced in the comments by the suggestion that the rule proposal be modified to require member reporting under subsection (a)(9) only if the member obtains knowledge of the reportable event. Extending this concept to ensure that members do not intentionally avoid becoming aware of a reportable event, it was suggested that proposed subsection (a)(9) be modified to obligate member reporting under this item only if the member ''knows or should have known'' of the existence of the reportable event.

Violation Reporting

Several commenters indicated that subsection (a)(1) information was too broad and should require reporting only after a finding of violation is made. Adopting this standard would add certainty to the proposed reporting obligation and clarify that members are not expected to launch independent inquiries to determine, for example, whether an associated person violated a provision of a business or professional organization. As a result, it was suggested that the rule proposal be modified to include language that a ''finding of violation'' is necessary before an occurrence needs to be reported under subsection (a)(1).

Arrest Reporting

Comments arose under proposed subsection (a)(5) that included the reporting of arrests. Analysis of this issue indicates that the NASD may not have the authority to gain access to arrest records of an individual. Similarly, ''arraignment'' carries a different meaning among states and is not consistently an indication that a person has been charged with a crime. For these reasons, it was suggested that the proposal be modified to delete the term ''arrest'' and ''arraignment'' from the text.

With regard to some of the specific comments raised, the NASD Board has amended the proposed rule in the following areas: (1) filings required pursuant to subsection (a)(1) are to be made only when there is a finding of violations; (2) ''arrest'' and ''arraignment'' are deleted from subsection (a)(5); and (3) filings required under subsection (a)(9) are to be made only where the member knows or should have known of the information to be reported.

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 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, N.W., Washington, D.C. 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–95–16 and should be submitted by August 8, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–17582 Filed 7–17–95; 8:45 am]

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[2] 17 CFR 200.30–3(a)(12).

[Release No. 34–35953; File No. SR–MSRB–95–4]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Customer Confirmations

July 11, 1995.

On April 3, 1995,[1] the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change (File No. SR–MSRB–95–4) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1). The proposed rule change amends rule G–15(a), on customer confirmations. Notice of the proposed rule change, together with the substance of the proposal, was issued by Commission release (Securities Exchange Act Release No. 35700, May 10, 1995) and by publication in the **Federal Register** 60 FR 26747, May 18, 1995). Two comment letters were received. The Commission is approving the proposed rule change.

I. Background

In response to market developments and regulatory concerns, the present rule G–15(a) has been subject to numerous amendments and Board interpretive notices since it was adopted in 1977. In November 1994, the SEC approved amendments to Rule 10b–10 under the Act, governing confirmation disclosure in securities other than municipal securities.[2] At the same time, the SEC deferred consideration of proposed Rule 15c2–13 that would have established confirmation disclosure requirements applicable to transactions in municipal securities.[3] In response to revisions by the SEC to Rule 10b–10, to the SEC's proposed Rule 15c2–13 and to promote better compliance with the MSRB's rule, the MSRB is amending rule G–15(a).

[1] The Municipal Securities Rulemaking Board initially submitted the proposed rule change on March 30, 1995. Amendment No. 1, submitted on April 3, 1995, extended the delay for effectiveness of the rule to 120 days following Commission approval. *See* letter from Marianne I. Dunaitis, Assistant General Counsel, MSRB, to Karl Varner, Staff Attorney, Division of Market Regulation, Securities and Exchange Commission, dated April 3, 1995.

[2] Securities Exchange Act Release No. 34962 (Nov. 10, 1994), 59 FR 59612, *corrected*, Securities Exchange Act Release No. 34962A (Nov. 25, 1994), 59 FR 60555.

[3] Securities Exchange Act Release No. 34962 (Nov. 10, 1994), 59 FR 59612, *corrected*, Securities Exchange Act Release No. 34962A (Nov. 25, 1994), 59 FR 60555.

II. Description

The change to rule G–15(a) will: (1) Clarify the current customer confirmation requirements by reorganizing the rule and incorporating previous Board interpretations into the language of the rule to promote better compliance; (2) revise certain requirements in areas to provided more disclosure; and (3) include modifications to the current confirmation disclosure requirements.

The rule change reorganizes the rule and incorporates previous Board interpretations into the rule. Most requirements are subdivided by subject matter into three board categories that comprised the content of municipal securities confirmations—terms of the transactions, securities identification, and securities confirmations—terms of the transactions, securities identification, and securities description (listing the features of the security). Under each category, Board rules and interpretations are organized by the specific confirmation requirement.

The rule change clarifies the confirmation format with the requirement that all disclosures, with certain exceptions, clearly and specifically be indicated on the front of the confirmation. To address concerns about the ''crowding'' of information on the front of the confirmation, certain requirements can be met by statements on the back of the confirmation, namely: (1) the required legend for zero coupon bonds; (2) the requirement that permits a dealer in agency transactions to include a statement that the name of the person from whom the securities were purchased or sold will be furnished upon the written request of the customer; (3) the requirement that permits a dealer, rather than indicating the time of execution, to include a statement that the time of execution will be furnished upon the written request of the customer; and (4) the requirements for the disclosure statement of actual yield and factors affecting yield of municipal collateralized mortgage obligations (''CMOs'') in rule G–15(a)(i)(D)(2).

The rule change revises customer confirmation requirements to provide that dealers disclose on the confirmation: (1) If a security has not been rated by a nationally recognized statistical rating organization; (2) if a letter of credit is used, the identify of the bank issuing the letter of credit; (3) if call features exist in addition to the next pricing call, that the additional call features will be provided on request; (4) if necessary for the calculation of final money, the first interest payment date; (5) if there is one additional obligor, the identity of the additional obligor; and (6) if there is more than one additional obligor, indication that there are ''multiple obligors.''

Furthermore, the rule change revises customer confirmation requirements to provide that dealers disclose on the confirmation: (1) A specific date and price for the next pricing call; (2) the primary revenue source for revenue bonds; (3) the amount of the dealer's ''discount'' or concession in an agency transaction; (4) the amount of any premium paid over accreted value for callable zero coupon bonds; (5) the initial pubic offering price for an original issue discount (''OID'') security; (6) that the actual yield of municipal CMOs may vary according to the rate at which the underlying receivables or other financial assets are prepaid; and (7) that information concerning factors that affect yield of the municipal CMOs (including, at a minimum, estimated yield, weighted average life, and the prepayment assumptions underlying yield) will be furnished upon the customer's written request.

However, the revisions to the customer confirmation requirements will: (1) Retain the specific confirmation requirements for zero coupon bonds; (2) delete the requirement for the ''limited tax'' and ''ex-legal' designations of certificates; and (3) provide specific exemptions for statement of yield on transactions in defaulted bonds, bonds that prepay principal and variable rate securities that are not sold on basis of yield to put.

Finally, the rule change modifies the confirmation requirement to require that a separate confirmation be provided for each municipal securities transaction whenever several transactions are done at one time.

III. Summary of Comments

As noted above, the Commission received two comment letters on the proposal.[4] Latham's clients generally support the proposed reorganization of rule G–15(a). However, Latham's clients believed the proposal should be modified to allow the issuance of a master confirmation that would not aggregate information nor omit any information that proposed rule G–15(a) requires to be included in a confirmation. Latham stated that the

[4] Letter from Roger M. Zaitzeff and Carlos Alvarez, Esq., Latham and Watkins (''Latham''), on behalf of unnamed clients to Jonathan G. Katz, Secretary, Commission (June 8, 1995); Letter from Robert B. Mayers, Senior Vice President/Group Executive, Wachovia Bank of North Carolina, N.A. (''Wachovia Bank'') to Jonathan G. Katz, Secretary, Commission (June 6, 1995).

proposed addition of G–15(a)(ii) which requires delivery of a separate confirmation for each transaction creates an administrative burden on institutional investors that have multiple odd lot trades with the same dealer at one time. Latham stated that late in the trading day institutional investors are not receptive to the purchase of multiple remarketed odd lot securities because of the administrative burdens required to separately confirm the purchase of multiple securities issued by many different municipal issuers, with each security having a different CUSIP number. As a result of requiring a separate confirmation for each transaction, Latham stated that multiple remarketed odd lot securities often are not placed, which results in a loss to the seller and the institutional investors who would have purchased the securities late in the trading day.

The other commenter, Wachovia Bank, was generally in agreement with the proposed changes to the customer confirmation requirements for municipal securities transactions. however, Wachovia Bank believed: (1) That disclosing the remuneration received in an agency transition may mislead the customer, and (2) that disclosing the initial offering price for an OID security could present difficulties for the secondary municipal market because the information for older issues is not readily available, or may not be available at all.

Wachovia Bank stated that disclosing any dealer concession or discount received as a result of an agency transaction may mislead the customer to conclude that the dealer through which the transaction was executed received some additional compensation, paid by the customer, that the customer would not have paid had the transaction been executed through another dealer. Furthermore, Wachovia Bank stated that the customer may mistakenly believe that the broker-dealer received other compensation or profit beyond the amount shown as remuneration from the customer and may not realize that the amount disclosed is the dealer's total compensation for the transaction. Wachovia Bank believed that it is the dealer's standing as a member of the broker-dealer community and the selling dealer's willingness to sell at less than the net price to another dealer, not to the customer, which allows the purchase at a discount or concession from another dealer.

Finally, Wachovia Bank stated that disclosing the initial offering price for an OID security could present difficulties for the secondary municipal market because the information for older issues is not readily available, or may not be available at all. Wachovia Bank stated that older OID issues may become illiquid because a bidder may be precluded from bidding for an OID security if the initial public offering price is not known as the purchaser could not reoffer the bonds without the OID price.

IV. Discussion

The Commission has considered the above comment letters. The Commission believes that a separate confirmation should be provided for each municipal securites transaction whenever several transactions are effected at one time. The Commission believes that separate confirmations are not too burdensome and that aggregating confirmation data has the potential to confuse the customers. If a customer purchases several different securities of one issuer from a dealer, it would be inappropriate for the dealer to aggregate on the confirmation the accrued interest for all the bonds acquired or to aggregate yield data and disclose the ''yield to the average life'' rather than providing yield to maturity information for each bond acquired. Moreover, the MSRB's rules require members to use an automated clearance and settlement system for transactions which makes it necessary to have separate confirmations to enter transactions into the automated system.

The Commission believes that a dealer, when acting as an agent for the customer, has a fiduciary duty to disclose on the confirmation the amount of the dealer's ''discount'' or concession received in the transaction. In an agency transaction, if a dealer acquires a bond from another dealer at a discount (*e.g.*, ''net'' price less concession) and the customer pays the ''net'' price, the inter-dealer discount or concession received by the dealer should be considered remuneration received from the customer and should be disclosed.

The Commission believes that requiring the dealer to disclose the initial public offering price for the original issue discount security information is particularly important to customers since it may be needed for tax reasons and also may be important in determining the investor's gain if the security is subject to an early call. Moreover, most commercial information vendors will have the OID price available.

The Commission believes that the rule change is consistent with and promotes better compliance with the provisions of Section 15B(b)(2)(C) of the Act.[5] The reorganization of the rule should assist operations personnel in programming automated systems for generating municipal securities confirmations since it will no longer be necessary to review all previous interpretive notices on confirmations to find those that may address the statement of interest rate for a particular type of municipal security.

The Commission believes the rule change will strengthen the disclosure requirements for municipal securities and customer protection objectives of the rule. The change to rule G–15(a)(i)(E) will require that all disclosures, with certain exceptions, be clearly and specifically indicated on the front of the confirmation. The rule change will allow certain requirements to be met by statements on the back of the confirmation to avoid crowding of information on the front side of the confirmation.

The Commission believes that the current disclosure of call features in the pre-printed legend on the back of the confirmation has not always been effective in alerting customers to the existence of all features. The rule change will put customers clearly on notice as to the presence of call features on the front of the confirmation, including the requirement that a specific date and price for the next pricing call (one of the most important elements of call information) always be disclosed.[6] If any call features exist in addition to the next pricing call, the proposed rule change will require the following notation on the front of the confirmation—''Additional call features exist that may affect yield; complete

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[5] 15 U.S.C. 78*o*–3. Section 15B(b)(2)(C) provides that the Board's rules shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, municipal securities brokers, or municipal securities dealers, to fix minimum profits, to impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by municipal securities brokers or municipal securities dealers, to regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or the administration of the Board, or to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

[6] Rule G–15(a)(vi)(F) as amended defines ''pricing call'' as a call feature that represents ''an in-whole call'' of the type that may be used by the issuer without restriction in a refunding. Consistent with the current rule, pricing calls do not include catastrophe calls, that is, calls which occur as a result of events specified in the bond indenture which are beyond the control of the issuer or calls that may operate to call part of an outstanding issue. *See* Interpretation of Nov. 7, 1977, published in *MSRB Manual* (CCH) at ¶ 3571.10.

information will be provided upon request.''

The change to rule G–15(a)(i)(C)(3)(f) will require that if a security is unrated by a nationally recognized statistical rating organization, a disclosure to that effect be made. The Commission believes that this disclosure will alert customers that they may wish to obtain further information or clarification from their dealer.

The change to rule G–15(a)(i)(C)(1)(a) will require dealers to put the primary revenue source for revenue bonds on the confirmation (*e.g.*, project name) and delete the language requiring disclosure of the primary revenue source ''if necessary for a materially complete description of the securities.'' The Commission believes that requiring disclosure of the primary revenue source of revenue bonds on the confirmation will help ensure that customers receive important information about the purpose and source of payment of revenue bonds.

The change to rule G–15(a)(i)(C)(1)(b) will require dealers always to identify the additional obligor on the confirmation or indicate ''multiple obligors'' if there is more than one additional obligor. The Commission believes this will simplify and clarify the intent of the rule. Also, the rule change will clarify that, if a letter of credit is used, the identity of the bank issuing the letter of credit must be noted.

The rule change will delete both the ''limited tax'' and the ''ex-legal'' designations of certificates. The ''limited tax'' designation is no longer necessary because the meaning of this ''limited tax'' designation has become ambiguous as various states have implemented a variety of tax limitation measures. The ''ex-legal'' delivery designation is no longer necessary because of the high percentage of book-entry-only securities in the market and the movement away from physical delivery of certificates which included a copy of the legal opinion.

The rule change will retain the specific confirmation requirements for zero coupon bonds, including disclosure that the interest rate is 0% and, if the securities are callable and available in bearer form, a statement to that effect which can be satisfied by the following legend: ''No periodic payments—callable below maturity value without prior notice by mail to holder unless registered.''

In addition, the change to rule G–15(a)(i)(A)(6)(h) will require that the amount of any premium paid over accreted value for callable zero coupon bonds be included on confirmations.[7] The Commission believes it is important for customers to know that zero coupon securities may be affected by an early call and that a premium over the accreted value is being paid in the purchase price.

Rule G–15(a)(i)(A)(6)(g) will clarify that the first interest payment date is required on the confirmation only in those cases in which it is necessary for the calculation of final money, so as not to be ambiguous as to whether the first interest payment date must be included on the confirmation in all instances in which there is no regular semi-annual interest payment, or only if the first payment date is necessary for purposes of calculation of final monies. It would, for example, not be required for transactions in the issue occurring after the first interest payment date.[8]

The change to rule G–15 (a)(i)(A)(5)(d) will include specific exemptions for statement of yield on transactions in defaulted bonds, bonds that prepay principal and variable rate securities that are not sold on basis of yield to put. The current rule includes no exemption for these transactions. The Commission believes that a statement of yield on these transactions may mislead investors.

Rule G–15(a)(i)(D)(2) will include a provision regarding municipal CMOs that the dealer must include a statement on the confirmation indicating that the actual yield of municipal CMOs may vary according to the rate at which the underlying receivables or other financial assets are prepaid, and a statement of the fact that information concerning the factors that affect yield (including, at a minimum, estimated yield, weighted average life, and the prepayment assumptions underlying yield) will be furnished upon the written request of a customer. The Commission believes that this provision should apply to municipal securities as it is similar to the Commission's requirements in Rule 10b-10, the rule for non-municipal securities.

Finally, the Commission believes the proposed rule change does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this title because the rule will apply to all MSRB members. Thus, individual brokers and dealers will not be disparately affected by the rule change.

At the MSRB's request, the Commission is delaying effectiveness of the proposed rule change until 120 days after the approval order by the Commission is published in the Federal Register to ensure that firms' confirmation practices are in compliance.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR–MSRB–95–4 be, and hereby is, approved and effective November 15, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–17518 Filed 7–17–95; 8:45 am]

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[7] The accreted value for a zero coupon bond reflects the increase in the security's value as it approaches the maturity date. For zero coupon bonds that are callable, the call price is generally at the accreted value.

[8] The change to rule G–15(a)(i)(C)(2)(e), consistent with current rule G–15(a)(ii)(I), requires that if securities pay interest on other than semi-annual basis, a statement of the basis on which interest is paid shall be included.

[Release No. 34–35954; File No. SR–NASD–95–21]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Freely Tradeable Direct Participation Program Securities

July 11, 1995.

On May 23, 1995,[1] the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder.[3] The proposed rule change excludes freely tradeable direct participation program securities from the prohibition on transactions in discretionary accounts without written approval. However, the exclusion is restricted to members that are not affiliated with the freely tradeable direct participation program.

Notice of the proposed rule change, together with the substance of the proposal, was issued by Commission

[1] The proposal was originally filed with the Commission on May 10, 1995. The NASD subsequently submitted Amendment No. 1 to the filing which amends Subsections (b)(3)(C) (i) and (ii) to Article III, Section 34 of the Rules of Fair Practice, by replacing the phrase ''the NASDAQ System'' in Subsections (i) and (ii) and the word ''NASDAQ'' in Subsection (ii) with the word ''Nasdaq.'' Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Mark P. Barracca, Branch Chief, Over-the-Counter Regulation, Division of Market Regulation, SEC, dated May 22, 1995.

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

release (Securities Exchange Act Release No. 35788, May 31, 1995) and by publication in the **Federal Register** (60 FR 30133, June 7, 1995). No comment letters were received. The Commission is approving the proposed rule change.

I. Background

Article III, Section 34 of the Rules of Fair Practice regulates participation by members and persons associated with a member in direct participation programs and limited partnership rollup transactions (''DPP rule''). The DPP rule generally prohibits a member or a person associated with a member from participating in a public distribution of a direct participation program or a limited partnership rollup transaction unless the distribution or transaction conforms to certain suitability and disclosure requirements and standards of fairness and reasonableness.

Since the adoption of the DPP rule in 1982,[4] an increasing number of direct participation programs, such as master limited partnerships, have issued partnership units, depositary receipts for such units, or assignee units of limited partnership units that are freely tradeable in a manner generally analogous to common stock and are quoted on Nasdaq or listed on registered national stock exchanges.

A direct participation program security is considered freely tradeable under Section 34 if it is either (1) a secondary public offering of or a secondary market transaction in a direct participation program security for which quotations are displayed on Nasdaq or which is listed on a registered national securities exchange, or (2) a primary offering of a direct participation program for which an application for inclusion on Nasdaq or listing on a registered national securities exchange has been approved.

To address the increased transparency and liquidity associated with the nature of the secondary markets for freely tradeable direct participation program securities, the NASD amended the DPP rule to exempt freely tradeable direct participation program securities from the suitability requirements of Subsections 34(b)(3) (A) and (B) of the DPP rule.[5]

Recently, the NASD considered whether Monthly Income Preferred Securities (''MIPS''), a new financial instrument which is a freely tradeable direct participation program security, ought to be subject to the discretionary account restrictions in Article III, Section 34.[6] In its consideration, the NASD determined that the concerns which attach to the use of discretionary authority for illiquid, unmarketable direct participation program securities are not present with freely tradeable direct participation program securities.

II. The Terms of Substance of the Proposed Rule Change

The proposed rule change reverses the order of current Subsections (b)(3)(C) and (D) to Section 34 and adds a reference to Subparagraph 3(C) in new Subparagraph 3(D) to exclude freely tradeable direct participation program securities from the prohibition on transactions in discretionary accounts without written approval. However, the exclusion for freely tradeable direct participation program securities in newly designated Subparagraph (3)(D) restricts the exclusion to members that are not affiliated with the direct participation program.

III. Discussion

The Commission believes that the rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[7] which require that the rules of the Association be designed to prevent fraudulent and manipulative acts and promote just and equitable principles of trade. The rule change relieves members of their obligation to comply with the prohibitions against discretionary transactions in freely tradeable direct participation program securities without written approval because the transactions do not present the substantial conflicts of interest and regulatory concerns that the prohibitions were intended to address. Furthermore, freely tradeable direct participation securities that are included on Nasdaq or listed on a registered national securities exchange provide investors with a liquid and available market for trading surplus securities placed in their discretionary accounts without written approval.

The exclusion for freely tradeable direct participation program securities is limited to members that are not affiliated with the direct participation program. Where such an affiliation is present, the Commission agrees with the NASD that substantial conflict of interest and regulatory concerns continue to exist and the exclusion should not be made available.

The NASD's members' use of discretionary authority for transactions in freely tradeable direct participation program securities is consistent with the NASD's 1986 amendments to Section 34 exempting freely tradeable direct participation program securities from the suitability and disclosure requirements of Section 34. The heightened suitability and disclosure requirements, which are necessary where direct participation program securities lack liquidity and marketability, are unnecessary where a ready, liquid market exists.

In addition, discretionary transactions in freely tradeable direct participation program securities would remain subject to the general discretionary account requirements contained in Article III, Section 15 of the Rules of Fair Practice.[8]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR–NASD–95–21 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–17519 Filed 7–17–95; 8:45 am]

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[4] The DPP rule was initially approved by the Commission as Appendix F to Article III, Section 34 on September 16, 1982 (Securities Exchange Act Release No. 19054); 47 FR 42226 (September 24, 1982).

[5] *See* Securities Exchange Act Release No. 23619 (September 15, 1986); 51 FR 33968 (September 24, 1986). However, freely tradeable direct participation program securities are still subject to the general suitability rules of the NASD. *See* NASD's Rules of Fair Practice, Article III, Section 2. Section 2(a) states:

> [I]n recommending to a customer the purchase, sale or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs.

[6] MIPS are preferred securities issued by a parent company's subsidiary, which is structured as a limited partnership or limited liability company. The subsidiary issues MIPS to investors and invests the proceeds in convertible subordinated debentures of the parent. Interest on the debentures of the parent are paid to the subsidiary, which in turn pays the equivalent rate of interest to MIPS holders in the form of dividends. MIPS are eligible to be listed on a national securities exchange or The Nasdaq Stock Market and have flow-through tax consequences for investors, which means that they are considered direct participation programs and, therefore, subject to Section 34.

[7] 15 U.S.C. 78*o*-3.

[8] Article III, Section 15(a) of the Rules of Fair Practice provides that ''[n]o member shall effect with or for any customer's account in respect to which such member or his agent or employee is vested with any discretionary power any transactions of purchase or sale which are excessive in size or frequency in view of the financial resources and character of the account.''

[Release No. 34–35955; File No. SR–NASD–95–23]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Gross Assessments

July 11, 1995.

On May 23, 1995, the National Association of Securities Dealers, Inc. (''NASD'' or ''association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder.[2] The proposed rule change amends Section 1 to Schedule A of the NASD By-Laws to clarify gross income filing requirements to include all revenue and to require all members to report revenue on a calendar year basis.

Notice of the proposed rule change, together with the substance of the proposal, was issued by Commission release (Securities Exchange Act Release No. 35795, June 1, 1995).[3] No comment letters were received. The Commission is approving the proposed rule change.

I. Background

Recently, the NASD amended Section 5 of Schedule A to the By-Laws to define gross revenue for assessment purposes as income reported on the FOCUS report, with certain limited exclusions and deductions.[4] The FOCUS report reports income on a calendar year basis. However, Section 1(a) of Schedule A was not amended when this change was enacted and still gives members the election to report on either a calendar year or fiscal year basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposal was originally filed with the Commission on May 15, 1995. The NASD subsequently submitted Amendment No. 1 to the filing which amends the proposed rule to publish under Section 19(b)(2) of the Act that portion of the proposed rule change that amends Section 1 to Schedule A to the NASD By-Laws and to publish under Section 19(b)(3)(A)(ii) of the Act that portion of the proposed rule change that amends Section 2 to Schedule A of the NASD By-Laws. Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Mark P. Barracca, Branch Chief, Over-the-Counter Regulation, Division of Market Regulation, SEC, dated May 22, 1995. The NASD designated the part of this proposal for continuing education fees as one establishing or changing a fee under § 19(b)(3)(A)(ii) of the Act, which rendered the rule effective upon the Commission's receipt of this filing.

[4] *See* Securities Exchange Act Release No. 35074 (December 9, 1994); 59 FR 64827 (December 15, 1994).

II. The Terms of Substance of the Proposed Rule Change

The NASD is amending Section 1(a) of Schedule A of the By-Laws to require all member firms to report annual gross revenue for assessment purposes on a calendar year basis. Each member is to report annual gross revenue as defined in section 5 of Schedule A, for the preceding calendar year.

III. Discussion

The Commission believes that the rule change is consistent with the provisions of Section 15(A)(b)(5) of the Act[5] which require that the rules of the Association provide for the equitable allocation of reasonable dues, fees, and other charges. The rule change provides a consistent basis for assessments among member firms by requiring all firms to report annual gross revenue on a calendar year basis. In addition, the rule change rectifies the current inconsistency between Sections 1 and 5 of Schedule A of the By-Laws.

The Commission finds that the amendment will simplify the data collection and reporting process for the NASD.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR–NASD–95–23 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–17520 Filed 7–17–95; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78*o*–3.

[Rel. No. IC–21202; File No. 812–9482]

Ameritas Life Insurance Corp., et al.

July 11, 1995.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANTS: Ameritas Life Insurance Corp. (''Ameritas''), Ameritas Life Insurance Corp. Separate Account LLVL (''Separate Account''), and Ameritas Investment Corp. (''Investment Corp.'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) for exemptions from Section 27(c)(2) of the 1940 Act and Rule 6e–3(T)(c)(4)(v) thereunder.

SUMMARY OF APPLICATION: The Applicants seek an order to permit them to deduct from premium payments received under certain flexible premium variable life insurance contracts (the ''Policies'') issued through the Separate Account an amount that is reasonable in relation to Ameritas's increased federal tax burden resulting from the application of Section 848 of the Internal Revenue Code of 1986, as amended (the ''Code''). The deduction would not be treated as sales load.

FILING DATE: The application was filed on February 15, 1995.

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 Secretary of the SEC 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 August 7, 1995, 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 Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicants, c/o Norman M. Krivosha, Esq., Ameritas Life Insurance Corp., 5900 ''O'' Street, Lincoln, Nebraska 68510.

FOR FURTHER INFORMATION CONTACT: Edward P. Macdonald, Staff Attorney, or Patrice M. Pitts, Special Counsel, Division of Investment Management (Office of Insurance Products), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC.

Applicants' Representations

1. Ameritas, a mutual life insurance company domiciled in Nebraska since 1887, is licensed to sell insurance in 49 states, and has assets of over $2 billion.

2. In 1994, the Board of Directors of Ameritas established the Separate Account under Nebraska law. The Separate Account is registered as a unit investment trust under the 1940 Act.

3. Currently, there are eleven subaccounts within the Separate Account available to policyowners for investment. Each subaccount will invest only in the shares of a corresponding portfolio of the Vanguard Variable Insurance Fund or Neuberger & Berman Advisers Management Trust (collectively the ''Funds''). Each Fund is

registered with the SEC as an open-end diversified management investment company. The assets of the Separate Account are segregated from all other Ameritas assets, and are not chargeable with liabilities arising out of any other business which Ameritas may conduct.

4. Investment Corp. is a wholly-owned subsidiary of Ameritas and is the principal underwriter of the Policies. Investment Corp. is registered as a broker-dealer under the Securities Exchange Act of 1934, and is a member of the National Association of Securities Dealers, Inc.

5. The Policies are issued through the Separate Account pursuant to Rule 6e–3(T) under the 1940 Act. The Policies will provide for (i) lifetime insurance coverage on the named insured up to age 100, (ii) cash value accumulation, (iii) surrender rights, and (iv) loan privileges. The Policies contain two death benefit options. Death benefit proceeds are payable to the beneficiary of Policies upon receipt by Ameritas of satisfactory proof of death. The amount of the death benefit proceeds is equal to: (i) the death benefit, plus (ii) additional life insurance proceeds provided by any riders, minus (iii) outstanding policy loans, minus (iv) any overdue monthly deduction, including the deduction for the month of death. The Policies incorporate a guaranteed death premium feature under which Policies are guaranteed not to lapse during the first three policy years, provided the specified amount of premiums is paid in advance on a monthly or yearly basis.

6. In the Omnibus Budget Reconciliation Act of 1990, Congress amended the Code by, among other things, enacting Section 848 thereof which requires that life insurance companies capitalize and amortize over a period of ten years part of their general expenses for the current year. Under prior law, these expenses were deductible in full from the current year's gross income. Section 848, in effect, accelerates the realization of income from specified insurance contracts for federal income tax purposes and, therefore, the payment of taxes on the income generated by those contracts. Taking into account the time value of money, Section 848 increases the tax burden borne by the insurance company because the amount of general deductions that must be capitalized and amortized is measured by premium payments received under specified contracts, such as the Policies. In this respect, the impact of Section 848 can be compared with that of a state premium tax.

7. The Policies to which the tax burden charge (the ''DAC tax charge'') will apply fall into the category of life insurance contracts identified under Section 848 as those for which the percentage of net premiums that determines the amount of otherwise currently deductible general expenses to be capitalized and amortized is 7.7 percent.

8. The increased tax burden resulting from the applicability of Section 848 to every $10,000 of net premiums received may be quantified as follows. In the year when the premiums are received, Ameritas's general deductions are reduced by $731.50—*i.e.,* an amount equal to (a) 7.7 percent of $10,000 ($770) minus (b) one-half year's portion of the ten-year amortization ($38.50). Using a 35 percent corporate tax rate, this computes to an increase in tax for the current year of $256.03 (*i.e.,* $731.50 multiplied by .35). This increase in tax will be partially offset by increased deductions that will be allowed during the next ten years as a result of amortizing the remainder of the $770—$77 in each of the following nine years, and $38.50 in the tenth year.

9. Capital which must be used by Ameritas to satisfy its increased federal tax burden under Section 848 (resulting from the receipt of premiums) is not available to Ameritas for investment. Because it seeks an after tax rate of return of 10 percent on its invested capital,[1] Ameritas submits that a discount rate of at least 10 percent is appropriate for use in calculating the present value.

10. Using a corporate tax rate of 35 percent, and assuming a discount rate of 10 percent, the present value of the tax effect of the increased deductions allowable in the following ten years comes to $160.41. Because this amount partially offsets the increased tax burden, applying Section 848 to the specified contracts imposes an increased tax burden on Ameritas equal to a present value of $95.62 (*i.e.,* $256.03 minus $160.41) for each $10,000 of net premiums.

11. Ameritas does not incur incremental income tax when it passes on state premium taxes to contract owners, because state premium taxes are deductible when computing federal income taxes. In contrast, federal income taxes are not tax-deductible when computing Ameritas's federal income taxes. Therefore, to offset fully the impact of Section 848, Ameritas must impose an additional charge that would make it whole not only for the $95.62 additional tax burden attributable to Section 848, but also for the tax on the additional $95.62 itself. This additional charge can be computed by dividing $95.62 by the complement of the 35 percent federal corporate income tax rate (*i.e.,* 65 percent), resulting in an additional charge of $147.11 for each $10,000 of net premiums, or 1.47 percent.

12. Tax deductions are of value to Ameritas only to the extent that it has sufficient gross income to fully utilize the deductions. Based upon its prior experience, Ameritas submits that it is reasonable to expect that virtually all future deductions will be fully taken.

13. Ameritas submits that a DAC tax charge of 1.00 percent of premium payments would reimburse it for the impact of Section 848 on its federal tax liabilities. Ameritas represents that a 1.00 percent charge is reasonably related to its increased tax burden under Section 848, taking into account the benefit to Ameritas of the amortization permitted by Section 848, and the use by Ameritas of a 10 percent discount rate in computing the future deduction resulting from such amortization, such rate being the equivalent of Ameritas's cost of capital.

Applicants' Legal Analysis

1. Pursuant to Section 6(c) of the 1940 Act, the SEC may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision(s) of the 1940 Act or from any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants request an order of the Commission pursuant to Section 6(c) of the 1940 Act, exempting them from the provisions of Section 27(c)(2) of the 1940 Act and 6e-3(T)(c)(4)(v) thereunder to the extent necessary to permit

[1] In determining its cost of capital, Ameritas considered a number of factors. Ameritas first determined a reasonable risk-free rate of return that could be expected to be earned over the long term, based on current market rates, inflation, and expected future interest rate trends. Ameritas then determined the premium it needed to earn over this risk-free rate in order to compensate for the risk profile of the insurance business. Ameritas also took into consideration any information available about the rates of return earned by other mutual life insurance companies. Ameritas represents that these factors are appropriate considerations in determining it cost of capital.

Ameritas also took into account the ratio of surplus to assets that it seeks to maintain. Ameritas represents that maintaining the ratio of surplus to assets is critical to maintaining both competitive ratings from various rating agencies and to offering competitive pricing on new and in force business. Consequently, Ameritas asserts that its surplus must grow at least at the same rate as its assets.

Applicants to deduct from premium payments received in connection with the Policies an amount that is reasonable in relation to Ameritas's increased federal tax burden created by its receipt of such premium payments. The deduction would not be treated as sales load.

3. Section 2(a)(35) of the 1940 Act defines ''sales load'' as the difference between the price of a security offered to the public and that portion of the proceeds from its sale which is received and invested or held by the issuer (or in the case of a unit investment trust, by the depositor or trustee), less any portion of such difference deducted for trustee's or custodian's fees, insurance premiums, issue taxes, or administrative expenses or fees which are not properly chargeable to sales or promotional activities.

4. Section 27(c)(2) of the 1940 Act prohibits a registered investment company or a depositor or underwriter for such company from making any deduction from purchase payments made under periodic payment plan certificates other than a deduction for sales load.

5. Rule 6e-3(T)(b)(13)(iii), among other things, provides relief from Section 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of certain charges other than sales load, including ''[t]he deduction of premium or other taxes imposed by any state or other governmental entity.'' Applicants represent that the requested exemption is necessary if they are to rely on certain provisions of Rule 6e-3(T)(b)(13).

6. Rule 6e-3(T)(c)(4) defines ''sales load'' during a contract period as the excess of any payments made during that period over certain specified charges and adjustments, including ''[a] deduction for and approximately equal to state premium taxes.'' Applicants submit that the proposed DAC tax charge is akin to a state premium tax charge and, therefore, should be treated as other than sales load for purposes of the 1940 Act and the rules thereunder.

7. Applicants acknowledge that the proposed DAC tax charge does not fall squarely into any of the itemized categories of charges or adjustments set forth in Rule 6e-3(T)(c)(4); a literal reading of that rule arguably does not exclude such a ''tax burden charge'' from sales load. Applicants maintain, however, that there is no public policy reason why a tax burden charge designed to cover the expense of federal taxes should be treated as sales load. Applicants also assert that nothing in the administrative history of Rule 6e-3(T) suggests that the SEC intended to treat tax charges as sales load.

8. Applicants assert that the public policy that underlies Rule 6e-3(T)(b)(13)(i), like that which underlies Sections 27(a)(1) and 27(h)(1), is to prevent excessive sales loads from being charged in connection with the sale of periodic payment plan certificates. Applicants submit that the treatment of a tax burden charge attributable to the receipt of purchase payments as sales load would in no way further this legislative purpose because such a charge has no relation to the payment of sales commissions or other distribution expenses. Applicants further submit that the Commission has concurred with this conclusion by excluding deductions for state premium taxes from the definition of sales load in Rule 6e-3(T)(c)(4).

9. Applicants assert that the genesis of Rule 6e-3(T)(c)(4) supports this analysis. In this regard, Applicants note that Section 2(a)(35) of the 1940 Act provides a scale against which the percent limits of Sections 27(a)(1) and 27(h)(1) thereof may be measured. Applicants submit that the intent of the SEC in adopting Rule 6e-3(T)(c)(4) was to tailor the general terms of Section 2(a)(35) top flexible premium variable life insurance contracts in order, among other things, to facilitate verification by the SEC of compliance with the sales load limits set forth in Rule 6e-3(T)(b)(13)(i). Applicants submit that Rule 6e-3(T)(c)(4) does not depart, in principal, from Section 2(a)(35).

10. Applicants further assert that Section 2(a)(35) excludes from the definition of sales load under the 1940 Act deductions from premiums for ''issue taxes.'' Applicants submit that, by extension, the exclusion from ''sales load'' (as defined in Rule 6e-3(T)) of charges to cover an insurer's expenses attributable to its federal tax obligations is consistent with the protection of investors and the purposes intended by the policies and provisions of the 1940 Act.

11. Applicants also submit that the reference in Section 2(a)(35) to administrative expenses or fees that are ''not properly chargeable to sales or promotional activities'' suggests that the only deductions intended to fall within the definition of sales load are those that are properly chargeable to such activities. Because the proposed DAC tax charge will be used to compensate Ameritas for its increased federal tax burden attributable to the receipt of premiums, and such deductions are not properly chargeable to sales or promotional activities, Applicants assert that the language of Section 2(a)(35) is another indication that not treating such deductions as sales load is consistent with the purposes intended by the policies of the 1940 Act.

Condition for Relief

1. Applicants agree to comply with the following conditions for relief.

a. Ameritas will monitor the reasonableness of the 1.00 percent proposed DAC tax charge.

b. The registration statement for the Policies under which the 1.00 percent charge is deducted will: (i) disclose the charge; (ii) explain the purpose of the charge; and (iii) state that the charge is reasonable in relation to Ameritas's increased federal tax burden resulting from the application of Section 848 of the Code.

c. The registration statement for the Policies under which the 1.00 percent charge is deducted will contain as an exhibit an actuarial opinion as to: (i) the reasonableness of the charge in relation to Ameritas's increased federal tax burden resulting from the application of Section 848 of the Code; (iii) the reasonableness of the targeted rate of return that is used in calculating such charge; and (iii) the appropriateness of the factors taken into account by Ameritas in determining such targeted rate of return.

Conclusion

For the reasons summarized above, Applicants represent that the requested relief from Section 27(c)(2) of the 1940 Act and Rule 6e-3(T)(c)(4)(v) thereunder is necessary or appropriate in the public interest and otherwise meets the standards of Section 6(c) of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–17521 Filed 7–17–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35959; File No. SR–PSE–95–16]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange Incorporated Relating to Violations of the Intermarket Trading System Rules

July 12, 1995.

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 June 8, 1995, the Pacific Stock Exchange Incorporated (''PSE'' 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. On June 26, 1995, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.[1] 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 Exchange is proposing to amend its Minor Rule Plan so that it includes violations of the Intermarket Trading System (''ITS'') rules, which are set forth in PSE Rules 5.20–5.23. The text of the proposed rule change is as follows [new text is italicized]:

¶ 6133 Minor Rule Plan

Rule 10.13(a)–(h)—No change.

(i) Minor Rule Plan: Equity Floor Decorum and Minor Trading Rule Violations

(i)(1)–(i)(8)—No change.

(i)(9) Failure to follow the provisions of the rules and regulations governing the use of the Intermarket Trading System (ITS) (Rules 5.20–5.23)

* * * * *

Minor Rule Plan

Recommended Fine Schedule

(Pursuant to Rule 10.13(f))

Rule 10.13(i)

Equity Floor Decorum and Minor Trading Rule Violations

	1st violation	2nd violation	3rd violation
1–8—No change.			
9—Failure to follow the provisions of the rules and regulations governing the use of the Intermarket Trading System (ITS) (Rules 5.20–5.23)	$500	$1,000	$2,000

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 Exchange's Minor Rule Plan (''MRP''),[2] set forth in PSE Rule 10.13, provides that the Exchange may impose a fine not to exceed $5,000 on any member, member organization, or person associated with a member or member organization, for any violation of an Exchange rule that has been deemed to be minor in nature and approved by the Commission for inclusion in the MRP. Rule 10.13, subsections (h)–(j), set forth the specific Exchange rules deemed to be minor in nature.

The Exchange is proposing to add the following provision to the MRP as Rule 10.13(i)(9): ''Failure to follow the provisions of the rules and regulations governing the use of the Intermarket Trading System (ITS) (PSE Rules 5.20–5.23).'' The Exchange is also proposing to amend its Recommended Fine Schedule to establish the following recommended fines (on a running two-year basis) for violations of the ITS rules and regulations: $500 for a first-time violation; $1,000 for a second-time violation; and $2,000 for a third-time violation.[3]

The Exchange believes that the ITS rules proposed to be added to the MRP are either objective or technical in nature and are easily verifiable, thereby lending themselves to the use of expedited proceedings. The Exchange further believes that violations of the ITS rules may require sanctions more severe than a warning or cautionary letter, but that full disciplinary proceedings (pursuant to Rule 10.3) would, in general, be unsuitable because they would be costly and time consuming in view of the minor nature of the violations. Nevertheless, the Exchange notes that if a violation of an ITS rule is particularly egregious or if the individual situation warrants such action, the Exchange may proceed with formal disciplinary action pursuant to Rule 10.3, rather than with the MRP procedures under Rule 10.13. The Exchange further notes that the Commission has recommended that the Exchange add ITS violations to the PSE Minor Rule Plan.[4] Finally, the Exchange notes that the addition of the ITS rules to the MRP would be consistent with the rules of the New York Stock Exchange.[5]

2. *Statutory Basis*

The proposed rule change is consistent with Section 6(b) of the Act, in general, and Sections 6(b)(5) and 6(b)(6), in particular, in that it is designed to promote just and equitable principles of trade, to protect investors and the public interest, and to provide that members of the Exchange are appropriately disciplined for violations of Exchange rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

[1] *See* letter from Michael Pierson, Senior Attorney, PSE, to Jennifer S. Choi, Attorney, SEC, dated June 23, 1995. Amendment No. 1 withdraws the proposed changes to the Equity Floor Procedure Advice 2–B because these changes have been approved already by the Commission. *See* Securities Exchange Act Release No. 34760 (Sept. 30, 1994), 59 FR 50950 (Oct. 6, 1994) (approving File No. SR–PSE–94–13).

[2] The MRP was initially approved by the Commission in 1985. *See* Securities Exchange Act Release No. 22654 (Nov. 21, 1985), 50 FR 48853 (Nov. 27, 1985). Since 1985, the MRP has been amended several times. *See, e.g.,* Securities Exchange Act Release No. 34322 (July 6, 1994), 59 FR 35958 (July 14, 1994).

[3] For a discussion of the Exchange's Recommended Fine Schedule, *see* Securities Exchange Act Release No. 34322 (July 6, 1994), 59 FR 35958 (July 14, 1994).

[4] *See* Inspection Report on the Operation of the Intermarket Trading System 3 (Nov. 18, 1994).

[5] *See* NYSE Rule 476A (Supplementary Material).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

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 within 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 Exchange. All submissions should refer to File No. SR–PSE–95–16 and should be submitted by August 8, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–17581 Filed 7–17–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35957; International Series Release No. 827 File No. SR–Phlx–95–44]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Enhanced Specialist Participation in 3D Foreign Currency Options

July 12, 1995.

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 July 3, 1995, the Philadelphia Stock Exchange, Inc. (''Phlx'' 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 Exchange. 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 Phlx proposes to amend Exchange Rule 1014(h) and Floor Procedure Advice (''Advice'') B–7 (Time Priority of Bids/Offers in Foreign Currency Options) regarding the enhanced parity participation for the specialist (''Enhanced Split'') in the dollar denominated delivery (''3D'') cash-spot deutsche mark foreign currency option (''FCO'') contract.[1] Specifically, the Exchange proposes to correct certain language pertaining to the Enhanced Split contained in Rule 1014(h) and to incorporate the procedures applicable to the Enhanced Split, as amended, into advice B–7. In addition, violations of the Enhanced Split would become subject to fines administered pursuant to the Exchange's minor rule violation enforcement and reporting plan.[2]

The Enhanced Split provisions in Rule 1014 currently provide that for all orders in excess of 500 contracts, the 3D FCO specialist is entitled to receive 50% of the first 500 contracts in any trade in which the 3D FCO specialist and one or more crowd participants are on parity, with the remaining 50% of the first 500 contracts allocated on a pro rata basis among the other crowd participants on parity. All contracts in excess of the first 500 contracts are split pro rata among the 3D FCO specialist and the other crowd participants on parity.

The Exchange represents that Rule 1014(h) was intended to apply to all 3D FCO orders, not just those in excess of 500 contracts.[3] Accordingly, the Exchange proposes to amend Rule 1014(h) to clarify that the Enhanced Split is activated by parity situations where parties compete to fill orders of any size, rather than the current language that states that the Enhanced Split only applies where the ''trade involves 500 or more contracts.''

In addition to amending Rule 1014(h), the Exchange also proposes to amend Advice B–7 to incorporate the provisions applicable to the 3D FCO Enhanced Split, as amended, and to make violations of the Enhanced Split subject to fines administered pursuant to the Exchange's Minor Rule Plan.[4]

The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and at the Commission.

II. Self-Regulatory Organization's Statement of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Section (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

In 1994, the Commission approved the Enhanced Split for the 3D FCO specialist.[5] The Exchange represents that the approved language in Rule 1014(h) erroneously limits the provision to situations where more than 500

[1] 3D FCOs are cash-settled, European-style, cash-spot FCO contracts on the German mark that were originally approved to trade in one-week and two-week expirations. *See* Securities Exchange Act Release No. 33732 (March 8, 1994), 59 FR 52337 (March 15, 1994). The Exchange subsequently obtained Commission approval to also list 3D FCOs with longer-term expirations. *See* Securities Exchange Act Release No. 35756 (May 24, 1995), 60 FR 28638 (June 1, 1995).

[2] The Minor Rule Plan, codified in Phlx Rule 970, contains floor procedure advices with accompanying fine schedules. Rule 19d–1(c)(2) under the Act authorized national securities exchanges to adopt minor rule violation plans for summary discipline and abbreviated reporting and Rule 19d–1(c)(1) under the Act required prompt filing with the Commission of any final disciplinary actions. Minor Rule Plan violations not exceeding $2,500, however, are deemed not final, thereby permitting periodic, as opposed to immediate reporting.

[3] *See* Securities Exchange Act Release No. 35177 (December 29, 1994), 60 FR 2419 (January 9, 1995) (''Exchange Act Release No. 35177'').

[4] *See supra* note 2.

[5] *See* Exchange Act Release No. 35177, *supra* note 3.

contracts are traded when, in fact, the intent of the proposal was for the Enhanced Split to apply to all parity 3D FCO trades. The Exchange represents that this intent was reflected in the Exchange's description of the proposal and in the Commission's approval of the Enhanced Split.[6]

The Exchange represents that there are two purposes for the amendment to Advice B–7: (1) To incorporate the terms of the Enhanced Split, as amended, into the options floor procedure advice handbook for ease of reference on the trading floor; and (2) to make violations of the Enhanced Split subject to the fines under the Exchange's Minor Rule Plan.

The Phlx represents that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5)[7] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest, by correcting the application of the Enhanced Split, incorporating the provisions of the Enhanced Split, as amended, into Advice B–7, and making violations of the Enhanced Split subject to the Exchange's Minor Rule Plan.

(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.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) does not become operative for 30 days from July 3, 1995, the date on which it was filed; and (4) the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five days prior to the filing date,[8] it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(6) thereunder.[9]

At any time within 60 days of the filing of the 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 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 Phlx. All submissions should refer to File No. SR–Phlx–95–44 and should be submitted by August 8, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–17580 Filed 7–17–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21199; 811–4177]

First Investors unit Investment Fund; Notice of Application

July 11, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: First Investors Unit Investment Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on June 26, 1995.

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 applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 7, 1995, and should be accompanied by proof of service on the applicant, 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 may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 95 Wall Street, New York, NY 10005.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or H.R. Hallock, Jr., Special Counsel at (202) 942–0564 (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 from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an inactive unit investment trust. On December 14, 1984, applicant registered under the Act and filed a registration statement under the Securities Act of 1933 on December 17, 1984. Applicant's registration statement was never declared effective, and applicant has made no public offering of its shares.

2. Applicant has no known debts or other liabilities which remain outstanding. Applicant has no shareholders and no assets. Applicant is not a party to any litigation or administrative proceeding. Applicant is now not engaged in, nor does it propose to engage in, business activities other than those necessary for the winding-up of its affairs.

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[6] *Id.*

[7] 15 U.S.C. § 78f(b)(5) (1988).

[8] *See* Letter from Edith Hallahan, Special Counsel, Phlx, to Michael Walinskas, Branch Chief, Office of Market Supervision, Division of Market Regulation, Commission, dated May 31, 1995.

[9] 17 CFR 240.19b–4(e)(6) (1994).

[10] 17 CFR 200.30–3(a)(12) (1994).

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–17517 Filed 7–17–95; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Howtek, Inc., Common Stock, $.01 Par Value) File No. 1–9341

July 12, 1995.

Howtek, Inc. (''Company'') has filed an application with the Securities and Exchange commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the American Stock Exchange, Inc. (''Amex'').

The reasons alleged in the application for withdrawing the security from listing and registration include the following:

According to the Company, the Board of Directors of the Company (''Board'') unanimously approved resolutions on May 31, 1995, to withdraw the Security from listing on the Exchange and, instead, list the Security as National Market securities on the Nasdaq Stock Market, Inc. (''Nasdaq''). The decision of the Board followed a lengthy study of the matter, and was based upon the belief that listing of the Security on Nasdaq will be more beneficial to the Company and its shareholders than the present listing on the Exchange because:

1. The Nasdaq system of multiple, competing market makers will provide the Company with increased visibility within the financial community, thereby encouraging greater investor awareness of the Company's activities;

2. The Nasdaq system will enable the company to attract its own group of market makers and expand the capital base available for purchases of the Security;

3. The Nasdaq system will stimulate increased demand for the Security and result in greater liquidity for the Company's shareholders; and

4. The firms making a market in the Security on Nasdaq will be more likely to issue research reports on the Company, which will increase the availability of information about the Company and the Security and enhance the Company's visibility to investors.

Any interested person may, on or before August 2, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–17522 Filed 7–17–95; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review for Glendale Municipal Airport, Glendale, AZ

AGENCY: Federal Aviation Administration.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for Glendale Municipal Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) (hereinafter referred to as ''the Act'') and 14 CFR part 150 by the city of Glendale, Arizona. This program was submitted subsequent to a determination by the FAA that the associated noise exposure maps submitted under CFR part 150 for Glendale Municipal Airport were in compliance with applicable requirements effective July 5, 1994. The proposed noise compatibility program will be approved or disapproved on or before December 27, 1995.

EFFECTIVE DATE: The effective date of the start of FAA's review of the noise compatibility program is June 30, 1995. The public comment period ends August 29, 1995.

FOR FURTHER INFORMATION CONTACT: David B. Kessler, Environmental Protection Specialist, AWP–611.2, Planning Section, Western-Pacific Region, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007, Telephone 310/297–1534. Street Address: 15000 Aviation Boulevard, Hawthorne, California 90261. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for Glendale Municipal Airport which will be approve or disapproved on or before December 27, 1995. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the noise compatibility program for Glendale Municipal Airport, effective on June 30, 1995. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before December 27, 1995.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise

exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, National Headquarters, 800 Independence Avenue, S.W., Room 617, Washington, D.C. 20591

Federal Aviation Administration, Western-Pacific Region Office, 15000 Aviation Boulevard, Room 3012, Hawthorne, California 90261

Mr. James J. McCue, A.A.E., Airport Manager, Glendale Municipal Airport, 6801 North Glen Harbor Boulevard, Suite 201, Glendale, Arizona 85307

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Hawthorne, California on June 30, 1995.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 95–17591 Filed 7–17–95; 8:45 am]

BILLING CODE 4910–13–M

Index of Administrator's Decisions and Orders in Civil Penalty Actions; Publication

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of publication.

SUMMARY: This notice constitutes the required quarterly publication of an index of the Administrator's decisions and orders in civil penalty cases. The FAA is publishing an index by order number, an index by subject matter, and case digests that contain identifying information about the final decisions and orders issued by the Administrator. Publication of these indexes and digests is intended to increase the public's awareness of the Administrator's decisions and orders. Also, the publication of these indexes and digests should assist litigants and practitioners in their research and review of decisions and orders that may have precedential value in a particular civil penalty action. Publication of the index by order number, as supplemented by the index by subject matter, ensures that the agency is in compliance with statutory indexing requirements.

FOR FURTHER INFORMATION CONTACT: James S. Dillman, Assistant Chief Counsel for Litigation (AGC–400), Federal Aviation Administration, 701 Pennsylvania Avenue NW, Suite 925, Washington, DC 20004; telephone (202) 376–6441.

SUPPLEMENTARY INFORMATION: The Administrative Procedure Act requires Federal agencies to maintain and make available for public inspection and copying current indexes containing identifying information regarding materials required to be made available or published. 5 U.S.C. 552(a)(2). In a notice issued on July 11, 1990, and published in the **Federal Register** (55 FR 29148; July 17, 1990), the FAA announced the public availability of several indexes and summaries that provide identifying information about the decisions and orders issued by the Administrator under the FAA's civil penalty assessment authority and the rules of practice governing hearings and appeals of civil penalty actions. 14 CFR part 13, subpart G.

The FAA maintains an index of the Administrator's decisions and orders in civil penalty actions organized by order number and containing identifying information about each decision or order. The FAA also maintains a subject-matter index, and digests organized by order number.

In a notice issued on October 26, 1990, the FAA published these indexes and digests for all decisions and orders issued by the Administrator through September 30, 1990. 55 FR 45984; October 31, 1990. The FAA announced in that notice that it would publish supplements to these indexes and digests on a quarterly basis (*i.e.*, in January, April, July, and October of each year). The FAA announced further in that notice that only the subject-matter index would be published cumulatively, and that both the order number index and the digests would be non-cumulative.

Since that first index was issued on October 26, 1990 (55 FR 45984; October 31, 1990), the FAA has issued supplementary notices containing the quarterly indexes of the Administrator's civil penalty decisions as follows:

Dates of quarter	Federal Register publication
10/1/90–12/31/90 .	56 FR 44886; 2/6/91
1/1/91–3/31/91	56 FR 20250; 5/2/91
4/1/91–6/30/91	56 FR 31984; 7/12/91
7/1/91–9/30/91	56 FR 51735; 10/15/91
10/1/91–12/31/91 .	57 FR 2299; 1/21/92
1/1/92–3/31/92	57 FR 12359; 4/9/92
4/1/92–6/30/92	57 FR 32825; 7/23/92
7/1/92–9/30/92	57 FR 48255; 10/22/92
10/1/92–12/31/92 .	58 FR 5044; 1/19/93
1/1/93–3/31/93	58 FR 21199; 4/19/93
4/1/93–6/30/93	58 FR 42120; 8/6/93
7/1/93–9/30/93	58 FR 58218; 10/29/93
10/1/93–12/31/93 .	59 FR 5466; 2/4/94
1/1/94–3/31/94	59 FR 22196; 4/29/94
4/1/94–6/30/94	59 FR 39618; 8/3/94
7/1/94–12/31/94* .	60 FR 4454; 1/23/95
1/1/95–3/31/95	60 FR 19318; 4/17/95

*Due to administrative oversight, the index for the third quarter of 1994, including information pertaining to the decisions and orders issued by the Administrator between July 1 and September 30, 1994, was not published on time. The information regarding the third quarter's decisions and orders, as well as the fourth quarter's decisions and orders in 1994, were included in the index published on January 23, 1995.

In the notice published on January 19, 1993, the Administrator announced that for the convenience of the users of these indexes, the order number index published at the end of the year would reflect all of the civil penalty decisions for that year. 58 FR 5044; 1/19/93. The order number indexes for the first, second, and third quarters would be non-cumulative.

The Administrator's final decisions and orders, indexes, and digests are available for public inspection and copying at all FAA legal offices. (The addresses of the FAA legal offices are listed at the end of this notice.)

Also, the Administrator's decisions and orders have been published by commercial publishers and are available on computer databases. (Information about these commercial publications and computer databases is provided at the end of this notice.)

Civil Penalty Actions—Orders Issued by the Administrator

Order Number Index

(This index includes all decisions and orders issued by the Administrator from April 1, 1995, to June 30, 1995.)

95–5, 4/26/95 .. Abraham T. Araya, CP94EA0207

95–6, 4/26/95 .. Roger Lee Sutton, CP93EA0370

95–7, 5/5/95 ..... Empire Airlines, CP94NM0064

95–8, 5/9/95 ..... Charter Airline, James Walker & Larry Mort, CP93WP0005, CP93WP0012, CP93WP0003

95–9, 5/9/95 ..... Mary Woodhouse, CP94WP0184, 94EAJAWP0017

95–10, 5/10/95 . Mark Steven Diamond, CP94NM0105

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Civil Penalty Actions—Orders Issued by the Administrator

Digests

(Current as of June 30, 1995)

The digests of the Administrator's final decisions and orders are arranged by order number, and briefly summarize key points of each decision. The following compilation of digests includes all final decisions and orders issued by the Administrator from April 1, 1995, to June 30, 1995. The FAA will publish noncumulative supplements to this compilation on a quarterly basis (e.g. April, July, October, and January of each year).

These digests do not constitute legal authority, and should not be cited or relied upon as such. The digests are not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.

In the Matter of Abraham T. Araya

[Order No. 95–5 (4/26/95)]

Appeal Dismissed. complainant withdrew its notice of appeal. The appeal is dismissed.

In the Matter of Roger Lee Sutton

[Order No. 95–6 (4/26/95)]

Appeal Dismissed, Order Assessing Civil Penalty Vacated, and Complaint Dismissed. Respondent filed an appeal from the law judge's written initial decision assessing a $1,000 civil penalty against Respondent based on his failure to file an answer to the complaint. Subsequently, however, the parties filed a ''Joint Notice of Settlement'' advising the Administrator that the case had been settled, and that both Respondent's appeal and the agency's complaint had been withdrawn. As a result, Respondent's appeal is dismissed, the law judge's order assessing a $1,000 civil penalty is vacated, and the complaint is dismissed with prejudice.

In the Matter of Empire Airlines

[Order No. 95–7 (5/5/95)]

Appeal Dismissed. Complainant withdrew its notice of appeal. The appeal is dismissed.

In the Matter of Charter Airlines, James Walker and Larry Mort

[Order No. 95–8 (5/9/95)]

Flight and Duty Time Limitations. Charter Airlines is the holder of an air taxi operator certificate issued under 14 CFR Part 135. Mr. Walker is the chief pilot and director of operations. Mr. Mort is a pilot employed by Charter Airlines. On all of the flights involved in this case, Mr. Walker was the captain and Mr. Mort was the co-pilot. It is held that Charter Airlines, Mr. Walker and Mr. Mort violated the flight and duty time regulations set forth in 14 CFR 135.263(a), 135.267(b) and 135.267(d) as alleged.

Flight time restriction, generally. Under Section 135.267(b)(2), when two flight crewmembers are required, the total flight time of an assigned flight, when added to any other commercial flying by that crew, may not exceed 10 hours during any 24-hour period.

Duty time restriction, generally. Under Section 135.267(d) provides that ''each assignment . . . must provide for at least 10 consecutive hours of rest during the 24-hour period that precedes the planned completion time of the

assignment.'' Hence, the planned completion time of the assignment should be no later than 14 hours after the time that the pilots report for duty. However, if the original planning was realistic, but was upset due to circumstances beyond the control of the pilots and operator, the flight may be conducted even though the crew duty time may exceed 14 hours. The key to interpreting Section 135.267(d) is to look at the original planning. Duty time includes more than a pilot's flight time. Duty time is any time that is not a rest period.

Circumstances beyond the control of the crew and the operator not proven. On a series of flights begun on August 2, 1990, and ending on August 3, 1990, Respondents flew over 18 hours. Part way through their duty day, Charter Airlines amended the crew's assignment, adding an assignment to pick up freight in St. Mary's and transport it to El Paso. The crew accepted this amendment. Respondents claim that they had to wait 10 hours for the freight to be delivered at St. Mary's, and that the late delivery of the freight constitutes a circumstance beyond the control of the operator and the crew.

When an operator adds a flight(s) to an assignment, the operator must determine whether the extra flight(s) can be completed in accordance with the requirement that the two-person crew receive at least 10 consecutive hours of rest during the 24-hour period preceding the planned completion time of the amended assignment. In addition, the flight crewmembers, before accepting an extra flight(s) as part of an assignment, must determine whether they will be able to complete the amended assignment and still comply with the rest requirement of Section 135.267(d). Hence, it must be determined whether at the time Charter Airlines assigned the trip to carry freight from St. Mary's to El Paso, Charter Airlines had reason to believe that the assignment, as amended, would provide the crew with at least 10 consecutive hours of rest during the 24-hour period preceding the planned completion time of the assignment. Likewise, it must be determined whether Mr. Walker and Mr. Mort reasonably believed, when they accepted the extra flights, that the amended assignment provided for at least 10 consecutive hours of rest during the 24-hour period preceding the planned completion time of the amended assignment.

The evidence is very confusing and in conflict regarding when they expected the freight to arrive in St. Mary's. What appears most likely is that when Charter Airlines assigned this trip to fly freight from St. Mary's to El Paso and when Mr. Walker and Mr. Mort accepted it, there was no planned completion time. If a planned completion time for the assignment to fly freight from St. Mary's to El Paso was not formulated when that assignment was made and accepted, Respondents cannot argue that the late freight delivery upset the original planning. Therefore, the protection offered by Section 135.263(d) in the event of circumstances beyond the control of the flight crew is unavailable to Respondents.

Circumstances beyond the control of the crew and the operator not proven. On October 25, 1990, the crew was on duty for 14 hours and 48 minutes. Respondents argued that the thunderstorm that they encountered in Provo, Utah, while they were visiting Mr. Walker's son, constituted circumstances beyond their control. Considering the totality of the circumstances, it was not the adverse weather that prevented Respondents from completing the duty day as planned. Instead, the planned schedule was upset by Respondents' plan to stop at Provo, visit Mr. Walker's son, and still get to Scottsdale in time to pick up the passenger as scheduled. By the time that they arrived in Provo, there was little time left, realistically, to secure the aircraft, leave the airport, visit Mr. Walker's son, return to the airport, prepare for takeoff and fly to Scottsdale, Arizona. The further delay caused by the adverse weather, which Respondents have not even attempted to show was unforeseeable, only made matters worse. Inherent in the concept of circumstances beyond the control of the operator and crew is the element of unforeseeability. If thunderstorms were forecast for the early afternoon, then Respondents should have departed from Provo much earlier than they did, if necessary skipping the visit with Mr. Walker's son. Also, the trip to Provo was a pleasure trip, and therefore, completely within the control of Respondents.

Other commercial flying. On appeal, the question regarding the flights on September 12–13, 1990, is whether Respondents flew more than 10 hours of commercial flying in a 24-hour period. Between 0947 on September 12, 1990, and 0947 on September 13, 1990, Respondents' flying time totaled 10 hours and 27 minutes.

A flight conducted under Part 91 as a ferry flight may be considered as ''other commercial flying.'' The issue in this case is not whether the ferry flights were conducted pursuant to Part 135, but whether those flights constituted commercial flying. Section 135.267(b)(2) provides in pertinent part that ''. . . during any 24 consecutive hours the total flight time of the assigned flight when added *to any other commercial flying* by that flight crewmember may not exceed . . . 10 hours for a flight crew consisting of two pilots.'' 14 CFR 135.267(b)(2) (emphasis added.) While ferry flights themselves are not operated pursuant to Part 135's limitations, the pilots flying flights for compensation or hire and the operators assigning those flights are subject to Part 135.

The general rule with respect to flight time limitations is that ''any other commercial flying (e.g., flights conducted under Part 91) must be counted against the daily flight time limitations of Part 135 if it *precedes* the flight conducted under Part 135. If the Part 91 flight occurs *after* the Part 135 flying, the Part 91 flight is not counted against the daily flight time limitations of Part 135.

Respondents delivered freight in Detroit. Then, intending to fly home, they departed from Detroit, stopping in Amarillo for fuel. After learning of a flight for compensation out of Winslow, they flew from Amarillo to Winslow. The flight from Amarillo to Winslow, preceding a flight to carry freight for compensation out of Winslow, was a commercial flight. Although that flight from Amarillo to Winslow itself may not have been for compensation, it put Respondents in a position to pick up freight and deliver it for remuneration.

Once it was decided that they would carry freight from Winslow to Youngstown, the character of the flight from Detroit to Amarillo changed. That is, even if the Detroit to Amarillo flight was once ''other than commercial,'' it could no longer be considered so once the decision was made to move on from Amarillo to Winslow to pick up the cargo for carriage to Youngstown. At that point, Respondents should have recomputed their flight times to determine whether accepting the Winslow-Youngstown assignment was consistent with the requirements of Section 135.267(b)

While some ferry flights would not be regarded as commercial flying, such as a flight back to base after the completion of an assignment, other ferry flights for the purpose of positioning an aircraft for a flight for compensation or hire would constitute commercial flying.

It is held that the law judge correctly found that the ferry flights on September 12, 1990, constituted ''other commercial flying'' for purposes of determining compliance with 14 CFR 135.267(b).

Other commercial flying. Within a 24-hour period, starting from 2200 on

November 5, 1990, and ending at 2200 on November 6, 1990, Respondents accumulated 11.3 flight hours. The law judge held that Respondent violated Section 135.267(b), finding that the three ferry flights during this period constituted ''other commercial flying'' and therefore, should be counted toward the total flying time. The law judge's finding is affirmed.

The Las Vegas-Brownsville leg on November 5, 1990, preceded the freight-carrying flight for compensation under Part 135 from Brownsville to Mesa. It was part of the assignment to get and transport the freight. As a result, it should be regarded as ''other commercial flying.''

The flight from Mesa to Milwaukee also must be considered as a commercial flight at least because it was for the purpose of getting contract fuel. Also, this flight leg from Mesa to Milwaukee was one of two legs to reposition the aircraft to pick up freight in Mosinee, Wisconsin.

The repositioning flight from Milwaukee to Mosinee preceded the flight for compensation from Mosinee to Brownsville, and therefore, it too should be considered other commercial flying.

Section 135.263. Assigning and accepting a prohibited flight are violations separate and distinct from operating a prohibited flight. Hence, the law judge's finding of no violation of 14 CFR 135.263(a) is reversed.

Double Jeopardy. The issue of whether a finding of multiple violations in this case would run afoul of the Double Jeopardy Clause is more academic than real. Whether the Double Jeopardy Clause applies to such civil money penalties has not been established.

Sanction. To justify the $10,000 civil penalty against Charter Airlines, and the $2000 civil penalties against Mr. Walker and Mr. Mort, it is not necessary to give separate effect to the alleged violations of Section 135.263(a). Respondents violated Section 135.267(b) on September 13 and November 6, 1990, and Section 135.267(d) on August 3, and October 25, 1990. Since a commercial operator may be assessed $10,000 per violation, a $10,000 civil penalty against Charter Airlines for its conduct contrary to the flight and duty time regulations on those four sets of flights is reasonable and well below the maximum allowable civil penalty. Likewise, because a pilot may be assessed a $1000 civil penalty for each violation, $2000 civil penalties against Mr. Walker and Mr. Mort for violations of the flight and duty time regulations on these four sets of flights are reasonable and well below the maximum allowable civil penalty. Such significant penalties are justified not only by the numerous violations committed by Respondents, but by the cavalier attitude displayed by Respondents toward the flight and duty time restrictions.

In the Matter of Mary Woodhouse

[Order No. 95–9 (5/9/95)]

Good cause for late-filed notice of appeal. The law judge denied Ms. Woodhouse's application for attorney's fees and costs under the Equal Access to Justice Act (EAJA) on December 7, 1994. Ms. Woodhouse filed an appeal document on January 3, 1995. Ms. Woodhouse's appeal was late. Under Section 14.28 of the FAA's rules implementing the EAJA, 14 CFR 14.28, and Section 13.233(a) of the Rules of Practice in Civil Penalty Proceedings, 14 CFR 13.233(a), Ms. Woodhouse had 10 days to file a notice of appeal from the law judge's denial. Good cause exists to excuse the lateness of Ms. Woodhouse's appeal because the law judge had written in his denial that Ms. Woodhouse had 30 days in which to file an appeal.

Detailed appeal document satisfies the requirements for an appeal brief and is construed as an appeal brief. Agency counsel is given 35 days in which to file a reply brief.

In the Matter of Mark Steven Diamond

[Order No. 95–10 (5/10/95)]

No Good Cause for Failure to File Answer. In this case involving alleged hazardous materials violations, Respondent appealed from the law judge's order assessing a $3,000 civil penalty against him after Respondent fails to file an answer to the complaint. Respondent's counsel requests another opportunity to file an answer, explaining that he is not familiar with administrative proceedings and the failure to file was simply an oversight on his part.

Parties may not avoid default merely by claiming unfamiliarity with the rules of practice. Counsel for Respondent had the benefit of two specific written reminders to file the complaint, but failed to do so. Good cause has not been shown, and therefore the law judge's assessment of a $3,000 civil penalty is affirmed.

In the Matter of Horizon Air Industries, Inc.

[Order No. 95–11 (5/10/95)]

Minimum Equipment List Violation. On several occasions, Respondent cleared the Minimum Equipment List entry and returned the aircraft to revenue service without a reasonable basis for concluding that the altitude warning system was repaired. Where there is a pattern of discrepancies indicating that the existing diagnostic test may be unreliable, an air carrier must take further steps to ensure that the aircraft is truly repaired. In this case, Respondent should have: (1) performed a flight test; (2) checked with its pilots to see which air data computer was in use when the malfunctions occurred; and (3) called in the manufacturer of the malfunctioning system sooner. Safety was compromised to the extent that the captain or first officer reading the erroneous display would have required additional time and concentration to determine the aircraft's actual altitude by alternate means.

Sanction Reduced. The sanction imposed by the law judge is reduced from $8,000 to $5,000 on the ground that this was an exceptionally difficult maintenance problem to solve and Respondent did make many attempts to repair the system.

In the Matter of Toyota Motor Sales, USA, Inc.

[Order No. 95–12 (5/10/95)]

Previous Order Clarified. Complainant has petitioned for modification of the earlier order issued in this case, Order No. 94–28. Complainant submits that Order No. 94–28 may imply erroneously that hearings conducted under Section 110 of the Hazardous Materials Act (HMTA) must be conducted under Section 5 of the Administrative Procedure Act (APA), 5 U.S.C. 554. Order No. 94–28 did not address or decide this issue. It explained only what is required of law judges under 14 CFR 13.232, the particular rule of practice that addresses what a law judge must include in the initial decision. Moreover, regardless of whether Section 5 of the APA applies to hearings under the HMTA, the Administrator has the authority to impose, through adjudication, the common-sense requirement that law judges articulate the reasons for their sanction decision.

In the Matter of Thomas Kilrain

[Order No. 95–13 (6/16/95)]

Appeal Perfected. Mr. Kilrain's very short appeal brief merely sets forth the issues. Based upon the proceedings below, there can be no doubt about what Mr. Kilrain is arguing on appeal. It appears that Mr. Kilrain, who is *pro se*, is making the same arguments that he raised before the law judge at the prehearing conference and the hearing. Mr. Kilrain's appeal brief, despite its obvious deficiencies, is sufficient because he is simply renewing arguments raised below. Consequently, Complainant's motion to dismiss Mr.

Kilrain's appeal with prejudice is denied.

In the Matter of Charter Airlines, James Walker and Larry Mort

[Order No. 95–14 (6/21/95)]

Stay Pending Judicial Review. Respondents requested a stay for 60 days pending the filing of a petition for review of Order 95–8. Stay granted.

Commercial Reporting Services of the Administrator's Civil Penalty Decisions and Orders

In June 1991, as a public service, the FAA began releasing to commercial publishers the Administrator's decisions and orders in civil penalty cases. The goal was to make these decisions and orders more accessible to the public. The Administrator's decisions and orders in civil penalty cases are now available in the following commercial publications:

AvLex, published by Aviation Daily, 1156 15th Street, NW, Washington, DC 20005, (202) 822–4669;

Civil Penalty Cases Digest Service, published by Hawkins Publishing Company, Inc., P.O. Box 480, Mayo, MD, 21106 (410) 798–1677;

Federal Aviation Decisions, Clark Boardman Callaghan, 50 Broad Street East, Rochester, NY 14694, (716) 546–1490.

The decisions and orders may be obtained on disk from Aviation Records, Inc., P.O. Box 172, Battle Ground, WA 98604, (206) 896–0376. Aeroflight Publications, P.O. Box 854, 433 Main Street, Gruver, TX 79040 (806) 733–2483, is placing the decisions on CD-ROM. Finally, the Administrator's decisions and orders in civil penalty cases are available on Compuserve and FedWorld.

The FAA has stated previously that publication of the subject-matter index and the digests may be discontinued once a commercial reporting service publishes similar information in a timely and accurate manner. No decision has been made yet on this matter, and for the time being, the FAA will continue to prepare and publish the subject-matter index and digests.

FAA Offices

The Administrator's decisions and orders, indexes, and digests are available for public inspection and copying at the following location in FAA headquarters: FAA Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW., Room 924A, Washington, DC 20591; (202) 267–3641.

These materials are also available at all FAA regional and center legal offices at the following locations:

Office of the Assistant Chief Counsel for the Aeronautical Center (AMC–7), Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73125; (405) 954–3296.

Office of the Assistant Chief Counsel for the Alaskan Region (AAL–7), Alaskan Region Headquarters, 222 West 7th Avenue, Anchorage, AK 99513; (907) 271–5269.

Office of the Assistant Chief Counsel for the Central Region (ACE–7), Central Region Headquarters, 601 East 12th Street, Federal Building, Kansas City, MO 64106; (816) 426–5446.

Office of the Assistant Chief Counsel for the Eastern Region (AEA–7), Eastern Region Headquarters, JFK International Airport. Federal Building, Jamaica, NY 11430; (718) 553–3285.

Office of the Assistant Chief Counsel for the Great Lakes Region (AGL–7), 2300 East Devon Avenue, Suite 419, Des Plaines, IL 60018; (708) 294–7108.

Office of the Assistant Chief Counsel for the New England Region (ANE–7), New England Region Headquarters, 12 New England Executive Park, Room 401, Burlington, MA 01803–5299; (617) 238–7050.

Office of the Assistant Chief Counsel for the Northwest Mountain Region (ANM–7), Northwest Mountain Region Headquarters, 1601 Lind Avenue, SW, Renton, WA 98055–4056; (206) 227–2007.

Office of the Assistant Chief Counsel for the Southern Region (ASO–7), Southern Region Headquarters, 1701 Columbia Avenue, College Park, GA 30337; (404) 305–5200.

Office of the Assistant Chief Counsel for the Southwest Region (ASW–7), Southwest Region Headquarters, 2601 Meacham Blvd., Fort Worth, TX 76137–4298; (817) 222–5087.

Office of the Assistant Chief Counsel for the Technical Center (ACT–7), Federal Aviation Administration Technical Center, Atlantic City International Airport, Atlantic City, NJ 08405; (609) 485–7087.

Office of the Assistant Chief Counsel for the Western-Pacific Region (AWP–7), Western-Pacific Region Headquarters, 15000 Aviation Boulevard, Lawndale, CA 90261; (310) 297–1270.

Issued in Washington, DC on July 10, 1995.

James S. Dillman,

Assistant Chief Counsel for Litigation.

[FR Doc. 95–17587 Filed 7–17–95; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–95–25]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

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

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before August 7, 1995.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. ____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT:

Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on July 13, 1995.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28191.
Petitioner: Mr. Louis D. Carrara, Jr.
Sections of the FAR Affected: 14 CFR 121.383(c).
Description of Relief Sought: To permit Mr. Carrara to serve as a pilot on an airplane engaged in operations conducted under part 121 after he has reached his 60th birthday.

Docket No.: 28205.
Petitioner: Mr. Ralph W. Sirek.
Sections of the FAR Affected: 14 CFR 121.383(c).
Description of Relief Sought: To permit Mr. Sirek to be a pilot in operations conducted under part 121 after reaching his 60th birthday.

Docket No.: 28210.
Petitioner: Mr. John A. Marshall, Jr.
Sections of the FAR Affected: 14 CFR 121.383(c).
Description of Relief Sought: To permit Mr. Marshall to act as a pilot in operations conducted under part 121 after reaching his 60th birthday.

Docket No.: 28225.
Petitioner: Northwest Airlines, Inc.
Sections of the FAR Affected: 14 CFR 43.9.
Description of Relief Sought: To permit Northwest Airlines,Inc., to use ''electronic signatures'' to meet the signature requirement specified in § 43.9.

Docket No.: 28228.
Petitioner: Flight Dynamics.
Sections of the FAR Affected: 14 CFR 25.562.
Description of Relief Sought: To allow Flight Dynamics temporary exemption from the head injury criteria of § 25.562 for its Dornier 328 aircraft until June 30, 1996, to allow redevelopments necessary to accommodate revised seating.

Dispositions of Petitions

Docket No.: 22558.
Petitioner: Boeing Commercial Airplane Company.
Sections of the FAR Affected: 14 CFR 47.69(b).
Description of Relief Sought: To extend Exemption No. 3513, as amended, which was originally granted to allow the agency to consider amending the regulations. Because a final decision is still pending, the exemption is extended to prevent disruption of the petitioner's operations being conducted under the original petition. *Grant of Temporary Exemption, May 24, 1995, Exemption No. 3513J.*

Docket No.: 25862.
Petitioner: Cessna Aircraft Company.
Sections of the FAR Affected: 14 CFR 47.69(b).
Description of Relief Sought/ Disposition: To extend Exemption No. 5043, as amended, which was originally granted to allow the agency to consider amending the regulations. Because a final decision is still pending, the exemption is extended to prevent disruption of the petitioner's operations being conducted under the original petition. *Grant of Temporary Exemption, March 27, 1995, Exemption No. 5043C.*

Docket No.: 26176.
Petitioner: AMR Combs.
Sections of the FAR Affected: 14 CFR 135.165(a) (1) and (6) and (b)(1), (6), and (7).
Description of Relief Sought/ Disposition: To extend Exemption No. 5334, as amended, which permits AMR Combs, Inc., to operate turbojet airplanes in extended overwater operations with one high-frequency communication system within certain named geographical areas subject to certain conditions and limitations. *Grant, May 24, 1995, Exemption No. 5334B.*

Docket No.: 27136.
Petitioner: Kenai Air Alaska, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To extend Exemption No. 5699, which allows Kenai Air Alaska, Inc., to operate its part 135 aircraft without a TSO–C112 (Mode S) transponder installed on its aircraft. *Grant, May 24, 1995, Exemption No. 5699A.*

Docket No.: 27144.
Petitioner: New York Helicopter.
Sections of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To extend Exemption No. 5712, which allows New York Helicopter to operate its part 135 aircraft without a TSO–C112 (Mode S) transponder installed on its aircraft. *Grant, May 24, 1995, Exemption No. 5712A.*

Docket No.: 27237.
Petitioner: Midway Aviation, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To extend Exemption No. 5738, which permits Midway Aviation, Inc., to operate under the provisions of part 135 without a TSO–C112 (Mode S) transponder. *Grant, June 5, 1995, Exemption No. 5738A.*

Docket No.: 27430.
Petitioner: Midwest Flying Service, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To extend Exemption No. 5757, which permits Midwest Flying Service, Inc., to operate aircraft N558Y, serial number 27–2695, in part 135 operations without a TSO–C112 (Mode S) transponder installed. *Grant, June 5, 1995, Exemption No. 5757A.*

Docket No.: 28096.
Petitioner: Boeing Commercial Airplane Group.
Sections of the FAR Affected: 14 CFR 25.1435(b)(1).
Description of Relief Sought/ Disposition: To permit type certification of the Model 737–700 by testing of the complete hydraulic system at 3400 psig, the system relief pressure. *Grant, May 17, 1995, Exemption No. 6086.*

Docket No.: 28118.
Petitioner: King Airelines, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit King Airelines, Inc., to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135. *Grant, May 24, 1995, Exemption No. 6093.*

Docket No.: 28207.
Petitioner: Hillsboro Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 133.19(a) and 133.51.
Description of Relief Sought/ Disposition: To allow Hillsboro Helicopters, Inc., to conduct external-load operations using a Canadian-registered rotorcraft in the United States. *Grant, May 26, 1995, Exemption No. 6092.*

[FR Doc. 95–17613 Filed 7–17–95; 8:45 am]
BILLING CODE 4910–13–M

[Summary Notice No. PE–95–26]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

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

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation

Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before August 7, 1995.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. ____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part II of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on July 13, 1995.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28166.
Petitioner: Mr. Ronald T. Brown.
Sections of the FAR Affected: 14 CFR 43.3 and 43.7.
Description of Relief Sought: To permit Mr. Brown to perform maintenance, repairs, and inspections on his 1943 Fairchild PT23C–M62C 66020, serial number 147HO, without holding a mechanic certificate, repairman certificate, repair station certificate, an operating certificate under 14 CFR part 121, 127, or 135, or an inspection authorization; without working under the supervision of a holder of a mechanic or repairman certificate; or without being an aircraft, airframe, aircraft engine, propeller, appliance, or component part manufacturer.

Docket No.: 28201.
Petitioner: Alaska Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.481 and 121.483.
Description of Relief Sought: To permit Alaska Airlines, Inc., to conduct flight operations to and from the State of Alaska and the continental United States under the requirements of the domestic flight time limitations and rest requirements of 14 CFR 121.471.

Docket No.: 28203.
Petitioner: Airpower, Inc.
Sections of the FAR Affected: 14 CFR 91.205.
Description of Relief Sought: To permit certain instrument rated pilots employed by Airpower, Inc., to operate two Gruman C–1A aircraft (N6193N and N6193Z) in Class A airspace, under an experimental certificate, using a Global Positioning System receiver authorized under Technical Standard Order No. 129 for enroute and terminal navigation in lieu of approved distance measuring equipment.

Docket No.: 28212.
Petitioner: Air Logistics.
Sections of the FAR Affected: 14 CFR 135.243 (b) and (c) and 135.245(a).
Description of Relief Sought: To permit Air Logistics to operate U.S.-registered aircraft under 14 CFR part 135 in a foreign country, using pilots certificated in that country.

Dispositions of Petitions

Docket No.: 27141.
Petitioner: Panther Aviation, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Panther to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135. *Grant, May 12, 1995, Exemption No. 6089.*

Docket No.: 27953.
Petitioner: Aero Sports Connection, Inc.
Sections of the FAR Affected: 14 CFR 103.1 (a) and (e)(1) through (e)(4).
Description of Relief Sought/ Disposition: To allow Aero Sports Connections, Inc. (ASC), to conduct training by approved flight instructors in two-place ultralight vehicles. Additionally, the exemption permits ASC to operate powered ultralight vehicles at an empty weight of not more than 496 pounds, with a vehicle tank capacity of not more than 10 gallons, with a vehicle stall speed of not more than 32 knots, and with a maximum speed of not more than 75 knots. *Grant, May 9, 1995, Exemption No. 6080.*

Docket No.: 28071.
Petitioner: Frontier Flying Service, Inc.
Sections of the FAR Affected: 14 CFR 135.180.
Description of Relief Sought/ Disposition: To allow Frontier Flying Service, Inc., to operate turbine powered airplanes having passenger seat configurations, excluding any pilot seat, of 10 to 30 seats, without an approved traffic alert and collision avoidance system (TCAS) within the airspace of the State of Alaska and any foreign airspace as approved by the foreign civil aviation authority, after February 9, 1995. *Denial, May 16, 1995, Exemption No. 6088.*

Docket No.: 28094.
Petitioner: American Trans Air.
Sections of the FAR Affected: 14 CFR 121.433(c)(1)(iii), 121.441(a)(1), 121.441(b)(1), and appendix F, part 121.
Description of Relief Sought/ Disposition: To permit American Trans Air to conduct a single visit training program (SVTP) for flight crewmembers, and eventually transition into the Advanced Qualification Program (AQP) codified in Special Aviation Regulation (SFAR) 58. *Grant, May 18, 1995, Exemption No. 6090.*

Docket No.: 28101.
Petitioner: Sun Jet International Airlines.
Sections of the FAR Affected: 14 CFR 121.343(l)(1).
Description of Relief Sought/ Disposition: To permit Sun Jet to operate two Douglas DC–9–31 aircraft after May 26, 1995, until July 9, 1995, that are equipped with digital flight data recorders that are capable of recording only 6 of 11 required parameters. *Denial, May 19, 1995, Exemption No. 6087.*

[FR Doc. 95–17597 Filed 7–17–95; 8:45 am]
BILLING CODE 4910–13–M

[Summary Notice No. PE–95–24]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

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

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain

petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before August 7, 1995.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on July 13, 1995.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28185.
Petitioner: Airline Interiors.
Sections of the FAR Affected: 14 CFR 21.439(a)(3).
Description of Relief Sought: To allow Airline Interiors to be eligible for a designated alteration station authorization without owning or leasing an aircraft hangar.

Docket No.: 28187.
Petitioner: Mr. Jimmy P. Thompson.
Sections of the FAR Affected: 14 CFR 212.383(c).
Description of Relief Sought: To permit Mr. Thompson to serve as a pilot on an airplane engaged in operations conducted under part 121 after he has reached his 60th birthday.

Docket No.: 28204.
Petitioner: Mr. Eugene D. Olson.
Sections of the FAR Affected: 14 CFR 121.383(c).
Description of Relief Sought: To permit Mr. Olson to act as a pilot on an airplane engaged in operations conducted under part 121 after he has reached his 60th birthday.

Docket No.: 28211.
Petitioner: Mr. Milton J. Songy.
Sections of the FAR Affected: 14 CFR 121.383(c).
Description of Relief Sought: To permit Mr. Songy to act as a pilot in operations conducted under part 121 after reaching his 60th birthday.

Docket No.: 28220.
Petitioner: Air Transport Association of America.
Sections of the FAR Affected: 14 CFR 121.571(a)(1)(i) and 121.585(i) (1), (2), (3), and (4).
Description of Relief Sought: To permit ATA's member airlines and similarly situated part 121 certificate holders to omit certain smoking and exit seating announcements from their passenger briefings.

Docket No.: 28222.
Petitioner: Mr. Graham G. Olson.
Sections of the FAR Affected: 14 CFR 121.383(c).
Description of Relief Sought: To permit Mr. Olson to act as a pilot in operations conducted under part 121 after reaching his 60th birthday.

Docket No.: 28230.
Petitioner: AOPA Air Safety Foundation.
Sections of the FAR Affected: 14 CFR 141.41(a)(1).
Description of Relief Sought: To permit the Air Safety Foundation to credit training time acquired on certain personal computer-based pilot ground trainers as flight training time required for an instrument pilot rating.

Docket No.: 28234.
Petitioner: Mr. Donald I. McKay.
Sections of the FAR Affected: 14 CFR 121.383(c).
Description of Relief Sought: To permit Mr. McKay to act as a pilot in operations conducted under part 121 after reaching his 60th birthday.

Docket No.: 28235.
Petitioner: Mr. James A. Fitts.
Sections of the FAR Affected: 14 CFR 121.383(c).
Description of Relief Sought: To permit Mr. Fitts to act as a pilot in operations conducted under part 121 after reaching his 60th birthday.

Dispositions of Petitions

Docket No.: 26440.
Petitioner: Dassault Falcon Jet Corporation.
Sections of the FAR Affected: 14 CFR 47.65 and 47.69(b).
Description of Relief Sought/ Disposition: To extend Exemption No. 5315, as amended, which permits Dassault Falcon Jet Corporation to obtain a Dealer's Aircraft Registration Certificate without meeting the United States citizenship requirements and to conduct limited flights outside the United States. *Grant, May 26, 1995, Exempetion No. 5315B.*

Docket No.: 27139.
Petitioner: Helicopter Adventures, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To extend Exemption No. 5698, which allows Helicopter Adventures, Inc., to operate its part 135 aircraft without a TSO–C112 (Mode S) transponder installed on its aircraft: *Grant, June 16, 1995, Exemption No. 5698A.*

Docket No.: 27143.
Petitioner: Columbia Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c).
Description of Relief Sought/ Disposition: To extend Exemption No. 5696, which allows Columbia Helicopters, Inc., to operate part 135 aircraft without a TSO–C112 (Mode S) transponder installed on its aircraft. *Grant, June 16, 1995, Exemption No. 5696A.*

Docket No.: 27147.
Petitioner: Bulldog Airlines, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To extend Exemption No. 5739, which allows Bulldog Airlines, Inc., to operate part 135 aircraft without a TSO–C112 (Mode S) transponder installed on its aircraft. *Grant, June 5, 1995, Exemption No. 5739A.*

Docket No.: 27166.
Petitioner: Puget Sound Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To extend Exemption No. 5701, which allows Puget Sound Helicopters, Inc., to operate part 135 aircraft without a TSO–C112 (Mode S) transponder installed on its aircraft. *Grant, June 13, 1995, Exemption No. 5701A.*

Docket No.: 27167.
Petitioner: Alaska Helicopters, Inc.

Sections of the FAR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To extend Exemption No. 5709, which allows Alaska Helicopters, Inc., to operate part 135 aircraft without a TSO–C112 (Mode S) transponder installed on its aircraft. *Grant, June 16, 1995, Exemption No. 5709A.*

Docket No.: 27258.

Petitioner: Air Methods.

Sections of the FAR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To extend Exemption No. 5720, which allows Air Methods to operate part 135 aircraft without a TSO–C112 (Mode S) transponder installed on its aircraft. *Grant, June 5, 1995, Exemption No. 5720A.*

Docket No.: 27539.

Petitioner: ProMech Inc., dba Seaborne Seaplane Adventures.

Sections of the FAR Affected: 14 CFR 135.173.

Description of Relief Sought/ Disposition: To permit Seaborne Seaplane Adventures to operate two DeHavilland Twin Otter DHC–6–300 aircraft that are not equipped with weather radar equipment. *Denial, June 7, 1995, Exemption No. 6098.*

Docket No.: 28096.

Petitioner: Boeing Commercial Airplane Group.

Sections of the FAR Affected: 14 CFR 25.1435(b)(1).

Description of Relief Sought/ Disposition: To permit type certification of the Model 737–700 by testing of the complete hydraulic system at 3400 psig, the system relief pressure. *Grant, May 17, 1995, Exemption No. 6086.*

Docket No.: 28112.

Petitioner: Ipeco Europe.

Sections of the FAR Affected: 14 CFR 25.562(b)(2).

Description of Relief Sought/ Disposition: To make permanent Exemption No. 5740, as amended, which allows Ipeco Europe exemption from the floor warpage test requirement for Ipeco pilot and co-pilot seats in Dornier model 328 airplanes, only for those D0328 airplanes registered prior to June 30, 1995. *Denial, June 2, 1995, Exemption No. 6097.*

Docket No.: 28115.

Petitioner: Aero Flight Service, Inc.

Sections of the FAR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Aero Flight Service, Inc., to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135. *Grant, May 9, 1995, Exemption No. 6084.*

Docket No.: 28140.

Petitioner: Aviation Charter, Inc.

Sections of the FAR Affected: 14 CFR 134.143(c)(2).

Description of Relief Sought/ Disposition: To permit Aviation Charter, Inc., to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135. *Grant, June 13, 1995, Exemption No. 6107.*

Docket No.: 28158.

Petitioner: Twin Otter International, Ltd.

Sections of the FAR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Twin Otter International, Ltd., to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135. *Grant, June 16, 1995, Exemption No. 6111.*

Docket No.: 28159.

Petitioner: Grand Canyon Airlines.

Sections of the FAR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Grand Canyon Airlines to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135. *Grant, June 13, 1995, Exemption No. 6101.*

Docket No.: 28172.

Petitioner: Helicopters International, Inc.

Sections of the FAR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Helicopters International, Inc., to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135. *Grant, June 13, 1995, Exemption No. 6109.*

Docket No.: 28173.

Petitioner: Bemidji Airlines.

Sections of the FAR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Bemidji Airlines to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135. *Grant, June 13, 1995, Exemption No. 6110.*

Docket No.: 28174.

Petitioner: Air Carriage.

Sections of the FAR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Air Carriage to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135. *Grant, June 13, 1995, Exemption No. 6108.*

Docket No.: 28208.

Petitioner: K–C Aviation, Inc.

Sections of the FAR Affected: 14 CFR 25.562(a), (b), and (c).

Description of Relief Sought/ Disposition: To allow installation of ''executive seating'' in Jetstream Model 4100 airplanes, until such time as design solutions are available. *Partial Grant, June 15, 1995, Exemption No. 6100.*

[FR Doc. 95–17598 Filed 7–17–95; 8:45 am]

BILLING CODE 4910–13–M

Availability of Solicitation for Development of a High Speed Computer Tomography Explosive Detection Device

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Availability of Solicitation.

SUMMARY: The FAA is authorized under Section 107 of the Aviation Security Improvement Act of 1990 (P.L. 101–604) to award grants for the implementation of technologies and procedures to counteract terrorist acts against civil aviation. Further, Section 307 of the FAA Reauthorization Act of 1994 (Public Law 103–305) permits the Administrator to enter into cooperative agreements, on a cost sharing basis, with Federal and non-Federal entities to conduct aviation research, engineering and development, including the development of prototypes and demonstration models. The FAA has criteria for certification of Explosion Detection Systems (EDS) which call for the equipment to detect, under realistic air carrier operating conditions, the amounts, configurations and types of explosive materials likely to be used to cause catastrophic damage to commercial aircraft. At present, only one EDS device based on computer tomography (CT) technology has been certified by the FAA. This project has as a goal the development of alternative CT-based explosive detection systems to foster competition in the EDS market. Greater competition should lead to lower prices, greater innovation, and ultimately, greater safety for the air traveler.

DATES: Requests for the solicitation must be received on or before July 25, 1995. The solicitation will open on July 7, 1995, and will close on September 1, 1995. All applications responsive to the solicitation must be received on or before September 1, 1995.

ADDRESSES: Inquiries regarding this matter should be directed to: CT

Proposals, Federal Aviation Administration Technical Center, Office of Research and Technology Applications, Grants Officer, AAR–201, Building 270, Room B115, Atlantic City International Airport, NJ 08405.

FOR FURTHER INFORMATION CONTACT: Questions of a technical nature may be addressed to Mr. Ed Rao at (609) 485–6996. Questions related to grants and cooperative agreements may be addressed to Ms. Kathleen Fazen at (609) 485–4431.

SUPPLEMENTARY INFORMATION:

Background

The potential of CT for detecting and identifying explosives concealed in baggage and packages has long been recognized. CT images are created by quantitatively determining the x-ray attenuation by materials within a cross section and mapping these values in a reconstruction matrix. The three dimensional image presented has many views and a high resolution and can be maneuvered in real time. The grant seeks to improve the performance of a CT based EDS device in terms of high detection probabilities, high throughput rates, low false alarm rate and a low unit cost.

The application should consist of a technical proposal covering the methodology and technical approaches on the following life cycle aspects of EDS prototype development:

a. Preliminary Design Phase,

b. Final Design Phase, and

c. Prototype Fabrication and Testing Phase.

The developed prototype explosives detection device will meet or exceed specified detection and false alarm rates while achieving a high throughput rate and low unit cost. The target throughput rate is 600–700 bags per hour and the target unit cost is approximately $500,000 per deployable unit. The performance period for the grant is not to exceed 24 months from the date of award. The certification criteria are classified and require that the applicant's principal investigator have a security clearance at the confidential level. Clearance information should be addressed to: Ms. Karen Clark, ACT–008, FAA Technical Center, Atlantic City International Airport, New Jersey 08405; telephone 609–485–6692, and facsimile 609–485–5690.

A meeting open to all interested applicants will be held approximately two weeks after the publication of this announcement, at Building 315, FAA Technical Center, Atlantic City, New Jersey. A special classified briefing on the certification criteria will also be held at that time to release and clarify the classified data on the project. The exact details of the date and time of these meetings will be provided in the solicitation publication. The closing date for the receipt of the grants proposals is September 1, 1995.

Additional requirements are identified in the solicitation: Development of a High Speed Computer Tomography Explosive Detection Device, Solicitation 95.3.

Specific selection criteria is set out in the solicitation.

Dated: July 12, 1995.

Andres Zellweger,

Director, Office of Aviation Research.

[FR Doc. 95–17596 Filed 7–17–95; 8:45 am]

BILLING CODE 4910–13–M

Flight Service Station at Northway, Alaska; Notice of Change in Facility Operation

Notice is hereby given that on or about July 25, 1995, we will be permanently reducing the hours of the Northway, Alaska, Flight Service Station (FSS). They will operate from 6:00 a.m. to 9:30 p.m. On September 30, 1995, Northway FSS will close until March 1, 1996. From that date on, Northway FSS will operate as a seasonal facility, remaining open March 1 through September 30, 6:00 a.m. to 9:30 p.m. annually. When open, Northway will operate as a full-service facility. When closed, services will be provided by the Fairbanks Automated Flight Service Station. This information will be reflected in the FAA Organization Statement the next time it is reissued. Sec. 313(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 752; 49 U.S.C. App. 1354(a).

Issued in Anchorage, Alaska on June 30, 1995.

Jacqueline L. Smith,

Regional Administrator, Alaskan Region.

[FR Doc. 95–17592 Filed 7–17–95; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent to Rule on Application to Use the Revenue from a Passenger Facility Charge (PFC) at Delta County Airport, Escanaba, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Delta County Airport, Escanaba, Michigan, under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before August 17, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Harvey Setter, Airport Manager, of the Delta County Airport and Parks Commission at the following address: Delta County Airport, 3300 Airport Road, Escanaba, Michigan 49829.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Delta County Airport and Parks Commission under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Jon B. Gilbert, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111 (313–487–7281). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Delta County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On June 14, 1995, the FAA determined that the application to use the revenue from a PFC submitted by the Delta County Airport and Parks Commission was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 12, 1995.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Actual charge effective date: February 1, 1993

Estimated charge expiration date: August 1, 1996

Total approved net PFC revenue: $158,325

Brief description of proposed project(s): Rehabilitate, widen, and light (MIRL)

Runway 18/36; Extend and light (MIRL) Runway 18; Acquire land including relocation assistance; Construct and light (MITL) parallel (north/south) taxiway.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air taxis and charters.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Delta County Airport and Parks Commission.

Issued in Des Plaines, Illinois, on July 5, 1995.

Benito De Leon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 95–17590 Filed 7–17–95; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent to Rule on Application to Impose and Use the Revenue from a Passenger Facility Charge (PFC) at Fayetteville Municipal Airport, Fayetteville, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Fayetteville Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before August 17, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Staff, ASW–610D, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Dale Frederick, Manager of Fayetteville Municipal Airport at the following address: Mr. Dale Frederick, Fayetteville Municipal Airport, 4500 South School Avenue, Suite F, Airport Terminal Building, Fayetteville, AR 72701.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under Section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Staff, ASW–610D, Fort Worth, Texas 76193–0610, (817) 222–5614.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Fayetteville Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part of the Federal Aviation Regulations (14 CFR Part 158).

On July 6, 1995, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of Section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 31, 1995.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: January 1, 1996

Proposed charge expiration date: July 30, 1999

Total estimated PFC revenue: $2,584,339

Brief description of proposed project(s):

PROJECTS TO IMPOSE AND USE PFC'S

Master Plan Update, Airfield Safety Area Improvements, Terminal Expansion, Land Acquisition/ Easements, Airfield Safety Improvements, and PFC Administrative Costs

Proposed class or classes of air carriers to be exempted from collecting PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Staff, ASW–610D, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Fayetteville Municipal Airport.

Issued in Fort Worth, Texas on July 10, 1995.

Edward N. Agnew,

Acting Manager, Airports Division.

[FR Doc. 95–17594 Filed 7–17–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Sebastian, Crawford, Scott, Logan, Polk, Howard and Sevier Counties, AR

AGENCY: Federal Highway Administration (FHA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in the Arkansas Counties of Sebastian, Crawford, Scott, Logan, Polk, Howard and Sevier.

FOR FURTHER INFORMATION CONTACT: Wendall L. Meyer, Environmental and Design Specialist, Federal Highway Administration, 3128 Federal Office Building, Little Rock, AR 72201–3298, telephone: (501) 324–6430; or Reid Beckel, Consultant Coordinator, Roadway Design, Arkansas State Highway and Transportation Department, P.O. Box 2261, Little Rock, AR 72203, telephone: (501) 569–2163.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Arkansas State Highway and Transportation Department, will prepare an environmental impact statement (EIS) on a proposal to construct a four-lane, divided, fully controlled access highway facility located on new alignment. Several alternatives and locations will be considered, including various types of improvements and combinations of improvements to the existing facility. The ''no-action'' alternative will also be considered, in which roads are constructed in accordance with the Statewide Transportation Improvement plan, with the exception of the proposed facility. The approximate length of the project is 206 kilometers (128 miles).

This Environmental Impact Statement will also include a Major Investment Study within the metropolitan area of Fort Smith, AR, as required by the Code of Federal Regulations, Section 23, Part 450.

The proposed improvements would improve the safety and capacity of the existing route and increase regional mobility along a proposed ultimate

route extending from Kansas City, MO to Shreveport, LA. This project is one of several projects identified as ''high priority corridors'' on the National Highway System that would provide a transportation corridor of national significance from Kansas City to Shreveport. The proposed improvements will draw new traffic through western Arkansas and serve as both a short-term and long-term economic stimulus, promoting development in this currently rural area.

The northern terminus of the proposed improvements will connect to Interstate 40 near Fort Smith, AR. The southern terminus will connect with the proposed improvements of U.S. 71 near DeQueen, AR, for which an EIS is currently being prepared.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, state, and local agencies and to private organizations and citizens who have previously expressed or are known to have an interest in this project. A series of public meetings will be held within the study area beginning in the summer of 1995, with on-going public involvement activities. Scoping meetings with local officials and State and Federal resource agencies will also be held during the summer of 1995. The draft Environmental Impact Statement (EIS) will be available for public and agency review and comment prior to a public hearing. Public notice will be given of the time and place for all meetings and hearings.

To ensure that the full range of issues related to this proposed project are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: July 12, 1995.

Wendall L. Meyer,

Environmental and Design Specialist, FHWA, Little Rock, AR.

[FR Doc. 95–17561 Filed 7–17–95; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

[Docket No. 95–30; Notice 2]

Decision that Nonconforming 1992 Mercedes-Benz 600SL Passenger Cars are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1992 Mercedes-Benz 600SL passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1992 Mercedes-Benz 600SL passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the 1992 Mercedes-Benz 500SL, and they are capable of being readily altered to conform to the standards.

DATES: The decision is effective as of July 18, 1995.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Northern California Diagnostics Laboratory, Inc. of Napa, California (Registered Importer R–92–011) petitioned NHTSA to decide whether 1992 Mercedes-Benz 600SL passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on May 1, 1995 (60 FR 21238) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number of Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–121 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that a 1992 Mercedes-Benz 600SL (Model ID 129.076) is substantially similar to a 1992 Mercedes-Benz 500SL originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30115, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 13, 1995.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–17634 Filed 7–17–95; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 95–52; Notice 1]

Receipt of Petition for Decision That Nonconforming 1992 Mercedes-Benz 300CE Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1992

Mercedes-Benz 300CE passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1992 Mercedes-Benz 300CE that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATE: The closing date for comments on the petition is August 17, 1995.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Motors of Kingsville, Maryland (''J.K.'') (Registered Importer 90–006) has petitioned NHTSA to decide whether 1992 Mercedes-Benz 300CE (Model ID 124.050 and 124.061) passenger cars are eligible for importation into the United States. The vehicle which J.K. believes is substantially similar is the 1992 Mercedes-Benz 300CE that was manufactured for importation into, and sale in, the United States and certified by its manufacturer, Daimler Benz A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1992 Mercedes-Benz 300CE to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that the non-U.S. certified 1992 Mercedes-Benz 300CE, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1992 Mercedes-Benz 300CE is identified to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence, * * *. 103* Defrosting and Defogging Systems, 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 107 *Reflecting Surfaces,* 109 *New Pneumatic Tires,* 113 *Hod Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 203 *Impact Protection for the Driver From the Steering Control System,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 211 *Wheel Nuts, Wheel Discs and Hubcaps,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that the non-U.S. certified 1992 Mercedes-Benz 300CE complies with the Bumper Standard found in 49 CFR part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked ''Brake'' for a lens with an ECE symbol on the brake failure indicator lamp; (b) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamps and front sidemakers; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp assembly.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* Installation of a warning buzzer microswitch and a warning buzzer in the steering lock assembly.

Standard No. 115 *Vehicle Identification Number:* Installation of a VIN plate that can be read from outside the left windsheld pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power Window Systems:* Installaton of a relay on the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a seat belt warning buzzer, wired to the seat belt latch; (b) installation of knee bolsters to augument the vehicle's air bag based passive restraint system, which otherwise conforms to the standard. The petitioner stated that the vehicle is equipped with lap and shoulder belts in the front and rear outboard seating positions, and with a lap belt in the rear center seating position.

Standard No. 214 *Side Impact Protection:* installation of reinforcing beams.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before

and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 13, 1995.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–17635 Filed 7–17–95; 8:45 am]

BILLING CODE 4910–59–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported For Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that those objects to be included in the exhibit ''House of Style'' (See list [1]) which are imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the listed exhibit objects at the Rock and Roll Hall of Fame and Museum, Cleveland, Ohio, from on or about September 1, 1995 through on or about September 1, 1997, is in the national interest. Public Notice of this determination is ordered to be published in the **Federal Register**.

Dated: July 11, 1995.

Les Jin,

General Counsel.

[FR Doc. 95–17583 Filed 7–17–95; 8:45 am]

BILLING CODE 8230–01–M

Voice of America; Development Office; VOA Computerized Pronunciation Guide Project Development

ACTION: Request for proposals.

SUMMARY: The Voice of America Office of Development announces a solicitation for proposals to participate with VOA in technical development and commercial marketing of the VOA Pronunciation Guide, a computerized digital audio pronunciation reference system. The system provides current and authoritative pronunciation of names, places and things found in international news reports. VOA has completed concept and initial design. The Guide is suitable for commercial marketing to media, business, home, government and educational organizations in the United States and abroad as an on-line service, network or stand-alone service. Applicants must demonstrate hardware and software expertise and competency in addition to marketing capability. Organizations should suggest options for cooperation with VOA in terms of cash benefits, cost sharing, provision of goods or services or exchanges in kind.

Overall authority for VOA to solicit proposals is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256 as amended, also known as the Fullbright-Hays Act, and The U.S. Information and Educational Exchange Act of 1948, as amended, known as the Smith-Mundt Act. Proposals must conform to requirements and guidelines outlined in the Solicitation Package.

ANNOUNCEMENT NAME AND NUMBER: All communications with VOA concerning this announcement should refer to the above title and reference number B/VOA–95–1.

DATES: Deadline for proposal: All copies must be received at VOA by 5 p.m. Washington time on Friday October 13, 1995. Faxes documents will not be accepted, nor will documents postmarked on Friday, October 13, 1995, but received on a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline.

FOR FURTHER INFORMATION CONTACT: Voice of America Development Office, Room 3340, 330 Independence Avenue, Washington, D.C. 20547, telephone: 202–401–8526, FAX: 202–401–2374, EMail: mkennedyusia.gov. to request a solicitation package which includes more detailed award criteria, all application forms, and guidelines for preparing proposals. For specific questions or concerns regarding the solicitation, contact VOA Senior Development Officer Margaret Kennedy. Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to VOA or submitting their proposals. Once the RFP deadline has passed, representatives of the VOA may not discuss the competition in any way with applicants until after the Bureau proposal review process has been completed.

ADDRESSES: Applicants must follow all instructions given in the Solicitation Package and send only complete applications to: Voice of America, Ref.: B/VOA–95–1, Office of Development, Room 3340, 330 Independence Avenue, S.W., Washington, D.C. 20547.

SUPPLEMENTARY INFORMATION

Overview

VOA is the preeminent authority on the pronunciation of foreign names and places for American media. VOA seeks assistance to complete its interactive, digital audio system to provide its professional staff with fast and accurate pronunciations for international names commonly found in international news. This system provides users with precise visual and audio guidance using a specially-designed international phonetic alphabet and spoken pronunciations by VOA's language experts. The prototype currently in use at VOA uses Foxpro for Windows with a SoundBlaster 16 sound card and runs on a stand-alone IBM compatible computer. With modification, it could run on Macintosh or a network. VOA's current index has 50,000 entries updated daily. The guide provides text references for honorifics, second reference and other useful information. The index can be expanded and tailored for specialized needs.

Guidelines

This solicitation is for a proposal for joint creation of a commercial reference system based on the prototype currently in use at VOA. VOA maintains the integrity of the data base on a 24 hour basis through the expertise of its own editors and language experts.

A proposal should clearly state how the applicant would work with VOA to develop hardware and software to facilitate commercial access to the VOA Pronunciation Guide. Proposals may include an on line service, network and/or stand-alone product.

Proposals should address hardware options to implement practical data entry, storage and retrieval, compression system and software as well as project management. Proposals should include geographical marketing areas. Applicants should refer to the Program Objectives, Goals and Implementation section of the Solicitation Package for greater detail regarding special conditions and other program information.

[1] A copy of this list may be obtained by contacting Lorie J. Nierenberg, Assistant General Counsel, at 202/619–6084; the address is Room 700, U.S. Information Agency, 301–4th Street, S.W., Washington, D.C. 20547–0001

Review Process

VOA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to the USIA Office of Contracts for review. The VOA Director will have final authority on choice of successful applicant.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation.

1. Accommodation of VOA objectives: The concept and current application of the VOA Pronunciation Guide are served by the proposal.

2. Institutional Record and Capacity: The proposal should demonstrate an ability by the applicant to provide sufficient hardware and software capacity and expertise to develop and maintain technical integrity of the system, and define the extent of public access available. The proposal should also demonstrate ability to provide support services including marketing, billing, project management and data capacity.

3. Impact: Ability to make the Pronunciation Guide available to potential users outside the United States is demonstrated. VOA seeks the widest possible availability. Ability to provide benefit to VOA in terms of services, exchanges, or cash should be evident.

Notice

The terms and conditions published in the RFP are binding and may not be modified by any VOA representative. Explanatory information provided by VOA that contradicts published language will not be binding. Issuance of RFP does not constitute a commitment on the part of the Government to go forward with the project.

Notification

All applicants will be notified of the results of the review process on or about December 13, 1995.

Dated: July 17, 1995.

Geoffrey Cowan,

Director, Voice of America.

[FR Doc. 95–17584 Filed 7–17–95; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Information Collections Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Number: 2900–0029.

Titles and Form Numbers: Offer to Purchase and Contract of Sale, VA Form 26–6705; Credit Statement of Prospective Purchaser, VA Form 26–6705b; Addendum to Offer to Purchase and Contract of Sale, VA Form 26–6705c; and (Virginia) Addendum to Offer to Purchase and Contract of Sale, VA Form 26–6705d.

Type of Information Collection: Revision of a currently approved collection.

Needs and Uses:

a. VA Form 26–6705 serves as an offer to purchase and contract of sale for submitted purchase offers to VA on properties acquired through operation of the guaranteed and direct loan programs.

b. VA Form 26–6705b is used to collect credit and income information necessary to determine whether an applicant qualifies to purchase a VA-owned property.

c. VA Form 26–6705c is an addendum used to simplify the selection process among competing offers and ensure that the offer selected provides the greatest value to VA.

d. VA Form 26–6705d is a new addendum to VA Form 6705 for use in Virginia. It includes requirements of State law which must be acknowledged by the purchaser at or prior to closing.

Affected Public: Individuals or household.

Estimated Annual Burden: 64,583 total hours.

a. VA Form 26–6705—33,333 hours.
b. VA Form 26–6705b—33,500 hours.
c. VA Form 26–6705c—8,333 hours.
d. VA Form 26–6705d—417 hours.

Estimated Average Burden per Respondent: 14 minutes average.

a. VA Form 26–6705—20 minutes.
b. VA Form 26–6705b—20 minutes.
c. VA Form 26–6705c—5 minutes.
d. VA Form 26–6705d—5 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 272,500 total respondents.

a. VA Form 26–6705—100,000 respondents.
b. VA Form 26–6705b—67,500 respondents.
c. VA Form 26–6705c—100,000 respondents.
d. VA Form 26–6705d—5,000 respondents.

OMB Number: 2900–0094.

Titles and Form Numbers: Supplement to VA Forms 21–526, 21–534, and 21–535 (For Philippine Claims), VA Form 21–4169.

Type of Information Collection: Extension of a currently approved collection.

Needs and Uses: The information is used by VA Regional Office in Manila to determine whether eligibility for VA benefits can be established based on service in the Commonwealth Army of the Philippines or recognized guerrilla organization.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,000 hours.

Estimated Average Burden per Respondent: 1 hour.

Frequency of Response: On time.

Estimated Number of Respondents: 1,000 respondents.

OMB Number: 2900–0496

Title and Form Number: Claim for Veterans Mortgage Life Insurance, VA Form 29–0549.

Type of Information Collection: Reinstatement, without change, of a previously approved collection for which approval has expired.

Needs and Uses: The form is used by the mortgage holder to claim the proceeds of Veterans Mortgage Life Insurance and to provide information needed to authorize payment of the insurance. The information is used by VBA to process the mortgage holder's claim.

Affected Public: Individuals or households.

Estimated Annual Burden: 250 hours.

Estimated Average Burden per Respondent: 60 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 250 respondents.

ADDRESSES: Copies of these submissions may be obtained from Trish Fineran, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–6886.

Comments and recommendations concerning the submissions should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources

and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Do not send request for benefits to this address.

DATES: Comments on the information collections should be directed to the OMB Desk Officer by no later than August 17, 1995.

Dated: July 5, 1995.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 95–17534 Filed 7–17–95; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 137

Tuesday, July 18, 1995

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).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Thursday, July 20, 1995.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

Charcoal Labeling

The staff will brief the Commission on recommended revisions to the labeling requirements on packages of charcoal.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: July 13, 1995.

Sadye E. Dunn,

Secretary.

[FR Doc. 95–17758 Filed 7–14–95; 11:48 pm]

BILLING CODE 6355–01–M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, July 19, 1995.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS:

MATTERS TO BE CONSIDERED:

Open to the Public.

1. FY 1997 Budget

The Commission will consider issues related to the Commission's budget for fiscal year 1997.

Closed to the Public.

2. Enforcement Matter OS# 5381

The staff and Commission will discuss issues related to reporting under Section 15, CPSA.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: July 14, 1995.

Sadye E. Dunn,

Secretary.

[FR Doc. 95–17757 Filed 7–14–95; 1:48 pm]

BILLING CODE 6355–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, July 24, 1995.

PLACE: William McChesney Martin, Jr. Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 14, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–17785 Filed 7–14–95; 3:46 pm]

BILLING CODE 6210–01–P

NATIONAL SCIENCE FOUNDATION

NATIONAL SCIENCE BOARD

DATE AND TIME:

July 25, 1995, 8:00 a.m. Closed Session
July 25, 1995, 12:30 p.m. Open Session
July 25, 1995, 12:45 p.m. Closed Session

PLACE: National Science Foundation, 4201 Wilson Boulevard, Room 1235, Arlington, Virginia 22230

STATUS:

Part of this meeting will be open to the public.

Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Tuesday, July 25, 1995

Closed Session (8:00 a.m.–12:00 p.m.)

—Minutes, June 1995 Meeting
—NSF FY 1997 Budget

Tuesday, July 25, 1995

Open Session (12:30 p.m.–12:45 p.m.)

—Minutes, June 1995 Meeting
—Closed Session Agenda Items for August
—Chairman's Report
—Director's Report

Tuesday, July 25, 1995

Closed Session (12:45 p.m.–3:00 p.m.)

—NSF FY 1997 Budget (Continued)
—Other Business/Adjourn

Marta Cehelsky,

Executive Officer.

[FR Doc. 95–17706 Filed 7–14–95; 10:31 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of July 17, 24, 31, and August 7, 1995.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Week of July 17

There are no meetings scheduled for the Week of July 17.

Week of July 24—Tentative

Wednesday, July 26

10:00 a.m.
Briefing on Status of Maintenance Rule (Public Meeting)
(Contact: Richard Correia, 301–415–10009)
11:30 a.m.
Affirmation Session (Public Meeting)
a. Georgia Institute of Technology Appeal of LBP–95–6 (Tentative)
(Contact: Andrew Bates, 301–415–1963)
2:00 p.m.
Briefing on Reactor Inspection Program (Public Meeting)
(Contact: Frank Gillespie, 301–415–1275)

Thursday, July 27

2:00 p.m.
Meeting with Nuclear Safety Research Review Committee (NSRRC) (Public Meeting)
(Contact: George Sege, 301–415–6593)

Week of July 31—Tentative

There are no meetings scheduled for the Week of July 31.

Week of August 7—Tentative

There are no meetings scheduled for the Week of August 7.

Note: The Nuclear Regulatory Commission is operating under a delegation of authority

to Chairman Shirley A. Jackson, because with three vacancies on the Commission, it is temporarily without a quorum. As a legal matter, therefore, the Sunshine Act does not apply; but in the interests of openness and public accountability, the Commission will conduct business as though the Sunshine Act were applicable.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

Dated: July 14, 1995.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 95–17759 Filed 7–14–95; 1:48 pm]

BILLING CODE 7590–01–M

Federal Register

Tuesday
July 18, 1995

Part II

Department of Agriculture

Rural Utilities Service

7 CFR Part 1718

Loan Security Documents for Electric Borrowers; Final Rule

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1718

RIN 0572–AB06

Loan Security Documents for Electric Borrowers

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) hereby establishes new policies and requirements for the form of mortgage required of electric distribution borrowers. This rule updates and clarifies the provisions of the mortgage, ensures that security for loans made to distribution borrowers will continue to be adequate, generally confines the scope of the mortgage primarily to basic issues of collateral and loan security, and supports borrower access to other credit sources.

EFFECTIVE DATE: This rule is effective August 17, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Alex M. Cockey, Jr., Deputy Assistant Administrator—Electric, U.S. Department of Agriculture, Rural Utilities Service, room 4037–S, Ag Box 1560, 14th Street & Independence Avenue, SW., Washington, DC 20250–1500. Telephone: 202–720–9547.

SUPPLEMENTARY INFORMATION: This rule has been determined to be not significant for the purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget (OMB). The Administrator of RUS has determined that the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply to this rule. The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment. This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A Notice of Final Rule titled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts RUS electric loans and loan guarantees from coverage under this Order. This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule; (2) Will not have any retroactive effect; and (3) Will not require administrative proceedings before any parties may file suit challenging the provisions of this rule.

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850 Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325.

Information Collection and Recordkeeping Requirements

The existing recordkeeping and reporting burdens contained in this rule were approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), under control numbers 0572–0032 and 0572–0103.

Send questions or comments regarding these burdens or any other aspect of these collections of information, including suggestions for reducing the burden, to the Office of Information and Regulatory Affairs, Office of Management and Budget, NEOB, Washington, DC 20503. Attention: Desk Officer for USDA.

Background

On September 29, 1994, at 59 FR 49594, the Rural Utilities Service (RUS) published a proposed rule, 7 CFR 1718 Loan Security Documents for Electric Borrowers, Subpart B Mortgage for Distribution Borrowers, which proposed the agency's policies and requirements for mortgages used to secure direct and guaranteed loans made to electric distribution borrowers. The objectives of the proposed rule were to update and clarify the provisions of the mortgage used with distribution borrowers, to generally confine the scope of the mortgage primarily to basic issues of collateral and loan security, to support borrower access to other credit sources, and to continue to provide adequate loan security. This proposal was preceded by the revision of the agency's policies and requirements for accommodating or subordinating the lien of the RUS mortgage, which was published in final form in the **Federal Register** on October 19, 1993 at 58 FR 53835.

Comments on the proposed rule were received from 30 different sources, including the Ad Hoc Mortgage Committee of the National Rural Electric Cooperative Association (NRECA), the National Rural Utilities Cooperative Finance Corporation (CFC), CoBank, several state-wide or regional electric cooperative associations, and a number of individual distribution and power supply borrowers.

In addition to the written comments received, RUS met, in either separate or combined meetings, with representatives of the ad hoc NRECA Mortgage Committee, CFC, and CoBank to discuss and answer questions regarding specific provisions of the proposed rule, to clarify the meaning, scope and effect of some proposed provisions, and to listen to alternatives to certain provisions. The NRECA Mortgage Committee also submitted additional written comments to clarify certain points in their earlier written comments. Also, some commenters provided additional oral comments by telephone to clarify or expand their written comments.

All of the written and oral comments received, some of which were conflicting, were taken into consideration in drafting the final rule. The more important comments and issues are discussed below.

Published elsewhere in this issue of the **Federal Register** is a proposed rule that sets forth proposed amendments to RUS regulations to update the agency's policies and requirements regarding loan contracts with distribution borrowers. These new policies and requirements are designed to complement the new distribution mortgage and to reflect changes in the lending program and the electric industry that have occurred over the past several years. Readers are encouraged to review that proposed rule in connection with the final mortgage published today.

Phase-in of New Mortgage

Distribution borrowers receiving a loan from RUS during the transition period between now and the date the new model loan contract is published in final form in the **Federal Register** may opt to execute the new model mortgage and the proposed model loan contract. Such borrowers will have the further option of executing the final form of the model loan contract after it is published in the **Federal Register**. Distribution borrowers receiving a loan from RUS during the period after publication of the final form of the new model loan contract but before its effective date may opt for the final forms of both the model loan contract and the model mortgage. If there are other co-mortgagees on the borrower's existing mortgage, which there are in most cases, the borrower would have to obtain the approval of these co-mortgagees before executing a new mortgage.

Other borrowers not obtaining a new loan from RUS could request that a new mortgage and loan contract be executed, for example, in connection with a lien accommodation request or if the borrower is trying to expand its access to future private financing. RUS will attempt to honor these requests, but may be constrained by time and staff limitations.

After the effective date of the new model loan contract, all distribution borrowers receiving a loan or loan guarantee from RUS will be required to execute the new model forms of the mortgage and loan contract. The proposed mortgage rule had proposed that borrowers receiving a lien accommodation after the effective date of the new mortgage would have the option of staying with their existing mortgage. That proposed provision was not intended to give borrowers the absolute right to stay with their existing mortgage for all time, even after both the new mortgage and new RUS loan contract have been finalized. In the proposed rule for the RUS loan contract, published elsewhere in this issue of the **Federal Register**, borrowers receiving a lien accommodation or other financial assistance from RUS after the effective date of the new loan contract may on a case-by-case basis be required by RUS to execute the new forms of the loan documents. Again, before executing a new mortgage, borrowers may have to obtain the approval of any other lenders secured under their existing mortgage.

Mortgage Lien; Excepted Property; Permitted Encumbrances

Both CFC and CoBank recommended that the lien of the new mortgage, like that of the existing mortgage, should be more inclusive and cover such assets as cash, stocks, other securities, computer records, and other property essential to the operation of the utility system. This recommendation has been accepted and the changes included in the final mortgage.

One commenter recommended that emission allowances not be covered by the mortgage lien because that would inhibit free market trading. This recommendation was not accepted. Emission allowances represent a very important element of collateral since they are required for generation and because of their potential market value. RUS does not believe that having a lien on Emission allowances will materially inhibit a borrower's ability to obtain fair market value for these assets. Borrowers should be able to take the necessary steps prior to the sale of the allowances to obtain mortgagee approval to release the lien. Moreover, Mortgagee approval of such sales would not be required if the conditions of the mortgage are met with regard to limitations on transfers of property.

Section 1.01 Definitions

A borrower association stated that accounting requirements should be decided by the mortgagee with the majority of the outstanding debt. This recommendation has not been adopted since it is in the interests of all mortgagees to have continuity in accounting requirements and not have the standards changed depending on which mortgagee holds a majority of the outstanding debt. The final mortgage retains the provision that accounting requirements will be those promulgated by RUS so long as RUS is a mortgagee, and if RUS ceases to be a mortgagee, the requirements will be based on generally accepted accounting principles.

One commenter recommended that the term ''regulatory created assets'', as used in the definitions of equity and total assets, should be defined. This has been done.

The Rate Covenant

The proposed rate covenant and proposed section 2.01 on issuing additional notes without mortgagee approval received the greatest number of comments. The proposed rate covenant required a borrower to design and implement rates sufficient to maintain on an annual basis a Modified TIER and Modified DSC each equal to at least 1.35. If the borrower failed to achieve either ratio based on the average of the two best years out of the past three years, the borrower would be required to submit a plan of remedial action to the mortgagees for approval, and then implement the approved plan.

There was substantial disagreement among the commenters regarding the rate covenant, including disagreement among RUS, CFC, CoBank, and NRECA. CFC recommended that the rate covenant be deleted from the mortgage and put in the agency's loan contract (and presumably in the loan contracts of other secured lenders). Since it appeared impossible to reach full agreement among the three principal lenders, RUS decided to shift the rate covenant from the mortgage to its proposed new loan contract, which is published for comment elsewhere in this issue of the **Federal Register**.

Most comments on the rate covenant focused on the formulation or definition of Modified TIER and Modified DSC, and whether or not both ratios are needed. Modified TIER and Modified DSC were defined the same as the standard TIER and DSC contained in existing distribution mortgages, with the important exception that allocations of generation and transmission capital credits and other capital credits were excluded from margins in calculating the ratios. The intent was to more closely reflect the current revenues and cash flows of the borrower's utility operations than do the standard TIER and DSC, and thus better reflect a borrower's ability to meet expenses currently and over time.

CoBank generally supported the formulation of the proposed coverage ratios, but recommended that cash received from retirement of capital credits, including patronage refunds, be included in margins when measuring past performance. CoBank also argued that certain of the proposed procedures in the event the borrower failed to achieve the ratios weakened the covenant and should be deleted. CFC supported the idea of deleting capital credit allocations, but recommended a substantially different formulation of Modified DSC and that Modified DSC was sufficient by itself.

NRECA indicated that they recognized that many private lenders were moving toward more cash-flow based financial tests. However, NRECA opposed the use of Modified TIER and Modified DSC set at 1.35 (the level specified in CFC's indenture for its collateral trust bonds, as well as in recent mortgages executed by CFC and CoBank) because of concerns that it would be difficult for some borrowers to meet the test. NRECA further recommended that if Modified TIER and Modified DSC were adopted, they should at minimum be phased in over a number of years and cash retirements of capital credits should be included in calculating the ratios.

A number of power supply borrowers and the distribution members of power supply borrowers opposed the exclusion of allocations of generation and transmission capital credits in calculating the coverage ratios because they believed it would put pressure on the G&T to lower the rates charged for power and thus reduce the G&T's cash flow and weaken its financial condition. They argued that if the distribution members of a G&T were not able to include the capital credits allocated to them by the G&T in calculating their TIER and DSC ratios, the members would put additional pressure on the G&T to operate on a even thinner margin that could jeopardize the financial viability of the G&T. Some G&Ts and some distribution members of G&Ts also argued that using Modified TIER and Modified DSC set at 1.35 would force some distribution systems

to raise rates, which would weaken the financial viability of both the members and the G&Ts. One regional borrower association supported the use of both Modified TIER and Modified DSC.

Given the concerns and issues raised, RUS has decided to shift the rate covenant from the mortgage to RUS' proposed new loan contract for distribution borrowers, to retain the existing standard TIER and DSC set at the existing minimum levels of 1.5 and 1.25 respectively, and to add an Operating TIER and Operating DSC, both set at a minimum of 1.1 for the borrower's electric utility operations. Adding Operating TIER (OTIER) and Operating DSC (ODSC) set at 1.1 would achieve the original objective of excluding major non-cash margins from the coverage tests, while also requiring that borrowers at least break even, with a small margin for error, on their primary business. Operating TIER and Operating DSC would be tested retrospectively using the same averaging of the best two out of three years as is used for standard TIER and DSC.

Since a borrower's electric utility business accounts for most of the financing provided by RUS, is the main source of revenue for repaying the loans, and provides the primary security for the loans, RUS believes it is reasonable to expect this business to be financially viable and not dependent on other sources of income to cover business expenses. Retaining the existing standard TIER and DSC requirements will help ensure that the borrower's overall operations are financially sound. These existing requirements appear to be widely accepted by borrowers, and no formal or informal complaints were received that they are too demanding. Based on performance data as of the end of 1993, adding OTIER and ODSC at 1.1 would affect only 18 distribution borrowers who had met the standard TIER and DSC requirements based on the average of the best two out of three years.

RUS also believes it is important to retain both TIER and DSC as the coverage tests, and not rely solely on DSC. Given the fact that the amortization of principal for virtually all debt owed by borrowers is heavily back-end loaded and that depreciation charges substantially exceed principal payments now and for the foreseeable future, relying solely on Modified DSC set at 1.35, regardless of whether RUS' or CFC's version of Modified DSC is used, would allow many distribution borrowers to operate at a loss and still meet the coverage ratio. TIER, on the other hand, provided that it is set at least 1.0, requires a borrower to at least break even, either for its overall operations in the case of standard TIER, or its electric utility operations in the case of Operating TIER. RUS does not believe it would be in the interests of the rural electrification program, either from the standpoint of loan security and financial soundness or public support, to rely on a standard that would allow a large number of borrowers to operate at a loss.

Comments were also received on the provision which would have prohibited borrowers from offering any services free of charge. Several commenters suggested that this restriction be limited to electric power and energy so as not be prevent borrowers from participating in legitimate community service activities. RUS has adopted this change and has included it in its proposed loan contract.

Section 2.01 Additional Notes Without Mortgagee Approval

Unlike the existing mortgage where the issuance of any debt secured by the mortgage must be approved in advance by RUS, section 2.01 of the proposed mortgage would authorize a borrower to issue additional secured notes without the approval of RUS or the other mortgagees if the following criteria are met:

- The borrower achieved a Modified TIER and Modified DSC of at least 1.35 in each of the two most recent years after including the incremental interest expense of the new debt.
- The borrower's equity is equal to at least 27 percent of total assets, after including the effect of the addition to plant.
- The borrower has a ratio of net utility plant to long term debt of at least 1.1, after including the effect of the new debt and the addition to plant.
- The maturity of the loan is less than the weighted average remaining life of the assets financed.
- Loan maturity is not less than 5 years.
- The loan is amortized at a rate not less than the rate obtained under level payment of principal and interest.
- Outstanding secured debt for water and sewer systems, telecommunications systems, natural gas distribution systems, and solid waste disposal systems would be not more than 20 percent of total outstanding secured debt after issuing the debt.

Comments on the use of Modified TIER and Modified DSC and the definition of these ratios were similar to those regarding the rate covenant. In addition, several commenters opposed the inclusion of the incremental interest expense of the new debt when calculating the ratio, mainly because of possible problems of accurately reflecting the interest cost of new debt for variable rate loans. While RUS believes inclusion of incremental interest expense is sound conceptually, it recognizes the potential problems in implementing the concept and thus has decided not to include it in the final rule.

For the reasons explained with respect to the rate covenant, RUS believes it would be unwise to rely on Modified DSC by itself set at a 1.35 level. We also believe it wouldn't be desirable to have three different formulations of the coverage ratios: standard TIER and DSC and Operating TIER and DSC in the rate covenant, and Modified TIER and DSC in section 2.01 of the mortgage. There appears to be no particular advantage of adding a third formulation in section 2.01, and having three different formulations could cause administrative and communication problems.

Standard TIER and DSC have proven to be workable over the past 25 years and acceptable to nearly all borrowers. Therefore, RUS has decided to use in section 2.01 a standard TIER or 1.5 and standard DSC of 1.25, the levels currently required in the existing rate covenants of distribution borrowers. Borrowers meeting these levels in each of the two years immediately preceding the issuance of the debt would meet the test. The incremental interest expense of the new debt would not be included in calculating the ratios.

For the sake of consistency with the proposed RUS rate covenant, it could be argued that a borrower should also be required to meet an Operating TIER and Operating DSC of at least 1.1 in each of the two most recent years to issue debt under section 2.01 of the mortgage. While that argument can be made, RUS believes that so long as the borrower is required in its rate covenant to operate so as to meet the standard TIER and DSC ratios and the Operating TIER and DSC ratios on an ongoing basis, it is not necessary to also include Operating TIER and DSC in section 2.01 of the mortgage. Having only the two ratios rather than all four would also be responsive to the concerns raised by CFC, NRECA, and some others about the tests being too numerous and too complicated. Other lenders, it should be noted, may include additional tests in their respective loan contracts if they do not believe that the standard TIER and DSC tests are adequate.

Comments were mixed regarding the equity and net utility plant tests. Several commenters argued that the tests were duplicative and only one was needed.

CFC favored deleting the net utility plant test and relying on equity, set at 20 percent of total assets, after issuance of the debt. CoBank and NRECA favored using a net utility plant test over one based on equity. One regional borrower association also supported the use of a net utility plant test. Another regional borrower association indicated general support for the two tests.

RUS recognized when it proposed these two tests that they overlap to a considerable degree. However, in the interest of establishing a collateralization test that is no higher than necessary to preserve reasonably adequate loan security, RUS believes it is better to use two admittedly overlapping tests, each set at minimal levels, than to use either test by itself set at a higher level. The net utility plant to long term debt ratio focuses on the primary collateral for the loans, and approximates a bondable additions test commonly used in utility indentures. The equity test reflects the broader operations of the borrower and focuses on the overall equity cushion available as security for the loans. Each test has its advantages and limitations, and when used together the advantages of one test tends to offset the limitations of the other.

For these reasons RUS has decided to retain both the equity and the net utility/long-term debt plant tests. The net utility plant/long-term debt test has been reduced to a level of 1.0 from 1.1 in the proposed rule.

Based on performance data as of the end of 1993, up to 64 percent of distribution borrowers would have qualified under the proposed criteria of Modified TIER and Modified DSC at 1.35 (including incremental interest expense), equity at 27 percent, and net utility plant to long-term debt at 1.1. Under the criteria included in the final rule (standard TIER of 1.5, standard DSC of 1.25, equity of 27 percent, and net utility plant to long-term debt of 1.0) the number of borrowers qualifying increases to 71 percent.

RUS believes that these criteria represent a reasonable compromise between RUS' legitimate need (and statutorily imposed requirement) to maintain reasonably adequate loan security, and the borrowers' needs for financial flexibility. This issue, however, is not a we versus them proposition. RUS believes that the tests for issuing secured debt without mortgagee approval must be reasonably rigorous to attract other lenders and expand the financing alternatives available to borrowers. Any lender not familiar with rural electric systems will be looking for reasonably rigorous financial covenants to compensate for the uncertain financial risks of lending to unfamiliar borrowers.

Comments were also received on the other four proposed conditions for issuing debt under section 2.01. Most of those who commented argued that three of the four conditions (the two dealing with loan maturity and the other with a minimum loan amortization rate) were unnecessary and unduly cluttered the section. Some also suggested that such conditions be put in the RUS loan contract if they were deemed necessary to retain.

RUS does believe it is important to retain these conditions and has shifted them to our proposed loan contract. Restricting loan maturity to the useful life of the asset financed and requiring a minimum rate of loan amortization (albeit a very minimal rate) is important to ensure that the collateral for loans remains adequate. Limiting secured lending to loans of at least 5 years will preserve the security of the mortgage for lenders committed to providing permanent long-term financing for rural electrification. Without these conditions in its loan contract, RUS believes it would be necessary to have more restrictive tests in section 2.01 of the mortgage.

As to the fourth condition, which limited the issuance of debt under section 2.01 for the four community infrastructure purposes cited above, NRECA recommended that the limitation be dropped, and CFC recommended that the limitation be based on 50 percent of the borrower's equity rather than 20 percent of the outstanding long-term debt. Since these activities would be new to nearly all borrowers, RUS believes some limitation ought to be placed on a borrower's ability to issue secured debt for these activities without the approval of the mortgagees. CFC's recommendation that the limitation be based on equity has been adopted, but RUS believes it is more prudent to set the limitation at 30 percent of equity rather than 50 percent. For the typical distribution borrower, 30 percent of equity, which is numerically equal to 26 percent of outstanding long-term debt, would provide greater latitude to the borrower than the original proposal.

CFC also recommended that there should be no other limitations on the purposes that can be financed under section 2.01 of the mortgage. RUS disagrees and believes that secured debt issued under 2.01 without mortgagee approval should be limited to property additions, which essentially means property chargeable to the mortgagor's utility plant accounts and used or useful in the mortgagor's utility business. The mortgage is intended to provide security for loans made to rural utility systems primarily for utility purposes, and any security granted for loans to finance property or purposes that are outside of the utility business should be subject to the approval of the mortgagees under section 2.03 of the mortgage. This position seems consistent with the position taken by CFC in its own 100 percent mortgage, wherein secured debt issued without the approval of the mortgagee is limited such that at least 95 percent of the proceeds of the loan must be for the purpose of acquiring or constructing new or replacement electric utility or general plant.

Other changes were made to section 2.01. In the proposed rule, financing under the section was limited to ''mortgageable property.'' But mortgageable property was defined essentially as ''property additions.'' The distinction between the two terms was based mainly on expositional use of the terms. For simplicity and clarity, the term ''mortgageable property'' has be dropped from the mortgage in favor of using ''property additions''. This change has no effect on the property eligible for financing under section 2.01.

One commenter asked whether debt to reimburse general funds or to replace interim financing was eligible for issuance under section 2.01, or whether the section could be used only to finance plant added after and as a direct result of the debt issuance. The intent was, and remains, to allow such debt under the section so long as the general funds and interim financing were used to finance property additions. This question lead to the practical question of how the mortgagor and the mortgagees will be able to determine that the debt was in fact being issued to finance property additions, since plant added 10 or 20 years ago or plant which may not be added until 10 or 20 years in the future might be claimed as the basis for issuing the debt.

In response to these questions, changes were made to limit financing under section 2.01 to property additions acquired or whose construction was completed not more than 5 years prior to the issuance of the additional notes and property additions acquired or whose construction is started and/or completed not more than 4 years after issuance of the additional notes, so long as such property additions were not financed by other debt secured under the mortgage at the time the additional notes are issued.

Also in section 2.01, the pro forma test for net utility plant/long-term debt has been revised to clarify and simplify

calculation. In the proposed rule it was implicitly assumed that each issuance of debt would entail additions to plant. However, in the case of reimbursement of general funds or replacement of interim financing, there many be little or no plant actually added as a result of issuing the secured debt. In other cases, there would be uncertainty about whether the proposed plant additions would actually materialize in every instance. For these reasons, the pro forma net utility plant/long-term debt test has been changed and clarified. Namely, the principal amount of the additional debt would be added to the then outstanding long-term debt, but no adjustment would be made for any additional plant that may actually result from the debt issuance. For this reason, the required ratio was reduced from 1.1 to 1.0 to compensate for those instances where plant may be added as a result of the debt issuance.

Two other clarifications were made to section 2.01. The date of issuance of additional notes has been defined as the date the notes are executed. Also, for purposes of calculating the pro forma ratios, it has been specified that the most recently available end-of-month data preceding debt issuance shall be used for total long-term debt and total assets before debt issuance and for equity and net utility plant. The data used, however, may not be for a month ending more than 180 days prior to debt issuance.

Section 2.02 Refinancing Without Mortgagee Approval

Unlike the existing mortgage where any refinancing loans to be secured under the mortgage must be approved in advance by RUS, section 2.02 of the proposed mortgage would authorize a borrower to issue secured refinancing notes without the approval of RUS or the other mortgagees if the following tests are met:

- The principal amount of the refinancing loan does not exceed 103.5 percent of the loan principal being refinanced.
- The weighted average life of the refinancing loan does not exceed the remaining weighted average life of the loan being refinanced.
- The present value of the cost of the refinancing, including all transaction costs and any required investments in the lender, is less than the present value of the cost of the loan being refinanced.

CFC commented that none of the three tests are needed. NRECA argued that the net present value of cost test is sufficient by itself and thus the other two are not necessary. CoBank supported the net present value of costs test, but did not comment on the other two tests. CoBank argued that documentation and certification of the tests to the mortgagees is needed, as well as explicit guidance on calculating net present value of costs. One borrower association indicated that it supported the changes proposed in section 2.02 in comparison with the present mortgage.

In view of these comments, RUS has decided to retain in section 2.02 the limitation on the principal amount of the refinancing loan, to shift the limitation on the weighted average life of the refinancing loan to the agency's proposed new loan contract, and to drop the net present value of costs test. Moreover, the limitation on the principal of the refinancing loan has been increased from 103.5 percent to 105 percent of the loan refinanced, which is the same limitation contained in recent 100 percent mortgages executed by CFC and CoBank.

RUS believes the limitations on the weighted average life and principal amount of the refinancing loan via-a-vis the loan refinanced are reasonable and provide important safeguards. The limitation on weighted average life will help ensure that refinancing, or repeated refinancings, will not extend the borrower's debt beyond the useful life and security value of the collateral used to secure the original loan. Limiting the principal of the refinancing loan to 105 percent of the loan principal refinanced is designed to prevent the accumulation of additional debt without the addition of additional collateral. The purpose of section 2.02 is to allow for existing secured debt to be refinanced, not to provide for the issuance of additional debt or extension of existing debt.

The net present value of costs test was intended to address the comparative costs of the refinancing loan and the loan to be refinanced, which is a different matter than that addressed by the other two tests. However, after reviewing the comments and discussing the question with co-mortgagees and other commenters, RUS has concluded that it would not be possible to define a methodology for calculating the net present value of costs that would be entirely routine and objective and not dependent on judgment calls on how to deal with unusual cases. For example, determining interest costs alone is difficult when the rate is variable, and certain assumptions must be made that may not be appropriate for all cases. While such judgments can be made for case-by-case approvals, the tests in section 2.02 need to be entirely generic and routine.

Section 2.05 Form of Supplemental Mortgage

The proposed mortgage indicated that a simple form of mortgage supplement needed to be added in order to extend the lien of the mortgage to new lenders. The form included in the final mortgage was drafted based, in part, on a form suggested by a co-mortgagee.

Section 3.04 Environmental Obligations; Indemnification of Mortgagees

CFC suggested that this provision be moved to the RUS loan contract, and that the 3 days to notify mortgagees of environmental liabilities was too short. CoBank recommended that the provision remain in the mortgage, that the mortgagees should be authorized to examine and test borrowers' premises at the borrowers' expense, and that indemnification of mortgagees against environmental liabilities should continue after satisfaction and release of the mortgage. NRECA stated that the provision was (1) unnecessary since the borrower is required in section 3.09 to comply with all laws, including environmental laws, (2) unworkable since it required compliance with all environmental laws rather than all ''material'' environmental laws, and (3) if not eliminated altogether, the provision should be moved to the RUS loan contract.

RUS believes the provision should remain in the mortgage itself given the importance of this issue to all lenders and the virtual explosion of environmental suits and potential liabilities in the past few years. RUS agrees that is reasonable to give borrowers more time to notify mortgagees of potential or actual environmental liabilities, and has increased the time allowed to 10 days. RUS agrees that the indemnification of mortgagees against environmental and other liabilities stemming from the mortgaged property should survive the lien of the mortgage, and has made this clear in the final language.

RUS does not agree that since section 3.09 requires borrowers to comply with all laws that section 3.04 is not needed. Section 3.09 does not address indemnification of mortgagees against environmental liabilities. RUS also does not agree that the requirement should be that borrowers need comply only with ''material'' environmental laws, since this might imply that RUS was advising borrowers that certain environmental laws are not themselves material.

RUS agrees that individual lenders in specific cases may want the right to test a borrower's property for environmental

hazards at the expense of the borrower. RUS believes, however, that it would be more appropriate to include such a provision in individual loan contracts.

Section 3.08 Restrictions on Additional Permitted Debt

Comments were received regarding two of the proposed restrictions on additional permitted debt: restricting unsecured debt to 15 percent of the borrower's net utility plant, and restricting any debt assumed as part of an acquisition to 90 percent of the net utility plant of the acquired company. Those who opposed restricting unsecured debt believed it was unnecessary and could limit interim construction financing. One commenter said the restriction was unnecessary if borrowers were required to maintain a minimum equity requirement. On the other hand, one regional borrower association said that: ''The cooperatives applaud the amendments [proposals] regarding restrictions on additional permitted debt. The amendments make the requirements less restrictive and more conducive to today's utility environment.''

In light of these comments, RUS has decided to move the restriction on issuing unsecured debt without mortgagee approval to the RUS loan contract and apply it only to borrowers with equity of less than 30 percent of total assets. Currently, only 9 percent of distribution borrowers have less than 30 percent equity and would thus be subject to this restriction.

The restriction limiting debt assumed through acquisitions to 90 percent of net utility plant of the acquired company (which was intended to mirror the test in sec. 2.01) was been dropped. Such debt would have to comply with Article II of the mortgage in order to be secured, and thus the proposed restriction is not needed.

Section 3.10 Limitations on Consolidations and Mergers

One commenter recommended that consolidations that don't meet the required financial ratios should have the opportunity to be approved by mortgagees on a case-by-case basis. This in fact is the intention of section 3.10 and language has been added to make that clear. Moreover, the required financial ratios have been revised consistent with the changes to the financial ratios in section 2.01 of the mortgage.

Section 3.12 Maintenance of Mortgaged Property

Most of the comments on this section focused on the professional engineer's certification as to the condition of the borrower's property, which the mortgagees could require not more than once every 3 years. Some commenters said the certificate need not come from an independent professional engineer, but simply a professional engineer acceptable to the mortgagees. RUS has adopted this change.

One mortgagee argued that the proposed second certification and related remedial plan and process should be dropped since they detracted from the clear intent of the section and could weaken the provision. RUS agrees and has dropped these provisions. The section has also been modified to make it clear that the mortgagees may direct the mortgagor to make needed improvements in the maintenance and repair of the borrower's system based on any information available to the mortgagees, including the engineer's certification. The suggestion that ''good utility practice'' be changed to ''prudent utility practice'' has also been adopted.

Section 3.16 Limitations on Dividends, Patronage Refunds and Other Cash Distributions

CFC recommended that this provision be moved to the RUS loan contract. CoBank recommended that no restrictions be placed on distributions at or above 30 percent equity if the borrower is not in default, and that no distributions be allowed below 30 percent equity (after distribution), except for membership fees upon termination of membership. NRECA stated that the proposed provision (which was essentially the same as that in the existing mortgage) was too complicated, and that it should be simplified by having no restrictions on distributions above 27 percent equity (after distribution), and presumably allowing distributions below 27 percent equity only in the case of membership terminations. One borrower association proposed a fairly complicated scheme whereby different proportions of prior year's margins could be distributed depending on the level of borrower equity.

Based on these comments, RUS has decided to move this provision to its loan contract. In the proposed loan contract, the language of the provision would be simplified and greater latitude would be granted. Borrowers could make distributions without RUS approval provided that the borrower was not in default and equity after the distribution was equal to at least 30 percent of total assets (versus 40 percent in the existing mortgage). Below 30 percent equity, borrowers not in default could make distributions to the estates of deceased persons without RUS approval. Also, between 20 percent and 30 percent equity (after distribution) borrowers could distribute up to 25 percent of last year's margins, including any distributions for estates. These changes would provide substantially greater latitude to most borrowers since 91 percent of distribution borrowers have equity of 30 percent or more.

Section 4.02 Acceleration of Maturity; Rescission and Annulment

Several comments were received suggesting clarifications or modifications of certain aspects of this section. Based on these comments, the following clarifications or modifications have been made:

A mortgagee who accelerates a note for a non-payment default (not just a payment default) must notify the other mortgagees.

A mortgagee who becomes aware that another mortgagee has accelerated its notes for either a payment or a non-payment default may in turn accelerate its own notes.

Two additional conditions have been added to those that must be met before mortgagees representing at least 80 percent of the outstanding secured debt may annul an acceleration by another mortgagee: all reasonable expenses of the mortgagee in connection with the acceleration must have been paid, and the annulment must be made before proceedings to foreclose the lien of the mortgage have commenced.

Opinions of Borrower's Counsel

Several comments were received concerning the number and nature of legal opinions called for in the proposed mortgage. The final mortgage published today requires fewer opinions, and the scope of some of the opinions has been narrowed in response to those comments. The topic of legal opinions from borrowers' counsels has been the subject of robust debate within the legal profession for several years, with no clear consensus emerging. It is doubtful that all of these concerns can be addressed to the satisfaction of the entire legal community.

List of Subjects in 7 CFR Part 1718

Administrative practice and procedure, Electric power, Electric utilities, Loan programs—energy, Loan security documents, Reporting and recordkeeping requirements, Rural areas.

For the reasons set out in the preamble, REA amends chapter XVII of title 7 of the Code of Federal Regulations by adding a new part 1718 to read as follows:

PART 1718—LOAN SECURITY DOCUMENTS FOR ELECTRIC BORROWERS

Subpart A—General

Sec.
1718.1–1718.49 [Reserved]

Subpart B—Mortgage for Distribution Borrowers

Appendix A to Subpart B of Part 1718—Model Form of Mortgage for Electric Distribution Borrowers

Authority: 7 U.S.C. 901–950b; Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

Subpart A—General

§§ 1718.1–1718.49 [Reserved]

Subpart B—Mortgage for Distribution Borrowers

§ 1718.50 Definitions.

Unless otherwise indicated, terms used in this subpart are defined as set forth in 7 CFR 1710.2.

§ 1718.51 Policy.

(a) Adequate loan security must be provided for loans made or guaranteed by RUS. The loans are required to be secured by a first mortgage lien on most of the borrower's assets substantially in the form set forth in Appendix A of this subpart. At the discretion of RUS, this model form of mortgage may be adapted to satisfy different legal requirements among the states and individual differences in lending circumstances, provided that such adaptations are consistent with the policies set forth in this subpart.

(b) Some borrowers, such as certain public power districts, may not be able to provide security in the form of a first mortgage lien on their assets. In these cases RUS will consider accepting other forms of security, such as resolutions and pledges of revenues.

(c) RUS may require supplemental and amending mortgages to protect its security, or in connection with additional loans.

(d) RUS may also require such other security instruments (such as loan contracts, security agreements, financing statements, guarantees, and pledges) as it deems appropriate.

(e) All distribution borrowers that receive a loan or loan guarantee from RUS on or after August 17, 1995 will be required to enter into a mortgage with RUS that meets the requirements of this subpart. The concurrence of any other lenders secured under the borrower's existing mortgage may be required before the borrower can enter into a new mortgage.

§ 1718.52 Existing mortgages.

Nothing contained in this subpart amends, invalidates, terminates or rescinds any existing mortgage entered into between the borrower and RUS and any other mortgagees.

§ 1718.53 Rights of other mortgagees.

Nothing contained in this subpart is intended to alter or affect any other mortgagee's rights under an existing mortgage.

§ 1718.54 Availability of model mortgage.

Single copies of the model mortgage (RUS Informational Publication 1718 B) are available from the Administrative Services Division, Rural Utilities Service, United States Department of Agriculture, Washington, DC 20250–1500. This document may be reproduced.

Appendix A to Subpart B of Part 1718—Model Form of Mortgage for Electric Distribution Borrowers

RESTATED MORTGAGE AND SECURITY AGREEMENT Made By And Between

_____

Mortgagor

and UNITED STATES OF AMERICA and

_____

MORTGAGEE

Dated as of _____

THIS INSTRUMENT GRANTS A SECURITY INTEREST BY A TRANSMITTING UTILITY

THIS INSTRUMENT CONTAINS FUTURE ADVANCE PROVISIONS

THIS INSTRUMENT CONTAINS AFTER-ACQUIRED PROPERTY PROVISIONS

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RESTATED MORTGAGE AND SECURITY AGREEMENT, dated as of _____ 19____, (hereinafter sometimes called this ''Mortgage'') is made by and between

_____

(hereinafter called the ''Mortgagor''), a corporation existing under the laws of the State of _____, and the UNITED STATES OF AMERICA acting by and through the Administrator of the Rural Utilities Service (hereinafter called the ''Government''), _____ {Supplemental Lender}, (hereinafter called ''_____'') a _____ existing under the laws of _____, and is intended to confer rights and benefits on both the Government and _____ as well as any and all other lenders pursuant to Article II of this Mortgage that enter into a supplemental mortgage in accordance with Section [2.04] of Article II hereof (the Government and any such other lenders being herein sometimes collectively referred to as the ''Mortgagees'').

RECITALS

WHEREAS, the Mortgagor, the Government and _____ are parties to that certain _____ Mortgage and Security Agreement dated as of _____, 19____, as supplemented, amended or restated (the ''Original Mortgage'' identified in Schedule ''A'' of this Mortgage) originally entered into between the Mortgagor, the Government acting by and through the Administrator of the Rural Electrification Administration, the predecessor of RUS, and _____;

WHEREAS, the Mortgagor deems it necessary to borrow money for its corporate purposes and to issue its promissory notes and other debt obligations therefor from time to time in one or more series, and to mortgage and pledge its property hereinafter described or mentioned to secure the payment of the same;

WHEREAS, the Mortgagor desires to enter into this Mortgage pursuant to which all secured debt of the Mortgagor hereunder shall be secured on parity;

WHEREAS, this Mortgage restates and consolidates the Original Mortgage while preserving the priority of the Lien under the Original Mortgage securing the payment of Mortgagor's outstanding obligations secured under the Original Mortgage, which indebtedness is described more particularly by listing the Original Notes in Schedule ''A'' hereto; and

WHEREAS, all acts necessary to make this Mortgage a valid and binding legal instrument for the security of such notes and obligations, subject to the terms of this Mortgage, have been in all respects duly authorized;

NOW, THEREFORE, THIS MORTGAGE WITNESSETH: That to secure the payment of the principal of (and premium, if any) and interest on the Original Notes and all Notes issued hereunder according to their tenor and effect, and the performance of all provisions therein and herein contained, and in consideration of the covenants herein contained and the purchase or guarantee of Notes by the guarantors or holders thereof, the Mortgagor has mortgaged, pledged and granted a continuing security interest in, and by these presents does hereby grant, bargain, sell, alienate, remise, release, convey, assign, transfer, hypothecate, pledge, set over and confirm, pledge, and grant a continuing security interest and lien in for the purposes hereinafter expressed [other language may be required under various state laws], unto the Mortgagees all property, rights, privileges and franchises of the Mortgagor of every kind and description, real, personal or mixed, tangible and intangible, of the kind or nature specifically mentioned herein OR ANY OTHER KIND OR NATURE, except any Excepted Property, now owned or hereafter acquired by the Mortgagor (by purchase, consolidation, merger, donation, construction, erection or in any other way) wherever located, including (without limitation) all and singular the following:

GRANTING CLAUSE FIRST

A. all of those fee and leasehold interests in real property set forth in Schedule ''B'' hereto, subject in each case to those matters set forth in such Schedule;

B. all of the Mortgagor's interest in fixtures, easements, permits, licenses and rights-of-way comprising real property, and all other interests in real property, comprising any portion of the Utility System (as herein defined) located in the Counties listed in Schedule ''B'' hereto;

C. all right, title and interest of the Mortgagor in and to those contracts of the Mortgagor (i) relating to the ownership, operation or maintenance of any generation, transmission or distribution facility owned, whether solely or jointly, by the Mortgagor, (ii) for the purchase of electric power and energy by the Mortgagor and having an original term in excess of 3 years, (iii) for the sale of electric power and energy by the Mortgagor and having an original term in excess of 3 years, and (iv) for the transmission of electric power and energy by or on behalf of the Mortgagor and having an original term in excess of 3 years, including in respect of any of the foregoing, any amendments, supplements and replacements thereto;

D. all the property, rights, privileges, allowances and franchises particularly described in the annexed Schedule ''B'' are hereby made a part of, and deemed to be described in, this Granting Clause as fully as if set forth in this Granting Clause at length; and

ALSO ALL OTHER PROPERTY, real estate, lands, easements, servitudes, licenses, permits, allowances, consents, franchises, privileges, rights of way and other rights in or relating to real estate or the occupancy of the same; all power sites, storage rights, water rights, water locations, water appropriations, ditches, flumes, reservoirs, reservoir sites, canals, raceways, waterways, dams, dam sites, aqueducts, and all other rights or means for appropriating, conveying, storing and supplying water; all rights of way and roads; all plants for the generation of electric and other forms of energy (whether now known or hereafter developed) by steam, water, sunlight, chemical processes and/or (without limitation) all other sources of power (whether now known or hereafter developed); all power houses, gas plants, street lighting systems, standards and other equipment incidental thereto; all telephone, radio, television and other communications, image and data transmission systems, air conditioning systems and equipment incidental thereto, water wheels, waterworks, water systems, steam and hot water plants, substations, lines, service and supply systems, bridges, culverts, tracks, ice or refrigeration plants and equipment, offices, buildings and other structures and the equipment thereto all machinery, engines, boilers, dynamos, turbines, electric, gas and other machines, prime movers, regulators, meters, transformers, generators (including, but not limited to, engine-driven generators and turbogenerator units), motors, electrical, gas and mechanical appliances, conduits, cables, water, steam, gas or other pipes, gas mains and pipes, service pipes, fittings, valves and connections, pole and transmission lines, towers, overhead conductors and devices, underground conduits, underground conductors and devices, wires, cables, tools, implements, apparatus, storage battery equipment, and all other fixtures and personalty; all municipal and other franchises, consents, certificates or permits; all emissions allowances; all lines for the transmission and distribution of electric current and other forms of energy, gas, steam, water or communications, images and data for any purpose including towers, poles, wires, cables, pipes, conduits, ducts and all apparatus for use in connection therewith, and (except as hereinbefore or hereinafter expressly excepted) all the right, title and interest of the Mortgagor in and to all other property of any kind or nature appertaining to and/or used and/or occupied and/or employed in connection with any property hereinbefore described, but in all circumstances excluding Excepted Property;

GRANTING CLAUSE SECOND

All other property, real, personal or mixed, of whatever kind and description and wheresoever situated, including without limitation goods, accounts, money held in a trust account pursuant hereto or to a Loan Agreement, and general intangibles now owned or which may be hereafter acquired by the Mortgagor, but excluding Excepted Property, now owned or which may be hereafter acquired by the Mortgagor, it being the intention hereof that all property, rights, privileges, allowances and franchisees now owned by the Mortgagor or acquired by the Mortgagor after the date hereof (other than Excepted Property) shall be as fully embraced within and subjected to the lien hereof as if such property were specifically described herein.

GRANTING CLAUSE THIRD

Also any Excepted Property that may, from time to time hereafter, by delivery or by writing of any kind, be subjected to the lien hereof by the Mortgagor or by anyone in its behalf; and any Mortgagee is hereby authorized to receive the same at any time as additional security hereunder for the benefit of all the Mortgagees. Such subjection to the lien hereof of any Excepted Property as additional security may be made subject to any reservations, limitations or conditions which shall be set forth in a written instrument executed by the Mortgagor or the person so acting in its behalf or by such Mortgagee respecting the use and disposition of such property or the proceeds thereof.

GRANTING CLAUSE FOURTH

Together with (subject to the rights of the Mortgagor set forth on Section [5.01]) all and singular the tenements, hereditaments and appurtenances belonging or in anywise appertaining to the aforesaid property or any part thereof, with the reversion and reversions, remainder and remainders and all the tolls, earnings, rents, issues, profits, revenues and other income, products and proceeds of the property subjected or required to be subjected to the lien of this Mortgage, and all other property of any nature appertaining to any of the plants, systems, business or operations of the Mortgagor, whether or not affixed to the realty, used in the operation of any of the premises or plants or the System, or otherwise, which are now owned or acquired by the Mortgagor, and all the estate, right, title and interest of every nature whatsoever, at law as well as in equity, of the Mortgagor in and to the same and every part thereof (other than Excepted Property with respect to any of the foregoing).

EXCEPTED PROPERTY

There is, however, expressly excepted and excluded from the lien and operation of this Mortgage the following described property of the Mortgagor, now owned or hereafter acquired (herein sometimes referred to as ''Excepted Property''):

A. all shares of stock, securities or other interests of the Mortgagor in the National Rural Utilities Cooperative Finance Corporation, the National Bank for Cooperatives and the St. Paul Bank for Cooperatives other than any stock, securities or other interests that are specifically described in Subclause D of Granting Clause First as being subjected to the lien hereof;

B. all rolling stock (except mobile substations), automobiles, buses, trucks, truck cranes, tractors, trailers and similar vehicles and movable equipment, and all tools, accessories and supplies used in connection with any of the foregoing;

C. all vessels, boats, ships, barges and other marine equipment, all airplanes, airplane engines and other flight equipment, and all tools, accessories and supplies used in connection with any of the foregoing;

D. all office furniture, equipment and supplies that is not data processing, accounting or other computer equipment or software;

E. all leasehold interests for office purposes;

F. all leasehold interests of the Mortgagor under leases for an original term (including any period for which the Mortgagor shall have a right of renewal) of less than five (5) years;

G. all timber and crops (both growing and harvested) and all coal, ore, gas, oil and other minerals (both in place or severed);

H. the last day of the term of each leasehold estate (oral or written) and any agreement therefor, now or hereafter enjoyed by the Mortgagor and whether falling within a general or specific description of property herein: PROVIDED, HOWEVER, that the Mortgagor covenants and agrees that it will hold each such last day in trust for the use and benefit of all of the Mortgagees and Noteholders and that it will dispose of each such last day from time to time in accordance with such written order as the Mortgagee in its discretion may give;

I. all permits, licenses, franchises, contracts, agreements, contract rights and other rights not specifically subjected or required to be subjected to the lien hereof by the express provisions of this Mortgage, whether now owned or hereafter acquired by the Mortgagor, which by their terms or by reason of applicable law would become void or voidable if mortgaged or pledged hereunder by the Mortgagor, or which cannot be granted, conveyed, mortgaged, transferred or assigned by this Mortgage without the consent of other parties whose consent has been withheld, or without subjecting any Mortgagee to a liability not otherwise contemplated by the provisions of this Mortgage, or which otherwise may not be, hereby lawfully and effectively granted, conveyed, mortgaged, transferred and assigned by the Mortgagor; and

J. the property identified in Schedule ''C'' hereto.

PROVIDED, HOWEVER, that (i) if, upon the occurrence of an Event of Default, any Mortgagee, or any receiver appointed pursuant to statutory provision or order of court, shall have entered into possession of all or substantially all of the Mortgaged Property, all the Excepted Property described or referred to in the foregoing Subdivisions A through H, inclusive, then owned or thereafter acquired by the Mortgagor shall immediately, and, in the case of any Excepted Property described or referred to in Subdivisions I through J, inclusive, upon demand of any Mortgagee or such receiver, become subject to the lien hereof to the extent permitted by law, and any Mortgagee or such receiver may, to the extent permitted by law, at the same time likewise take possession thereof, and (ii) whenever all Events of Default shall have been cured and the possession of all or substantially all of the Mortgaged Property shall have been restored to the Mortgagor, such Excepted Property shall again be excepted and excluded from the lien hereof to the extent and otherwise as hereinabove set forth.

However, pursuant to Granting Clause Third, the Mortgagor may subject to the lien of this Mortgage any Excepted Property, whereupon the same shall cease to be Excepted Property.

HABENDUM

TO HAVE AND TO HOLD all said property, rights, privileges and franchises of every kind and description, real, personal or mixed, hereby and hereafter (by supplemental mortgage or otherwise) granted, bargained, sold, aliened, remised, released, conveyed, assigned, transferred, mortgaged, encumbered, hypothecated, pledged, setover, confirmed, or subjected to a continuing security interest and lien as aforesaid, together with all the appurtenances thereto appertaining (said properties, rights, privileges and franchises, including any cash and securities hereafter deposited with any Mortgagee ((other than any such cash, if any, which is specifically stated herein not to be deemed part of the Mortgaged Property)), being herein collectively called the ''Mortgaged Property'') unto the Mortgagees and the respective assigns of the Mortgagees forever, to secure equally and ratably the payment of the principal of (and premium, if any) and interest on the Notes, according to their terms, without preference, priority or distinction as to interest or principal (except as otherwise specifically provided herein) or as to lien or otherwise of any Note over any other Note by reason of the priority in time of the execution, delivery or maturity thereof or of the assignment or negotiation thereof, or otherwise, and to secure the due performance of all of the covenants, agreements and provisions herein and in the Loan Agreements contained, and for the uses and purposes and upon the terms, conditions, provisos and agreements hereinafter expressed and declared.

SUBJECT, HOWEVER, to Permitted Encumbrances (as defined in Section 1.01).

ARTICLE I

DEFINITIONS & OTHER PROVISIONS OF GENERAL APPLICATION

Section 1.01. *Definitions.* In addition to the terms defined elsewhere in this Mortgage, the terms defined in this Article I shall have the meanings specified herein and under the UCC, unless the context clearly requires otherwise. The terms defined herein include the plural as well as the singular and the singular as well as the plural.

Accounting Requirements shall mean the requirements of any system of accounts prescribed by RUS so long as the Government is the holder, insurer or guarantor of any Notes, or, in the absence thereof, the requirements of generally accepted accounting principles applicable to businesses similar to that of the Mortgagor.

Additional Notes shall mean any Notes issued by the Mortgagor to the Government or any other lender pursuant to Article II of this Mortgage including any refunding, renewal, or substitute Notes which may from time to time be executed and delivered by the Mortgagor pursuant to the terms of Article II.

Board shall mean either the Board of Directors or the Board of Trustees, as the case may be, of the Mortgagor.

Business Day shall mean any day that the Government is open for business.

Debt Service Coverage Ratio (''DSC'') shall mean the ratio determined as follows: for each calendar year add (i) Patronage Capital or Margins of the Mortgagor, (ii) Interest

Expense on Total Long Term Debt of the Mortgagor (as computed in accordance with the principles set forth in the definition of TIER) and (iii) Depreciation and Amortization Expense of the Mortgagor, and divide the total so obtained by an amount equal to the sum of all payments of principal and interest required to be made on account of Total Long-Term Debt during such calendar year increasing said sum by any addition to interest expense on account of Restricted Rentals as computed with respect to the Times Interest Earned Ratio herein; *provided, however,* that in the event that any Long-Term Debt (being any amount included in Total Long-Term Debt computed as provided above) has been refinanced during such year the payments of principal and interest required to be made during such year on account of such Long-Term Debt shall be based (in lieu of actual payments required to be made on such refinanced Debt) upon the larger of (i) an annualization of the payments required to be made with respect to the refinancing debt during the portion of such year such refinancing debt is outstanding or (ii) the payment of principal and interest required to be made during the following year on account of such refinancing debt.

Depreciation and Amortization Expense shall mean an amount constituting the depreciation and amortization of the Mortgagor as computed pursuant to Accounting Requirements.

Electric System shall mean, and shall be broadly construed to encompass and include, all of the Mortgagor's interests in all electric production, transmission, distribution, conservation, load management, general plant and other related facilities, equipment or property and in any mine, well, pipeline, plant, structure or other facility for the development, production, manufacture, storage, fabrication or processing of fossil, nuclear or other fuel of any kind or in any facility or rights with respect to the supply of water, in each case for use, in whole or in major part, in any of the Mortgagor's generating plants, now existing or hereafter acquired by lease, contract, purchase or otherwise or constructed by the Mortgagor, including any interest or participation of the Mortgagor in any such facilities or any rights to the output or capacity thereof, together with all additions, betterments, extensions and improvements to such Electric System or any part thereof hereafter made and together with all lands, easements and rights-of-way of the Mortgagor and all other works, property or structures of the Mortgagor and contract rights and other tangible and intangible assets of the Mortgagor used or useful in connection with or related to such Electric System, including without limitation a contract right or other contractual arrangement referred to in Granting Clause First, Subclause [(C)] but excluding any excepted property.

Environmental Law and *Environmental Laws* shall mean all federal, state, and local laws, regulations, and requirements related to protection of human health or the environment, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*), the Clean Water Act (33 U.S.C. 1251 *et seq.*) and the Clean Air Act (42 U.S.C. 7401 *et seq.*), and any amendments and implementing regulations of such acts.

Equity shall mean the total margins and equities and margins computed pursuant to Accounting Requirements, but excluding any Regulatory Created Assets.

Event of Default shall have the meaning specified in Section [4.01] hereof.

Excepted Property shall have the meaning stated in the Granting Clauses.

Government shall mean the United States of America acting by and through the Administrator of RUS and shall include its successors and assigns.

Government Notes shall mean the Original Notes, and any Additional Notes, issued by the Mortgagor to the Government, or guaranteed or insured as to payment by the Government.

Independent shall mean when used with respect to any specified person or entity means such a person or entity who (1) is in fact independent, (2) does not have any direct financial interest or any material indirect financial interest in the Mortgagor or in any affiliate of the Mortgagor and (3) is not connected with the Mortgagor as an officer, employee, promoter, underwriter, trustee, partner, director or person performing similar functions.

Interest Expense shall mean an amount constituting the interest expense of the Mortgagor as computed pursuant to Accounting Requirements.

Lien shall mean any statutory or common law consensual or non-consensual mortgage, pledge, security interest, encumbrance, lien, right of set off, claim or charge of any kind, including, without limitation, any conditional sale or other title retention transaction, any lease transaction in the nature thereof and any secured transaction under the UCC.

Loan Agreement shall mean any agreement executed by and between the Mortgagor and the Government or any other lender in connection with the execution and delivery of any Notes secured hereby.

Long-Term Debt shall mean any amount included in Total Long-Term Debt pursuant to Accounting Requirements.

Long-Term Lease shall mean a lease having an unexpired term (taking into account terms of renewal at the option of the lessor, whether or not such lease has previously been renewed) of more than 12 months.

Margins shall mean the sum of amounts recorded as operating margins and non-operating margins as computed in accordance with Accounting Requirements.

Maximum Debt Limit, if any, shall mean the amount more particularly described in Schedule ''A'' hereof.

Mortgage shall mean this Restated Mortgage and Security Agreement, including any amendments or supplements thereto from time to time.

Mortgaged Property shall have the meaning specified as stated in the Habendum to the Granting Clauses.

MORTGAGEE or MORTGAGEES shall mean the Government, _____ {the supplemental lender}, _____ their successors and assigns as well as any and all other lenders pursuant to Article II of this Mortgage that enter into a supplemental mortgage in accordance with Section [2.04] of Article II hereof, their successors and assigns.

Net Utility Plant shall mean the amount constituting the total utility plant of the Mortgagor less depreciation computed in accordance with Accounting Requirements.

Note or Notes shall mean one or more of the Government Notes, and any other Notes which may, from time to time, be secured under this Mortgage.

Noteholder or Noteholders shall mean one or more of the holders of Notes secured by this Mortgage; PROVIDED, however, that in the case of any Notes that have been guaranteed or insured as to payment by RUS, as to such Notes Noteholder or Noteholders shall mean RUS, exclusively, regardless of whether such notes are in the possession of RUS.

Original Mortgage means the instrument(s) identified as such in Schedule ''A'' hereof.

Original Notes shall mean the Notes listed on Schedule ''A'' hereto as such, such Notes being instruments evidencing outstanding indebtedness of the Mortgagor (i) to the Government (including indebtedness which has been issued by the Mortgagor to a third party and guaranteed or insured as to payment by the Government) and (ii) to each other Mortgagee on the date of this Mortgage.

Outstanding Notes shall mean as of the date of determination, (i) all Notes theretofore issued, executed and delivered to any Mortgagee and (ii) any Notes guaranteed or insured as to payment by the Government, *except* (a) Notes referred to in clause (i) or (ii) for which the principal and interest have been fully paid and which have been canceled by the Noteholder, and (b) Notes the payment for which has been provided for pursuant to Section [5.03].

Permitted Debt shall have the meaning specified in Section [3.08].

Permitted Encumbrances shall mean:

(1) as to the property specifically described in Granting Clause First, the restrictions, exceptions, reservations, conditions, limitations, interests and other matters which are set forth or referred to in such descriptions and each of which fits one or more of the clauses of this definition, PROVIDED, such matters do not in the aggregate materially detract from the value of the Mortgaged Property taken as a whole and do not materially impair the use of such property for the purposes for which it is held by the Mortgagor;

(2) liens for taxes, assessments and other governmental charges which are not delinquent;

(3) liens for taxes, assessments and other governmental charges already delinquent which are currently being contested in good faith by appropriate proceedings; PROVIDED the Mortgagor shall have set aside on its books adequate reserves with respect thereto;

(4) mechanics', workmen's, repairmen's, materialmen's, warehousemen's and carriers' liens and other similar liens arising in the ordinary course of business for charges which are not delinquent, or which are being contested in good faith and have not proceeded to judgment; PROVIDED the

Mortgagor shall have set aside on its books adequate reserves with respect thereto;

(5) liens in respect of judgments or awards with respect to which the Mortgagor shall in good faith currently be prosecuting an appeal or proceedings for review and with respect to which the Mortgagor shall have secured a stay of execution pending such appeal or proceedings for review; PROVIDED the Mortgagor shall have set aside on its books adequate reserves with respect thereto;

(6) easements and similar rights granted by the Mortgagor over or in respect of any Mortgaged Property, PROVIDED that in the opinion of the Board or a duly authorized officer of the Mortgagor such grant will not impair the usefulness of such property in the conduct of the Mortgagor's business and will not be prejudicial to the interests of the Mortgagees, and similar rights granted by any predecessor in title of the Mortgagor;

(7) easements, leases, reservations or other rights of others in any property of the Mortgagor for streets, roads, bridges, pipes, pipe lines, railroads, electric transmission and distribution lines, telegraph and telephone lines, the removal of oil, gas, coal or other minerals and other similar purposes, flood rights, river control and development rights, sewage and drainage rights, restrictions against pollution and zoning laws and minor defects and irregularities in the record evidence of title, PROVIDED that such easements, leases, reservations, rights, restrictions, laws, defects and irregularities do not materially affect the marketability of title to such property and do not in the aggregate materially impair the use of the Mortgaged Property taken as a whole for the purposes for which it is held by the Mortgagor;

(8) liens upon lands over which easements or rights of way are acquired by the Mortgagor for any of the purposes specified in Clause [(7)] of this definition, securing indebtedness neither created, assumed nor guaranteed by the Mortgagor nor on account of which it customarily pays interest, which liens do not materially impair the use of such easements or rights of way for the purposes for which they are held by the Mortgagor;

(9) leases existing at the date of this instrument affecting property owned by the Mortgagor at said date which have been previously disclosed to the Mortgagees in writing and leases for a term of not more than two years (including any extensions or renewals) affecting property acquired by the Mortgagor after said date;

(10) terminable or short term leases or permits for occupancy, which leases or permits expressly grant to the Mortgagor the right to terminate them at any time on not more than six months' notice and which occupancy does not interfere with the operation of the business of the Mortgagor;

(11) any lien or privilege vested in any lessor, licensor or permittor for rent to become due or for other obligations or acts to be performed, the payment of which rent or performance of which other obligations or acts is required under leases, subleases, licenses or permits, so long as the payment of such rent or the performance of such other obligations or acts is not delinquent;

(12) liens or privileges of any employees of the Mortgagor for salary or wages earned but not yet payable;

(13) the burdens of any law or governmental regulation or permit requiring the Mortgagor to maintain certain facilities or perform certain acts as a condition of its occupancy of or interference with any public lands or any river or stream or navigable waters;

(14) any irregularities in or deficiencies of title to any rights-of-way for pipe lines, telephone lines, telegraph lines, power lines or appurtenances thereto, or other improvements thereon, and to any real estate used or to be used primarily for right-of-way purposes, PROVIDED that in the opinion of counsel for the Mortgagor, the Mortgagor shall have obtained from the apparent owner of the lands or estates therein covered by any such right-of-way a sufficient right, by the terms of the instrument granting such right-of-way, to the use thereof for the construction, operation or maintenance of the lines, appurtenances or improvements for which the same are used or are to be used, or PROVIDED that in the opinion of counsel for the Mortgagor, the Mortgagor has power under eminent domain, or similar statutes, to remove such irregularities or deficiencies;

(15) rights reserved to, or vested in, any municipality or governmental or other public authority to control or regulate any property of the Mortgagor, or to use such property in any manner, which rights do not materially impair the use of such property, for the purposes for which it is held by the Mortgagor;

(16) any obligations or duties, affecting the property of the Mortgagor, to any municipality or governmental or other public authority with respect to any franchise, grant, license or permit;

(17) any right which any municipal or governmental authority may have by virtue of any franchise, license, contract or statute to purchase, or designate a purchaser of or order the sale of, any property of the Mortgagor upon payment of cash or reasonable compensation therefor or to terminate any franchise, license or other rights or to regulate the property and business of the Mortgagor; PROVIDED, HOWEVER, that nothing in this clause 17 is intended to waive any claim or rights that the Government may otherwise have under Federal laws;

(18) as to properties of other operating electric companies acquired after the date of this Mortgage by the Mortgagor as permitted by Section [3.10] hereof, reservations and other matters as to which such properties may be subject as more fully set forth in such Section;

(19) any lien required by law or governmental regulations as a condition to the transaction of any business or the exercise of any privilege or license, or to enable the Mortgagor to maintain self-insurance or to participate in any fund established to cover any insurance risks or in connection with workmen's compensation, unemployment insurance, old age pensions or other social security, or to share in the privileges or benefits required for companies participating in such arrangements; PROVIDED, HOWEVER, that nothing in this clause 19 is intended to waive any claim or rights that the Government may otherwise have under Federal laws;

(20) liens arising out of any defeased mortgage or indenture of the Mortgagor;

(21) the undivided interest of other owners, and liens on such undivided interests, in property owned jointly with the Mortgagor as well as the rights of such owners to such property pursuant to the ownership contracts;

(22) any lien or privilege vested in any lessor, licensor or permittor for rent to become due or for other obligations or acts to be performed, the payment of which rent or the performance of which other obligations or acts is required under leases, subleases, licenses or permits, so long as the payment of such rent or the performance of such other obligations or acts is not delinquent;

(23) purchase money mortgages permitted by Section [3.08]; and

(24) the Original Mortgage.

Property Additions shall mean Utility System property as to which the Mortgagor shall provide Title Evidence and which shall be (or, if retired, shall have been) subject to the lien of this Mortgage, which shall be properly chargeable to the Mortgagor's utility plant accounts under Accounting Requirements (including property constructed or acquired to replace retired property credited to such accounts) and which shall be:

(1) acquired (including acquisition by merger, consolidation, conveyance or transfer) or constructed by the Mortgagor after the date hereof, including property in the process of construction, insofar as not reflected on the books of the Mortgagor with respect to periods on or prior to the date hereof, and

(2) used or useful in the utility business of the Mortgagor conducted with the properties described in the Granting Clauses of this Mortgage, even though separate from and not physically connected with such properties.

''Property Additions'' shall also include:

(3) easements and rights-of-way that are useful for the conduct of the utility business of the Mortgagor, and

(4) property located or constructed on, over or under public highways, rivers or other public property if the Mortgagor has the lawful right under permits, licenses or franchises granted by a governmental body having jurisdiction in the premises or by the law of the State in which such property is located to maintain and operate such property for an unlimited, indeterminate or indefinite period or for the period, if any, specified in such permit, license or franchise or law and to remove such property at the expiration of the period covered by such permit, license or franchise or law, or if the terms of such permit, license, franchise or law require any public authority having the right to take over such property to pay fair consideration therefor.

''Property Additions'' shall NOT include:

(a) good will, going concern value, contracts, agreements, franchises, licenses or permits, whether acquired as such, separate and distinct from the property operated in connection therewith, or acquired as an incident thereto, or

(b) any shares of stock or indebtedness or certificates or evidences of interest therein or other securities, or

(c) any plant or system or other property in which the Mortgagor shall acquire only a leasehold interest, or any betterments, extensions, improvements or additions (other than movable physical personal property which the Mortgagor has the right to remove), of, upon or to any plant or system or other property in which the Mortgagor shall own only a leasehold interest unless (i) the term of the leasehold interest in the property to which such betterment, extension, improvement or addition relates shall extend for at least 75% of the useful life of such betterment, extension, improvement or addition and (ii) the lessor shall have agreed to give the Mortgagee reasonable notice and opportunity to cure any default by the Mortgagor under such lease and not to disturb any Mortgagee's possession of such leasehold estate in the event any Mortgagee succeeds to the Mortgagor's interest in such lease upon any Mortgagee's exercise of any remedies under this Mortgage so long as there is no default in the performance of the tenant's covenants contained therein, or

(d) any property of the Mortgagor subject to the Permitted Encumbrance described in clause [(23)] of the definition thereof.

Prudent Utility Practice shall mean any of the practices, methods and acts which, in the exercise of reasonable judgment, in light of the facts, including, but not limited to, the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry prior thereto, known at the time the decision was made, would have been expected to accomplish the desired result consistent with cost-effectiveness, reliability, safety and expedition. It is recognized that Prudent Utility Practice is not intended to be limited to optimum practice, method or act to the exclusion of all others, but rather is a spectrum of possible practices, methods or acts which could have been expected to accomplish the desired result at the lowest reasonable cost consistent with cost-effectiveness, reliability, safety and expedition.

REA shall mean the Rural Electrification Administration of the United States Department of Agriculture, the predecessor of RUS.

Regulatory Created Assets shall mean the sum of any amounts properly recordable as unrecovered plant and regulatory study costs or as other regulatory assets, pursuant to Accounting Requirements.

Restricted Rentals shall mean all rentals required to be paid under finance leases and charged to income, exclusive of any amounts paid under any such lease (whether or not designated therein as rental or additional rental) for maintenance or repairs, insurance, taxes, assessments, water rates or similar charges. For the purpose of this definition the term ''finance lease'' shall mean any lease having a rental term (including the term for which such lease may be renewed or extended at the option of the lessee) in excess of 3 years and covering property having an initial cost in excess of $250,000 other than aircraft, ships, barges, automobiles, trucks, trailers, rolling stock and vehicles; office, garage and warehouse space; office equipment and computers.

RUS shall mean the Rural Utilities Service, an agency of the United States Department of Agriculture, or if at any time after the execution of this Mortgage RUS is not existing and performing the duties of administering a program of rural electrification as currently assigned to it, then the entity performing such duties at such time.

Security Interest shall mean any assignment, transfer, mortgage, hypothecation or pledge.

Subordinated Indebtedness shall mean secured indebtedness of the Mortgagor, payment of which shall be subordinated to the prior payment of the Notes in accordance with the provisions of Section [3.08] hereof by subordination agreement in form and substance satisfactory to each Mortgagee which approval will not be unreasonably withheld.

Supplemental Mortgage shall mean an instrument of the type described in Section [2.04].

Times Interest Earned Ratio (''TIER'') shall mean the ratio determined as follows: for each calendar year: add (i) patronage capital or margins of the Mortgagor, (ii) Interest Expense on Total Long-Term Debt of the Mortgagor and (iii) taxes paid, if any, based upon income during the year and divide the total so obtained by Interest Expense on Total Long-Term Debt of the Mortgagor, *provided, however,* that in computing Interest Expense on Total Long-Term Debt, there shall be added, to the extent not otherwise included, an amount equal to 33⅓% of the excess of Restricted Rentals paid by the Mortgagor over 2% of the Mortgagor's Equity.

Title Evidence shall mean with respect to any real property:

(1) an opinion of counsel to the effect that the Mortgagor has title, whether fairly deducible of record or based upon prescriptive rights (or, as to personal property, based on such evidence as counsel shall determine to be sufficient), as in the opinion of counsel is satisfactory for the use thereof in connection with the operations of the Mortgagor, and counsel in giving such opinion may disregard any irregularity or deficiency in the record evidence of title which, in the opinion of such counsel, can be cured by proceedings within the power of the Mortgagor or does not substantially impair the usefulness of such property for the purpose of the Mortgagor and may base such opinion upon counsel's own investigation or upon affidavits, certificates, abstracts of title, statements or investigations made by persons in whom such counsel has confidence or upon examination of a certificate or guaranty of title or policy of title insurance in which counsel has confidence; or

(2) a mortgagee's policy of title insurance in the amount of the cost to the Mortgagor of the land included in Property Additions, as such cost is determined by the Mortgagor in accordance with the Accounting Requirements, issued in favor of the Mortgagees by an entity authorized to insure title in the states where the subject property is located, showing the Mortgagor as the owner of the subject property and insuring the lien of this Mortgage; and with respect to any *personal property* a certificate of the general manage or other duly authorized officer that the Mortgagor lawfully owns and is possessed of such property.

Total Assets shall mean an amount constituting total assets of the Mortgagor as computed pursuant to Accounting Requirements, but excluding any Regulatory Created Assets.

Total Long-Term Debt shall mean the total outstanding long-term debt of the Mortgagor as computed pursuant to Accounting Requirements.

Total Utility Plant shall mean the total of all property properly recorded in the utility plant accounts of the Mortgagor, pursuant to Accounting Requirements.

Uniform Commercial Code or UCC shall mean the UCC of the state referred to in Section [1.04], and if Mortgaged Property is located in a state other than that state, then as to such Mortgaged Property UCC refers to the UCC in effect in the state where such property is located.

Utility System shall mean the Electric System and all of the Mortgagor's interest in community infrastructure located substantially within its electric service territory, namely water and waste systems, solid waste disposal facilities, telecommunications and other electronic communications systems, and natural gas distribution systems.

SECTION 1.02. *General Rules of Construction:*

a. Accounting terms not referred to above are used in this Mortgage in their ordinary sense and any computations relating to such terms shall be computed in accordance with the Accounting Requirements.

b. Any reference to ''directors'' or ''board of directors'' shall be deemed to mean ''trustees'' or ''board of trustees,'' as the case may be.

SECTION 1.03. *Special Rules of Construction if RUS is a Mortgagee:* During any period that RUS is a Mortgagee, the following additional provisions shall apply:

a. In the case of any Notes that have been guaranteed or insured as to payment by RUS, as to such Notes RUS shall be considered to be the Noteholder, exclusively, regardless of whether such Notes are in the possession of RUS.

b. In the case of any prior approval rights conferred upon RUS by Federal statutes, including (without limitation) Section 7 of the Rural Electrification Act of 1936, as amended, with respect to the sale or disposition of property, rights, or franchises of the Mortgagor, all such statutory rights are reserved except to the extent that they are expressly modified or waived in this Mortgage.

SECTION 1.04. *Governing Law:* This Mortgage shall be construed in and governed by Federal law to the extent applicable, and otherwise by the laws of the State of _____.

SECTION 1.05 *Notices:* All demands, notices, reports, approvals, designations, or directions required or permitted to be given hereunder shall be in writing and shall be deemed to be properly given if sent by

registered or certified mail, postage prepaid, or delivered by hand, or sent by facsimile transmission, receipt confirmed, addressed to the proper party or parties at the following address:

As to the Mortgagor:

_____

_____

_____

As to the Mortgagee:

Rural Utilities Service,
United States Department of Agriculture,
Washington, DC 20250–1500

_____

_____

_____

and as to any other person, firm, corporation or governmental body or agency having an interest herein by reason of being a Mortgagee, at the last address designated by such person, firm, corporation, governmental body or agency to the Mortgagor and the other Mortgagees. Any such party may from time to time designate to each other a new address to which demands, notices, reports, approvals, designations or directions may be addressed, and from and after any such designation the address designated shall be deemed to be the address of such party in lieu of the address given above.

ARTICLE II

ADDITIONAL NOTES

SECTION 2.01. *Additional Notes:* (a) Without the prior consent of any Mortgagee or any Noteholder, the Mortgagor may issue Additional Notes to the Government or to another lender or lenders for the purpose of acquiring, procuring or constructing new or replacement Eligible Property Additions which Notes will thereupon be secured equally and ratably with the Notes if each of the following requirements are satisfied:

(1) As evidenced by a certificate of an Independent certified public accountant sent to each Mortgagee on or before the first advance of proceeds from such Additional Notes:

(i) The Mortgagor shall have achieved for each of the two calendar years immediately preceding the issuance of such Additional Notes, a TIER of not less than 1.5 and a DSC of not less than 1.25;

(ii) After taking into account the effect of such Additional Notes on the Total Long Term Debt of the Mortgagor, the ratio of the Mortgagor's Net Utility Plant to its Total Long Term Debt shall be greater than or equal to 1.0 on a pro forma basis;

(iii) After taking into account the effect of such Additional Notes on the Total Assets of such Mortgagor, the Mortgagor shall have Equity greater than or equal to 27 percent of Total Assets on a pro forma basis; and

(iv) The sum of the aggregate principal amount of such Additional Notes (if any) that are not related to the Electric System if added to the aggregate outstanding principal amount of all the existing Notes (if any) that are not related to the Electric System will not exceed 30% of the Mortgagor's Equity on a pro forma basis.

(2) No Event of Default has occurred and is continuing hereunder, or any event which with the giving of notice or lapse of time or both would become an Event of Default has occurred and is continuing.

(3) The Eligible Property Additions being constructed, acquired, procured or replaced are part of the Mortgagor's Utility System.

(4) The Borrower's general manager or other duly authorized officer shall send to each of the Mortgagees a certificate in substantially the form attached hereto as [Exhibit A] on or before the date of the first advance of proceeds from such Additional Notes.

(b) For purposes of this section:

(1) ''Eligible Property Additions'' shall mean Property Additions acquired or whose construction was completed not more than 5 years prior to the issuance of the Additional Notes and Property Additions acquired or whose construction is started and/or completed not more than 4 years after issuance of the Additional Notes, but shall exclude any Property Additions financed by any other debt secured under the Mortgage at the time additional Notes are issued;

(2) Notes are considered to be ''issued'' on, and the date of ''issuance'' shall be, the date on which they are executed by the Mortgagor; and

(3) For purposes of calculating the pro forma ratios in subparagraphs (a)(1)(ii) and (iii), the values for Total Long Term Debt and Total Assets before debt issuance and the values for Equity and Net Utility Plant shall be the most recently available end-of-month figures preceding the issuance of the Additional Notes, but in no case for a month ending more than 180 days preceding such issuance.

SECTION 2.02. *Refunding or Refinancing Notes:* The Mortgagor shall also have the right without the consent of any Mortgagee or any Noteholder to issue Additional Notes for the purpose of refunding or refinancing any Notes so long as the total amount of outstanding indebtedness evidenced by such Additional Note or Notes is not greater than 105% of the then outstanding principal balance of the Note or Notes being refunded or refinanced. PROVIDED, HOWEVER, that the Mortgagor may not exercise its rights under this Section if an Event of Default has occurred and is continuing, or any event which with the giving of notice or lapse of time or both would become an Event of Default has occurred and is continuing. On or before the first advance of proceeds from Notes issued under this section, the Mortgagor shall notify each Mortgagee of the refunding or refinancing. Additional Notes issued pursuant to this Section [2.02] will thereupon be secured equally and ratably with the Notes.

SECTION 2.03. *Other Additional Notes.* With the prior written consent of each Mortgagee, the Mortgagor may issue Additional Notes to the Government or any lender or lenders, which Notes will thereupon be secured equally and ratably with Notes without regard to whether any of the requirements of Sections [2.01] or [2.02] are satisfied.

SECTION 2.04. *Additional Lenders Entitled to the Benefit of This Mortgage:* Without the prior consent of any Mortgagee or any Noteholder, each new lender designated as a payee in any Additional Notes issued by the Mortgagor pursuant to Section [2.01] or [2.02] of this Mortgage shall become a Mortgagee hereunder upon the execution and delivery by the Mortgagor and such lender of a supplemental mortgage hereto designating such lender as a Mortgagee hereunder. Such new lender shall be entitled to the benefits of this Mortgage without further act or deed. Each Mortgagee and each person or entity that becomes a lender pursuant to Section [2.01] or [2.02] of this Mortgage shall, upon the request of the Mortgagor to do so, execute and deliver a supplement to this Mortgage in substantially the form set forth in Section [2.05] to evidence the addition of such new lender as an additional Mortgagee entitled to the benefits of this Mortgage. The failure of any existing Mortgagee to enter into such supplemental mortgage shall not deprive the new lender of its rights under this Mortgage; provided that such additional indebtedness otherwise conforms in all respects with the requirements for issuing Additional Notes under this Mortgage.

SECTION 2.05. *Form of Supplemental Mortgage:* (a) The form of supplemental mortgage referred to in Section [2.04] is attached to this Mortgage as Exhibit B and hereby incorporated by reference as if set forth in full at this point.

(b) In the event that the Mortgagor subsequently issues Additional Notes pursuant to Sections [2.01] or [2.02] to any existing Mortgagee and that Mortgagee desires further assurance that such Additional Notes will be secured by the lien of the Mortgage, an instrument substantially in the form of the supplemental mortgage attached as Exhibit B may be used.

(c) In the event that the Mortgagor issues Additional Notes pursuant to Section [2.03] to either an existing Mortgagee or a new lender, in either case with the prior written consent of each Mortgagee, then an instrument substantially in the form of the supplemental mortgage attached as Exhibit B may also be used.

ARTICLE III—PARTICULAR COVENANTS OF THE MORTGAGOR

SECTION 3.01. *Payment of Debt Service on Notes*: The Mortgagor will duly and punctually pay the principal, premium, if any, and interest on the Notes in accordance with the terms of the Notes, the Loan Contracts, this Mortgage and any Supplemental Mortgage authorizing such Notes.

SECTION 3.02. *Warranty of Title*: (a) At the time of the execution and delivery of this instrument, the Mortgagor has good and marketable title in fee simple to the real property specifically described in Granting Clause First as owned in fee and good and marketable title to the interests in real property specifically described in Granting Clause [First], subject to no mortgage, lien, charge or encumbrance except as stated therein, and has full power and lawful authority to grant, bargain, sell, alien, remise, release, convey, assign, transfer, encumber, mortgage, pledge, set over and confirm said real property and interests in real property in the manner and form aforesaid.

(b) At the time of the execution and delivery of this instrument, the Mortgagor lawfully owns and is possessed of the

personal property specifically described in Granting Clauses [First and Second], subject to no mortgage, lien, charge or encumbrance except as stated therein, and has full power and lawful authority to mortgage, assign, transfer, deliver, pledge and grant a continuing security interest in said property and, including any proceeds thereof, in the manner and form aforesaid.

(c) The Mortgagor hereby does and will forever warrant and defend the title to the property specifically described in Granting Clause First against the claims and demands of all persons whomsoever, except Permitted Encumbrances.

SECTION 3.03. *After-Acquired Property; Further Assurances; Recording*: (a) All property of every kind, other than Excepted Property, acquired by the Mortgagor after the date hereof, shall, immediately upon the acquisition thereof by the Mortgagor, and without any further mortgage, conveyance or assignment, become subject to the lien of this Mortgage; SUBJECT, HOWEVER, to Permitted Encumbrances and the exceptions, if any, to which all of the Mortgagees consent. Nevertheless, the Mortgagor will do, execute, acknowledge and deliver all and every such further acts, conveyances, mortgages, financing statements and assurances as any Mortgagee shall require for accomplishing the purposes of this Mortgage.

(b) The Mortgagor will cause this Mortgage and all Supplemental Mortgages and other instruments of further assurance, including all financing statements covering security interests in personal property, to be promptly recorded, registered and filed, and will execute and file such financing statements and cause to be issued and filed such continuation statements, all in such manner and in such places as may be required by law fully to preserve and protect the rights of all of the Mortgagees and Noteholders hereunder to all property comprising the Mortgaged Property. The Mortgagor will furnish to each Mortgagee:

(1) promptly after the execution and delivery of this instrument and of each Supplemental Mortgage or other instrument of further assurance, an Opinion of Counsel stating that, in the opinion of such Counsel, this instrument and all such Supplemental Mortgages and other instruments of further assurance have been properly recorded, registered and filed to the extent necessary to make effective the lien intended to be created by this Mortgage, and reciting the details of such action or referring to prior Opinions of Counsel in which such details are given, and stating that all financing statements and continuation statements have been executed and filed that are necessary fully to preserve and protect the rights of all of the Mortgagees and Noteholders hereunder, or stating that, in the opinion of such Counsel, no such action is necessary to make the lien effective; and

(2) within 30 days after _____ in each year beginning with the year ____, an Opinion of Counsel, dated as of such date, either stating that, in the opinion of such Counsel, such action has been taken with respect to the recording, registering, filing, re-recording, re-registering and re-filing of this instrument and of all Supplemental Mortgages, financing statements, continuation statements or other instruments of further assurances as is necessary to maintain the lien of this Mortgage (including the lien on any property acquired by the Mortgagor after the execution and delivery of this instrument and owned by the Mortgagor at the end of preceding calendar year) and reciting the details of such action or referring to prior Opinions of Counsel in which such details are given, and stating that all financing statements and continuation statements have been executed and filed that are necessary to fully preserve and protect the rights of all of the Mortgagees and Noteholders hereunder, or stating that, in the opinion of such Counsel, no such action is necessary to maintain such lien.

SECTION 3.04. *Environmental Requirements and Indemnity*: (a) The Mortgagor shall, with respect to all facilities which may be part of the Mortgaged Property, comply with all Environmental Laws.

(b) The Mortgagor shall defend, indemnify, and hold harmless each Mortgagee, its successors and assigns, from and against any and all liabilities, losses, damages, costs, expenses (including but not limited to reasonable attorneys' fees and expenses), causes of actions, administrative proceedings, suits, claims, demands, or judgments of any nature arising out of or in connection with any matter related to the Mortgage Property and any Environmental Law, including but not limited to:

(1) the past, present, or future presence of any hazardous substance, contaminant, pollutant, or hazardous waste on or related to the Mortgaged Property;

(2) any failure at any time by the undersigned to comply with the terms of any order related to the Mortgaged Property and issued by any federal, state, or municipal department or agency (other than RUS) exercising its authority to enforce any Environmental Law; and

(3) any lien or claim imposed under any Environmental Law related to clause (1).

(c) Within 10 (ten) business days after receiving knowledge of any liability, losses, damages, costs, expenses (including but not limited to reasonable attorneys' fees and expenses), cause of action, administrative proceeding, suit, claim, demand, judgment, lien, reportable event including but not limited to the release of a hazardous substance, or potential or actual violation or non-compliance arising out of or in connection with the Mortgaged Property and any Environmental Law, the Mortgagor shall provide each Mortgagee with written notice of such matter. With respect to any matter upon which it has provided such notice, the Mortgagor shall immediately take any and all appropriate actions to remedy, cure, defend, or otherwise affirmatively respond to the matter.

SECTION 3.05. *Payment of Taxes:* The Mortgagor will pay or cause to be paid as they become due and payable all taxes, assessments and other governmental charges lawfully levied or assessed or imposed upon the Mortgaged Property or any part thereof or upon any income therefrom, and also (to the extent that such payment will not be contrary to any applicable laws) all taxes, assessments and other governmental charges lawfully levied, assessed or imposed upon the lien or interest of the Noteholders or of the Mortgagees in the Mortgaged Property, so that (to the extent aforesaid) the lien of this Mortgage shall at all times be wholly preserved at the cost of the Mortgagor and without expense to the Mortgagees or the Noteholders; PROVIDED, HOWEVER, that the Mortgagor shall not be required to pay and discharge or cause to be paid and discharged any such tax, assessment or governmental charge to the extent that the amount, applicability or validity thereof shall currently be contested in good faith by appropriate proceedings and the Mortgagor shall have established and shall maintain adequate reserves on its books for the payment of the same.

SECTION 3.06. *Authority to Execute and Deliver Notes, Loan Agreements and Mortgage; All Action Taken; Enforceable Obligations:* The Mortgagor is authorized under its articles of incorporation and bylaws [or code of regulations] and all applicable laws and by corporate action to execute and deliver the Notes, any Additional Notes, the Loan Agreements and this Mortgage. The Notes, the Loan Agreements and this Mortgage are, and any Additional Notes and Loan Agreements when executed and delivered will be, the valid and enforceable obligations of the Mortgagor in accordance with their respective terms.

SECTION 3.07. *Restrictions on Further Encumbrances on Property:* Except to secure Additional Notes, the Mortgagor will not, without the prior written consent of each Mortgagee, create or incur or suffer or permit to be created or incurred or to exist any Lien, charge, assignment, pledge, mortgage on any of the Mortgaged Property inferior to, prior to, or on a parity with the Lien of this Mortgage except for the Permitted Encumbrances. Subject to the provisions of Section [3.08], or unless approved by each of the Mortgagees, the Mortgagor will purchase all materials, equipment and replacements to be incorporated in or used in connection with the Mortgaged Property outright and not subject to any conditional sales agreement, chattel mortgage, bailment, lease or other agreement reserving to the seller any right, title or Lien.

SECTION 3.08. *Restrictions On Additional Permitted Debt:* The Mortgagor shall not incur, assume, guarantee or otherwise become liable in respect of any debt for borrowed money and Restricted Rentals (including Subordinated Debt) other than the following: (''Permitted Debt'')

(1) Additional Notes issued in compliance with Article II hereof;

(2) Purchase money indebtedness in non-Utility System property, in an amount not exceeding 10% of Net Utility Plant;

(3) Restricted Rentals in an amount not to exceed 5% of Equity during any 12 consecutive calendar month period;

(4) Unsecured lease obligations incurred in the ordinary course of business except Restricted Rentals;

(5) Debt represented by dividends declared but not paid; and

(6) Subordinated Indebtedness approved by each Mortgagee.

PROVIDED, However, that the Mortgagor may incur Permitted Debt without the consent of the Mortgagee only so long as there exists no Event of Default hereunder and there has been no continuing occurrence which with the passage of time and giving of notice could become an Event of Default hereunder.

PROVIDED, FURTHER, by executing this Mortgage any consent of RUS that the Mortgagor would otherwise be required to obtain under this Section is hereby deemed to be given or waived by RUS by operation of law to the extent, but only to the extent, that to impose such a requirement of RUS consent would clearly violate existing federal laws or government regulations.

SECTION 3.09. *Preservation of Corporate Existence and Franchises:* The Mortgagor will, so long as any Outstanding Notes exist, take or cause to be taken all such action as from time to time may be necessary to preserve its corporate existence and to preserve and renew all franchises, rights of way, easements, permits, and licenses now or hereafter to be granted or upon it conferred the loss of which would have a material adverse affect on the Mortgagor's financial condition or business. The Mortgagor will comply with all laws, ordinances, regulations, orders, decrees and other legal requirements applicable to it or its property the violation of which could have a material adverse affect on the Mortgagor's financial condition or business.

SECTION 3.10. *Limitations on Consolidations and Mergers:* The Mortgagor shall not, without the prior written approval of each Mortgagee, consolidate or merge with any other corporation or convey or transfer the Mortgaged Property substantially as an entirety unless: (1) such consolidation, merger, conveyance or transfer shall be on such terms as shall fully preserve the lien and security hereof and the rights and powers of the Mortgagees hereunder; (2) the entity formed by such consolidation or with which the Mortgagor is merged or the corporation which acquires by conveyance or transfer the Mortgaged Property substantially as an entirety shall execute and deliver to the Mortgagees a mortgage supplemental hereto in recordable form and containing an assumption by such successor entity of the due and punctual payment of the principal of and interest on all of the Outstanding Notes and the performance and observance of every covenant and condition of this Mortgage; (3) immediately after giving effect to such transaction, no default hereunder shall have occurred and be continuing; (4) the Mortgagor shall have delivered to the Mortgagees a certificate of its general manager or other officer, in form and substance satisfactory to each of the Mortgagees, which shall state that such consolidation, merger, conveyance or transfer and such supplemental mortgage comply with this subsection and that all conditions precedent herein provided for relating to such transaction have been complied with; (5) the Mortgagor shall have delivered to the Mortgagees an opinion of counsel in form and substance satisfactory to each of the Mortgagees; and (6) the entity formed by such consolidation or with which the Mortgagor is merged or the corporation which acquires by conveyance or transfer the Mortgaged Property substantially as an entirety shall be an entity—(A) having Equity equal to at least 27% of its Total Assets on a pro forma basis after giving effect to such transaction, (B) having a pro forma TIER of not less than 1.50 and a pro forma DSC of not less than 1.25 for each of the two preceding calendar years, and (C) having Net Utility Plant equal to or greater than 1.0 times its Total Long-Term Debt on a pro forma basis. Upon any consolidation or merger or any conveyance or transfer of the Mortgaged Property substantially as an entirety in accordance with this subsection, the successor entity formed by such consolidation or with which the Mortgagor is merged or to which such conveyance or transfer is made shall succeed to, and be substituted for, and may exercise every right and power of, the Mortgagor under this Mortgage with the same effect as if such successor entity had been named as the Mortgagor herein.

SECTION 3.11. *Limitations on Transfers of Property:* The Mortgagor may not, except as provided in [Section 3.10] above, without the prior written approval of each Mortgagee, sell, lease or transfer any Mortgaged Property to any other person or entity (including any subsidiary or affiliate of the Mortgagor), unless (1) there exists no Event of Default or occurrence which with the passing of time and the giving of notice would be an Event of Default, (2) fair market value is obtained for such property, (3) the aggregate value of assets so sold, leased or transferred in any 12-month period is less than 10% of Net Utility Plant, and (4) the proceeds of such sale, lease or transfer, less ordinary and reasonable expenses incident to such transaction, are immediately (i) applied as a prepayment of all Notes equally and ratably, (ii) in the case of dispositions of equipment, materials or scrap, applied to the purchase of other property useful in the Mortgagor's utility business, not necessarily of the same kind as the property disposed of, which shall forthwith become subject to the Lien of the Mortgage, or (iii) applied to the acquisition or construction of utility plant.

SECTION 3.12. *Maintenance of Mortgaged Property:* (a) So long as the Mortgagor holds title to the Mortgaged Property, the Mortgagor will at all times maintain and preserve the Mortgaged Property which is used or useful in the Mortgagor's business and each and every part and parcel thereof in good repair, working order and condition, ordinary wear and tear and acts of God excepted, and in compliance with Prudent Utility Practice and in compliance with all applicable laws, regulations and orders, and will from time to time make all needed and proper repairs, renewals and replacements, and useful and proper alterations, additions, betterments and improvements, and will, subject to contingencies beyond its reasonable control, at all times use all reasonable diligence to furnish the consumers served by it through the Mortgaged Property, or any part thereof, with an adequate supply of electric power and energy. If any substantial part of the Mortgaged Property is leased by the Mortgagor to any other party, the lease agreement between the Mortgagor and the lessee shall obligate the lessee to comply with the provisions of subsections (a) and (b) of this Section in respect of the leased facilities and to permit the Mortgagor to operate the leased facilities in the event of any failure by the lessee to so comply.

(b) If in the sole judgement of any Mortgagee, the Mortgaged Property is not being maintained and repaired in accordance with paragraph (a) of this section, such Mortgagee may send to the Mortgagor a written report of needed improvements and the Mortgagor will upon receipt of such written report promptly undertake to accomplish such improvements.

(c) The Mortgagor further agrees that upon reasonable written request of any Mortgagee, which request together with the requests of any other Mortgagees shall be made no more frequently than once every three years, the Mortgagor will supply promptly to each Mortgagee a certification (hereinafter called the ''Engineer's Certification''), in form satisfactory to the requestor, prepared by a professional engineer, who shall be satisfactory to the Mortgagees, as to the condition of the Mortgaged Property. If in the sole judgment of any Mortgagee the Engineer's Certification discloses the need for improvements to the condition of the Mortgaged Property or any other operations of the Mortgagor, such Mortgagee may send to the Mortgagor a written report of such improvements and the Mortgagor will upon receipt of such written report promptly undertake to accomplish such of these improvements as are required by such Mortgagee.

SECTION 3.13. *Insurance; Restoration of Damaged Mortgaged Property:* (a) The Mortgagor will take out, as the respective risks are incurred, and maintain the classes and amounts of insurance in conformance with generally accepted utility industry standards for such classes and amounts of coverages of utilities of the size and character of the Mortgagor and consistent with Prudent Utility Practice.

(b) The foregoing insurance coverage shall be obtained by means of bond and policy forms approved by regulatory authorities having jurisdiction, and, with respect to insurance upon any part of the Mortgaged Property, shall provide that the insurance shall be payable to the Mortgagees as their interests may appear by means of the standard mortgagee clause without contribution. Each policy or other contract for such insurance shall contain an agreement by the insurer that, notwithstanding any right of cancellation reserved to such insurer, such policy or contract shall continue in force for at least 30 days after written notice to each Mortgagee of cancellation.

(c) In the event of damage to or the destruction or loss of any portion of the Mortgaged Property which is used or useful in the Mortgagor's business and which shall be covered by insurance, unless each Mortgagee shall otherwise agree, the Mortgagor shall replace or restore such damaged, destroyed or lost portion so that such Mortgaged Property shall be in substantially the same condition as it was in prior to such damage, destruction or loss, and

shall apply the proceeds of the insurance for that purpose. The Mortgagor shall replace the lost portion of such Mortgaged Property or shall commence such restoration promptly after such damage, destruction or loss shall have occurred and shall complete such replacement or restoration as expeditiously as practicable, and shall pay or cause to be paid out of the proceeds of such insurance all costs and expenses in connection therewith.

(d) Sums recovered under any policy or fidelity bond by the Mortgagor for a loss of funds advanced under the Notes or recovered by any Mortgagee or any Noteholder for any loss under such policy or bond shall, unless applied as provided in the preceding paragraph, be used to finance construction of utility plant secured or to be secured by this Mortgage, or unless otherwise directed by the Mortgagees, be applied to the prepayment of the Notes *pro rata* according to the unpaid principal amounts thereof (such prepayments to be applied to such Notes and installments thereof as may be designated by the respective Mortgagee at the time of any such prepayment), or be used to construct or acquire utility plant which will become part of the Mortgaged Property. At the request of any Mortgagee, the Mortgagor shall exercise such rights and remedies which they may have under such policy or fidelity bond and which may be designated by such Mortgagee, and the Mortgagor hereby irrevocably appoints each Mortgagee as its agent to exercise such rights and remedies under such policy or bond as such Mortgagee may choose, and the Mortgagor shall pay all costs and reasonable expenses incurred by the Mortgagee in connection with such exercise.

SECTION 3.14. *Mortgagee Right to Expend Money to Protect Mortgaged Property:* The Mortgagor agrees that any Mortgagee from time to time hereunder may, in its sole discretion, after having given 5 Business days prior written notice to Mortgagor, but shall not be obligated to, advance funds on behalf of Mortgagor, in order to insure the Mortgagor's compliance with any covenant, warranty, representation or agreement of the Mortgagor made in or pursuant to this Mortgage or any of the Loan Agreements, to preserve or protect any right or interest of the Mortgagees in the Mortgaged Property or under or pursuant to this Mortgage or any of the Loan Agreements, including without limitation, the payment of any insurance premiums or taxes and the satisfaction or discharge of any judgment or any Lien upon the Mortgaged Property or other property or assets of Mortgagor; *provided, however,* that the making of any such advance by or through any Mortgagee shall not constitute a waiver by any Mortgagee of any Event of Default with respect to which such advance is made nor relieve the Mortgagor of any such Event of Default. The Mortgagor shall pay to a Mortgagee upon demand all such advances made by such Mortgagee with interest thereon at a rate equal to that on the Note having the highest interest rate but in no event shall such rate be in excess of the maximum rate permitted by applicable law. All such advances shall be included in the obligations and secured by the security interest granted hereunder.

SECTION 3.15. *Time Extensions for Payment of Notes:* Any Mortgagee may, at any time or times in succession without notice to or the consent of the Mortgagor, or any other Mortgagee, and upon such terms as such Mortgagee may prescribe, grant to any person, firm or corporation who shall have become obligated to pay all or any part of the principal of (and premium, if any) or interest on any Note held by or indebtedness owed to such Mortgagee or who may be affected by the lien hereby created, an extension of the time for the payment of such principal, (and premium, if any) or interest, and after any such extension the Mortgagor will remain liable for the payment of such Note or indebtedness to the same extent as though it had at the time of such extension consented thereto in writing.

SECTION 3.16. *Application of Proceeds from Condemnation:* (a) In the event that the Mortgaged Property or any part thereof, shall be taken under the power of eminent domain, all proceeds and avails therefrom may be used to finance construction of utility plant secured or to be secured by this Mortgage. Any proceeds not so used shall forthwith be applied by the Mortgagor: first, to the ratable payment of any indebtedness secured by this Mortgage other than principal of or interest on the Notes; second, to the ratable payment of interest which shall have accrued on the Notes and be unpaid; third, to the ratable payment of or on account of the unpaid principal of the Notes, to such installments thereof as may be designated by the respective Mortgagee at the time of any such payment; and fourth, the balance shall be paid to whomsoever shall be entitled thereto.

(b) If any part of the Mortgaged Property shall be taken by eminent domain, each Mortgagee shall release the property so taken from the Mortgaged Property and shall be fully protected in so doing upon being furnished with:

(1) A certificate of a duly authorized officer of the Mortgagor requesting such release, describing the property to be released and stating that such property has been taken by eminent domain and that all conditions precedent herein provided or relating to such release have been complied with; and

(2) an opinion of counsel to the effect that such property has been lawfully taken by exercise of the right of eminent domain, that the award for such property so taken has become final and that all conditions precedent herein provided for relating to such release have been complied with.

SECTION 3.17. *Compliance with Loan Agreements; Notice of Amendments to and Defaults under Loan Agreements:* The Mortgagor will observe and perform all of the material covenants, agreements, terms and conditions contained in any Loan Agreement entered into in connection with the issuance of any of the Notes, as from time to time amended. The Mortgagor will send promptly to each Mortgagee notice of any default by the Mortgagor under any Loan Agreement and notice of any amendment to any Loan Agreement. Upon request of any Mortgagee, the Mortgagor will furnish to such Mortgagee single copies of such Loan Agreements and amendments thereto as such Mortgagee may request.

SECTION 3.18. *Rights of Way, etc., Necessary in Business:* The Mortgagor will use its best efforts to obtain all such rights of way, easements from landowners and releases from lienors as shall be necessary or advisable in the conduct of its business, and, if requested by any Mortgagee, deliver to such Mortgagee evidence satisfactory to such Mortgagee of the obtaining of such rights of way, easements or releases.

SECTION 3.19. *Limitations on Providing Free Electric Services.* The Mortgagor will not furnish or supply or cause to be furnished or supplied any electric power, energy or capacity free of charge to any person, firm or corporation, public or private, and the Mortgagor will enforce the payment of any and all amounts owning to the Mortgagor by reason of the ownership and operation of the Utility System by discontinuing such use, output, capacity, or service, or by filing suit therefor within 90 days after any such accounts are due, or by both such discontinuance and by filing suit.

SECTION 3.20. *Keeping Books; Inspection by Mortgagee:* The Mortgagor will keep proper books, records and accounts, in which full and correct entries shall be made of all dealings or transactions of or in relation to the Notes and the Utility Systems, properties, business and affairs of the Mortgagor in accordance with the Accounting Requirements. The Mortgagor will at any and all times, upon the written request of any Mortgagee and at the expense of the Mortgagor, permit such Mortgagee by its representatives to inspect the Utility Systems and properties and properties, books of account, records, reports and other papers of the Mortgagor and to take copies and extracts therefrom, and will afford and procure a reasonable opportunity to make any such inspection, and the Mortgagor will furnish to each Mortgagee any and all such information as such Mortgagee may request, with respect to the performance by the Mortgagor of its covenants under this Mortgage, the Notes and the Loan Agreements.

ARTICLE IV

EVENTS OF DEFAULT AND REMEDIES

SECTION 4.01. *Events of Default:* Each of the following shall be an ''Event of Default'' under this Mortgage:

(a) default shall be made in the payment of any installment of or on account of interest on or principal of (or premium, if any associated with) any Note or Notes for more than five (5) Business Days after the same shall be required to be made;

(b) default shall be made in the due observance or performance of any other of the covenants, conditions or agreements on the part of the Mortgagor, in any of the Notes, Loan Agreements or in this Mortgage, and such default shall continue for a period of thirty (30) days after written notice specifying such default and requiring the same to be remedied and stating that such notice is a ''Notice of Default'' hereunder shall have been given to the Mortgagor by any Mortgagee; PROVIDED, HOWEVER that in the case of a default on the terms of a Note or Loan Agreement of a particular Mortgagee, the ''Notice of Default'' required under this paragraph may only be given by that Mortgagee;

(c) the Mortgagor shall file a petition in bankruptcy or be adjudicated a bankrupt or insolvent, or shall make an assignment for the benefit of its creditors, or shall consent to the appointment of a receiver of itself or of its property, or shall institute proceedings for its reorganization or proceedings instituted by others for its reorganization shall not be dismissed within sixty (60) days after the institution thereof;

(d) a receiver or liquidator of the Mortgagor or of any substantial portion of its property shall be appointed and the order appointing such receiver or liquidator shall not be vacated within sixty (60) days after the entry thereof;

(e) the Mortgagor shall forfeit or otherwise be deprived of its corporate charter or franchises, permits, easements, or licenses required to carry on any material portion of its business;

(f) a final judgment for an amount of more than $_____ shall be entered against the Mortgagor and shall remain unsatisfied or without a stay in respect thereof for a period of sixty (60) days; or,

(g) any material representation or warranty made by the Mortgagor herein, in the Loan Agreements or in any certificate or financial statement delivered hereunder or thereunder shall prove to be false or misleading in any material respect at the time made.

SECTION 4.02. *Acceleration of Maturity; Rescission and Annulment:*

(a) If an Event of Default described in Section [4.01(a)] has occurred and is continuing, any Mortgagee upon which such default has occurred may declare the principal of all its Notes secured hereunder to be due and payable immediately by a notice in writing to the Mortgagor and to the other Mortgagees (failure to provide said notice to any other Mortgagee shall not affect the validity of any acceleration of the Note or Notes by such Mortgagee), and upon such declaration, all unpaid principal (and premium, if any) and accrued interest so declared shall become due and payable immediately, anything contained herein or in any Note or Notes to the contrary notwithstanding.

(b) If any other Event of Default shall have occurred and be continuing, any Mortgagee may declare the principal of all its Notes secured hereunder to be due and payable immediately by a notice in writing to the Mortgagor and to the other Mortgagees (failure to provide said notice to any other Mortgagee shall not affect the validity of any acceleration of the Note or Notes by such Mortgagee), and upon such declaration, all unpaid principal (and premium, if any) and accrued interest so declared shall become due and payable immediately, anything contained herein or in any Note or Notes to the contrary notwithstanding.

(c) Upon receipt of actual knowledge of or any notice of acceleration by any Mortgagee, any other Mortgagee may declare the principal of all of its Notes to be due and payable immediately by a notice in writing to the Mortgagor and upon such declaration, all unpaid principal (and premium, if any) and accrued interest so declared shall become due and payable immediately, anything contained herein or in any Note or Notes or Loan Agreements to the contrary notwithstanding.

(d) If after the unpaid principal of (and premium, if any) and accrued interest on any of the Notes shall have been so declared to be due and payable, all payments in respect of principal and interest which shall have become due and payable by the terms of such Note or Notes (other than amounts due as a result of the acceleration of the Notes) shall be paid to the respective Mortgagees, and (i) all other defaults under the Loan Agreements, the Notes and this Mortgage shall have been made good or cured to the satisfaction of the Mortgagees representing at least 80% of the aggregate unpaid principal balance of all of the Notes then Outstanding, (ii) proceedings to foreclose the lien of this Mortgage have not been commenced, and (iii) all reasonable expenses paid or incurred by the Mortgagees in connection with the acceleration shall have been paid to the respective Mortgagees, then in every such case such Mortgagees representing at least 80% of the aggregate unpaid principal balance of all of the Notes then Outstanding may by written notice to the Mortgagor, for purposes of this Mortgage, annul such declaration and waive such default and the consequences thereof, but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

SECTION 4.03. *Remedies of Mortgagees:* If one or more of the Events of Default shall occur and be continuing, any Mortgagee personally or by attorney, in its or their discretion, may, in so far as not prohibited by law:

(a) take immediate possession of the Mortgaged Property, collect and receive all credits, outstanding accounts and bills receivable of the Mortgagor and all rents, income, revenues, proceeds and profits pertaining to or arising from the Mortgaged Property, or any part thereof, whether then past due or accruing thereafter, and issue binding receipts therefor; and manage, control and operate the Mortgaged Property as fully as the Mortgagor might do if in possession thereof, including, without limitation, the making of all repairs or replacements deemed necessary or advisable by such Mortgagee in possession;

(b) proceed to protect and enforce the rights of all of the Mortgagees by suits or actions in equity or at law in any court or courts of competent jurisdiction, whether for specific performance of any covenant or any agreement contained herein or in aid of the execution of any power herein granted or for the foreclosure hereof or hereunder or for the sale of the Mortgaged Property, or any part thereof, or to collect the debts hereby secured or for the enforcement of such other or additional appropriate legal or equitable remedies as may be deemed necessary or advisable to protect and enforce the rights and remedies herein granted or conferred, and in the event of the institution of any such action or suit the Mortgagee instituting such action or suit shall have the right to have appointed a receiver of the Mortgaged Property and of all proceeds, rents, income, revenues and profits pertaining thereto or arising therefrom, whether then past due or accruing after the appointment of such receiver, derived, received or had from the time of the commencement of such suit or action, and such receiver shall have all the usual powers and duties of receivers in like and similar cases, to the fullest extent permitted by law, and if application shall be made for the appointment of a receiver the Mortgagor hereby expressly consents that the court to which such application shall be made may make said appointment; and

(c) sell or cause to be sold all and singular the Mortgaged Property or any part thereof, and all right, title, interest, claim and demand of the Mortgagor therein or thereto, at public auction at such place in any county (or its equivalent locality) in which the property to be sold, or any part thereof, is located, at such time and upon such terms as may be specified in a notice of sale, which shall state the time when and the place where the sale is to be held, shall contain a brief general description of the property to be sold, and shall be given by mailing a copy thereof to the Mortgagor at least fifteen (15) days prior to the date fixed for such sale and by publishing the same once in each week for two successive calendar weeks prior to the date of such sale in a newspaper of general circulation published in said locality or, if no such newspaper is published in such locality, in a newspaper of general circulation in such locality, the first such publication to be not less than fifteen (15) days nor more than thirty (30) days prior to the date fixed for such sale. Any sale to be made under this subparagraph (c) of this Section [4.03] may be adjourned from time to time by announcement at the time and place appointed for such sale or for such adjourned sale or sales, and without further notice or publication the sale may be had at the time and place to which the same shall be adjourned; *provided, however,* that in the event another or different notice of sale or another or different manner of conducting the same shall be required by law the notice of sale shall be given or the sale be conducted, as the case may be, in accordance with the applicable provisions of law. The expense incurred by any Mortgagee (including, but not limited to, receiver's fees, counsel fees, cost of advertisement and agents' compensation) in the exercise of any of the remedies provided in this Mortgage shall be secured by this Mortgage.

(d) In the event that a Mortgagee proceeds to enforce remedies under this Section, any other Mortgagee may join in such proceedings. In the event that the Mortgagees are not in agreement with the method or manner of enforcement chosen by any other Mortgagee, the Mortgagees representing a majority of the aggregate unpaid principal balance on the then Outstanding Notes may direct the method and manner in which remedial action will proceed.

SECTION 4.04. *Application of Proceeds from Remedial Actions:* Any proceeds or funds arising from the exercise of any rights or the enforcement of any remedies herein provided after the payment or provision for the payment of any and all costs and expenses in connection with the exercise of such rights or the enforcement of such remedies shall be applied first, to the ratable

payment of indebtedness hereby secured other than the principal of or interest on the Notes; second, to the ratable payment of interest which shall have accrued on the Notes and which shall be unpaid; third, to the ratable payment of or on account of the unpaid principal of the Notes; and the balance, if any, shall be paid to whomsoever shall be entitled thereto.

SECTION 4.05. *Remedies Cumulative; No Election:* Every right or remedy herein conferred upon or reserved to the Mortgagees or to the Noteholders shall be cumulative and shall be in addition to every other right and remedy given hereunder or now or hereafter existing at law, or in equity, or by statute. The pursuit of any right or remedy shall not be construed as an election.

SECTION 4.06. *Waiver of Appraisement Rights; Marshaling of Assets Not Required:* The Mortgagor, for itself and all who may claim through or under it, covenants that it will not at any time insist upon or plead, or in any manner whatever claim, or take the benefit or advantage of, any appraisement, valuation, stay, extension or redemption laws now or hereafter in force in any locality where any of the Mortgaged Property may be situated, in order to prevent, delay or hinder the enforcement or foreclosure of this Mortgage, or the absolute sale of the Mortgaged Property, or any part thereof, or the final and absolute putting into possession thereof, immediately after such sale, of the purchaser or purchasers thereat, and the Mortgagor, for itself and all who may claim through or under it, hereby waives the benefit of all such laws unless such waiver shall be forbidden by law. Under no circumstances shall there be any marshalling of assets upon any foreclosure or to other enforcement of this Mortgage.

SECTION 4.07. *Notice of Default:* The Mortgagor covenants that it will give immediate written notice to each Mortgagee of the occurrence of any Event of Default or in the event that any right or remedy described in Sections [4.02] and [4.03] hereof is exercised or enforced or any action is taken to exercise or enforce any such right or remedy.

ARTICLE V—POSSESSION UNTIL DEFAULT-DEFEASANCE CLAUSE

SECTION 5.01. *Possession Until Default:* Until some one or more of the Events of Default shall have happened, the Mortgagor shall be suffered and permitted to retain actual possession of the Mortgaged Property, and to manage, operate and use the same and any part thereof, with the rights and franchises appertaining thereto, and to collect, receive, take, use and enjoy the rents, revenues, issues, earnings, income, proceeds, products and profits thereof or therefrom, subject to the provisions of this Mortgage.

SECTION 5.02. *Defeasance:* If the Mortgagor shall pay or cause to be paid the whole amount of the principal of (and premium, if any) and interest on the Notes at the times and in the manner therein provided, and shall also pay or cause to be paid all other sums payable by the Mortgagor hereunder or under any Loan Agreement and shall keep and perform, all covenants herein required to be kept and performed by it, then and in that case, all property, rights and interest hereby conveyed or assigned or pledged shall revert to the Mortgagor and the estate, right, title and interest of the Mortgagee so paid shall thereupon cease, determine and become void and such Mortgagee, in such case, on written demand of the Mortgagor but at the Mortgagor's cost and expense, shall enter satisfaction of the Mortgage upon the record. In any event, each Mortgagee, upon payment in full to such Mortgagee by the Mortgagor of all principal of (and premium, if any) and interest on any Note held by such Mortgagee and the payment and discharge by the Mortgagor of all charges due to such Mortgagee hereunder or under any Loan Agreement, shall execute and deliver to the Mortgagor such instrument of satisfaction, discharge or release as shall be required by law in the circumstances.

SECTION 5.03. *Special Defeasance:* Other than any Notes excluded by the foregoing Sections 5.01 and 5.02 and Notes which have become due and payable, the Mortgagor may cause the Lien of this Mortgage to be defeased with respect to any Note for which it has deposited or caused to be deposited in trust solely for the purpose an amount sufficient to pay and discharge the entire indebtedness on such Note for principal (and premium, if any) and interest to the date of maturity thereof; PROVIDED, HOWEVER, that depository serving as trustee for such trust must first be accepted as such by the Mortgagee whose Notes are being defeased under this section. In such event, such a Note will no longer be considered to be an Outstanding Note for purposes of this Mortgage and the Mortgagee shall execute and deliver to the Mortgagor such instrument of satisfaction, discharge or release as shall be required by law in the circumstances.

ARTICLE VI

MISCELLANEOUS

SECTION 6.01. *Property Deemed Real Property:* It is hereby declared to be the intention of the Mortgagor that any electric generating plant or plants and facilities and all electric transmission and distribution lines, or other Electric System or Utility System facilities, embraced in the Mortgaged Property, including (without limitation) all rights of way and easements granted or given to the Mortgagor or obtained by it to use real property in connection with the construction, operation or maintenance of such plant, lines, facilities or systems, and all other property physically attached to any of the foregoing, shall be deemed to be real property.

SECTION 6.02. *Mortgage to Bind and Benefit Successors and Assigns:* All of the covenants, stipulations, promises, undertakings and agreements herein contained by or on behalf of the Mortgagor shall bind its successors and assigns, whether so specified or not, and all titles, rights and remedies hereby granted to or conferred upon the Mortgagees shall pass to and inure to the benefit of the successors and assigns of the Mortgagees and shall be deemed to be granted or conferred for the ratable benefit and security of all who shall from time to time be a Mortgagee. The Mortgagor hereby agrees to execute such consents, acknowledgements and other instruments as may be reasonably requested by any Mortgagee in connection with the assignment, transfer, mortgage, hypothecation or pledge of the rights or interests of such Mortgagee hereunder or under the Notes or in and to any of the Mortgaged Property.

SECTION 6.03. *Headings:* The descriptive headings of the various articles and sections of this Mortgage and also the table of contents were formulated and inserted for convenience only and shall not be deemed to affect the meaning or construction of any of the provisions hereof.

SECTION 6.04. *Severability Cause:* In case any provision of this Mortgage or in the Notes or in the Loan Agreements shall be invalid or unenforceable, the validity, legality and enforceability of the remaining provisions thereof shall not in any way be affected or impaired, nor shall any invalidity or unenforceability as to any Mortgagee hereunder affect or impair the rights hereunder of any other Mortgagee.

SECTION 6.05. *Mortgage Deemed Security Agreement:* To the extent that any of the property described or referred to in this Mortgage is governed by the provisions of the UCC this Mortgage is hereby deemed a ''security agreement'' under the UCC, and, if so elected by any Mortgagee, a ''financing statement'' under the UCC for said security agreement. The mailing addresses of the Mortgagor as debtor, and the Mortgagees as secured parties are as set forth in Section [1.05] hereof. If any Mortgagee so directs the Mortgagor to do so, the Mortgagor shall file as a financing statement under the UCC for said security agreement and for the benefit of all of the Mortgagees, an instrument other than this Mortgage. In such case, the instrument to be filed shall be in a form customarily accepted by the filing office as a financing statement. PROCEEDS OF COLLATERAL ARE COVERED HEREBY.

SECTION 6.06. *Indemnification by Mortgagor of Mortgagees:* The Mortgagor agrees to indemnify and save harmless each Mortgagee against any liability or damages which any of them may incur or sustain in the exercise and performance of their rightful powers and duties hereunder. For such reimbursement and indemnity, each Mortgagee shall be secured under this Mortgage in the same manner as the Notes and all such reimbursements for expense or damage shall be paid to the Mortgagee incurring or suffering the same with interest at the rate specified in Section [3.14] hereof. The Mortgagor's obligation to indemnify the Mortgagees under this section and under Section [3.04] shall survive the satisfaction of the Notes, the reconveyance or foreclosure of this Mortgage, the acceptance of a deed in lieu of foreclosure, or any transfer or abandonment of the Mortgaged Property.

IN WITNESS WHEREOF, _____ as Mortgagor, has caused this Restated Mortgage and Security Agreement to be signed in its name and its corporate seal to be hereunto affixed and attested by its officers thereunto duly authorized, and UNITED STATES OF AMERICA, as Mortgagee, and as Mortgagee, has caused this Restated Mortgage and Security Agreement to be signed in its name by duly authorized persons, all as of the day and year first above written.

_____

(SEAL)

By: _____

President

Attest: _____

Title: _____

Executed by the Mortgagor in the presence of:

_____

_____

Witnesses

UNITED STATES OF AMERICA

By: Director, of the _____ Rural Utilities Service

Executed by the United States of America, Mortgagee, in the presence of:

_____

_____

Witnesses

By:

(SEAL)

Attest: _____

Title: _____

Executed by the above-named Mortgagee in the presence of:

_____

_____

Witnesses

Schedule A

1. The Maximum Debt Limit is _____.

2. The Original Mortgage as described in the [first] WHEREAS clause above is _____.

3. The outstanding secured indebtedness described in the [fourth] WHEREAS clause above as evidenced by the Original Notes is as follows:

[Note this requires computation of principal balances, not merely a toting up of the original face amounts of the notes. Alternative approaches may be used by the parties where legally effective and mutually agreeable.]

Schedule B—Property Schedule

The fee and leasehold interests in real property referred to in Section Subclause (a) of Granting Clause One are _____.

The counties referred to in Subclause (B) of Granting Clause One are _____.

Schedule C—Excepted Property

STATE OF _____

COUNTY OF _____

On this _____ day of _____, 19 ____, before me appeared _____ and _____ personally known, by me and having been duly sworn by me, did say that they are the President and Secretary, respectively, of _____, a _____ corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board, and said _____ and _____ acknowledged that the execution of said instrument was a free act and deed of said corporation.

IN WITNESS whereof, I have hereunto set my hand and official seal the day and year last above written.

_____

Notary Public

(Notarial Seal)

My commission expires:

DISTRICT OF COLUMBIA) SS

The foregoing instrument was acknowledged before me this_____ day of 19_____, by _____ Director, _____ Regional Division of the Rural Utilities Service, acknowledging an agency of the United States of America, on behalf of the Rural Utilities Service, United States of America.

_____

Notary Public

(Notarial Seal)

My Commission expires:

COMMONWEALTH OF VIRGINIA)

SS

BEFORE ME, a Notary Public, in and for the Commonwealth of Virginia, appeared in person _____, signing for the Governor of the National Rural Utilities cooperative Finance Corporation, to me personally known, and known to be the identical person who subscribed the name of said corporation to the foregoing instrument, being by me duly sworn, and who stated that she/he is duly authorized to execute the foregoing instrument on behalf of said corporation, and further stated and acknowledged that she/he executed the foregoing instrument as a free and voluntary act and deed of said corporation for the consideration therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this _____day of _____, 19_____.

_____

Notary Public

(Notarial Seal)

My commission expires:

Exhibit A—Manager's Certificate

Manager's Certificate Required Under Mortgage Section 2.01 for Additional Notes

On behalf on _____[Name of Borrower] (the ''Borrower''), I _____ hereby certify as follows:

1. I am the Manager of the Borrower and have been duly authorized to deliver this certificate in connection with the Additional Note or Notes to be issued on or about _____ [Date Note or Notes are to be Signed] pursuant to Section [2.01] of the Mortgage dated _____.

2. No Event of Default has occurred and is continuing under the Mortgage, or any event which with the giving of notice or lapse of time or both would become an Event of Default has occurred and is continuing.

3. The Additional Notes described in paragraph 1 are for the purpose of funding Property Additions being constructed, acquired, procured or replaced that are or will become part of the Borrower's Utility System.

4. The Property Additions referred to in paragraph 3 are Eligible Property Additions, i.e. Property Additions acquired or whose construction was completed not more than 5 years prior to the issuance of additional Notes and Property Additions acquired or whose construction is started and/or completed not more than 4 years after issuance of the additional Notes, but shall exclude any Property Additions financed by any other debt secured under the Mortgage at the time additional Notes are issued.

5. I have reviewed the certificate of the Independent certified public accountant also being delivered to each of the Mortgagees pursuant to Section [2.01] in connection with the aforesaid Additional Note or Notes and concur with the conclusions expressed therein.

6. Capitalized terms that are used in this certificate but are not defined herein have the meanings defined in the Mortgage.

[Signed] _____

[Dated] _____

[Name] _____

[Title] _____

[Name and Address of Borrower] _____

_____

_____

Exhibit B—Form of Supplemental Mortgage

_____

Supplemental Mortgage and Security Agreement, dated as of _____, _____, _____, (hereinafter sometimes called this ''Supplemental Mortgage'') is made by and between _____ (hereinafter called the ''Mortgagor''), a corporation existing under the laws of the State of _____, and the UNITED STATES OF AMERICA acting by and through the Administrator of the Rural Utilities Service (hereinafter called the ''Government''), _____ (Supplemental Lender) (hereinafter called _____), a _____ existing under the laws of _____, and intended to confer rights and benefits on both the Government and _____ and _____ in accordance with this Supplemental Mortgage and the Original Mortgage (hereinafter defined) (the Government and the Supplemental Lenders being herein sometimes collectively referred to as the ''Mortgagees'').

Recitals

Whereas, the Mortgagor, the Government and _____ are parties to that certain Restated Mortgage and Security Agreement, as supplemented, amended or restated (the ''Original Mortgage'' identified in Schedule ''A'' of this Mortgage) originally entered into between the Mortgagor, the Government acting by and through the Administrator of the Rural Utilities Service (hereinafter called ''RUS''), and _____; and

Whereas, the Mortgagor deems it necessary to borrow money for its corporate purposes and to issue its promissory notes and other debt obligations therefor, and to mortgage and pledge its property hereinafter described or mentioned to secure the payment of the same, and to enter into this Supplemental Mortgage pursuant to which all secured debt of the Mortgagor hereunder shall be secured on parity, and to add _____ as a secured party hereunder and under the Original Mortgage (the Supplemental Mortgage and the Original Mortgage, as it may have been previously amended or supplemented, hereinafter may be called collectively the ''RUS Mortgage''); and

Whereas, the RUS Mortgage, as supplemented hereby, preserves the priority of the Original Mortgage for the pro rata

benefit of all the Mortgagees and secures the payment of all of the Mortgagor's outstanding indebtedness as listed in the Instruments Recital of Schedule ''A''; and

Whereas, all acts necessary to make this Supplemental Mortgage a valid and binding legal instrument for the security of such notes and obligations, subject to the terms of the RUS Mortgage, have been in all respects duly authorized:

Now, Therefore, This Supplemental Mortgage Witnesseth: That to secure the payment of the principal of (and premium, if any) and interest on all Notes issued hereunder according to their tenor and effect, and the performance of all provisions therein and herein contained, and in consideration of the covenants herein contained and the purchase or guarantee of Notes by the guarantors or holders thereof, the Mortgagor has mortgaged, pledged and granted a continuing security interest in, and by these presents does hereby grant, bargain, sell, alienate, remise, release, convey, assign, transfer, hypothecate, pledge, set over and confirm, pledge and grant a continuing security interest in for the purposes hereinafter expressed [other language may be required under various state laws], unto the Mortgagees all property, rights, privileges and franchises of the Mortgagor of every kind and description, real, personal or mixed, tangible and intangible, of the kind or nature specifically mentioned herein or any other kind or nature, except any Excepted Property set forth on Schedule ''C'' hereof owned or hereafter acquired by the Mortgagor (by purchase, consolidation, merger, donation, construction, erection or in any other way) wherever located, including (without limitation) all and singular the following:

A. All of those fee and leasehold interests in real property set forth in Schedule ''B'' hereto, subject in each case to those matters set forth in such Schedule; and

B. All of those fee and leasehold interests in real property set forth in Schedule ''B'' of the Original Mortgage or in any restatement, amendment or supplement thereto, subject in each case to those matters set forth in such Schedule; and

C. All of the kinds, types or items of property, now owned or hereafter acquired, described as Mortgaged Property in the Original Mortgage or in any restatement, amendment to supplement thereto as Mortgaged Property.

It is Further Agreed and Covenanted That the Original Mortgage, as previously restated, amended or supplemented, and this Supplement shall constitute one agreement and the parties hereto shall be bound by all of the terms thereof and, without limiting the foregoing.

1. All capitalized terms not defined herein shall have the meaning given in Article I of the Original Mortgage.

2. This Supplemental Mortgage is one of the Supplemental Mortgages contemplated by Article II of the Original Mortgage.

In Witness Whereof, _____ as Mortgagor.

[ACKNOWLEDGEMENTS]

Supplemental Mortgage Schedule A—Maximum Debt Limit and Other Information

1. The Maximum Debt Limit is _____.

2. The Original Mortgage as described in the first WHEREAS clause above is _____.

3. The outstanding secured indebtedness described in the third WHEREAS clause above is _____.

Supplemental Mortgage Schedule B—Property Schedule

The fee and leasehold interests in real property referred to in clause A of the granting clause are _____.

Supplemental Mortgage Schedule C—Excepted Property

Dated: June 29, 1995.

Michael V. Dunn,

Acting Under Secretary, Rural Economic and Community Development.

[FR Doc. 95–16528 Filed 7–17–95; 8:45 am]

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Federal Register

Tuesday
July 18, 1995

Part III

Department of Agriculture

Rural Utilities Service

7 CFR Part 1710, et al.

Loan Policies and Security Documents for Electric Borrowers; Proposed Rule

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Parts 1710, 1717 and 1718

RIN 0572–AB06

Loan Policies and Security Documents for Electric Borrowers

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) hereby proposes to establish new policies and requirements for loan contracts ordinarily required for loans made to electric distribution borrowers. The rule would update and clarify the framework for loan contract provisions, conform loan contract provisions with the new form of mortgage recently approved, and provide greater flexibility in addressing the financial needs of individual borrowers and the credit risks involved with individual lending situations. Conforming amendments to RUS lien accommodation requirements and changes to RUS operational controls are also proposed.

DATES: Written comments must be received by RUS or carry a postmark or equivalent by September 18, 1995.

ADDRESSES: Written comments should be addressed to Mr. F. Lamont Heppe, Jr., Deputy Director, Program Support Staff, U.S. Department of Agriculture, Rural Utilities Service, room 2234–S, Ag Box 1522, 14th Street and Independence Avenue, SW., Washington, DC 20250–1500. RUS requires a signed original and 3 copies of all comments (7 CFR 1700.30 (e)). Comments will be available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Mr. Alex M. Cockey, Jr., Deputy Assistant Administrator—Electric, U.S. Department of Agriculture, Rural Utilities Service, room 4037–S, Ag Box 1560, 14th Street & Independence Avenue, SW., Washington, DC 20250–1500. Telephone: 202–720–9547.

SUPPLEMENTARY INFORMATION: This rule has been determined to be not significant for the purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget (OMB). The Administrator of RUS has determined that the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) does not apply to this rule. The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). Therefore, this action does not require an environmental impact statement or assessment. This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A Notice of Final Rule titled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts RUS electric loans and loan guarantees from coverage under this Order. This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule; (2) Will not have any retroactive effect; and (3) Will not require administrative proceedings before any parties may file suit challenging the provisions of this rule.

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850 Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325.

Information Collection and Recordkeeping Requirements

The existing recordkeeping and reporting burdens contained in this rule were approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), under control numbers 0572–0032 and 0572–0103.

Send questions or comments regarding these burdens or any other aspect of these collections of information, including suggestions for reducing the burden, to the Office of Information and Regulatory Affairs, Office of Management and Budget, NEOB, Washington, DC 20503. Attention: Desk Officer for USDA.

Background

On September 29, 1994, at 59 FR 49594, the Rural Utilities Service (RUS) published a proposed rule, 7 CFR 1718 Loan Security Documents for Electric Borrowers, Subpart B Mortgage for Distribution Borrowers, which proposed the agency's policies and requirements for mortgages used to secure direct and guaranteed loans made to electric distribution borrowers. The final rule for such mortgages is published elsewhere in this issue of the **Federal Register**.

This proposed rule sets forth proposed amendments to RUS regulations to update the agency's policies and requirements regarding loan contracts with distribution borrowers. These new policies and requirements are designed to complement the new distribution mortgage. The changes proposed today are in four different segments:

- A new Subpart C—Loan Contracts with Distribution Borrowers, to be added to 7 CFR part 1718. This proposed subpart sets forth agency policies and requirements regarding the scope, content, and usage of new loan contracts with distribution borrowers.
- A new Subpart M—Operational Controls, to be added to 7 CFR part 1717. This proposed new subpart outlines the main operational controls relating to new mortgages and loan contracts of distribution borrowers, and also modifies certain controls relating to existing mortgages and loan contracts of distribution and/or power supply borrowers.
- Proposed revisions to 7 CFR part 1717, Subpart R—Lien Accommodations and Subordinations for 100 Percent Private Financing. These revisions would adapt RUS policies and requirements regarding lien accommodations to the new loan contracts and mortgages.
- A limited number of proposed changes to 7 CFR part 1710 to conform those provisions to the new mortgages and loan contracts.

In addition to inviting written comments from the public on this proposed rule, REA stands ready to meet with interested individuals and organizations to discuss their comments and recommendations. Such meetings would be open to any interested person, and they would be ''informal'', as opposed to a formal hearing. Although any such meetings will not be transcribed, REA will include a summary of any such meeting in the file for this rulemaking. To facilitate scheduling, it would be better for individuals, especially the large number of borrowers affected by this proposed rule, to form one or more groups to represent their interests at such meetings.

7 CFR Part 1718, Subpart C—Loan Contracts With Distribution Borrowers

This new subpart would establish agency policies and requirements regarding the scope, content, and usage of new loan contracts with distribution borrowers. These policies are intended to complement those for new distribution mortgages, and to reflect changes in the electric industry and the RUS program over the past several years.

Distribution borrowers that obtain a loan or loan guarantee from RUS after the effective date of this rule would be required to execute a new loan contract and mortgage based on the policies and requirements established by the new rules. Distribution borrowers obtaining other financial assistance from RUS after the effective date of this rule may be required by RUS to execute a new mortgage and loan contract. If there are other co-mortgagees on the borrower's existing mortgage, which there are in most cases, the borrower would have to obtain the approval of these co-mortgagees before executing a new mortgage.

Distribution borrowers receiving a loan during the transition period between now and the date the new model loan contract is published in final form in the **Federal Register** may opt to execute the new model mortgage and the proposed model loan contract. Such borrowers will have the further option of executing the final form of the model loan contract after it is published in the **Federal Register**. Distribution borrowers receiving a loan during the period after publication of the final form of the new model loan contract but before its effective date may opt for the final forms of both the model loan contract and the model mortgage.

Other borrowers not obtaining a new loan from RUS could request that a new mortgage and loan contract be executed, for example, in connection with a lien accommodation request or if the borrower is trying to expand its access to future private financing. RUS will attempt to honor these requests, but may be constrained by time and staff limitations.

The policies and requirements proposed in new Subpart C are designed to provide flexibility in dealing with the different financial needs, credit risks and other circumstances of individual borrowers and individual lending situations. This is intended to enable RUS to respond more quickly and effectively to the special and changing needs of individual borrowers, while at the same time meeting the government's need for loan security under different lending circumstances.

Under this approach, RUS and borrowers would have the flexibility to negotiate different loan contract provisions depending on individual circumstances and needs. This would go beyond the current situation where special needs and requirements are dealt with almost exclusively in the ''special provisions'' section of a loan contract or contract amendment. It is anticipated that the provisions in the model loan contact will be suitable in most cases. Since drafting and approving customized contract provisions would be more time consuming and could delay approval of a loan, RUS will consider such modifications only when they are needed to address individual needs or problems.

Proposed section 1718.103 sets forth the scope and content of loan contracts to be used with distribution borrowers in combination with new mortgages executed under 7 CFR Part 1718, Subpart B. The proposed section establishes the general requirements for loan contracts, in most cases leaving the specific language of individual provisions to be determined in the drafting of the loan contracts. An example of such a model loan contract is presented in Appendix A. This model represents one example of a loan contract drafted pursuant to this proposed new rule. Other loan contracts could vary substantially from this example in response to the financing needs of individual borrowers and the credit risks involved in those individual lending situations. It is anticipated that individual provisions of the model will be refined over time to reflect experience gained from use of the model and to respond to the rapidly changing electric industry.

Proposed § 1718.103, as reflected in the model contract in Appendix A, attempts to streamline, simplify and clarify loan contract provisions. A substantial number of restrictive covenants, complex provisions, and other outdated requirements contained in the present form of loan contract would be eliminated. Also, RUS is abandoning the practice of using the same loan contract with a series of amendments to cover all RUS loans throughout the lending relationship, which spans more than 50 years in many cases. Instead, RUS intends to use the approach followed by other lenders of using a new loan contract with each loan. This approach is intended to simplify administration for all parties and to guard against the use of outdated loan documentation.

Historically, RUS loan contracts have contained sweeping powers favoring the Administrator. In the absence of any explicit rulemaking authority in the Rural Electrification Act as originally enacted, these contracts together with their related mortgages lay the foundation for most RUS regulations. RUS has administered these loan documents through a variety of methods, including case-by-case determinations, letters from the Administrator to all borrowers or a group of borrowers, and notice and comment rulemaking.

RUS intends to retain these flexible approaches to program administration, including the practice of establishing the rights and limitations of the lending relationship broadly in the loan documents and subsequently refining them in regulations. Thus many provisions of the proposed model contract are stated in very broad terms which can be fully understood only in the context of the agency's regulations.

For example, most proposed covenants or ''operational controls'' in the model contract are expressed in broad language, although in some cases the language is narrower and more focused than in existing loan contracts. Such language leaves room for unforeseen circumstances, which can be addressed more specifically through RUS regulations. In most cases RUS intends to cut back the reach of these provisions through its regulations, as it did recently in the publication of the final rule 7 CFR part 1726 on construction policies and procedures (at 60 FR 10151), as well as in the recent publication of proposed revisions to controls on borrowers' investments (at 60 FR 8981). Under today's proposed rule, several additional operational controls would be eliminated from loan contracts, and several others would be cut back, as described below.

Some may argue that the controls and approval rights contained in the RUS loan contract itself ought to be more limited and more narrowly focused than what is being proposed today. RUS recognizes that approach may appear desirable from an individual borrower's standpoint. However, from the standpoint of administering a program serving nearly 1,000 utility systems and responding to the diverse interests of this group, the Congress, the Executive Branch, and other interested parties, RUS believes that the proposed approach is administratively less costly, less time-consuming, more flexible, and better able to respond quickly to changing needs and circumstances.

Certain provisions that had been included in the proposed mortgage for distribution borrowers, but deleted in the final rule, are proposed for inclusion in the loan contract. These provisions include the rate covenant, limitations on retirements of capital credits and other distributions, certain tests for the issuance of debt that had been included in sections 2.01 and 2.02 of the proposed mortgage, and limitations on the issuance of unsecured debt. These changes are discussed in the final rule on the mortgage published elsewhere in this **Federal Register**.

7 CFR part 1717, Subpart M—Operational Controls

Proposed Subpart M of 7 CFR part 1717 serves several purposes. First, it outlines the main operational controls that would apply to distribution borrowers under the proposed new loan contacts. In many cases, such operational controls are further defined in other RUS regulations. Second, it establishes the circumstances under which RUS approval is granted or an exception to a requirement is established with respect to certain controls. Third, it extends these approvals and exceptions to existing loan contracts and mortgages of distribution borrowers and/or power supply borrowers.

Since proposed Subpart M would address only the main operational controls, failure to include an operational control under Subpart M would not invalidate operational controls contained in other RUS regulations. Also, the approvals and exceptions that would be granted by Subpart M would apply only to operational controls normally included in loan contracts and mortgages. They would not apply to special controls and requirements included in loan documents to deal with special circumstances of individual borrowers.

Proposed Subpart M is not intended to exhaust the treatment of operational controls. RUS is continuing to review this matter and will be proposing further changes. For example, proposed revisions to RUS policies and procedures regarding system design and architectural and engineering services are currently being drafted.

Extensions and additions. Under proposed § 1717.603, prior written approval by RUS would be required before a distribution borrower could extend or add to its electric system if the facilities will be financed by RUS (including reimbursements). If they won't be financed by RUS (wholly or partially), approval would not be required except for:

- Construction or procurement of generating facilities of any size.
- Acquisition of existing electric facilities or systems in service.
- Construction or procurement of electric facilities to serve a customer whose annual kWh purchases or maximum annual kW demand is projected to exceed 25 percent of the borrower's total kWh sales or maximum kW demand in the year immediately preceding the acquisition or start of construction.

Prior written approval from RUS would also be required before power supply borrowers could extend or add to their electric systems if the facilities will be financed by RUS. Approval requirements when the facilities will not be financed by RUS are or will be set forth in other RUS regulations.

Long-range engineering plans and construction work plans. Proposed § 1717.604 would continue to require all borrowers to maintain up-to-date long-range engineering plans and construction work plans (CWP). However, these plans would not be subject to RUS approval if the borrower does not intend to seek RUS financing for the facilities and other purposes covered by the plans. If requested by RUS, borrowers would have to provide a copy of such plans for RUS review. Applications for RUS financing would continue to be required to be supported by a long-range engineering plan and CWP approved by RUS.

Design standards, plans and specifications, construction standards, and list of materials. Proposed § 1717.605 would continue to require all borrowers, regardless of the source of funding, to follow applicable RUS requirements regarding system design, plans and specifications, construction standards, and the use of RUS accepted materials.

Construction contracts, and engineering and architectural services contracts. Under proposed § 1717.606 borrowers would be encouraged to use RUS standard forms of contracts for construction, materials, equipment, engineering services, and architectural services regardless of the source of funding. They would be required to use the standard contract forms only if funding for the construction, procurement, or services is provided by RUS.

Contract bidding requirements. Proposed § 1717.607 would reiterate current policy that RUS requirements regarding bidding for construction, materials and equipment contracts apply only if the construction or procurement will be financed by RUS.

RUS approval of contracts. Proposed § 1717.608 would establish requirements and grant RUS approval with respect to certain contracts. This section is not complete. Further work needs to be done, and RUS will propose additional rules updating contract approval requirements when those decisions are made.

This proposed section would reiterate current policy in 7 CFR part 1726 that RUS approval of contracts for construction, materials, equipment, and architectural and engineering services would be required only if the construction, procurement or services are financed by RUS.

RUS approval of contracts to sell electric power to retail customers would be required only if the contract is for longer than two years and the kWh sales or kW demand for any year covered by the contract exceeds 25 percent of the borrower's total kWh sales or maximum kW demand for the year immediately preceding execution of the contract.

RUS approval of power supply arrangements, including power supply contracts, interconnection agreements, interchange agreements, wheeling agreements, pooling agreements, and any other similar arrangements would be granted if they have a term of two years or less. Amendments to such arrangements would also be approved if the amendment would not extend the term of the arrangement for more than two years beyond the date of the amendment. The rule would also grant approval for any amendment to a schedule or exhibit contained in any power supply arrangement, which would have the mere effect of either altering a list of interconnection or delivery points or changing the value of a variable term (but not the formula itself) contained in a formulary rate or charge.

RUS approval of contracts for the management and operation of a borrower's electric system or for the maintenance of the electric system would be required only if such contracts cover all or substantially all of the electric system.

RUS approval of general manager. Most existing mortgages or loan contracts give RUS the unconditioned right to approve a borrower's general manager and the manager's employment contract. Proposed § 1717.609 would grant RUS approval for all borrowers that are in compliance with all provisions of their loan documents and any other agreements with RUS. It is further proposed that new loan contracts generally will not give RUS unconditioned approval rights over general managers. Under new loan contracts, RUS would have the right to replace the manager or approve a new manager when a vacancy occurs only if the borrower is in default under its mortgage, loan contract, or other agreement with RUS. This should greatly reduce the times when RUS approval of a general manager is required.

RUS approval of compensation of the board of directors. Most existing mortgages or loan contracts require the borrower to obtain RUS approval of any compensation provided to the members of the borrower's board of directors.

Such approval requirement will not be included in new mortgages or in the proposed loan contract, and proposed § 1717.610 would waive this requirement for existing mortgages and loan contracts.

RUS approval of expenditures for legal, engineering, and supervisory services. Most existing mortgages or loan contracts require borrowers to obtain RUS approval before making expenditures for legal, engineering, and supervisory services, other than ''routine'' expenditures. Proposed § 1717.611 would grant RUS approval of expenditures for legal and supervisory services regardless of the source of funding, and for engineering services if they are not funded by RUS. Approval requirements for engineering services financed by RUS are set forth in other RUS regulations.

RUS approval of borrower's bank or other depository. Most existing mortgages or loan contracts give RUS the right to approve the bank or other depositories used by a borrower. Proposed § 1717.612 would grant RUS approval of the borrower's bank or other depositories provided that they are insured by the Federal Deposit Insurance Corporation or other Federal agency acceptable to RUS. Proposed new loan contracts would not grant RUS such authority, but would require that funds from loans made or guaranteed by RUS be deposited in a bank or other depository insured by the Federal Deposit Insurance Corporation or other Federal agency acceptable to RUS, unless prior written approval is obtained from RUS.

110 Percent Borrowers. It is recognized that the proposed changes in operational controls applicable to borrowers in general will, if adopted, require some changes in the exceptions to RUS controls applicable to borrowers with a net worth of at least 110 percent of the outstanding debt owed to RUS. The interim final rule on such exceptions was published in the **Federal Register** on January 28, 1994 at 59 FR 3982. After comments are received on the proposed rule published today, RUS will review those comments as well as those received on the interim final rule (7 CFR 1710.7, 7 CFR 1717.860, and 7 CFR 1717.904) and then publish both rules in final form.

7 CFR Part 1717, Subpart R—Lien Accommodations and Subordinations for 100 Percent Private Financing

Changes are proposed to 7 CFR part 1717, subpart R, to adapt RUS policies and requirements for lien accommodations and subordinations to the new distribution mortgage. Most of these changes are conforming technical changes, a few are substantive in nature.

Section 1717.850 General

Under new mortgages for distribution borrowers, borrowers will be able to issue additional secured debt without the approval of RUS or the other mortgagees if the borrowers meet the criteria in section 2.01 of their mortgages. Also, if they meet the criteria in section 2.02 of their mortgages, borrowers will be able to issue secured debt to refinance existing secured debt without approval of the mortgagees.

If borrowers meet the criteria in section 2.01 or 2.02, debt issued under those sections will automatically be secured under the mortgage and will not require a lien accommodation from RUS or other mortgagees. Thus the lien accommodation regulation, 7 CFR 1717 subpart R, would not apply to such financing. This is true even if approval from RUS is required under the RUS loan contract due to criteria or restrictions included in the loan contract. While the borrower would be required to obtain prior RUS approval in such cases, a lien accommodation would not be required if the financing met the requirements of section 2.01 or 2.02 of the new mortgage.

Several technical amendments are proposed to 1717.850. Paragraph (a) would be revised to indicate, as discussed above, that Subpart R applies only to the issuance of secured debt that does not meet the criteria of section 2.01 or 2.02 of the new mortgage. Paragraph (b) would be revised to include the four community infrastructure purposes eligible under section 2.01 of the new mortgage as also being eligible for a lien accommodation under Subpart R.

Paragraph (f) would be substantially revised to eliminate the requirement that the borrower provide RUS with a written agreement that it will: comply with the National Electric Safety Code; use only RUS accepted materials where applicable; comply with RUS construction standards; follow a CWP approved by RUS; and provide an engineer's certification after completion of construction that the construction was done in compliance with RUS requirements. While this certification would no longer be required, the borrower would continue to be required to comply with RUS standards regarding facility and system planning and design, construction, procurement, and the use of materials accepted and listed by RUS. Elimination of the certification would reduce the administrative burden on borrowers.

A minor technical change would be made to paragraph (g)(1) to conform with proposed changes to 7 CFR part 1710, subpart F, (discussed later) to the effect that construction work plans would not have to be approved by RUS unless the borrower intends to seek RUS financing for facilities or other purposes covered by the plan. Also, a technical change is proposed to paragraph (h)(2) to eliminate references to sections of the mortgage and loan contract with respect to prior approval or waiver of approval of certain borrower actions granted by paragraphs (g)(1) and (h)(1) of this section. Such references to the loan documents will be confusing as new mortgages and loan contracts are executed with some borrowers, while other borrowers are still operating under the old loan documents. Moreover, as RUS continues to codify more and more of its regulations relating to RUS approvals and controls, references to specific provisions of the loan documents relating to prior approval and waivers granted by such regulations will become less meaningful.

Finally, changes are proposed to paragraph (m) of this section to broaden the requirements and conditions under Subpart R that may be waived by the Administrator of RUS if it's in the financial interests of the government. Also, the meaning of the financial interests of the government would be clarified.

Section 1717.852 Financing Purposes

With two exceptions, all of the proposed changes to § 1717.852 are basically technical changes to conform the section with the new mortgage. A new paragraph (a)(3) would be added to add to eligible lien accommodation purposes the four community infrastructure purposes eligible for financing without mortgagee approval under section 2.01 of the new mortgage. The four purposes are water and waste disposal systems, solid waste disposal systems, telecommunication and other electronic communication systems, and natural gas distribution systems. Other infrastructure and other rural development projects would continue to be eligible for a lien accommodation if the Administrator determines its in the government's financial interests. They would also continue to be eligible for a lien subordination under the terms of § 1717.858, to which no changes are being proposed.

Paragraph (a)(1) would be amended by adding steam power to electric power as an eligible purpose for lien accommodations. RUS has received lien accommodation requests from borrowers where the financing was needed to supply both electric power and steam power to the customer. The

requests have been approved after a special finding by RUS that the accommodation of the government's lien was in the government's financial interest. By adding steam power as an eligible purpose, the special finding would no longer be required, which should expedite the review of such applications.

Existing paragraph (a)(4) would be redesignated (a)(5) and the limit on transaction costs eligible for lien accommodation would be raised from 3.5 percent of loan proceeds to 5 percent. No other changes are proposed to paragraph (a) other than renumbering of the subparagraphs. Minor technical changes would be made to the wording in paragraph (b) to reflect the addition of the four community infrastructure purposes to the purposes generically eligible for a lien accommodation, and to broaden the scope of purposes eligible in connection with cogeneration projects. Also, paragraph (b)(2) would be removed since it would be redundant with the proposed expanded scope of § 1717.850(m).

Section 1717.854 Advance Approval.

Minor technical amendments are proposed to paragraphs (a) and (b) to reflect the proposed addition of the four community infrastructure purposes to the purposes generically eligible for a lien accommodation, and thus eligible for advance approval.

Changes are proposed to paragraph (c) to conform the financial criteria for eligibility for advance approval of a lien accommodation to those contained in section 2.01 of the new mortgage. Thus the existing two-part interest coverage and equity tests in paragraph (c) would be replaced with the interest coverage, equity, and net utility plant tests contained in section 2.01 of the new mortgage. With this change borrowers under the ''old'' existing mortgage would be subject to the same basic financial tests in qualifying for advance approval of a lien accommodation as borrowers under section 2.01 of the new mortgage in issuing additional secured debt without mortgagee approval. The latter borrowers would not require a lien accommodation, and thus 1717.854 would no longer be relevant for them.

The proposed new tests in paragraph (c) are a Times Interest Earned Ratio (TIER) of at least 1.5 and Debt Service Coverage (DSC) of at least 1.25 in each of the past two years, equity of at least 27 percent after debt issuance, and a ratio of net utility plant to long-term debt of at least 1.0 after debt issuance. In addition, the existing limitation of variable rate debt to 15 percent of all outstanding debt would be eliminated by removing paragraph (c)(7). This limitation on variable rate debt would also be eliminated from advance approvals of lien accommodations for refinancing loans by removing paragraph (a)(5) from 1717.857.

A few minor technical changes are proposed to § 1717.855 and 1717.856, primarily to conform them with the proposed addition of the four community infrastructure purposes to the purposes generically eligible for a lien accommodation, and to eliminate the certification from borrowers that they will comply with RUS construction standards and CWP requirements.

Finally, no changes are proposed to 7 CFR part 1717, Subpart S, regarding lien accommodations for concurrent supplemental loans. Such loans must continue to meet the same requirements as insured loans made by RUS.

7 CFR Part 1710—General and Pre-Loan Policies and Procedures Common to Insured and Guaranteed Electric Loans

Section 1710.103 Area coverage. A technical change is proposed to delete the statement which could be interpreted that the loan contract must include the exact language of § 1710.103 with respect to area coverage requirements. That never was the intent. The proposed technical change is consistent with the general approach that the loan contract should provide the general authority for a requirement or control, while RUS regulations should provide the specific details and often narrow the focus of the general authority provided in the loan contract.

Section 1710.114 TIER, DSC, OTIER and ODSC requirements. It is proposed that the rate covenant be shifted from the mortgage to the loan contract, and that an Operating Times Interest Earned Ratio (OTIER) and an Operating Debt Service Coverage (ODSC), both set at a minimum of 1.1, be added to the existing TIER and DSC requirements for distribution borrowers. The reasons for these changes are discussed in the background section of the final rule on the distribution mortgage published elsewhere in this issue of the **Federal Register**.

Long-range engineering plans and construction work plans. Under section 1710.250, all borrowers would continue to be required to maintain up-to-date long-range engineering plans and construction work plans, but the plans would not have to be approved by RUS unless the borrower intends to seek RUS financing. Applications for RUS financing would continue to have to be supported by an RUS-approved long-range engineering plan and CWP. RUS approval of these plans would be with respect to only those facilities to be financed by RUS, and as to whether the plans provide an acceptable basis, from a planning and engineering standpoint, for approving the RUS financing.

A new paragraph (k) would be added to this section authorizing RUS to waive certain requirements with respect to long-range engineering plans and construction work plans if RUS determines that the requirements impose a substantial burden on the borrower and that waiving the requirements will not significantly affect the accomplishment of the objectives of the regulation. For example, RUS could waive certain requirements relating to load growth if the borrower's growth is stagnant or declining.

List of Subjects

7 CFR Part 1710

Electric power, Electric utilities, Loan programs—energy, Rural areas.

7 CFR Part 1717

Administrative practice and procedure, Electric power, Electric utilities, Intergovernmental relations, Investments, Lien accommodation, Lien subordination, Loan programs—energy, Operational controls, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1718

Administrative practice and procedure, Electric power, Electric utilities, Loan programs—energy, Loan security documents, Reporting and recordkeeping requirements, Rural areas.

For the reasons explained in the preamble and under the authority of 7 U.S.C. 901 *et seq.*, RUS proposes to amend 7 CFR Chapter XVII as follows:

PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

1. The authority citation for part 1710 is revised to read as follows:

Authority: 7 U.S.C. 901–950b; Public Law 99–591, 100 Stat, 3341–16; Public Law 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

2. Section 1710.2 is amended in paragraph (a) by adding the following definitions in alphabetical order to read as follows:

§ 1710.2 Definitions and rules of construction.

(a) *Definitions.* * * *

* * * * *

Electric system means all of the borrower's interests in all electric production, transmission, distribution, conservation, load management, general plant and other related facilities, equipment or property and in any mine, well, pipeline, plant, structure or other facility for the development, production, manufacture, storage, fabrication or processing of fossil, nuclear, or other fuel or in any facility or rights with respect to the supply of water, in each case for use, in whole or in major part, in any of the borrower's generating plants, including any interest or participation of the borrower in any such facilities or any rights to the output or capacity thereof, together with all lands, easements, rights-of-way, other works, property, structures, contract rights and other tangible and intangible assets of the borrower in each case used or useful in such electric system.

* * * * *

ODSC means Operating Debt Service Coverage of the electric system calculated as:

$$ODSC = \frac{A + B + C}{D}$$

where:

All amounts are for the same one-year period and are based on the RUS system of accounts. References to line numbers in the RUS Form 7 refer to the June 1994 version of the form, and will apply to corresponding information in future versions of the form;

A=Depreciation and Amortization Expense of the electric system, which usually equals Part A, Line 12 of RUS Form 7;

B=Interest on Long-term Debt of the electric system, which usually equals Part A, Line 15 of RUS Form 7, except that Interest on Long-term debt shall be increased by ⅓ of the amount, if any, by which the rentals of Restricted Property of the electric system (Part M, Line 3 of RUS Form 7) exceeds 2 percent of Total Margins and Equities (Part C, Line 36 of RUS Form 7);

C=Patronage Capital & Operating Margins of the electric system, which usually equals Part A, Line 20 of RUS Form 7; and

D=Debt Service Billed (RUS+other) which equals all interest and principal billed or billable during the calendar year for long-term debt of the electric system plus ⅓ of the amount, if any, by which the rentals of Restricted Property of the electric system (Part M, Line 3 of RUS Form 7) exceeds 2 percent of Total Margins and Equities (Part C, Line 36 of RUS Form 7).

* * * * *

OTIER means Operating Times Interest Earned Ratio of the electric system calculated as:

$$OTIER = \frac{A + B}{A}$$

where:

All amounts are for the same one-year period and are based on the RUS system of accounts. References to line numbers in the RUS Form 7 refer to the June 1994 version of the form, and will apply to corresponding information in future versions of the form;

A=Interest on Long-term Debt of the electric system, which usually equals Part A, Line 15 of RUS Form 7, except that Interest on Long-term debt shall be increased by ⅓ of the amount, if any, by which the rentals of Restricted Property of the electric system (Part M, Line 3 of RUS Form 7) exceeds 2 percent of Total Margins and Equities (Part C, Line 36 of RUS Form 7); and

B=Patronage Capital & Operating Margins of the electric system, which usually equals Part A, Line 20 of RUS Form 7.

* * * * *

§ 1710.103 [Amended]

3. Section 1710.103 is amended by removing in paragraph (b) the sentence ''The loan contract shall contain provisions to this effect.''.

4. Section 1710.114 is revised as follows:

§ 1710.114 TIER, DSC, OTIER and ODSC requirements.

(a) *General.* Requirements for coverage ratios are set forth in the borrower's mortgage, loan contract, or other contractual agreements with RUS. The requirements set forth in this section apply to borrowers that receive a loan on or after February 10, 1992. Nothing in this section, however, shall reduce the coverage-ratio requirements of a borrower that has contractually agreed with RUS to a higher requirement.

(b) *Coverage ratios.* (1) Distribution borrowers. The minimum coverage ratios required of distribution borrowers, whether applied on an annual or average basis, are a TIER of 1.50, DSC of 1.25, OTIER of 1.1, and ODSC of 1.1. OTIER and ODSC shall apply to distribution borrowers that receive a loan on or after [the effective date of the final rule].

(2) The minimum coverage ratios required of power supply borrowers, whether applied on an annual or average basis, are a TIER of 1.05 and DSC of 1.00.

(3) When new loan contracts are executed, the Administrator may, case by case, increase the coverage ratios of distribution and power supply borrowers above the levels cited in paragraphs (b)(1) and (b)(2), respectively, of this section if the Administrator determines that the higher ratios are required to ensure reasonable security for and/or the repayment of loans made or guaranteed by RUS. Also, the Administrator may, case by case, reduce said coverage ratios if the Administrator determines that the lower ratios are required to ensure reasonable security for and/or the repayment of loans made or guaranteed by RUS.

(4) If a distribution borrower has in service or under construction a substantial amount of generation and associated transmission plant financed at a cost of capital substantially higher than the cost of funds under section 305 of the RE Act, then the Administrator may establish, in his or her sole discretion, blended levels for TIER, DSC, OTIER, and ODSC based on the respective shares of total utility plant represented by said generation and associated transmission plant and by distribution and other transmission plant.

(c) *Requirements for loan feasibility.* To be eligible for a loan, borrowers must demonstrate to RUS that they will, on a pro forma basis, earn the coverage ratios required by paragraph (b) of this section in each of the years included in the borrower's long-range financial forecast prepared in support of its loan application, as set forth in subpart G of this part.

(d) *Requirements for maintenance of coverage ratios.*—(1) *Prospective requirement.* Borrowers must design and implement rates for utility service to provide sufficient revenue (along with other revenue available to the borrower in the case of TIER and DSC) to pay all fixed and variable expenses, to provide and maintain reasonable working capital and to maintain on an annual basis the coverage ratios required by paragraph (b) of this section. Rates must be designed and implemented to produce at least enough revenue to meet the requirements of this paragraph under the assumption that average weather conditions in the borrower's service territory will prevail in the future, including average system damage and outages due to weather and the related costs. Failure to design and implement rates pursuant to the requirements of this paragraph shall be an event of default upon notice provided in accordance with the terms of the borrower's mortgage or loan contract.

(2) *Retrospective requirement.* The average coverage ratios achieved by a borrower in the 2 best years out of the 3 most recent calendar years must meet the levels required by paragraph (b) of this section. If a borrower fails to achieve these average levels, it must promptly notify RUS in writing. Within 30 days of such notification or of the borrower being notified in writing by RUS, whichever is earlier, the borrower, in consultation with RUS, must provide a written plan satisfactory to RUS setting forth the actions that will be taken to achieve the required coverage ratios on a timely basis. Failure to develop and implement a plan satisfactory to RUS shall be an event of default upon notice provided in accordance with the terms of the borrower's mortgage or loan contract.

(3) *Fixed and variable expenses,* as used in this section, include but are not limited to: all taxes, depreciation, maintenance expenses, and the cost of electric power and energy and other operating expenses of the electric system, including all obligations under the wholesale power contract, all lease payments when due, and all principal and interest payments on outstanding indebtedness when due.

(e) *Requirements for advance of funds.* (1) If a borrower applying for a loan has failed to achieve the coverage ratios required by paragraph (b) of this section during the latest 12 month period immediately preceding approval of the loan, or if any of the borrower's average coverage ratios for the 2 best years out of the most recent 3 calendar years were below the levels required in paragraph (b) of this section, RUS may withhold the advance of loan funds until the borrower has adopted an annual financial plan and operating budget satisfactory to RUS and taken such other action as RUS may require to demonstrate that the required coverage ratios will be maintained in the future and that the loan will be repaid with interest within the time agreed. Such other action may include, for example, increasing system operating efficiency and reducing costs or adopting a rate design that will achieve the required coverage ratios, and either placing such rates into effect or taking action to obtain regulatory authority approval of such rates. If failure to achieve the coverage ratios is due to unusual events beyond the control of the borrower, such as unusual weather, system outage due to a storm or regulatory delay in approving rate increases, then the Administrator may waive the requirement that the borrower take the remedial actions set forth in this paragraph, provided that such waiver will not threaten loan feasibility.

(2) With respect to any outstanding loan made on or after February 10, 1992, if, based on actual or projected financial performance of the borrower, RUS determines that the borrower may not achieve its required coverage ratios in the current or future years, RUS may withhold the advance of loan funds until the borrower has taken remedial action satisfactory to RUS.

5. Section 1710.250 is amended by revising paragraphs (b) and (e) and adding a new paragraph (k) to read as follows:

§ 1710.250 General.

* * * * *

(b) Generally, all borrowers are required to maintain up-to-date long range engineering plans approved by their boards of directors. Current CWPs approved by the borrower's board must also be developed and maintained for distribution and transmission facilities and for improvements and replacements of generation facilities. All such distribution, transmission or generation facilities must be included in the respective CWPs regardless of the source of financing.

* * * * *

(e) Applications for a loan or loan guarantee from RUS (new loans or budget reclassifications) must be supported by a current CWP approved by both the borrower's board of directors and RUS. RUS approval of these plans relates only to the facilities, equipment, and other purposes to be financed by RUS, and means that the plans provide an adequate basis from a planning and engineering standpoint to support RUS financing. RUS approval of the plans does not mean that RUS approves of the facilities, equipment, or other purposes for which the borrower is not seeking RUS financing. If RUS disagrees with a borrower's estimate of the cost of one or more facilities for which RUS financing is sought, RUS may adjust the estimate after consulting with the borrower and explaining the reasons for the adjustment.

* * * * *

(k) Upon written request from a borrower, RUS may waive in writing certain requirements with respect to long-range engineering plans and CWPs if RUS determines that such requirements impose a substantial burden on the borrower and that waiving the requirements will not significantly affect the accomplishment of the objectives of this subpart. For example, if a borrower's load is forecast to remain constant or decline during the planning period, RUS may waive those portions of the plans that relate to load growth.

§ 1710.251 [Amended]

6. Section 1710.251 is amended by removing the words ''and RUS'' from the first sentence of paragraph (a).

§ 1710.252 [Amended]

7. Section 1710.252 is amended by removing the words ''and RUS'' from the first sentence of paragraph (a).

PART 1717—POST-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

8. The authority citation for part 1717 continues to read as follows:

Authority: 7 U.S.C. 901–950b; Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*), unless otherwise noted.

9. Subpart M is added to part 1717 to read as follows:

Subpart M—Operational Controls

Sec.

Subpart M—Operational Controls

§ 1717.600 General.

(a) *General.* The loan contract and mortgage between the Rural Utilities Service (RUS) and electric borrowers imposes certain restrictions and controls on the borrowers and gives RUS (and other co-mortgagees in the case of the mortgage) the right to approve or disapprove certain actions contemplated by the borrowers. Certain of these controls and approval rights are referred to informally as ''operational controls'' because they pertain to decisions or actions with respect to the operation of the borrowers' electric systems. The approval authority granted to RUS by the loan contract or mortgage regarding

each decision or action subject to controls is often stated in broad, unlimited terms. This subpart lists the main operational controls affecting borrowers and establishes for each area of control the circumstances under which RUS approval of a decision or action by a borrower is either required or not required. In some cases, only the general principles or general circumstances pertaining to RUS approval or control are presented in this subpart, while the details regarding the circumstances and requirements of RUS approval or control are set forth in other RUS regulations. Since this subpart addresses only the main operational controls, failure to address a control or approval right in this subpart in no way invalidates such controls or rights established by the loan contract, mortgage, other agreements between a borrower and RUS, and RUS regulations.

(b) *Case by case amendments.* Upon written notice to a borrower, RUS may amend or annul the approvals and exceptions to controls set forth in this subpart or other RUS regulations if the borrower is in violation of any provision of its loan documents or any other agreement with RUS, or if RUS determines that loan security and/or repayment is threatened. Such amendment or annulment will apply to decisions and actions of the borrower after said written notice has been provided by RUS.

(c) *Generic notices.* By written notice to all borrowers or a group of borrowers, RUS may grant or waive approval of decisions and actions by the borrowers that are controlled under the loan documents and RUS regulations. RUS may also by written notice withdraw or cut back its grant or waiver of approval of said decisions and actions made by previous written notice, but may not by such notice extend its authority to approve decisions and actions by borrowers beyond the authority granted by the loan documents and RUS regulations.

§ 1717.601 Applicability.

(a) The approvals and exceptions to controls conveyed by this subpart apply only to controls and approval rights normally included in RUS loan documents. They do not apply to special controls and approval requirements included in the loan documents or other agreements executed between a borrower and RUS that relate to individual problems or circumstances specific to an individual borrower.

(b) The provisions of this subpart apply to loan documents entered into between borrowers and RUS, regardless of whether the documents were executed before, on, or after [the effective date of the final rule].

(c) The approvals and exceptions to controls granted by RUS in this subpart shall not in any way affect the rights of other co-mortgagees under the mortgage or their loan contracts.

§ 1717.602 Definitions.

Terms used in this subpart have the meanings set forth in 7 CFR part 1710. In addition, for the purposes of this subpart:

Default means an event of default as defined in the borrower's loan documents or other agreement with RUS, and furthermore includes any event that has occurred and is continuing which, with notice or lapse of time and notice, would become an event of default.

Financed or funded by RUS means financed or funded wholly or in part by a loan made or guaranteed by RUS, including concurrent supplemental loans required by 7 CFR 1710.110, loans to reimburse funds already expended by the borrower, and loans to replace interim financing.

Interchange agreement means a contractual arrangement that can include a variety of services utilities provide each other to increase reliability and efficiency, and to avoid duplicating expenses. Some examples are: transmission service (the use of transmission lines to move power and energy from one area to another); emergency service (an agreement by one utility to furnish another with power and energy to protect it in times of emergency, such as power plant outages); reserve sharing (contributions to a common pool of generating plant reserves so that each individual utility's reserves can be reduced); and economic exchanges (swapping power and energy from different plants to avoid running the most expensive units).

Interconnection agreement means a contract governing the terms for establishing or using one or more electrical connections between two or more electric systems permitting a flow of power and energy among the systems.

Loan documents means the mortgage (or other security instrument acceptable to RUS), the loan contract, and the promissory note entered into between the borrower and RUS.

Pooling agreement means a contract among two or more interconnected electric systems to operate on a coordinated basis to achieve economies and/or enhance reliability in supplying their respective loads.

Power supply contract means any contract entered into by a borrower for the sale or purchase, at wholesale, of electric energy.

Wheeling agreement means a contract providing for the use of the electric transmission facilities of one electric utility to transmit power and energy of another electric utility or other entity to a third party. Such transmission may be accomplished directly or by displacement.

§ 1717.603 RUS approval of extensions and additions.

(a) *Distribution borrowers.* Prior written approval by RUS is required for a distribution borrower to extend or add to its electric system if the extension or addition will be financed by RUS. For extensions and additions that will not be financed by RUS, approval is hereby given to distribution borrowers to make such extensions and additions to their electric systems, including the use of (or commitment to use) general funds of the borrower, except for the following:

(1) Construction, procurement, or leasing of generating facilities, regardless of the size of the facilities;

(2) Acquisition or leasing of existing electric facilities or systems in service; and

(3) Construction, procurement, or leasing of electric facilities to serve a customer whose annual kWh purchases or maximum annual kW demand in the foreseeable future is projected to exceed 25 percent of the borrower's total kWh sales or maximum kW demand in the year immediately preceding the acquisition or start of construction.

(b) *Power supply borrowers.* Prior written approval by RUS is required for a power supply borrower to extend or add to its electric system if the extension or addition will be financed by RUS. Requirements for RUS approval of extensions and additions that will not be financed by RUS are set forth in other RUS regulations.

(c) *Additional details.* Additional details relating to RUS approval of extensions and additions of a borrower's electric system financed by RUS are set forth in other RUS regulations, e.g., in 7 CFR parts 1710 and 1726.

§ 1717.604 Long-range engineering plans and construction work plans.

(a) All borrowers are required to maintain up-to-date long-range engineering plans and construction work plans (CWPs) in form and substance as set forth in 7 CFR part 1710, subpart F.

(b) Applications for financing from RUS must be supported by a long-range engineering plan and CWP approved by RUS.

(c) RUS approval is not required for long-range engineering plans and CWPs if the borrower does not intend to seek RUS financing for any of the facilities, equipment or other purposes included in those plans. However, if requested by RUS, a borrower must provide an informational copy of such plans to RUS.

§ 1717.605 Design standards, plans and specifications, construction standards, and RUS accepted materials.

All borrowers, regardless of the source of funding, are required to comply with applicable RUS requirements with respect to system design, plans and specifications, construction standards, and the use of RUS accepted materials. These requirements are set forth in other RUS regulations, especially in 7 CFR parts 1724 and 1728.

§ 1717.606 Standard forms of construction contracts, and engineering and architectural services contracts.

All borrowers are encouraged to use the standard forms of contracts promulgated by RUS for construction, materials, equipment, engineering services, and architectural services, regardless of the source of funding for such construction and services. Borrowers are required to use these standard forms of contracts only if the construction, procurement or services are financed by RUS. RUS requirements with respect to such standard forms of contract are set forth in 7 CFR part 1724 for architectural and engineering services, and in 7 CFR part 1726 for construction, materials, and equipment.

§ 1717.607 Contract bidding requirements.

Borrowers must follow RUS requirements regarding bidding for contracts for construction, materials, and equipment only if financing of the construction or procurement will be provided by RUS. These requirements are set forth in 7 CFR part 1726.

§ 1717.608 RUS approval of contracts.

(a) *Construction contracts and architectural and engineering contracts.* RUS approval of contracts for construction and procurement and for architectural and engineering services is required only when such construction, procurement or services are financed by RUS. Detailed requirements regarding RUS approval of such contracts are set forth in 7 CFR part 1724 for architectural and engineering services, and in 7 CFR part 1726 for construction and procurement.

(b) *Large retail power contracts.* RUS approval of contracts to sell electric power to retail customers is required only if the contract is for longer than 2 years and the kWh sales or kW demand for any year covered by the contract exceeds 25 percent of the borrower's total kWh sales or maximum kW demand for the year immediately preceding execution of the contract. This requirement applies regardless of the source of funding of any plant extensions, additions or improvements that may be involved in connection with the contract.

(c) *Power supply arrangements.* (1) Power supply contracts (including but not limited to economy energy sales and emergency power and energy sales), interconnection agreements, interchange agreements, wheeling agreements, pooling agreements, and any other similar power supply arrangements subject to approval by RUS are deemed approved if they have a term of 2 years or less. Amendments to said power supply arrangements are also deemed approved provided that the amendment does not extend the term of the arrangement for more than 2 years beyond the date of the amendment.

(2) Any amendment to a schedule or exhibit contained in any power supply arrangement subject to RUS approval, which merely has the effect of either altering a list of interconnection or delivery points or changing the value of a variable term (but not the formula itself) contained in a formulary rate or charge is deemed approved.

(3) The provisions of this paragraph apply regardless of whether the borrower is a seller or purchaser of the services furnished by the contracts or arrangements, and regardless of whether or not a Federal power marketing agency is a party to any of them.

(d) *System management and maintenance contracts.* RUS approval of contracts for the management and operation of a borrower's electric system or for the maintenance of the electric system is required only if such contracts cover all or substantially all of the electric system.

(e) *Other contracts.* [Reserved]

§ 1717.609 RUS approval of general manager.

(a) If a borrower's mortgage or loan contract grants RUS the unconditioned right to approve the employment and/or the employment contract of the general manager of the borrower's system, such approval is hereby granted provided that the borrower is in compliance with all provisions of its loan documents and any other agreements with RUS.

(b) If a borrower is in default with respect to any provision of its loan documents or any other agreement with RUS:

(1) Such borrower, if directed in writing by RUS, shall replace its general manager within 30 days after the date of such written notice; and

(2) Such borrower shall not hire a general manager without prior written approval by RUS.

§ 1717.610 RUS approval of compensation of the board of directors.

If a borrower's mortgage or loan contract requires the borrower to obtain approval from RUS for compensation provided to members of the borrower's board of directors, such requirement is hereby waived.

§ 1717.611 RUS approval of expenditures for legal, accounting, engineering, and supervisory services.

(a) If a borrower's mortgage or loan contract requires the borrower to obtain approval from RUS before incurring expenses for legal, accounting, supervisory (other than for the management and operation of the borrower's electric system, see § 1717.608(d)), or other similar services, such approval is hereby granted. However, while expenditures for accounting do not require RUS approval, the selection of a certified public accountant by the borrower to prepare audited reports required by RUS remains subject to RUS approval.

(b) If a borrower's mortgage or loan contract requires the borrower to obtain approval from RUS before incurring expenses for engineering services, such approval is hereby granted if such services will not be financed by RUS. Approval requirements with respect to engineering services financed by RUS are set forth in other RUS regulations.

§ 1717.612 RUS approval of borrower's bank or other depository.

(a) If a borrower's mortgage or loan contract gives RUS the authority to approve the bank or other depositories used by the borrower, such approval is hereby granted provided that the bank or other depositories are insured by the Federal Deposit Insurance Corporation or other Federal agency acceptable to RUS.

(b) Without the prior written approval of RUS, a borrower shall not deposit funds from loans made or guaranteed by RUS in any bank or other depository that is not insured by the Federal Deposit Insurance Corporation or other Federal agency acceptable to RUS.

10. Section 1717.850 is amended by revising paragraphs (a), (b), (f), (g)(1)(ii), (h)(2), and (m) to read as follows:

§ 1717.850 General.

(a) *Scope and applicability.* (1) This subpart R establishes policies and

procedures for the accommodation, subordination or release of the Government's lien on borrower assets, including approvals of supporting documents and related loan security documents, in connection with 100 percent private sector financing of facilities and other purposes. Policies and procedures regarding lien accommodations for concurrent supplemental financing required in connection with an RUS insured loan are set forth in subpart S of this part.

(2) This subpart and subpart S of this part apply only to debt to be secured under the mortgage, the issuance of which is subject to the approval of the Rural Utilities Service (RUS) by the terms of the borrower's mortgage with respect to the issuance of additional debt or the refinancing or refunding of debt. If RUS approval is not required under such terms of the mortgage itself, a lien accommodation is not required. If the loan contract or other agreement between the borrower and RUS requires RUS approval with respect to the issuance of debt or making additions to or extensions of the borrower's system, such required approvals do not by themselves result in the need for a lien accommodation.

(b) *Overall policy.* (1) Consistent with prudent lending practices, the maintenance of adequate security for RUS's loans, and the objectives of the Rural Electrification Act (RE Act), it is the policy of RUS to provide effective and timely assistance to borrowers in obtaining financing from other lenders by sharing RUS's lien on a borrower's assets in order to finance electric facilities, equipment and systems, and certain other types of community infrastructure. In certain circumstances, RUS may facilitate the financing of such assets by subordinating its lien on specific assets financed by other lenders.

(2) It is also the policy of RUS to provide effective and timely assistance to borrowers in promoting rural development by subordinating RUS's lien for financially sound rural development investments under the conditions set forth in § 1717.858.

* * * * *

(f) *Safety and performance standards.* (1) To be eligible for a lien accommodation or subordination from RUS, a borrower must comply with RUS standards regarding facility and system planning and design, construction, procurement, and the use of materials accepted by RUS, as required by the borrower's mortgage, loan contract, or other agreement with RUS, and as further specified in RUS regulations.

(2) RUS ''Buy American'' requirements shall not apply.

(g) * * *

(1) * * *

(ii) Obtain a certification from a registered professional engineer, for each year during which funds from the separate subaccount are utilized by the borrower, that all materials and equipment purchased and facilities constructed during the year from said funds comply with RUS safety and performance standards, as required by paragraph (f) of this section, and are included in an CWP or CWP amendment approved by the borrower's board of directors;

* * * * *

(h) * * *

(2) To the extent that provisions in a borrower's loan contract or mortgage in favor of RUS may be inconsistent with paragraphs (g)(1) and (h)(1) of this section, paragraphs (g)(1) and (h)(1) of this section are intended to constitute an approval or waiver under the terms of such instruments, and in any regulations implementing such instruments, with respect to facilities financed with debt obtained entirely from non-RUS sources without an RUS guarantee.

* * * * *

(m) *Waiver authority.* Consistent with the RE Act and other applicable laws, any requirement, condition, or restriction imposed by this subpart, or subpart S of this part, on a borrower, private lender, or application for a lien accommodation or subordination may be waived or reduced by the Administrator, if the Administrator determines that said action is in the Government's financial interest with respect to ensuring repayment and reasonably adequate security for loans made or guaranteed by RUS.

* * * * *

11. Section 1717.851 is amended by removing the definitions for ''ODSC'' and ''OTIER'' and by adding the following definitions in alphabetical order to read as follows:

§ 1717.851 Definitions.

* * * * *

Natural gas distribution system means any system of community infrastructure whose primary function is the distribution of natural gas and whose services are available by design to all or a substantial portion of the members of the community.

* * * * *

Solid waste disposal system means any system of community infrastructure whose primary function is the collection and/or disposal of solid waste and whose services are available by design to all or a substantial portion of the members of the community.

Telecommunication and other electronic communication system means any system of community infrastructure whose primary function is the provision of telecommunication or other electronic communication services and whose services are available by design to all or a substantial portion of the members of the community.

* * * * *

Water and waste disposal system means any system of community infrastructure whose primary function is the supplying of water and/or the collection and treatment of waste water and whose services are available by design to all or a substantial portion of the members of the community.

* * * * *

12. In § 1717.852, paragraphs (a)(1) introductory text and (a)(1)(ii) are amended by adding the words ''and/or steam'' before the word ''power'', paragraphs (a)(3) through (a)(7) and paragraph (b) are revised, and paragraph (a)(8) is added to read as follows:

§ 1717.852 Financing purposes.

(a) * * *

(3) The following types of community infrastructure substantially located within the electric service territory of the borrower: water and waste disposal systems, solid waste disposal systems, telecommunication and other electronic communications systems, and natural gas distribution systems;

(4) Front-end costs, when and as the borrower has obtained a binding commitment from the non-RUS lender for the financing required to complete the procurement or construction of the facilities;

(5) Transaction costs included as part of the cost of financing assets or refinancing existing debt, provided, however, that the amount of transaction costs eligible for lien accommodation or subordination normally shall not exceed 5 percent of the principal amount of financing or refinancing provided, net of all transaction costs;

(6) The refinancing of existing debt secured under the mortgage;

(7) Interest during construction of generation and transmission facilities if approved by RUS, case by case, depending on the financial condition of the borrower, the terms of the financing, the nature of the construction, the treatment of these costs by regulatory authorities having jurisdiction, and such other factors deemed appropriate by RUS; and

(8) Lien subordinations for certain rural development investments, as provided in § 1717.858.

(b) *Purposes ineligible.*The following financing purposes are not eligible for a lien accommodation or subordination from RUS:

(1) Working capital, including operating funds, unless in the judgment of RUS the working capital is required to ensure the repayment of RUS loans and/or other loans secured under the mortgage;

(2) Facilities, equipment, appliances, or wiring located inside the premises of the consumer, except:

(i) Certain load-management equipment (see 7 CFR 1710.251(c));

(ii) Renewable energy systems and RUS-approved programs of demand side management and energy conservation; and

(iii) As determined by RUS on a case by case basis, facilities included as part of certain cogeneration projects to furnish electric and/or steam power to end-user customers of the borrower;

(3) Investments in a lender required of the borrower as a condition for obtaining financing; and

(4) Debt incurred by a distribution or power supply borrower to finance facilities, equipment or other assets that are not part of the borrower's electric system or one of the four community infrastructure systems cited in paragraph (a)(3) of this section, except for certain rural development investments eligible for a lien subordination under § 1717.858.

* * * * *

13. Section 1717.854 is amended by revising the section heading and paragraphs (a), (b), (c)(1) and (c)(2), removing paragraph (c)(7), redesignating paragraphs (c)(3) through (c)(6) as paragraphs (c)(4) through (c)(7), adding a new paragraph (c)(3), adding ''and'' at the end of newly designated paragraph (c)(6)(vi), and removing ''; and'' at the end of newly designated paragraph (c)(7) and adding a period in its place to read as follows:

§ 1717.854 Advance approval—100 percent private financing of distribution, subtransmission and headquarters facilities, and certain other community infrastructure.

(a) *Policy.* Requests for a lien accommodation or subordination from distribution borrowers for 100 percent private financing of distribution, subtransmission and headquarters facilities, and for community infrastructure listed in § 1717.852(a)(3), qualify for advance approval by RUS if they meet the conditions of this section and all other applicable provisions of this subpart. Advance approval means RUS will approve these requests once RUS is satisfied that the conditions of this section and all other applicable provisions of this subpart have been met.

(b) *Eligible purposes.* Lien accommodations or subordinations for the financing of distribution, subtransmission, and headquarters facilities and community infrastructure listed in § 1717.852(a)(3) are eligible for advance approval, except those that involve the purchase of existing facilities and associated service territory.

(c) * * *

(1) The borrower has achieved a TIER of at least 1.5 and a DSC of at least 1.25 for each of 2 calendar years immediately preceding, or any 2 consecutive 12 month periods ending within 180 days immediately preceding, the issuance of the debt;

(2) The ratio of the borrower's equity, less deferred expenses, to total assets, less deferred expenses, is not less than 27 percent, after adding the principal amount of the proposed loan to the total assets of the borrower;

(3) The borrower's net utility plant as a ratio to its total outstanding long-term debt is not less than 1.0, after adding the principal amount of the proposed loan to the existing outstanding long-term debt of the borrower;

* * * * *

14. Section 1717.855 is amended by revising the section heading and paragraph (a) to read as follows:

§ 1717.855 Application contents: Advance approval—100 percent private financing of distribution, subtransmission and headquarters facilities, and certain other community infrastructure.

* * * * *

(a) A certification by an authorized official of the borrower that the borrower and, as applicable, the loan are in compliance with all conditions set forth in § 1717.854(c) and all applicable provisions of §§ 1717.852 and 1717.853;

* * * * *

15. Section 1717.856 is amended by revising the section heading, the introductory text, the introductory text of paragraph (a), and paragraph (c)(3) to read as follows:

§ 1717.856 Application contents: Normal review—100 percent private financing.

Applications for a lien accommodation or subordination for 100 percent private financing for eligible purposes that do not meet the requirements of § 1717.854 must include the following information and documents:

(a) A certification by an authorized official of the borrower that:

* * * * *

(c) * * *

(3) The borrower has achieved the TIER and DSC and any other coverage ratios required by its mortgage or loan contract in each of the two most recent calendar years; and

* * * * *

§ 1717.857 [Amended]

16. Section 1717.857 is amended by removing paragraph (a)(5), by adding ''and'' at the end of paragraph (a)(3), and by removing ''; and'' at the end of paragraph (a)(4)(ii) and adding a period in its place.

PART 1718—LOAN SECURITY DOCUMENTS FOR ELECTRIC BORROWERS

17. The authority citation for part 1718 continues to read as follows:

Authority: 7 U.S.C. 901–950b; Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

18. Subpart C is added to part 1718 to read as follows:

Subpart C—Loan Contracts With Distribution Borrowers

Sec.

Appendix A to Subpart C of Part 1718—Model Form of Loan Contract for Electric Distribution Borrowers

Subpart C—Loan Contracts With Distribution Borrowers

§ 1718.100 General.

(a) *Purpose.* The purpose of this subpart is to set forth the policies, requirements, and procedures governing loan contracts entered into between the Rural Utilities Service (RUS) and distribution borrowers or, in some cases, other electric borrowers.

(b) *Flexibility for individual circumstances.* The intent of this subpart is to provide the flexibility to address the different needs and different credit risks of individual borrowers, and other special circumstances of individual lending situations. The model loan contract contained in Appendix A of this subpart provides an example of what a loan contract with an ''average'' or ''typical'' distribution borrower may look like under ''average'' or ''typical'' circumstances. Depending on the credit risks and other circumstances of individual loans, RUS may execute loan contracts with

provisions that are substantially different than those set forth in the model. RUS may develop alternative model loan contract provisions. If it does, such provisions will be made available to the public.

(c) *Resolution of any differences in contractual provisions.* If any provision of the loan contract appears to be in conflict with provisions of the mortgage, the loan contract shall have precedence with respect to the contractual relationship between the borrower and RUS with respect to such provision. If either document is silent on a matter addressed in the other document, the other document shall have precedence with respect to the contractual relationship between the borrower and RUS with respect to such matter.

(d) *Loan contract provisions subject to subsequent rule making.* The provisions of all loan contracts executed pursuant to this subpart shall be subject to amendment and modification pursuant to subsequent rule making. Such amendments and modifications may not exceed the authority granted to RUS in the loan contract entered into with the borrower.

§ 1718.101 Applicability.

(a) *Distribution borrowers.* The provisions of this subpart apply to all distribution borrowers that obtain a loan or loan guarantee from RUS on or after [the effective date of the final rule]. Distribution borrowers that obtain a lien accommodation or any other form of financial assistance from RUS after [the effective date of the final rule] may be required to execute a new loan contract and new mortgage. Moreover, any distribution borrower may submit a request to RUS that a new loan contract and new mortgage be executed. Within the constraints of time and staff resources, RUS will attempt to honor such requests. Borrowers must first obtain the concurrence of any other mortgagees on their existing mortgage before a new mortgage can be executed.

(b) *Other borrowers.* Borrowers other than distribution borrowers may also submit requests for execution of a new loan contract pursuant to this subpart and a new mortgage pursuant to subpart B of this part. RUS may approve such requests if it determines that it is in the government's financial interest. If other mortgagees are on the borrower's existing mortgage, their concurrence would be required before a new mortgage could be executed.

§ 1718.102 Definitions.

For the purposes of this subpart:

Borrower means any organization that has an outstanding loan made or guaranteed by the Rural Utilities Service (RUS) or its predecessor, the Rural Electrification Administration, for rural electrification, or that is seeking such financing.

Distribution borrower means a borrower that sells or intends to sell electric power and energy at retail in rural areas, the latter being defined in 7 CFR 1710.2.

Loan documents means the mortgage (or other security instrument acceptable to RUS), the loan contract, and the promissory note entered into between the borrower and RUS.

§ 1718.103 Loan contract provisions.

Loan contracts executed pursuant to this subpart shall contain such provisions as RUS determines are appropriate to further the purposes of the RE Act and to ensure that the security for the loan will be reasonably adequate and that the loan will be repaid according to the terms of the promissory note. Such loan contracts will contain provisions addressing, but not necessarily limited to, the following matters:

(a) Description of the purpose of the loan;

(b) Specification of the interest to be charged on the loan, including the method for determining the interest rate if it is not fixed for the entire term of the loan;

(c) Specification of the method for repaying the loan principal, including the final maturity of the loan;

(d) The conditions under which the loan may be prepaid before its maturity date, including but not limited to requirements regarding the prepayment of loans made concurrently by RUS and another secured lender;

(e) The method for making scheduled payments on the loan;

(f) Accounting principles and system of accounts, and RUS authority to approve the accountant used by the borrower;

(g) The method and time period for advancing loan funds and the conditions precedent to the advance of funds;

(h) Representations and warranties by the borrower as a condition of obtaining the loan, including but not limited to: the legal authority of the borrower to enter into the loan contract and operate its system; that the loan documents will be a legal, valid and binding obligation of the borrower enforceable according to their terms; compliance of the borrower in all material respects with all federal, state, and local laws, regulations, codes, and orders; existence of any pending or threatened legal actions that could have a material adverse effect on the borrower's ability to perform its obligations under the loan documents; the accuracy and completeness of all information provided by the borrower in the loan application and with respect to the loan contract, and the existence of any material adverse change since the information was provided; and the existence of any material defaults under other agreements of the borrower;

(i) Representations, warranties, and covenants with respect to environmental matters;

(j) Reports and notices required to be submitted to RUS, including but not limited to: annual financial statements; notice of defaults; notice of litigation; notice of orders or other directives received by the borrower from regulatory authorities; notice of any matter that has resulted in or may result in a material adverse change in the condition or operations of the borrower; and such other information regarding the condition or operations of the borrower as RUS may reasonably require;

(k) Annual written certification that the borrower is in compliance with its loan contract, note, mortgage, and any other agreement with RUS, or if there has been a default in the fulfillment of any obligation under said agreements, specifying each such default and the nature and status thereof;

(l) Requirement that the borrower design and implement rates for utility services to meet certain minimum coverage of interest expense and/or debt service obligations;

(m) Requirement that the borrower maintain and preserve its mortgaged property in compliance with prudent utility practice and all applicable laws, which may include certain specific actions and certifications set forth in the borrower's loan contract or mortgage;

(n) Requirement that the borrower plan, design and construct its electric system according to standards and other requirements established by RUS, and if directed by the Administrator, that the borrower follow RUS planning, design and construction standards and requirements for other utility systems constructed by the borrower;

(o) Limitations on extensions and additions to the borrower's electric system without approval by RUS;

(p) Limitations on contracts and contract amendments that the borrower may enter into without approval by RUS;

(q) Limitations of the transfer of mortgaged property by the borrower;

(r) Limitations on dividends, patronage refunds, and cash distributions paid by the borrower;

(s) Limitations on investments, loans, and guarantees made by the borrower;

(t) Authority of RUS to approve a new general manager and to require that an existing general manager be replaced if the borrower is in default under its mortgage, loan contract, or any other agreements with RUS;

(u) Description of events of default under the loan contract and the remedies available to RUS;

(v) Applicability of state and federal laws;

(w) Severability of the individual provisions of the loan documents;

(x) Matters relating to the assignment of the loan contract;

(y) Requirements relating to federal laws and regulations, including but not limited to the following matters: area coverage for electric service; civil rights and equal employment opportunity; access to buildings and other matters relating to the handicapped; design and construction standards relating to earthquakes; the National Environmental Policy Act of 1969 and other environmental laws and regulations; flood hazard insurance; debarment and suspension from federal assistance programs; and delinquency on federal debt; and

(z) Special requirements applicable to individual loans, and such other provisions as RUS may require to ensure loan repayment and reasonably adequate loan security.

§ 1718.104 Availability of model loan contract.

Single copies of the model loan contract (RUS Informational Publication 1718 C) are available from the Administrative Services Division, Rural Utilities Service, United States Department of Agriculture, Washington, DC 20250–1500. This document may be reproduced.

Appendix A to Subpart C of Part 1718—Model Form of Loan Contract for Electric Distribution Borrowers

Loan Contract

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Loan Contract

AGREEMENT, dated _____, 199_____,
between _____ (''Borrower''),
a corporation organized and existing under the laws of the State of _____ (the ''State'') and the UNITED STATES OF AMERICA acting by and through the Administrator of the Rural Utilities Service (''RUS'').

Recitals

The Borrower has applied to RUS for a loan for the purpose(s) set forth in Schedule 1 hereto.

RUS is willing to make such a loan to the Borrower pursuant to the Rural Electrification Act of 1936, as amended, on the terms and conditions stated herein.

THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto agree and bind themselves as follows:

Article I—Definitions

Capitalized terms that are not defined herein shall have the meanings as set forth in the Mortgage. The terms defined herein include the plural as well as the singular and the singular as well as the plural.

''Act'' shall mean the Rural Electrification Act of 1936 etc.

''Advance'' or ''Advances'' shall mean advances by RUS to Borrower pursuant to the terms and conditions of this Agreement.

''Agreement'' shall mean this Loan Contract together with all schedules and exhibits and also any subsequent supplements or amendments.

''Business Day'' shall mean any day that RUS is open for business.

''Contemporaneous Loan'' shall mean a loan made pursuant to a loan agreement providing for a loan secured by a mortgage on which RUS was also a mortgagee, the making of which was conditioned upon the making of a loan, therein described, by another lender, and shall also mean any loan which the Borrower has used to satisfy RUS Regulations requiring that supplemental financing be obtained in order to qualify for a loan from RUS. Any loan used to refinance or refund a Contemporaneous Loan is also considered to be a Contemporaneous Loan.

''Coverage Ratios'' shall mean, collectively, the following financial ratios pertaining to the Electric System: (i) TIER of 1.5; (ii) Operating TIER of 1.1; (iii) DSC of 1.25; and Operating DSC of 1.1.

''DSC'' shall have the meaning as defined in the Mortgage.

''Distributions'' shall mean for the Borrower to, in any calendar year, declare or pay any dividends, or pay or determine to pay any patronage refunds, or retire any patronage capital or make any other cash distributions, to its members, stockholders or consumers; *provided, however,* that for the purposes of this Agreement a ''Cash Distribution'' shall be deemed to include any general cancellation or abatement of charges for electric energy or services furnished by the Borrower, but not the repayment of a membership fee upon termination of a membership [and not the rebate of an abatement of costs incurred by the Borrower, such as a reduction of wholesale power cost previously incurred].

''Electric System'' shall have the meaning as defined in the Mortgage.

''Equity'' shall mean the Borrower's total margins and equities computed pursuant to RUS Accounting Requirements but excluding any Regulatory Created Assets.

''Event of Default'' shall have the meaning as defined in Section [7.1].

''Interest Expense'' shall mean the interest expense of the Borrower computed pursuant to RUS Accounting requirements.

''Loan'' shall mean the loan described in Article II which is being made pursuant to the RUS Commitment in furtherance of the objectives of the Act.

''Loan Documents'' shall mean, collectively, this Agreement, the Mortgage and the Note.

''Long-Term Debt'' shall mean the total of all amounts included in the long-term debt of the Borrower pursuant to RUS Accounting Requirements.

''Maturity Date'' shall have the meaning as defined in the Note.

''Monthly Payment Date'' shall have the meaning as defined in the Note.

''Mortgage'' shall have the meaning as described in Schedule 1 hereto.

''Mortgaged Property'' shall have the meaning as defined in the Mortgage.

''Net Utility Plant'' shall mean the amount constituting the total utility plant of the Borrower, less depreciation, computed in accordance with RUS Accounting Requirements.

''Note'' shall mean a promissory note executed by the Borrower in the form of Exhibit A hereto, and any note executed and delivered to RUS to refund, or in substitution for such a note.

''Operating DSC'' or ''ODSC'' shall mean Operating Debt Service Coverage calculated as:

$$ODSC = \frac{A+B+C}{D}$$

where:

All amounts are for the same one-year period and are computed pursuant to RUS Accounting Requirements;

A=Depreciation and amortization expense of the Electric System;

B=Interest Expense on all Long-term Debt of the Electric System, except that Interest Expense shall be increased by 1/3 of the amount, if any, by which the rentals of Restricted Property of the Electric System exceed 2 percent of total margins and equities;

C=Patronage capital & operating margins of the Electric System, which equals operating revenue and patronage capital of Electric System operations, less total cost of electric service (including Interest Expense on all Long-Term Debt of the Electric System); and

D=Debt service billed which equals all interest and principal billed or billable to the Borrower during the year for all Long-Term Debt of the Electric System, plus ⅓ of the amount, if any, by which the rentals of Restricted Property of the Electric System exceed 2 percent of total margins and equities.

''Operating TIER'' or ''OTIER'' shall mean Operating Times Interest Earned Ratio calculated as:

$$OTIER = \frac{A+B}{A}$$

where:

All amounts are for the same one-year period and are computed pursuant to RUS Accounting Requirements;

A=Interest Expense on all Long-term Debt of the Electric System, except that Interest Expense shall be increased by ⅓ of the amount, if any, by which the rentals of Restricted Property of the Electric System exceed 2 percent of total margins and equities; and

B=Patronage capital & operating margins of the Electric System, which equals operating revenue and patronage capital of Electric System operations, less total cost of electric service (including Interest Expense on all Long-Term Debt of the Electric System).

''Payment Notice'' shall mean a notice furnished by RUS to Borrower that indicates the precise amount of each payment of principal and interest and the total amount of each payment.

''Permitted Debt'' shall have the meaning as defined in Section [6.13].

''Regulatory Created Assets'' shall mean the sum of any amounts properly recordable as unrecovered plant and regulatory study costs or as other regulatory assets, computed pursuant to RUS Accounting Requirements.

''RUS Accounting Requirements'' shall mean any system of accounts prescribed by RUS Regulations as such RUS Accounting Requirements exist at the date of applicability thereof.

''RUS Commitment'' shall have the meaning as defined in Schedule 1 hereto.

''RUS Regulations'' shall mean regulations published by RUS from time to time in the **Federal Register** as they exist at the date of applicability thereof, and shall also include any regulations of other federal entities which RUS is required by law to implement.

''Subsidiary'' shall mean a corporation that is a subsidiary of the Borrower and subject to the Borrower's control, as defined by RUS Accounting Requirements.

''Termination Date'' shall have the meaning as defined in the Note.

''TIER'' shall have the meaning as defined in the Mortgage.

''Total Assets'' shall mean an amount constituting the total assets of the Borrower as computed pursuant to RUS Accounting Requirements, but excluding any Regulatory Created Assets.

''Total Utility Plant'' shall mean the amount constituting the total utility plant of the Borrower computed in accordance with RUS Accounting Requirements.

''Utility System'' shall have the meaning as defined in the Mortgage.

Article II—Representations and Warranties

Section 2.1. Representations and Warranties. To induce RUS to make the Loan, and recognizing that RUS is relying hereof, the Borrower represents and warrants as follows:

(a) *Organization; Power, Etc.* The Borrower: (i) is duly organized, validly existing, and in good standing under the laws of its state of incorporation; (ii) is duly qualified to do business and is in good standing in each jurisdiction in which the transaction of its business makes such qualification necessary; (iii) has all requisite corporate and legal power to own and operate its assets and to carry on its business and to enter into and perform the Loan Documents; (iv) has duly and lawfully obtained and maintained all licenses, certificates, permits, authorizations, approvals, and the like which are material to the conduct of its business or which may be otherwise required by law; and (v) is eligible to borrow from RUS.

(b) *Authority.* The execution, delivery and performance by the Borrower of this Agreement and the other Loan Documents and the performance of the transactions contemplated thereby have been duly authorized by all necessary corporate action and will not violate any provision of law or of the Articles of Incorporation or By-Laws of the Borrower or result in a breach of, or constitute a default under, any agreement, indenture or other instrument to which the Borrower is a party or by which it may be bound.

(c) *Consents.* No consent, permission, authorization, order, or license of any governmental authority is necessary in connection with the execution, delivery, performance, or enforcement of the Loan Documents, except (i) such as have been obtained and are in full force and effect and (ii) such as have been disclosed on Schedule 1 hereto.

(d) *Binding Agreement.* Each of the Loan Documents is, or when executed and delivered will be, the legal, valid, and binding obligation of the Borrower,

enforceable in accordance with its terms, subject only to limitations on enforceability imposed by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting creditors' rights generally.

(e) *Compliance With Laws.* The Borrower is in compliance in all material respects with all federal, state, and local laws, rules, regulations, ordinances, codes, and orders (collectively, ''Laws''), the failure to comply with which could have a material adverse effect on the condition, financial or otherwise, operations, properties, or business of the Borrower, or on the ability of the Borrower to perform its obligations under the Loan Documents, except as the Borrower has disclosed on Schedule 1 attached hereto.

(f) *Litigation.* There are no pending legal, arbitration, or governmental actions or proceedings to which the Borrower is a party or to which any of its property is subject which, if adversely determined, could have a material adverse effect on the condition, financial or otherwise, operations, properties, or business of the Borrower, or on the ability of the Borrower to perform its obligations under the Loan Documents, and to the best of the Borrower's knowledge, no such actions or proceedings are threatened or contemplated, except as the Borrower has disclosed on Schedule 1 attached hereto.

(g) *Title to Property.* The Borrower holds good and marketable title to all of its real property and owns all of its personal property free and clear of any lien or encumbrance except the liens and encumbrances specifically identified on Schedule 2 attached hereto (the ''Existing Liens''), and liens or other interests permitted under the Mortgage.

(h) *Financial Statements; No Material Adverse Change; Etc.* All financial statements submitted to RUS in connection with the application for the Loan or in connections with this Agreement fairly and fully present the financial condition of the Borrower and the results of the Borrower's operations for the periods covered thereby and are prepared in accordance with RUS Accounting Requirements consistently applied. Since the dates thereof, there has been no material adverse change in the financial condition or operations of the Borrower. All budgets, projections, feasibility studies, and other documentation submitted by the Borrower to RUS are based upon assumptions that are reasonable and realistic, and as of the date hereof, no fact has come to light, and no event or transaction has occurred, which would cause any assumption made therein not to be reasonable or realistic.

(i) *Principal Place of Business; Records.* The principal place of business and chief executive office of the Borrower is at the address of the Borrower shown on Schedule 1 attached hereto.

(j) *Location of Properties.* All property owned by the Borrower is located in the counties identified in Schedule 1 hereto.

(k) *Subsidiaries.* The Borrower has no subsidiary, except as the Borrower has disclosed on Schedule 1 attached hereto.

(l) *Defaults Under Other Agreements.* The Borrower is not in default under any agreement or instrument to which it is a party or under which any of its properties are subject that is material to its financial condition, operations, properties, profits, or business.

(m) *Survival.* All representations and warranties made by the Borrower herein or made in any certificate delivered pursuant hereto shall survive the making of the Advances and the execution and delivery to RUS of the Note.

Article III—Loan

Section 3.1. Advances. RUS agrees to make, and the Borrower agrees to request, on the terms and conditions of this Agreement, Advances from time to time in an aggregate principal amount not to exceed the RUS Commitment. On the Termination Date, RUS may stop advancing funds and limit the RUS Commitment to the amount advanced prior to such date. The obligation of the Borrower to repay the Advances shall be evidenced by the Note in the principal amount of the unpaid principal amount of the Advances from time to time outstanding. The Borrower shall give RUS written notice of the date on which each Advance is to be made.

Section 3.2. Interest Rate and Payment. The Note shall be payable and bear interest as follows:

(a) *Payments and Amortization.* Principal will be amortized in accordance with the method stated in Schedule 1 hereto and more fully described in the form of Note attached hereto as Exhibit A.

(b) *Application of Payments.* Each payment shall be applied first to any charges then due on the Note, second to interest accrued on the principal amount to the due date of such payment on the Note, and the balance to the reduction of principal against the Note in inverse order of maturity.

(c) *Electronic Funds Transfer.* Except as otherwise prescribed by RUS, the Borrower shall make all payments on the Note utilizing electronic funds transfer procedures as specified by RUS.

(d) *Fixed or Variable Rate.* The Note will bear interest at either a fixed or variable rate in accordance with the method stated in Schedule 1 hereto and as more particularly described in the form of Note attached hereto as Exhibit A.

Section 3.3. Prepayment. The Borrower has no right to prepay the Note in whole or in part except such rights, if any, as are expressly provided for in the Note. However, prepayment of the Note (and any penalties) shall be mandatory under Section [5.3] hereof if the Borrower has used a Contemporaneous Loan in order to qualify for the RUS Commitment, and later prepays the Contemporaneous Loan.

Article IV—Conditions of Lending

Section 4.1. General Conditions. The obligation of RUS to make any Advance hereunder is subject to satisfaction of each of the following conditions precedent on or before the date of such Advance:

(a) *Legal Matters.* All legal matters incident to the consummation of the transactions hereby contemplated shall be satisfactory to counsel for RUS.

(b) *Loan Documents.* That RUS receive duly executed originals of this Agreement and the other Loan Documents.

(c) *Authorization.* That RUS receive evidence satisfactory to it that all corporate documents and proceedings of the Borrower necessary for duly authorizing the execution, delivery and performance of the Loan Documents have been obtained and are in full force and effect.

(d) *Approvals.* That RUS receive evidence satisfactory to it that all consents and approvals (including without limitation the consents referred to in Section [2.1(c)] of this Agreement) which are necessary for, or required as a condition of, the validity and enforceability of each of the Loan Documents have been obtained and are in full force and effect.

(e) *Event of Default.* That no Event of Default specified in Article VII and no event which, with the lapse of time or the notice and lapse of time specified in Article VII would become such an Event of Default, shall have occurred and be continuing or will have occurred after giving effect to the Advance on the books of the Borrower.

(f) *Continuing Representations and Warranties.* That the representations and warranties of the Borrower contained in this Agreement be true and correct on and as of the date of such Advance as though made on and as of such date.

(g) *Opinion of Counsel.* That RUS receive an opinion of counsel for the Borrower (who shall be acceptable to RUS) in form and content acceptable to RUS.

(h) *Mortgage Filing.* The Mortgage shall have been duly recorded as a mortgage on real property, including after-acquired real property, and duly filed, recorded or indexed as a security interest in personal property, including after acquired personal property, wherever RUS shall have requested, all in accordance with applicable law, and the Borrower shall have caused satisfactory evidence thereof to be furnished to RUS.

(i) *Wholesale Power Contract.* That the Borrower shall not be in default under the terms of, or contesting the validity of, any contract that has been pledged by any entity to RUS as security for the repayment of any loan made or guaranteed by RUS under the Act.

(j) *Material Adverse Change.* That there has occurred no material adverse change in the business or condition, financial or otherwise, of the Borrower and nothing has occurred which in the opinion of RUS materially and adversely affects the Borrower's ability to meet its obligations hereunder.

(k) *Requisitions.* That the Borrower will requisition all Advances by submitting its requisition to RUS in form and substance satisfactory to RUS. Requisitions shall be made only for the purpose(s) set forth herein. The Borrower agrees to apply the proceeds of the Advances in accordance with its loan application with such modifications as may be mutually agreed.

(l) *Flood Insurance.* That for any Advance used in whole or in part to finance the construction or acquisition of any building in any area identified by the Secretary of Housing and Urban Development pursuant to the Flood Disaster Protection Act of 1973 (the ''Flood Insurance Act'') or any rules, regulations or orders issued to implement the Flood Insurance Act (''Rules'') as any area

having special flood hazards, or to finance any facilities or materials to be located in any such building, or in any building owned or occupied by the Borrower and located in such a flood hazard area, the Borrower has submitted evidence, in form and substance satisfactory to RUS, or RUS has otherwise determined, that (i) the community in which such area is located is then participating in the national flood insurance program, as required by the Flood Insurance Act and any Rules, and (ii) the Borrower has obtained flood insurance coverage with respect to such building and contents as may then be required pursuant to the Flood Insurance Act and any Rules.

(m) *RUS Regulations.* That the Advance will be in accordance with all applicable RUS Regulations.

Section 4.2. Special Conditions. The obligation of RUS to make any Advance hereunder is also subject to satisfaction, on or before the date of such Advance, of each of the special conditions, if any, listed in Schedule 1 hereto.

Article V—Affirmative Covenants

Section 5.1. Generally. Unless otherwise agreed to in writing by RUS, while this Agreement is in effect, whether or not any Advance is outstanding, the Borrower agrees to duly observe each of the affirmative covenants contained in this Article:

Section 5.2. Annual Certificates.

(a) *Performance under Loan Documents.* The Borrower will duly observe and perform all of its obligations under each of the Loan Documents.

(b) *Annual Certification.* Within ninety (90) days after the close of each calendar year, commencing with the year following the year in which the initial Advance hereunder shall have been made, the Borrower shall deliver to RUS a written statement signed by its General Manager, stating that during such year the Borrower has fulfilled all of its obligations under the Loan Documents throughout such year or, if there has been a default in the fulfillment of any such obligations, specifying each such default known to said person and the nature and status thereof.

Section 5.3. Simultaneous Prepayment of Contemporaneous Loans. If the Borrower shall at any time prepay the Contemporaneous Loan described on Schedule 1, it shall prepay the RUS Note correspondingly to maintain the ratio that the Contemporaneous Loan bears to the RUS Commitment. If the RUS Note calls for a prepayment penalty or premium, such amount shall be paid but shall not be used in computing the amount needed to be paid to RUS under this section to maintain such ratio. In the case of Contemporaneous Loans and RUS Notes existing prior to the date of this Agreement under previous agreements, prepayments shall be treated as if governed by this section. Provided, however, in all cases prepayments associated with refinancing or refunding a Contemporaneous Loan pursuant to Article II of the Mortgage are not considered to be prepayments for purposes of this Agreement provided that the principal amount of such refinancing or refunding loan is not less than the amount of loan principal being refinanced, and the weighted average life of the refinancing or refunding loan is materially equal to the weighted average remaining life of the loan being refinanced.

Section 5.4 Rates to Provide Revenue Sufficient to Meet Coverage Ratios Requirements.

(a) *Prospective Requirement.* The Borrower shall design and implement rates for utility service furnished by it to provide sufficient revenue (along with other revenue available to the Borrower in the case of TIER and DSC) (i) to pay all fixed and variable expenses when and as due, (ii) to provide and maintain reasonable working capital, and (iii) to maintain, on an annual basis, the Coverage Ratios. In designing and implementing rates under this paragraph, such rates should be capable of producing at least enough revenue to meet the requirements of this paragraph under the assumption that average weather conditions in the Borrower's service territory will prevail in the future, including average Utility System damage and outages due to weather and the related costs.

(b) *Retrospective Requirement.* The average Coverage Ratios achieved by the Borrower in the 2 best years out of the 3 most recent calendar years must be not less than any of the following:

TIER=1.5
DSC=1.25
OTIER=1.1
ODSC=1.1

(c) *Prospective Notice of Change in Rates.* The Borrower shall give thirty (30) days prior written notice of any proposed change in its general rate structure to RUS if RUS has requested in writing that it be notified in advance of such changes.

(d) *Routine Reporting of Coverage Ratios.* Promptly following the end of each calendar year, the Borrower shall report, in writing, to RUS the TIER, Operating TIER, DSC and Operating DSC levels which were achieved during that calendar year.

(e) *Reporting Non-achievement of Retrospective Requirement.* If the Borrower fails to achieve the average levels required by paragraph (b) of this section, it must promptly notify RUS in writing to that effect.

(f) *Corrective Plans.* Within 30 days of sending a notice to RUS under paragraph (e) of this section, or of being notified by RUS, whichever is earlier, the Borrower in consultation with RUS, shall provide a written plan satisfactory to RUS setting forth the actions that will be taken to achieve the required Coverage Ratios on a timely basis.

(g) *Noncompliance.* Failure to design and implement rates pursuant to paragraph (a) of this section and failure to develop and implement the plan called for in paragraph (f) of this section shall constitute an Event of Default under this Agreement in the event that REA so notifies the Borrower to that effect under section [7.1(c)] of this Agreement.

Section 5.5. Depreciation Rates. The Borrower shall adopt as its depreciation rates only those which have been previously approved for the Borrower by RUS.

Section 5.6. Property Maintenance. The Borrower shall maintain and preserve its Utility System in compliance with the provisions of the Mortgage, RUS Regulations and all applicable laws.

Section 5.7. Financial Books. The Borrower shall at all times keep, and safely preserve, proper books, records and accounts in which full and true entries will be made of all of the dealings, business and affairs of the Borrower and its Subsidiaries, in accordance with any applicable RUS Accounting Requirements.

Section 5.8. Rights of Inspection. The Borrower shall afford RUS, through its representatives, reasonable opportunity, at all times during business hours and upon prior notice, to have access to and the right to inspect the Utility System, any other property encumbered by the Mortgage, and any or all books, records, accounts, invoices, contracts, leases, payrolls, canceled checks, statements and other documents and papers of every kind belonging to or in the possession of the Borrower or in anyway pertaining to its property or business, including its Subsidiaries, if any, and to make copies or extracts therefrom.

Section 5.9. Area Coverage. The Borrower shall make diligent effort to extend electric service to all unserved persons within the service area of the Borrower who (i) desire such service and (ii) meet all reasonable requirements established by the Borrower as a condition of such service. To the extent required by RUS, the Borrower shall provide electric service without a contribution in aid of construction.

Section 5.10. Real Property Acquisition. In acquiring real property, the Borrower shall comply with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the ''Uniform Act''), as amended by the Uniform Relocation Act Amendments of 1987, and 49 CFR part 24, referenced by 7 CFR part 21, to the extent the Uniform Act is applicable to such acquisition.

Section 5.11. ''Buy American'' Requirements. The Borrower shall use or cause to be used in connection with the expenditures of funds advanced on account of the Loan only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, Mexico, or Canada, and only such manufactured articles, materials, and supplies as have been manufactured in the United States, Mexico, or Canada substantially all from articles, materials, and supplies mined, produced or manufactured, as the case may be, in the United States, Mexico, or Canada, except to the extent RUS shall determine that such use shall be impracticable or that the cost thereof shall be unreasonable.

Section 5.12. Power Requirements Studies. The Borrower shall prepare and use power requirements studies of its electric loads and future energy and capacity requirements in conformance with RUS Regulations.

Section 5.13. Long Range Engineering Plans and Construction Work Plans. The Borrower shall develop, maintain and use up-to-date long-range engineering plans and construction work plans in conformance with RUS Regulations.

Section 5.14. Design Standards, Plans and Specifications, Construction Standards, and List of Materials. The Borrower shall use design standards, plans and specifications,

construction standards, and lists of acceptable materials in conformance with RUS Regulations.

Section 5.15. Construction. The Borrower shall acquire and construct the Electric System in conformance with RUS Regulations.

Section 5.16. Standard Forms of Construction Contracts, and Engineering and Architectural Services Contracts. The Borrower shall use the standard forms of contracts promulgated by RUS for construction, procurement, engineering services and architectural services in conformance with RUS Regulations.

Section 5.17. Contract Bidding Requirements. The Borrower shall follow RUS contract bidding procedures in conformance with RUS Regulations when contracting for construction or procurement.

Section 5.18. Nondiscrimination.

(a) *Equal Opportunity Provisions in Construction Contracts.* The Borrower shall incorporate or cause to be incorporated into any construction contract, as defined in Executive Order 11246 of September 24, 1965 and implementing regulations, which is paid for in whole or in part with funds obtained from RUS or borrowed on the credit of the United States pursuant to a grant, contract, loan, insurance or guarantee, or undertaken pursuant to any RUS program involving such grant, contract, loan, insurance or guarantee, the equal opportunity provisions set forth in Exhibit B hereto entitled Equal Opportunity Contract Provisions.

(b) *Equal Opportunity Contract Provisions Also Bind the Borrower.* The Borrower further agrees that it will be bound by such equal opportunity clause in any federally assisted construction work which it performs itself other than through the permanent work force directly employed by an agency of government.

(c) *Sanctions and Penalties.* The Borrower agrees that it will cooperate actively with RUS and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations and relevant orders of the Secretary of Labor, that it will furnish RUS and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of RUS's primary responsibility for securing compliance. The Borrower further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to Part II, Subpart D of Executive Order 11246 and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by RUS or the Secretary of Labor pursuant to Part II, Subpart D of Executive Order 11246. In addition, the Borrower agrees that if it fails or refuses to comply with these undertakings RUS may cancel, terminate or suspend in whole or in part this contract, may refrain from extending any further assistance under any of its programs subject to Executive Order 11246 until satisfactory assurance of future compliance has been received from such Borrower, or may refer the case to the Department of Justice for appropriate legal proceedings.

Section 5.19. Financial Reports. The Borrower will cause to be prepared and furnished to RUS from time to time pursuant to RUS Regulations, a full and complete annual report of its financial condition and of its operations in form and substance satisfactory to RUS, audited and certified by Independent certified public accountants satisfactory to RUS and accompanied by a report of such audit in form and substance satisfactory to RUS. The Borrower shall also furnish to RUS from time to time such other reports concerning the financial condition or operations of the Borrower, including its Subsidiaries, as RUS may reasonably request or RUS Regulations require.

Section 5.20. Miscellaneous Reports and Notices. The Borrower will furnish to RUS:

(a) *Notice of Default.* Promptly after becoming aware thereof, notice of: (i) the occurrence of any default; and (ii) the receipt of any notice given pursuant to the Mortgage with respect to the occurrence of any event which with the giving of notice or the passage of time, or both, could become an ''Event of Default'' under the Mortgage.

(b) *Notice of Non-Environmental Litigation.* Promptly after the commencement thereof, notice of the commencement of all actions, suits or proceedings before any court, arbitrator, or governmental department, commission, board, bureau, agency, or instrumentality affecting the Borrower which, if adversely determined, could have a material adverse effect on the condition, financial or otherwise, operations, properties or business of the Borrower, or on the ability of the Borrower to perform its obligations under the Loan Documents.

(c) *Notice of Environmental Litigation.* Without limiting the provisions of section [5.20(b)] above, promptly after receipt thereof, notice of the receipt of all pleadings, orders, complaints, indictments, or other communications alleging a condition that may require the Borrower to undertake or to contribute to a cleanup or other response under laws relating to environmental protection, or which seek penalties, damages, injunctive relief, or criminal sanctions related to alleged violations of such laws, or which claim personal injury or property damage to any person as a result of environmental factors or conditions, or which, if adversely determined, could have a material adverse effect on the condition, financial or otherwise, operations, properties or business of the Borrower, or on the ability of the Borrower to perform its obligations under the Loan Documents.

(d) *Notice of Change of Place of Business.* Promptly in writing, notice of any change in location of its principal place of business or the office where its records concerning accounts and contract rights are kept.

(e) *Regulatory and Other Notices.* Promptly after receipt thereof, copies of any notices or other communications received from any governmental authority with respect to any matter or proceeding, the effect of which could have a material adverse effect on the condition, financial or otherwise, operations, properties, or business of the Borrower, or on the ability of the Borrower to perform its obligations under the Loan Documents.

(f) *Material Adverse Change.* Promptly, notice of any matter which has resulted or may result in a material adverse change in the condition, financial or otherwise, operations, properties, or business of the Borrower, or the ability of the Borrower to perform its obligations under the Loan Documents.

(g) *Other Information.* Such other information regarding the condition, financial or otherwise, or operations of the Borrower as RUS may, from time to time, reasonably request.

Section 5.21. Special Construction Account. The Borrower shall hold all moneys advanced to it by RUS hereunder in trust for RUS and shall deposit such moneys promptly after the receipt thereof in a bank or banks which meet the requirements of Section [6.16] of this Agreement. Any account (hereinafter called ''Special Construction Account'') in which any such moneys shall be deposited shall be designated by the corporate name of the Borrower followed by the words ''Trustee, Special Construction Account.'' Moneys in any Special Construction Account shall be used solely for the construction and operation of the Utility System and, subject to Section [9.14] of this Agreement, may be withdrawn only upon checks, drafts, or orders signed on behalf of the Borrower and countersigned by an executive officer thereof.

Section 5.22. Additional Affirmative Covenants. The Borrower also agrees to comply with any additional affirmative covenant(s) identified in Schedule 1 hereto.

Article VI—Negative Covenants

Section 6.1. General. Unless otherwise agreed to in writing by RUS, while this Agreement is in effect, whether or not any Advance is outstanding hereunder, the Borrower will duly observe each of the negative covenants set forth in this Article.

Section 6.2. Limitations on System Extensions and Additions. The Borrower will not extend or add to its Electric System either by construction or acquisition without the prior written approval of RUS.

Section 6.3. Limitations on Expenses for Legal, Engineering and Supervisory Services. If RUS shall require, the Borrower will not incur any expenses for legal, engineering or supervisory services without the prior written approval of RUS.

Section 6.4. Limitations on Employment and Retention of Manager. At any time any Event of Default, or any occurrence which with the passage of time or giving of notice would be an Event of Default, occurs and is continuing the Borrower will not employ any general manager of the Electric System or any person exercising comparable authority to such a manager unless such employment shall first have been approved by RUS. If any Event of Default, or any occurrence which with the passage of time or giving of notice would be an Event of Default, occurs and is continuing and RUS requests the Borrower to terminate the employment of any such manager or person exercising comparable

authority, or RUS requests the Borrower to terminate any contract for operating the Electric System, the Borrower will do so within thirty (30) days after the date of such notice. All contracts in respect of the employment of any such manager or person exercising comparable authority, or for the operation of the Electric System, shall contain provisions to permit compliance with the foregoing covenants.

Section 6.5. Limitations on Certain Types of Contracts. Without the prior approval of RUS in writing, the Borrower shall not enter into any of the following contracts:

(a) *Construction Contracts.* Any contract for construction or procurement or for architectural and engineering services in connection with its Electric System;

(b) *Large retail power contracts.* Any contract to sell electric power and energy for periods exceeding two (2) years if the kWh sales or kW demand for any year covered by such contract will exceed 25 percent of the Borrower's total kWh sales or maximum kW demand for the year immediately preceding the execution of such contract;

(c) *Wholesale power contracts.* Any contract to sell electric power or energy for resale and any contract to purchase electric power or energy that has a term exceeding two (2) years;

(d) *Power supply arrangements.* Any interconnection agreement, interchange agreement, wheeling agreement, pooling agreement or similar power supply arrangement that has a term exceeding two (2) years;

(e) *System management and maintenance contracts.* Any contract for the management and operation of all or substantially all of its Electric System; or

(f) *Other contracts.* Any contracts of the type described on Schedule 3.

Section 6.6. Limitations on Mergers and Sale, Lease or Transfer of Capital Assets. The Borrower shall not consolidate with, or merge, or sell all or substantially all of its business or assets, to another entity or person except to the extent it is permitted to do so under the Mortgage.

Section 6.7. Limitations on Acquisition, Construction or Procurement of Generating Facilities, Existing Facilities or Utility Systems. The Borrower shall not acquire, construct or procure any generating facilities, existing facilities or utility systems, or portions thereof, without the prior written approval of RUS.

Section 6.8. Limitation on Distributions. Without the prior written approval of RUS, the Borrower shall not in any calendar year make any Distributions (exclusive of any Distributions to the estates of deceased natural patrons) to its members, stockholders or consumers except as follows:

(a) *Equity above 30%*. If, after giving effect to any such Distribution, the Equity of the Borrower will be greater than or equal to 30% of its Total Assets; or

(b) *Equity above 20%*. If, after giving effect to any such Distribution, the aggregate of all Distributions made during the calendar year when added to such Distribution will be less than or equal to 25% of the prior year's margins.

Provided however, that in no event shall the Borrower make any Distributions if there is unpaid when due any installment of principal of (premium, if any) or interest on its Notes, if the Borrower is otherwise in default hereunder or if, after giving effect to any such Distribution, the Borrower's current and accrued assets would be less than its current and accrued liabilities.

Section 6.9. Limitations on Loans, Investments and Other Obligations. The Borrower shall not make any loan or advance to, or make any investment in, or purchase or make any commitment to purchase any stock, bonds, notes or other securities of, or guaranty, assume or otherwise become obligated or liable with respect to the obligations of, any other person, firm or corporation, except as permitted by the Act and RUS Regulations.

Section 6.10. Depreciation Rates. The Borrower shall not file with or submit for approval of regulatory bodies any proposed depreciation rates which are inconsistent with RUS Regulations.

Section 6.11. Historic Preservation. The Borrower shall not, without approval in writing by RUS, use any Advance to construct any facilities which will involve any district, site, building, structure or object which is included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior pursuant to the Historic Sites Act of 1935 and the National Historic Preservation Act of 1966.

Section 6.12. Rate Reductions. The Borrower shall not decrease its rates if it has failed to achieve all of the Coverage Ratios for the calendar year prior to such reduction.

Section 6.13. Limitations on Additional Indebtedness. Except as expressly permitted by Article II of the Mortgage and subject to the further limitations expressed in the next section, the Borrower shall not incur, assume, guarantee or otherwise become liable in respect of any debt for borrowed money and Restricted Rentals (including Subordinated Indebtedness) other than the following: (''Permitted Debt'')

(a) Additional Notes issued in compliance with Article II of the Mortgage;

(b) Purchase money indebtedness in non-Utility System property, in an amount not exceeding 10% of Net Utility Plant;

(c) Restricted Rentals in an amount not to exceed 5% of Equity during any 12 consecutive calendar month period;

(d) Unsecured lease obligations incurred in the ordinary course of business except Restricted Rentals;

(e) Unsecured indebtedness for borrowed money, except when the aggregate amount of such indebtedness exceeds 15% of Net Utility Plant and after giving effect to such unsecured indebtedness the Borrower's Equity is less than 30% of its Total Assets;

(f) Debt represented by dividends declared but not paid; and

(g) Subordinated Indebtedness approved by RUS.

PROVIDED, However, that the Borrower may incur Permitted Debt without the consent of RUS only so long as there exists no Event of Default hereunder and there has been no continuing occurrence which with the passage of time and giving of notice could become an Event of Default hereunder.

PROVIDED FURTHER, by executing this Agreement any consent of RUS that the Borrower would otherwise be required to obtain under this Section is hereby deemed to be given or waived by RUS by operation of law to the extent, but only to the extent, that to impose such a requirement of RUS consent would clearly violate federal laws or RUS Regulations.

Section 6.14. Limitations on Issuing Additional Indebtedness Secured Under the Mortgage. (a) The Borrower shall not issue any Additional Notes under the Mortgage without the prior written consent of RUS unless the following additional requirements are met in addition to the requirements set forth in the Mortgage for issuing Additional Notes without the prior consent of any Mortgagee:

(1) the maturity of the loan evidenced by such Notes does not exceed the weighted average of the expected remaining useful lives of the assets being financed;

(2) the principal of the loan evidenced by such Notes is amortized at a rate that will yield a weighted average life that is not greater than the weighted average life that would result from level payments of principal and interest;

(3) the principal of the loan being evidenced by such Notes has a maturity of not less than 5 years; *or*, in the case of Additional Notes issued to refund or refinance Notes; and

(4) the weighted average life of any such Additional Notes is not greater than the weighted remaining life of the Notes being refinanced.

(b) Any request for consent from RUS under this section, shall be accompanied by a certificate of the Borrower's manager substantially in the form attached to this Agreement as Exhibit C–1 in the case of Notes being issued under Section [2.01] of the Mortgage and C–2 in the case of Notes being issued under Section [2.02] of the Mortgage.

Section 6.15. Impairment of Contracts Pledged to RUS. The Borrower shall not breach any obligation to be paid or performed by the Borrower on any contract, or take any action which is likely to materially impair the value of any contract, which has been pledged as security to RUS by the Borrower or any other entity.

Section 6.16. Limitations on Using non-FDIC Insured Depositories. The Borrower shall not place any Mortgaged Property in the custody of any banking institution or other depository, other than a Mortgagee, unless deposits at such institution are insured by the Federal Deposit Insurance Corporation, or other Federal agency acceptable to RUS. Without the prior written approval of RUS, the Borrower shall not place the proceeds of the Loan or any loan which has been made or guaranteed by RUS in the custody of any bank or other depository that is not insured by the Federal Deposit Insurance Corporation or other federal agency acceptable to RUS.

Section 6.17. Additional Negative Covenants. The Borrower also agrees to comply with any additional negative covenant(s) identified in Schedule 1 hereto.

Article VII—Default

Section 7.1. Events of Default. The following shall be Events of Default under this Agreement:

(a) *Representations and Warranties.* Any representation or warranty made by the Borrower in Article II hereof or any certificate furnished to RUS hereunder shall prove to have been incorrect in any material respect at the time made and shall at the time in question be untrue or incorrect in any material respect and remain uncured;

(b) *Payment.* Default shall be made in the payment of or on account of interest on or principal of the Note when and as the same shall be due and payable, whether by acceleration or otherwise, which shall remain unsatisfied for five (5) Business Days;

(c) *Other Covenants.* Default by the Borrower in the observance or performance of any other covenant or agreement contained in any of the Loan Documents, which shall remain unremedied for 30 calendar days after written notice thereof shall have been given to the Borrower by RUS;

(d) *Corporate Existence.* The Borrower shall forfeit or otherwise be deprived of its corporate charter, franchises, permits, easements, consents or licenses required to carry on any material portion of its business;

(e) *Other Obligations.* Default by the Borrower in the payment of any obligation, whether direct or contingent, for borrowed money or in the performance or observance of the terms of any instrument pursuant to which such obligation was created or securing such obligation;

(f) *Bankruptcy.* A court having jurisdiction in the premises shall enter a decree or order for relief in respect of the Borrower in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official, or ordering the winding up or liquidation of its affairs, and such decree or order shall remain unstayed and in effect for a period of ninety (90) consecutive days or the Borrower shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or under any such law, or consent to the appointment or taking possession by a receiver, liquidator, assignee, custodian or trustee, of a substantial part of its property, or make any general assignment for the benefit of creditors; and

(g) *Dissolution or Liquidation.* Other than as provided in the immediately preceding subsection, the dissolution or liquidation of the Borrower, or failure by the Borrower promptly to forestall or remove any execution, garnishment or attachment of such consequence as will impair its ability to continue its business or fulfill its obligations and such execution, garnishment or attachment shall not be vacated within 30 days. The term ''dissolution or liquidation of the Borrower'', as used in this subsection, shall not be construed to include the cessation of the corporate existence of the Borrower resulting either from a merger or consolidation of the Borrower into or with another corporation following a transfer of all or substantially all its assets as an entirety, under the conditions permitting such actions.

Article VIII—Remedies

Section 8.1. Generally. If any of the Events of Default listed in Article VII hereof shall occur after the date of this Agreement and shall not have been remedied, then RUS may pursue all rights and remedies available to RUS that are contemplated by this Agreement or the Mortgage in the manner, upon the conditions, and with the effect provided in this Agreement or the Mortgage, including, but not limited to, a suit for specific performance, injunctive relief or damages. Nothing herein shall limit the right of RUS to pursue all rights and remedies available to a creditor following the occurrence of an Event of Default listed in Article VII hereof. Each right, power and remedy of RUS shall be cumulative and concurrent, and recourse to one or more rights or remedies shall not constitute a waiver of any other right, power or remedy.

Section 8.2. Suspension of Advances. In addition to the rights, powers and remedies referred to in the immediately preceding section, RUS may, in its absolute discretion, suspend making Advances hereunder if (i) any Event of Default, or any occurrence which with the passage of time or giving of notice would be an Event of Default, occurs and is continuing; (ii) there has occurred a change in the business or condition, financial or otherwise, of the Borrower which in the opinion of RUS materially and adversely affects the Borrower's ability to meet its obligations under the Loan Documents, or (iii) RUS is authorized to do so under RUS Regulations.

Article IX—Miscellaneous

Section 9.1. Notices. All notices, requests and other communications provided for herein including, without limitation, any modifications of, or waivers, requests or consents under, this Agreement shall be given or made in writing (including, without limitation, by telecopy) and delivered to the intended recipient at the ''Address for Notices'' specified below; or, as to any party, at such other address as shall be designated by such party in a notice to each other party. Except as otherwise provided in this Agreement, all such communications shall be deemed to have been duly given when transmitted by telecopier or personally delivered or, in the case of a mailed notice, upon receipt, in each case given or addressed as provided for herein. The Address for Notices of the respective parties are as follows:

Rural Utilities Service, United States Department of Agriculture, Washington, DC 20250–1500, Fax: (202) xxxxxxxx

Attention: [Administrator]

The Borrower: The address set forth in Schedule 1 hereto

Section 9.2. Expenses. To the extent allowed by law, the Borrower will pay all costs and expenses of RUS, including reasonable fees of counsel, incurred in connection with the enforcement of the Loan Documents or with the preparation for such enforcement if RUS has reasonable grounds to believe that such enforcement may be necessary.

Section 9.3. Late Payments. If payment of any amount due hereunder is not received at the United States Treasury in Washington, DC, or such other location as RUS may designate to the Borrower within five (5) Business Days after the due date thereof or such other time period as RUS may prescribe from time to time in its policies of general application in connection with any late payment charge (such unpaid amount being herein called the ''delinquent amount'', and the period beginning after such due date until payment of the delinquent amount being herein called the ''late-payment period''), the Borrower will pay to RUS, in addition to all other amounts due under the terms of the Note, the Mortgage and this Agreement, any late-payment charge as may be fixed by RUS Regulations from time to time on the delinquent amount for the late-payment period.

Section 9.4. Filing Fees. To the extent permitted by law, the Borrower agrees to pay all expenses of RUS (including the fees and expenses of its counsel) in connection with the filing or recordation of all financing statements and instruments as may be required by RUS in connection with this Agreement, including, without limitation, all documentary stamps, recordation and transfer taxes and other costs and taxes incident to recordation of any document or instrument in connection herewith. Borrower agrees to save harmless and indemnify RUS from and against any liability resulting from the failure to pay any required documentary stamps, recordation and transfer taxes, recording costs, or any other expenses incurred by RUS in connection with this Agreement. The provisions of this subsection shall survive the execution and delivery of this Agreement and the payment of all other amounts due hereunder or due on the Note.

Section 9.5. No Waiver. No failure on the part of RUS to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise by RUS of any right hereunder preclude any other or further exercise thereof or the exercise of any other right.

Section 9.6. GOVERNING LAW. EXCEPT TO THE EXTENT GOVERNED BY APPLICABLE FEDERAL LAW, THE LOAN DOCUMENTS SHALL BE DEEMED TO BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE [IN WHICH THE BORROWER IS INCORPORATED].

Section 9.7. Holiday Payments. If any payment to be made by the Borrower hereunder shall become due on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in computing any interest in respect of such payment.

Section 9.8. Rescission. The Borrower may elect not to borrow all or any portion of the RUS Commitment in which event RUS shall release the Borrower from its obligations hereunder, provided the Borrower complies with such terms and conditions as RUS may impose for such release.

Section 9.9. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Borrower and RUS and their respective successors and assigns,

except that the Borrower may not assign or transfer its rights or obligations hereunder without the prior written consent of RUS.

Section 9.10. Complete Agreement; Amendments. Subject to RUS Regulations, this Agreement and the other Loan Documents are intended by the parties to be a complete and final expression of their agreement. No amendment, modification, or waiver of any provision hereof or thereof, and no consent to any departure of the Borrower herefrom or therefrom, shall be effective unless approved by RUS and contained in either a RUS Regulation or other writing signed by or on behalf of RUS, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

Section 9.11. Headings. The headings and sub-headings contained in the titling of this Agreement are intended to be used for convenience only and do not constitute part of this Agreement.

Section 9.12. Severability. If any term, provision or condition, or any part thereof, of this Agreement or the Mortgage shall for any reason be found or held invalid or unenforceable by any governmental agency or court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of such term, provision or condition nor any other term, provision or condition, and this Agreement, the Note, and the Mortgage shall survive and be construed as if such invalid or unenforceable term, provision or condition had not been contained therein.

Section 9.13. Right of Setoff. Upon the occurrence and during the continuance of any Event of Default, RUS is hereby authorized at any time and from time to time, without prior notice to the Borrower, to exercise rights of setoff or recoupment and apply any and all amounts held or hereafter held, by RUS or owed to the Borrower or for the credit or account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing hereunder or under the Note. RUS agrees to notify the Borrower promptly after any such setoff or recoupment and the application thereof, provided that the failure to give such notice shall not affect the validity of such setoff, recoupment or application. The rights of RUS under this section are in addition to any other rights and remedies (including other rights of setoff or recoupment) which RUS may have. Borrower waives all rights of setoff, deduction, recoupment or counterclaim.

Section 9.14. Right of RUS to Appoint Supervisor. If the construction of any portion of the Electric System shall not proceed in accordance with the terms of the Loan Documents, RUS may appoint a supervisor (hereinafter called the ''Supervisor'') for the Electric System. Upon the appointment of a Supervisor, the employment of all superintendents and managers of the Electric System and of all associate and assistant superintendents and managers thereof shall be forthwith terminated. The Borrower shall comply with all reasonable instructions of the Supervisor incident to the carrying out of the obligations of the Borrower hereunder.

Section 9.15. Schedules and Exhibits. Each Schedule and Exhibit attached hereto and referred to herein is each an integral part of this Agreement.

Section 9.16. Prior Loan Contracts. It is understood and agreed that with respect to all loan agreements previously entered into by and between RUS and the Borrower (hereinafter being referred to as ''Prior Loan Contracts'') the Borrower shall be required, after the date hereof, to meet affirmative and negative covenants as set forth in this Agreement rather than those set forth in the Prior Loan Contracts. In addition, any remaining obligation of RUS to make additional advances on promissory notes of the Borrower that have been previously delivered to RUS under Prior Loan Contracts shall, after the date hereof, be subject to the conditions set for in this Agreement. In the event of any conflict between any provision set forth in a Prior Loan Contract and any provision in this Agreement, the requirements as set forth in this Agreement shall apply. In the event of any conflict between the provisions set forth in this Agreement and any RUS Regulations now or hereafter in effect from time to time, the RUS Regulations apply. Nothing in this section shall, however, eliminate or modify any special condition, special affirmative covenant or special negative covenant, if any, unless specifically agreed to in writing by RUS.

Section 9.17. Term. This Agreement shall remain in effect until one of the following two events has occurred:

(a) the Borrower and RUS replace this Agreement with another written agreement or

(b) all of the Borrower's obligations under the prior loan contracts and this Agreement have been discharged and paid.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

_____

(Name of Borrower)

(SEAL)

By _____

President

Attest: _____

Secretary

RURAL UTILITIES SERVICE

By _____

Administrator

Schedule 1

[citations subject to change]

1. The purpose of this loan is _____.

2. The Mortgage shall mean the Restated Mortgage and Security Agreement, dated as of _____, between the Borrower and RUS, as it may have been or shall be supplemented, amended, consolidated, or restated from time to time.

3. The governmental authority referred to in Section [2.1(c)] is _____.

4. The exception being taken to the representations in Section [2.1(e)] concerning material compliance with laws is as follows: _____.

5. The litigation referred to in Section [2.1(f)] is described as follows: _____.

6. The date of the Borrower's financial information referred to in Section [2.1(h)] is _____.

7. The principal place of business of the Borrower referred to in Section [2.1(i)] is _____.

8. All of the property of the Borrower is located in the counties of _____.

9. The subsidiary (or subsidiaries) referred to in Section [2.1(k)] is (are): _____.

10. The Contemporaneous Loan referred to in Section [5.3] is described as follows: _____.

Lender: _____

Amount: _____

Year of Final Maturity: _____

11. The RUS Commitment referred to in the definitions means a loan in the principal amount of $_____ which is being made by RUS to the Borrower at the ____ Hardship Rate ____ Municipal Rate (CHECK ONE) pursuant to the Rural Electrification Act and RUS Regulations.

12. Amortization of Advance shall be based upon the method indicated below:

_____ level principal

_____ level debt service

_____ other

13. The SPECIAL condition(s) referred to in Section [4.2] is (are): _____.

14. The additional AFFIRMATIVE covenant(s) referred to in Section [5.22] is (are) as follows: _____.

15. The additional NEGATIVE covenant(s) referred to in Section [6.17] is (are) as follows: _____.

16. The address of the Borrower referred to in Section [9.1]. is _____.

Schedule 2—Existing Liens

The Existing Liens referred to in Section [2.1(g)] are as follows:

[INSERT DESCRIPTION OF EXISTING LIENS, IF ANY, HERE]

Schedule 3—Additional Contracts

The additional contracts referred to in Section [6.5(e)] are described as follows: [INSERT LIST OF ANY ADDITIONAL CONTRACTS HERE]

Exhibit A—Form of Promissory Note

[INSERT EITHER MUNICIPAL or HARDSHIP RATE PROMISSORY NOTE FORM HERE]

Exhibit B—Equal Opportunity Contract Provisions

During the performance of this contract, the contractor agrees as follows:

(a) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(b) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(c) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

(e) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliances with such rules, regulations and orders.

(f) In the event of the contractor's noncompliance with the non-discrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(g) The contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246, dated September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Exhibit C–1—Manager's Certificate Required Under Loan Contract Section 6.14 for Additional Notes

On behalf of [Name of Borrower] I hereby certify that the Additional Note or Notes to be issued under Section [2.01] of the Mortgage on or about [Date Note or Notes are to be Signed] meet all of the requirements of Section [6.14] of the Loan Contract, namely:

(a) The maturity of the loan evidenced by such Notes (____ years) does not exceed the weighted average of the expected remaining useful lives of the assets being financed (____ years) as evidenced by the attached calculation of said weighted average.

(b) The principal of the loan evidenced by such Notes will either be [check one and provide evidence in the second case]:

____ (1) repaid based on level payments of principal and interest throughout the life of the loan, or

____ (2) amortized at a rate that will yield a weighted average life that is not greater than the weighted average life that would result from level payments of principal and interest throughout the life of the loan as evidenced by the attached analysis of said weighted average lives.

____ (3) The principal of the loan evidenced by such Notes has a maturity of not less than 5 years.

[Signed] _____
[Dated] _____
[Name] _____
[Title] _____
[Name and Address of Borrower] _____
_____
_____

Exhibit C–2—Manager's Certificate Required Under Loan Contract Section 6.14 for Refinancing Notes

On behalf of [Name of Borrower] I hereby certify that the Additional Note or Notes to be issued under Section [2.02] of the Mortgage on or about [Date Note or Notes are to be Signed] meet the requirement of Section [6.14] of the Loan Contract that the weighted average life of such Notes is not greater than the weighted remaining life of the Notes being refinanced, as evidenced by the attached calculation of said weighted average lives.

[Signed] _____
[Dated] _____
[Name] _____
[Title] _____
[Name and Address of Borrower] _____
_____
_____

Dated: June 29, 1995.

Michael V. Dunn,

Acting Under Secretary, Rural Economic and Community Development.

[FR Doc. 95–16527 Filed 7–17–95; 8:45 am]

BILLING CODE 3410–15–P

Federal Register

Tuesday
July 18, 1995

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 43

Airworthiness Standards: Maintenance and Preventive Maintenance; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 43

[Docket No. 28273; Notice No. 95–10]

RIN 2120–AE57

Revisions to Maintenance and Preventive Maintenance Rules

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This NPRM proposes to amend the maintenance rules to allow properly trained pilots of aircraft type certificated for 9 or fewer passenger seats and operated under 14 CFR Part 135 to perform certain maintenance tasks on their aircraft. This NPRM also proposes to add certain tasks to those items considered to be preventive maintenance. The proposed changes are needed because a large number of exemption requests has demonstrated a need for pilots conducting certain types of operations to be able to respond more rapidly to emergency medical missions and to reconfigure cabins to accommodate changing needs to transport varying combinations of passenger and/or cargo in situations when a certificated mechanic is not available to perform the required maintenance task. The proposed rules, if adopted, would improve emergency response and flight turnaround times for these operations, and would relieve the public and agency burdens of filing and processing exemptions.

DATES: Comments must be submitted on or before September 18, 1995.

ADDRESSES: Comments on this notice should be mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–10), Docket No. 28273, 800 Independence Avenue, S.W., Washington, D.C. 20591. Comments delivered must be marked Docket No. 28273.

Comments may also be submitted electronically to the following Internet address: nprmcmts@mail.hq.faa.gov. Comments may be examined in Room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Edward L. Ortiz, General Aviation Commercial Branch (AFS–340), Aircraft Maintenance Division, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591, (202) 267–9952.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contract with Federal Aviation Administration (FAA) personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 28273''. The postcard will be date stamped and mailed to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–430, 800 Independence Avenue, S.W., Washington, D.C. 20591, or by calling (202) 267–3483. Communications must identify the notice number of this NPRM. Persons interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Statement of the Problem

Many small air carriers operating under 14 CFR part 135 (part 135) perform missions in locations where or during times when a certificated mechanic may not be available to perform certain maintenance tasks that need immediate attention. These air carriers provide emergency ambulance service; transport internal organs for emergency medical treatment; transport packages, parts, and electronic equipment whose delivery is of a time-critical nature; and provide normal passenger-carrying service, occasionally with freight as a secondary load. Because the demand for these services varies and, especially in the case of medical emergency calls, arises at all times of the day, it is impossible for air carriers to anticipate airplane configuration requirements.

Performing cabin conversions to aircraft operating under part 135 is considered either maintenance (if extensive) or preventive maintenance (if minor), and must currently be performed by a certificated mechanic as required by § 43.3. Similarly, the removal and replacement of medical oxygen bottles is considered maintenance and must be performed by a certificated mechanic.

For many carriers, locating a mechanic each time a request for service occurs creates lengthy delays that are costly and could be potentially life threatening to injured or ill passengers. Similarly, providing a maintenance crew on ''24-hour call'' is cost prohibitive for many carriers.

In addition to imposing these burdens, the current regulations also prohibit general aviation pilots from removing and replacing easily removable communication and navigation devices, and from updating easily replaceable data bases. Certain aviation communication and navigation systems are now designed for easy removal and data base update. Many privately-owned aircraft owners and operators prefer to remove this self-contained equipment (a job that normally requires only an allen wrench and no disassembly of the unit) to prevent theft. They also would like to be able to insert flight plans or update the Air Traffic Control (ATC) software data base. Current regulations require that a mechanic perform this task.

History

As of March 1995, the FAA had addressed over 250 petitions for exemption from the sections of part 43 governing these ''maintenance'' items. A majority of these petitions were from nonhelicopter, air taxi operators who learned from local FAA inspectors that their pilots are not authorized to reconfigure their cabins or exchange medical oxygen bottles. The petitions for exemption highlight several common issues: (1) Many small part 135 air carriers operate in areas where they

undergo a hardship due to their regions' lack of certificated mechanics; (2) many others operate during times when certificated mechanics are not normally on duty (these missions are usually time-critical); and (3) many of these operators are unable to operate their aircraft in only one configuration. Passenger-to-cargo or passenger-to-stretcher conversion ensures the most efficient utilization of cabin space on each flight. In most instances, seats, stretchers, base assemblies, and other items used in the conversion are approved for aircraft installation, and the procedures for installation and removal are designed to be accomplished safely by a trained person.

Historically, the FAA has granted exemptions to permit pilots of aircraft operated under part 135 to perform seat removal and replacement tasks only if the aircraft was operated in a remote area such as the Alaskan bush or sparsely populated areas of the Northwestern United States. Certificated mechanics servicing these areas are scarce. Many of the operations include such essential services as flying food, mail, needed goods and people into and out of areas that may not be accessible by other modes of transportation.

More recently, however, exemptions have been granted to part 135 air carriers to permit their properly trained pilots to reconfigure cabin seats when flying missions of an emergency nature during times—at night and on weekends—when certificated mechanics are not normally available, and when a time delay incurred by locating a mechanic could cause undue burden or create a life-threatening situation.

The FAA has determined that if a properly trained pilot can change seat configurations in a remote area where a certificated mechanic is not available (and which might be performed under adverse conditions), he or she would be capable of and should be allowed to perform the same conversions under better conditions such as those present at the operator's maintenance base.

Passenger-to-cargo and passenger-to-stretcher conversions have been performed safely by pilots who have been trained to do so and who are employed by air carriers holding exemptions allowing their pilots to perform the tasks. No reported incidents or accidents have been attributed to properly trained pilots changing aircraft cabin configurations. If an air taxi operator develops a program for performing seat conversions and appropriately instructs and trains its pilots according to the program, safety levels equivalent to those achieved by certificated mechanics would be maintained.

Also, on January 10, 1994, the FAA published a Request for Comments (59 FR 1326; docket No. 27581) to solicit from the public a list of those regulations that are believed to be unwarranted or inappropriate. The agency received eight comments that addressed the maintenance and preventive maintenance regulations of part 43. The commenters noted that current regulations do not allow a pilot of a part 135 operator to remove and reinstall aircraft cabin seats and stretchers. The commenters feel that the current regulations are unnecessary and are financially and physically burdensome. They point out that the FAA has issued a number of exemptions to relieve the burden, and that the exemption process itself is burdensome and time consuming.

The FAA has determined that the concern shown for this issue is significant, and that this rulemaking action is consistent with the agency's responsibility to review the continuing need for its regulations and to eliminate regulations that impose unnecessary burdens.

Related Rulemaking

The Aviation Rulemaking Advisory Committee (ARAC), which is a committee composed of aviation community and FAA personnel, has been tasked with reviewing part 43 and Appendix A to determine what revisions, if any, should be made. It is anticipated that any ARAC action taken regarding this task would not be complete before a final rule resulting from this proposed rulemaking would be issued.

The Current Rule

Part 43 requires air carriers to use certificated mechanics for their aircrafts' maintenance and preventive maintenance needs. This requirement reflects an FAA position that passengers of all aircraft be given a high degree of safety protection through the proper installation of cabin seats and appointments. As outlined in Appendix A, paragraph (c), of this part, removal and replacement of aircraft seats is considered preventive maintenance. Several years ago, the FAA recognized the need for pilots operating helicopters under part 135 to be able to perform certain preventive maintenance tasks when operating in remote areas. Accordingly, the agency amended part 43, effective January 6, 1987 (51 FR 40702, Nov. 7, 1986), by adding a new § 43.3(h), which authorized part 135 certificate holders to allow their pilots, when operating rotorcraft, to perform specific preventive maintenance tasks, under the following conditions:

(1) The items of preventive maintenance must be a result of a known or suspected mechanical difficulty or malfunction that occurred en route to or in a remote area.

(2) The pilot must have satisfactorily completed an approved training program and is authorized, in writing, by the certificate holder for each item of preventive maintenance that the pilot is authorized to perform.

(3) There must be no certificated mechanic available to perform preventive maintenance.

(4) The certificate holder must have procedures to evaluate the accomplishment of a preventive maintenance item that requires a decision concerning the airworthiness of the rotorcraft.

(5) The items of preventive maintenance authorized by this section must be those listed in paragraph (c) of Appendix A of part 43.

General Discussion of the Proposal

This proposal addresses only those aircraft type certificated with 9 or fewer passenger seats operating in part 135 operations. Operators of aircraft type certificated with 10 or more passenger seats operating under part 135 would not be provided relief under this rulemaking action because they are required to have a maintenance organization in place to support their part 135 operations, and their aircraft tend to be more complex in design and construction.

Because certificated mechanics are not available at all times in all places, the current requirements of part 43 impose an economic hardship on some operators. The operational difficulties experienced by these operators and the attendant passenger inconvenience is evidenced in the content and quantity of exemption petitions submitted to the FAA. In response to these petitions, the agency proposes to add a new § 43.3(i) to allow a pilot of a small aircraft (9 or fewer passenger seats) to remove and reinstall approved aircraft cabin seats, approved cabin-mounted stretchers, and, when no tools are required, approved cabin-mounted medical oxygen bottles (gaseous and liquid).

In view of the demonstrated public benefit from permitting pilots to perform the relatively simple maintenance and preventive maintenance tasks of removing and replacing seats, stretchers, and medical oxygen bottles, and the demonstrated safety record of the performance of these

tasks, the FAA has determined that a level of safety will be maintained that is equivalent to the level of safety provided when a certificated mechanic performs the maintenance.

Granting the authority for pilots to perform the above maintenance and preventive maintenance tasks under the conditions proposed would not only reduce the burden of petitioning for exemption for part 135 operators, but it would greatly expedite flight turnaround times when a certificated mechanic is not available, thus benefiting passengers requiring immediate medical evacuation.

Given that the FAA has determined that safety would not be compromised, this proposed rule would not require the absence of certificated maintenance personnel for a trained pilot to perform certain tasks. The FAA realizes that this action may encourage pilots to undertake the maintenance tasks on a regular basis, thereby taking time away from pilot-related tasks that are required before flight. The FAA also realizes that by allowing pilots to perform certain tasks even when certificated maintenance personnel are present may take work from the maintenance personnel. This document solicits public comment on these two issues.

In addition, the FAA recognizes the technological advances in communication and navigation systems and the ease with which these devices may be removed, replaced, and updated. The agency has determined that safety would not be compromised if pilots were allowed to perform certain tasks. Therefore, this proposal would amend Appendix A, paragraph (c), to add to the list of work items considered to be preventive maintenance the removal and replacement of instrument panel-mounted, self-contained navigation and communication devices, which the manufacture has designed for frequent removal and replacement. This authorization would not extend to automatic flight control systems, transponders, and microwave frequency distance measuring equipment (DME). Similarly, this proposal would also add to the list the updating of Air Traffic Control (ATC) navigational software data bases, provided no disassembly of the unit is required and pertinent instructions are provided by the equipment manufacturer.

This proposed rulemaking would also amend Appendix A, paragraph (c)(30)(i) to correct and editorial error. During its review of the regulations, a Flight Standards District Office found that the reference to § 147.21(f) should read § 147.21(e).

In addition, the FAA has received a petition for rulemaking from Mr. John W. Caulkins requesting that a reference in § 43.7(d) that currently reads ''§ 43.3(h)'' be corrected to read ''§ 43.3(i).'' A summary of the petition was published in the **Federal Register** on June 21, 1993 (58 FR 33783), and one comment, which was favorable, was received. The FAA has determined the petition has merit, and proposes to correct the reference in this rulemaking action, taking into account, however, the proposed redesignation of current paragraph (i) to new paragraph (j).

Also, current § 43.11(b) makes reference to § 91.30(d)(2). In August 1989, 14 CFR part 91 (part 91) was recodified to make the general operating and flight rules more understandable and easier to use. All references in the Federal Aviation Regulations were to be changed at that time to correspond with the new part 91. During this recodification, § 91.30(d)(2) was renumbered § 91.213(d)(2). The text of the section was unchanged. The old reference to § 91.30(d)(2) in § 43.11 was inadvertently overlooked. This rulemaking action will correct this error.

Paperwork Reduction Act

Information collection requirements in the proposed amendment to § 43.3 have been previously approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Number 2120–0021. For further information contact: the Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, S.W., Washington, DC 20590, (202) 366–4735.

Regulatory Evaluation Summary

Executive Order 12866 established the requirement that, within the extent permitted by law, a Federal regulatory action may be undertaken only if the potential benefits to society for the regulation outweigh the potential costs to society. In response to this requirement, and in accordance with Department of Transportation policies and procedures, the FAA has estimated the anticipated benefits and costs of this rulemaking action. The FAA has determined that this rule change is not a significant rulemaking action as defined by Executive Order 12866 (Regulatory Planning and Review). The results are summarized in this section. For more detailed economic information, see the full regulatory evaluation contained in the docket.

The proposed revisions are cost relieving because they would eliminate the need for operators to carry mechanics on trips to remote areas or make special trips to maintenance facilities for the purpose of altering seat configurations or exchanging medical oxygen bottles. Currently, even if a mechanic is not needed at a remote site, operators may have to hire the services of a local mechanic to reconfigure a cabin, which can be especially expensive for emergency medical evacuation operations conducted at night during off-duty hours. For the purposes of this regulatory evaluation, the FAA assumes that typical air taxi operators that fly into remote areas where mechanics would be scarce could make 36 trips per year that would require cabin reconfiguration. The FAA further assumes that a pilot flying into a remote area would have to fly the airplane for an additional hour (roundtrip) to a larger airport where a mechanic would be available to perform the required maintenance.

The FAA estimates that a mechanic would have to be paid for ½ hour of working time at a loaded wage rate (including benefits) of $18.16 per hour. The FAA also estimates that, in the event a cabin reconfiguration had to be performed in a remote area, the airplane would burn an additional 30 gallons of fuel during the one hour of flying time needed to reach an available mechanic, which would add $60 to operating costs. The additional cost per trip would therefore amount to $69. On an annual basis, these cost-savings would amount to $2484 ($69 × 36) based on the assumption of 36 trips per year. The FAA further estimates that at least 30 operators per year would have a recurring need to reconfigure cabins in remote areas based on the number of requests for exemption from the requirements of § 43.3 submitted to the FAA each year. This number is a very conservative estimate; many air taxi operators are unaware of this option and forego the additional revenue that could be earned through reconfiguring their cabins. The FAA estimates that industry-wide cost savings from the proposed rule amendment would amount to $74,520 per year ($2484 × 30). Over a 10-year period, the discounted value of these cost savings would amount to $523,382.

Since January 1987, part 135 rotorcraft operators have been permitted to allow their pilots to perform certain preventive maintenance tasks, under very limited specified conditions, one of which is that the item of preventive maintenance must be the result of a malfunction that occurred en route to or in a remote area. In addition, numerous of the exemptions that permitted pilots

of aircraft operating under part 135 to reconfigure cabins were granted to operators of rotorcraft. Each of the above authorizations contained a requirement that the pilot be properly trained for the preventive maintenance task that would be undertaken. Rotorcraft pilots operating under part 91 rules are authorized to perform preventive maintenance tasks under § 43.3(g).

The National Transportation Safety Board (NTSB) accident report reveals no instance of rotorcraft accidents where the removal and replacement of cabin seats by a rotorcraft pilot was suspected as a possible cause. In fact, a search of the FAA and NTSB accident and incident data recorded for part 91 and part 135 operations over the 1972-present period did not reveal a single instance in which the performance by a pilot of any of the tasks that would be authorized under this proposal was suspected as having had a casual role in an accident. The FAA has therefore determined that this proposed rule would be cost relieving and would not reduce the current level of safety.

The FAA solicits information from the public to refine this estimate of cost savings. Information of use to the agency would pertain to the frequency of the practices covered by this proposal (e.g., cabin reconfiguration) as well as the additional expenses involved (e.g., cost of transporting and compensating mechanics).

International Trade Impact Analysis

The proposed rulemaking action would affect only those operators engaged in part 135 operations of a localized or regional nature. No impact is expected on international trade because these domestic operators seldom compete with foreign firms in the markets they serve.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules that may have ''a significant economic impact on a substantial number of small entities.'' The proposed rule amendment is of a cost relieving nature and would therefore afford cost savings to individual part 135 operators.

Under FAA Order 2100.14A, the criterion for a ''substantial number'' is a number that is not less than 11 and that is more than one third of the small entities subject to the rule. This proposal would affect all part 135 operators who operate aircraft type certificated for 9 or fewer passenger seats. For operators of aircraft for hire, a small operator is one that owns, but not necessarily operates, nine or fewer aircraft.

The FAA's criterion for a ''significant impact'' is $4,330 or more per year for an unscheduled operator. The extent of the cost savings per operator was estimated at $2484 per operator in the section on economic impacts. The FAA concludes, therefore, that this proposed rule would not have a significant economic impact, positive or negative, on a substantial number of small entities.

Federalism Implications

The regulations proposed 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 proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not a significant regulatory action under Executive Order 12866. In addition, the FAA certifies that this proposal, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is considered nonsignificant under Order DOT 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations. A draft regulatory evaluation of the proposal, including an initial Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects in 14 CFR Part 43

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 43 of the Federal Aviation Regulations as follows:

PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING, AND ALTERATION

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

Authority: 49 U.S.C. App. 1354, 1421 through 1430; 49 U.S.C. 106(g).

2. In § 43.3, paragraph (i) is redesignated as paragraph (j), and a new paragraph (i) is added to read as follows:

§ 43.3 Persons authorized to perform maintenance, preventive maintenance, rebuilding, and alterations.

* * * * *

(i) Notwithstanding the provisions of paragraph (g) of this section, in accordance with an approval issued to the holder of a certificate issued under part 135 of this chapter, a pilot of an aircraft type-certificated for 9 or fewer passenger seats, excluding any pilot seat, may perform the removal and reinstallation of approved aircraft cabin seats, approved cabin-mounted stretchers, and when no tools are required, approved cabin-mounted medical oxygen bottles, provided—

(1) The pilot has satisfactorily completed an approved training program and is authorized in writing by the certificate holder to perform each task; and

(2) The certificate holder has procedures to evaluate the accomplishment of the task.

* * * * *

Appendix A to Part 43—[Amended]

3. In Appendix A to part 43, paragraph (c)(30)(i), the reference ''§ 147.21(f)'' is corrected to read ''§ 147.21(e) of this chapter''.

4. In Appendix A to part 43, paragraphs (c)(31) and (c)(32) are added to read as follows:

Appendix A to Part 43—Major Alterations, Major Repairs, and Preventive Maintenance

* * * * *

(c) * * *

(31) Removing and replacing self-contained, instrument panel-mounted navigation and communication devices (excluding automatic flight control systems, transponders, and microwave frequency distance measuring equipment (DME)) if the approved unit is designed to be readily and repeatedly removed and replaced, and pertinent instructions are provided.

(32) Updating self-contained, instrument panel-mounted Air Traffic Control (ATC) navigational software data bases (excluding those of automatic flight control systems, transponders, and microwave frequency distance

measuring equipment (DME)) provided no disassembly of the unit is required and pertinent instructions are provided.

§ 43.7 [Amended]

5. In section 43.7(d), the reference ''§ 43.3(h)'' is corrected to read ''§ 43.3(j)''.

§ 43.11 [Amended]

6. In section 43.11(b), the reference ''§ 91.30(d)(2)'' is corrected to read ''§ 91.213(d)(2) of this chapter''.

Issued in Washington, DC, on June 30, 1995.

William J. White,

Acting Director, Flight Standards Service.

[FR Doc. 95–17393 Filed 7–17–95; 8:45 am]

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July 18, 1995

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 25 and 121

Revision of Emergency Evacuation Demonstration Procedures To Improve Participant Safety; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 25 and 121

[Docket No. 28272; Notice No. 95–9]

RIN 2120–AF21

Revision of Emergency Evacuation Demonstration Procedures To Improve Participant Safety

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the emergency evacuation demonstration procedures requirements for transport category airplanes to allow certain alternative procedures in conducting full-scale emergency evacuation demonstrations. These proposals are in response to recommendations from the Performance Standards Working Group (PSWG) of the Aviation Rulemaking Advisory Committee (ARAC). Additionally, the operational requirements for domestic, flag, and supplemental air carriers and commercial operators of large airplanes would be revised to require each operator to conduct a partial demonstration of emergency evacuation procedures upon initial introduction of a type of model of airplane into passenger-carrying operation. The proposed changes are intended to make full-scale emergency evacuation demonstrations safer for participants, to codify existing practices, and to ensure that each operator demonstrates the effectiveness of crewmember training by conducting at least a partial evacuation demonstration. These proposed changes would affect manufacturers and operators of transport category airplanes.

DATES: Comments must be received on or before October 16, 1995.

ADDRESSES: Comments on this notice may be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 28272, 800 Independence Avenue SW., Washington, DC 20591; or delivered in triplicate to: Room 915G, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked Docket No. 28272. Comments may be examined in Room 915G weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. In addition, the FAA is maintaining an information docket of comments in the Transport Airplane Directorate (ANM–100), Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98055–4056. Comments in the information docket may be examined weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Franklin Tiangsing, Regulations Branch, ANM–114, Transport Airplane Directorate, Aircraft Certification Service, FAA, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (206) 227–2121.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to any environmental, energy, or economic impact that might result from adopting the proposals contained in this notice are invited. Substantive comments should be accompanied by cost estimates. Commenters should identify the regulatory docket or notice number and submit comments in triplicate to the Rules Docket address above. All comments received on or before the closing date for comments will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments received will be available in the Rules Docket, both before and after the comment period closing date, for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 28272.'' The postcard will be date stamped and returned to the commenter.

Availability of the NPRM

Any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration (FAA), Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue SW., Washington, DC 20591; or by calling (202) 267–3484. The notice number of this notice of proposed rulemaking (NPRM) must be identified in all communications. Persons interested in being placed on a mailing list for future rulemaking documents should also request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Part 25 of Title 14 of the Code of Federal Regulations (CFR) contains the airworthiness standards for transport category airplanes. Manufacturers of transport category airplanes must show that each airplane they produce complies with the relevant standards of part 25. These standards apply to airplanes manufactured within the U.S. and to airplanes manufactured in other countries and imported under a bilateral airworthiness agreement. One of the standards that must be met is that of demonstrating that passengers and crewmembers can be evacuated in a timely manner in an emergency. This standard is addressed by the requirements contained in § 25.803 and Appendix J to part 25. This standard is intended to demonstrate emergency evacuation capability under a consistent set of prescribed conditions but is not intended to demonstrate that all passengers can be evacuated under all conceivable emergency conditions.

Part 121 contains the requirements governing the operations of domestic, flag, and supplemental air carriers, and commercial operators of large airplanes. One of the requirements is that the certificate holder must demonstrate the effectiveness of the crewmember training and operating procedures in opening floor level and non floor level exits and deploying the evacuation slides, if installed, in a timely manner.

History of the Emergency Evacuation Regulations

Amendment 121–2, effective March 3, 1965, first introduced the requirements for an emergency evacuation demonstration to the FAA regulations. Entities operating under part 121 of Title 14 of the CFR were required to conduct full-scale emergency evacuation demonstrations using 50 percent of the airplane's exits. Half of the exits were rendered inoperative to simulate the type of emergency where fire, structural, or other adverse condition would prevent those exits from being used. A time limit of 120 seconds was given. The demonstration was required upon initial introduction of a type and model of airplane into passenger carrying operations, an increase of 5 percent or greater in passenger seating capacity, or a major change to the interior arrangement that would affect emergency evacuation. The purposes of the demonstration were to demonstrate the ability of crewmembers

to execute established emergency evacuation procedures, and to ensure realistic assignments of crewmember functions.

Amendment 25–15, effective October 24, 1967, introduced the emergency evacuation requirements into part 25. Newly created § 25.803 required airplane manufacturers to conduct an emergency evacuation demonstration for airplanes with a passenger seating capacity of 44 or more. The purpose of this demonstration was to establish the evacuation capability of the airplane. The time limit for this demonstration was established at 90 seconds. Concurrently, the time limit for the part 121 demonstration was reduced to 90 seconds by Amendment 121–30, also effective October 24, 1967. This reduction was primarily attributable to significant gains made in the efficacy of devices, such as inflatable slides, to assist in the evacuation. The purpose of the part 121 demonstration still focused on crew training and crew procedures so that demonstration conditions remained somewhat different between the two parts.

Section 25.803(d) listed conditions under which analysis could be used in lieu of a full-scale demonstration to demonstrate compliance with the regulation. The section stated that the full-scale demonstration did not have to be repeated for a change in the interior arrangement, or for an increase in passenger capacity of less than five percent, if it could be substantiated by analysis that all occupants could be evacuated in less than 90 seconds.

Amendment 25–46, effective December 1, 1978, revised § 25.803 to allow means other than actual demonstration to show the evacuation capability of the airplane and to replace the existing part 25 demonstration conditions with conditions that would satisfy both part 25 and part 121. In this way, one demonstration could be used to satisfy both requirements. In addition, Amendment 25–46 revised § 25.803 to allow analysis to be used to substantiate compliance for an increase in seating capacity of more than five percent. Part 121 was revised, by Amendment 121–149, effective December 1, 1978, to accept the results of demonstrations conducted in compliance with § 25.803 as of Amendment 25–46.

Amendment 25–72, effective August 20, 1990, placed the demonstration conditions previously listed in § 25.803(c) into a new Appendix J to part 25. This change was done for clarity and editorial consistency with part 121. In addition, emergency escape route requirements formerly contained in § 25.803(e) were transferred to a new § 25.810(c).

Amendment 25–79, effective September 27, 1993, revised Appendix J to part 25 by revising the age/gender mix to be used when conducting an emergency evacuation demonstration, by allowing the use of stands or ramps for descending from overwing exits only when the airplane is not equipped with an off-wing descent means, and by prohibiting the flight crew from taking an active role in assisting in the passenger cabin.

Amendment 121–233, effective September 27, 1993, revised § 121.291(a), (a)(1), and (a)(2) to remove the requirement that the certificate holder conduct a full-scale evacuation demonstration if the airplane type and model had been shown to be in compliance with § 121.219(a) in effect on or after October 24, 1967, or, if during type certification the airplane had been shown to be in compliance with § 25.803 in effect on or after December 1, 1978. Additionally, an actual demonstration could be conducted in accordance with Appendix D to part 121 in effect on or after September 27, 1993, or in accordance with § 25.803 in effect on or after that date.

The Aviation Rulemaking Advisory Committee

The ARAC was formally established by the FAA on January 22, 1991 (56 FR 2190) to provide advice and recommendations to the FAA concerning the full range of the FAA's safety-related rulemaking activity. This advice was sought to develop better rules in less overall time using fewer FAA resources than are currently needed. The committee provides the opportunity for the FAA to obtain firsthand information and insight from interested parties regarding proposed new rules or revisions of existing rules.

There are approximately 60 member organizations on the committee, representing a wide range of interests within the aviation community. Meetings of the committee are open to the public, except as authorized by Section 10(d) of the Federal Advisory Committee Act.

The ARAC establishes working groups to develop proposals to recommend to the FAA for resolving specific issues. Tasks assigned to working groups are published in the **Federal Register**. Working group meetings are not generally open to the public; however, all interested persons are invited to become working group members when the group is formed. Working groups report directly to ARAC, and the ARAC must adopt a working group proposal before that proposal can be presented to the FAA as an ARAC recommendation.

The activities of the ARAC do not, however, circumvent the public rulemaking procedures. After an ARAC recommendation is received and found acceptable by the FAA, the agency proceeds with the normal public rulemaking procedures. Any ARAC participation in a rulemaking package will be fully disclosed in the public docket.

Activities of the Performance Standards Working Group

On May 23, 1991, the first meeting of the ARAC was held in Baltimore, Maryland, pursuant to a notification in the **Federal Register** (56 FR 2190, January 22, 1991).

Members of the ARAC interested in issues involving emergency evacuation met on May 24, 1991, in Baltimore. At that meeting the charter for a working group that would report to ARAC was established as well as the group membership, which includes representatives from airplane and parts manufacturers, pilot, flight attendant and machinist unions, airlines, airworthiness authorities, passenger associations and other public interest groups. This diverse working group includes representatives from the United States, Canada, and Europe. The charter of the working group is to recommend to the ARAC whether new or revised emergency evacuation standards can and should be stated in terms of performance standards rather than design standards. The first meeting of the new PSWG was held on June 26, 1991, and the group has continued to meet on a bi-monthly basis since then.

Following two unsuccessful emergency evacuation demonstrations of an airplane on October 26, 1991, for which increased seating capacity was sought, and during which a participant was seriously injured, the ARAC was tasked by the FAA to work on recommendations for revising the emergency evacuation demonstration requirements and compliance methods to eliminate or minimize the potential for injury to demonstration participants. The ARAC decided to add this task to the charter of the PSWG.

In response to this additional task, the PSWG created a draft report for discussion. The draft report consisted primarily of two significant parts: recommendations of changes that could be made to the current demonstration that would improve participant safety, but that would not alter the basic character of the demonstrations; and, recommendations for when analysis

could be used in lieu of the full scale demonstration, plus an outlined step-by-step methodology for preparing such an analysis. The former recommendation would require a revision to Appendix J to part 25, while the latter recommendations would expand FAA guidance now in Advisory Circular 25.803–1, Emergency Evacuation Demonstrations. The report was revised numerous times, over several PSWG meetings, based on comments from PSWG members. Nonetheless, after numerous attempts to develop a report that was acceptable to all members of the working group, it was determined that a consensus on the full report could not be attained. Areas of disagreement were, however, defined and discussed in an attempt to reach consensus. Representatives of three organizations on the PSWG have written letters stating their objections to the report as finalized. These letters are included as Appendix 2 of the report. In summary, the objectors expressed concern that the committee did not systematically review the causes of injuries in emergency evacuation demonstrations, and thus could not make meaningful recommendations to reduce or eliminate those injuries. Instead, the objectors felt that the committee had concentrated on an approach which would effectively eliminate the full scale demonstration. It should be noted that the comments are primarily aimed at the proposed revisions to the existing advisory circular and not to the revisions to Appendix J of part 25 contained in this NPRM.

The PSWG accepted the report, although a consensus could not be reached on all issues covered in the report, after discussing all items members raised, including the letters of objection. The report was forwarded to the ARAC on January 28, 1993, and accepted by that body with one negative vote. The vote was taken after an opportunity was given to all members to raise questions or to discuss any item in the report. The ARAC then tasked the PSWG to draft the appropriate rulemaking document and revise the advisory material as recommended in the report. This NPRM covers the recommended revisions to part 25 covered in the report, ''Emergency Evacuation Requirements and Compliance Methods that Would Eliminate or Minimize the Potential for Injury to Full Scale Evacuation Demonstration Participants.'' A copy of the report has been placed in the docket for examination by interested parties.

Harmonization With the Joint Aviation Authorities (JAA)

This document has not been formally harmonized with the JAA in that the JAA has not agreed, as yet, to proceed with parallel rulemaking. A representative of the JAA, however, has been involved with the PSWG since its inception; and the views of the JAA representative have been considered in the development of this notice. Additionally, a representative of the JAA participated as a member of the PSWG writing group, which produced the report noted above upon which this notice is based.

Injuries During Full Scale Emergency Evacuation Demonstrations

Hundreds of people jumping out of an airplane in simulated dark of night conditions onto inflated slides, sliding as many as 25 feet to the ground below, can result in some injuries. As stated in the report, FAA records (''An FAA Analysis of Aircraft Emergency Evacuation Demonstrations: 1982, Society of Automotive Engineers Technical Paper Series #821486 by Sharon A. Barthelmess) noted 166 injuries to participants in a sampling of seven full scale evacuation demonstrations conducted between 1972 and 1980, involving 2,571 passengers and crewmembers. Additionally, a review of 19 full scale evacuation demonstrations during the 1972–1991 time frame identified 269 injuries among 5,797 passengers and crewmembers. Detailed descriptions of most of the injuries discussed above are not available. Not all the injuries, therefore, could be classified as to their severity. Some injuries have been serious; however, the majority probably would not be classified as serious (see 49 CFR 830.2 for injury classification definitions). To date, the most serious injury has resulted in paralysis.

Discussion of the Proposals

The FAA proposes amending Appendix J to part 25, as recommended by the ARAC, to reduce the possibility of injury to participants in a full-scale emergency evacuation demonstration and to codify existing practice regarding airplanes equipped with overwing slides.

Paragraph (a) of Appendix J would be amended to allow exterior light levels of 0.3 foot-candles or less prior to the activation of the airplane emergency lighting system in lieu of the currently required ''dark of night'' conditions. The proposed light level is approximately the level that would be found in the passenger cabin when the emergency lighting system is the only source of illumination. Allowing this low level lighting outside the airplane will enhance the ability of the demonstration director to see and react more quickly to problems that may develop during the demonstration. While this would not prevent injuries incurred at the onset of the problems, it could result in reducing the number of injuries by halting the demonstration sooner than in the past. Tests were not run to ascertain whether or not such exterior ambient lighting would enhance or detract from evacuation performance, since it was considered that crew performance, escape system efficiency, and illumination provided by the airplane emergency lighting system have the predominant impact on evacuation performance.

Paragraph (p) would be revised to allow exits with inflatable slides to have the slides deployed and available for use prior to the start of the demonstration timing. If this method is used, the exit preparation time, which would be established in separate component tests, would need to be accounted for in some manner. This change would prevent what has occurred in at least two instances, a participant exiting the airplane before the slide was fully available for use. Neither participant was seriously injured; however, if this were to occur again, the potential for serious injury would remain. An additional benefit is that slides being pre-deployed and inflated would not be subject to damage from equipment, such as light stanchions, that is near the airplane only because a demonstration is being run. The predeployment and inflation of slides also allows the proper placement and opportunity for inspection of safety mats around the slide prior to the start of the demonstration. Additionally, the paragraph would be revised to require that the exits that are not used in the demonstration must be clearly indicated once the demonstration has started. This revision to the regulation would contain wording more general than currently in the rule to accommodate the additional flexibility in exit configuration (slide stowed or pre-deployed and inflated) allowed by this proposal. Finally, the opening sentence in the paragraph would be revised to more succinctly describe the exits that are to be used in the demonstration. The exit pairs in the proposed regulation are as required in the passenger seating tables in § 25.807(d). As in the past, exits that are not installed in pairs, typically tail cone or ventral exits, would not be used in the demonstration. This proposal is in

response to numerous requests to the FAA for clarification of the existing text.

Paragraph (f) would be revised to remove the requirement that each external door and exit be in the takeoff configuration. This proposal is a result of the proposed change to paragraph (p), noted above, which would allow slides to be deployed and inflated prior to the start of the demonstration. If the option to predeploy the slide is selected by the applicant, an agreement must be reached with the FAA prior to the demonstration regarding how to prevent demonstration participants from determining which exits will be used in the demonstration, as well as when, how, and by whom the covers (a likely solution to the issue) in the doorways will be removed and the impact on the resulting times for each of the used exits. Internal doors would still be required to be in takeoff configuration.

Paragraph (o) would be revised to state more generally the intent of the requirement rather than requiring specific actions. The intent is that participants inside the airplane should not be able to identify, prior to the start of the demonstration, which exits will be used during the demonstration. Although this may be made more difficult by the proposed change to paragraph (p), this change is not specifically related to reducing injuries.

Paragraph (n) would be revised to allow passengers to be briefed on safety procedures that are in place for the particular demonstration, e.g., demonstration abort procedures, or procedures that have to do with the demonstration site, e.g., how to evacuate the building in which the demonstration is being conducted, and to note when that briefing could take place. This briefing would be useful by stopping some participants from adding to an already potential injurious situation in the event of problems, such as a collapsed evacuation slide, occurring during the demonstration, or by providing information that would be helpful in case of a problem at the demonstration site, e.g., a fire in the building. The briefing would have to be carefully constructed so as not to impart any information that would enable the participants to evacuate the airplane faster. Additionally, the appropriate time for the passenger briefing required by § 121.571 has been added.

One of the ARAC recommendations, that paragraph (c) be amended to allow the use of stands or ramps for overwing exits only if assist means are not required as part of the airplane type design, is not being proposed because that change has already been implemented by Amendment 25–79.

Another of the recommendations, involving revising the age/gender mix to require using only the age/gender groups least susceptible to injury, is not being proposed at this time, pending research to identify the groups and develop an appropriate mix. A group of participants based on the new mix would have the same evacuation capability as a group based on the existing mix. This possible future proposal would be in addition to the recent change to the mix promulgated by Amendment 25–79.

In addition to the amendments to part 25 proposed in this notice, revisions to Advisory Circular (AC) 25.803–1, Emergency Evacuation Demonstrations, are proposed in response to the recommendations contained in the ARAC report. Advisory Circular 25.803–1 provides guidelines that the FAA has found acceptable regarding emergency evacuation demonstrations. Public comments concerning the proposed revisions to AC 25.803 will be invited by separate notice.

Finally, although not recommended by the ARAC, the FAA has determined that a revision to § 121.291(b)(1) is necessary to accommodate the revision to § 121.291(a), (a)(1), and (a)(2) promulgated by Amendment 121–233, and the proposed change to paragraph (p) of Appendix J to part 25 contained herein. Amendment 121–233 allows a certificate holder to conduct a full-scale emergency evacuation demonstration in accordance with § 25.803 in effect on or after September 27, 1993. The proposed revision to paragraph (p) of Appendix J to part 25 would allow the full-scale emergency evacuation to be run with exits opened and slides deployed and inflated prior to the start of the demonstration. If this proposal were to be incorporated into part 25, it would then be possible for a certificate holder to conduct a full-scale emergency evacuation demonstration without having to have the flight attendants open the exits and deploy the exit slides, if installed. The efficacy of the certificate holder's training and line operating procedures regarding the exits and slides would, therefore, not be demonstrated.

The FAA proposes to remove the qualifying phrase ''if the certificate holder has not conducted an actual demonstration under paragraph (a) of this section'' from § 121.291(b)(1), thereby requiring each certificate holder to conduct at least a partial demonstration of emergency evacuation procedures for each new type and model of airplane placed into passenger-carrying service. The FAA considers this a necessary and significant demonstration that must be accomplished prior to any new airplane type and model being placed into passenger-carrying service by every certificate holder. This proposal would require a certificate holder to conduct a partial demonstration, even if the certificate holder ran a full-scale evacuation demonstration with the exits in the takeoff and landing configuration. It is extremely unlikely that a certificate holder would voluntarily choose to conduct a full-scale demonstration in lieu of utilizing the results of the airplane manufacturer's demonstration as part of showing compliance with § 25.803, considering the considerable expense of a full-scale evacuation demonstration versus the minimal expense of a partial evacuation demonstration.

Regualtory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule: (1) would generate benefits that would justify its costs, but is a ''significant regulatory action'' as defined in the Executive Order; (2) is ''significant'' as defined in DOT's Policies and Procedures; (3) would not have a significant impact on a substantial number of small entities; and (4) would not have a negative impact on international trade. These analyses, available in the docket, are summarized below.

The proposed rule would not necessarily result in additional compliance costs, because it would allow alternative procedures in conducting demonstrations, rather than mandating them. If manufacturers elect to use the proposed procedures, however, the FAA estimates that there would be incremental costs of approximately $1,100 per transport airplane certification.

The primary benefit of the proposed rule would be reduced risks of injuries to demonstration participants. Allowing low-level exterior light would enhance the ability of the demonstration director to react more quickly to problems which

could develop during the demonstration. Pre-deploying and inflating slides would prevent participants from injuring themselves by exiting the airplane before the slides are fully available for use.

The FAA reviewed 19 demonstrations conducted between 1972 and 1991. Of the 5,797 participants in the demonstrations, 269, or 4.6 percent, were injured. In the seven demonstrations for which there was information on the types of injuries, 13 suffered fractures, 63 sprains or strains, 32 contusions, and 108 suffered lacerations or abrasions, a total of 216 people injured.

In one of these demonstrations, a participant was seriously injured. In general, however, fractures, sprains, strains, contusions, lacerations, and abrasions are generally classified as ''minor'' or ''moderate,'' according to the abbreviated injury scale (AIS) used by the National Transportation Safety Board (NTSB). The FAA estimates that the average costs of a minor injury are $6,900 and the average costs of a moderate injury are $44,000. Avoiding only one minor injury during an evacuation demonstration would result in cost savings exceeding the estimated $1,100 incremental costs of the proposed alternative procedures. The FAA has determined, therefore, that the proposed rule would be cost-beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Federal regulations. The RFA requires a Regulatory Flexibility Analysis if a proposed rule would have a significant economic impact, either positive or negative, on a substantial number of small entities. Based on FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, the FAA has determined that the proposed amendments would not have a significant economic impact on a substantial number of small entities because no small entities would be affected.

International Trade Impact Assessment

The proposed rule would not constitute a barrier to international trade, including the export of American airplanes to foreign countries and the import of foreign airplanes into the Untied States.

Federalism Implications

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

Conclusion

Although the proposed changes to revise the emergency evacuation demonstration requirements of part 25 of the FAR are not expected to result in substantial economic cost, the FAA has determined that this proposed regulation would be ''significant'' under Executive Order 12866, and ''significant'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 25, 1979) because of the public interest involved. Since there are no small entities affected by this proposed rulemaking, the FAA certifies that the rule, at promulgation, would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the regulatory evaluation prepared for this project may be examined in the Rules Docket or obtained from the person identified under the caption **FOR FURTHER INFORMATION COTNACT.**

List of Subjects

14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

The Proposed Amendments

Accordingly, the Federal Aviation Administration (FAA) proposes to amend 14 CFR parts 25 and 121 of the Federal Aviation Regulations (FAR) as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for part 25 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40110, 40113, 44701, 44702, 44711, 44713; 49 CFR 1.47(a).

2. By amending Appendix J to part 25 by revising paragraphs (a), (f), (n), (o), and (p) to read as follows:

Appendix J to Part 25—Emergency Evacuation

* * * * *

(a) The emergency evacuation must be conducted with exterior ambient light levels of 0.3 foot-candles or less, prior to the evacuation of the airplane emergency lighting system. The source(s) of the initial exterior ambient light level may remain active or illuminated during the actual demonstration. There must, however, be no increase in the exterior ambient light level except for that due to activation of the airplane emergency lighting system.

* * * * *

(f) Each internal door or curtain must be in the takeoff configuration.

* * * * *

(n) Prior to entering the demonstration aircraft, the passengers may also be advised to follow directions of crewmembers but not be instructed on the procedures to be followed in the demonstration, except with respect to safety procedures in place for the demonstration or that have to do with the demonstration site. Prior to the start of the demonstration, the pre-takeoff passenger briefing required by § 121.571 of this chapter may be given. Flight attendants may assign demonstration subjects to assist persons from the bottom of a slide, consistent with their approved training program.

(o) The airplane must be configured to prevent closure of the active emergency exits to demonstration participants in the airplane, until the start of the demonstration.

(p) Exits used in the demonstration will consist of one exit from each exit pair. The demonstration may be conducted with the escape slides, if provided, inflated and the exits open at the beginning of the demonstration. In this case, all exists will be configured such that the active exits are not disclosed to the occupants. If this method is used, the exit preparation time for each exit utilized must be accounted for, and exits that are not to be used in the demonstration must not be indicated before the demonstration has started. The exits to be used must be representative of all of the emergency exits on the airplane and must be designated by the applicant, subject to approval by the Administrator. At least one floor level exit must be used.

* * * * *

PART 121—CERTIFICATION AND OPERATIONS; DOMESTIC FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

3. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40105, 40113, 44701–44702, and 44704–44705.

4. By amending § 121.291 by revising paragraph (b)(1) to read as follows:

§ 121.291 Demonstration of emergency evacuation procedures.

* * * * *

(b) * * *

(1) Initial introduction of a type and model of airplane into passenger-carrying operation;

* * * * *

Issued in Washington, D.C. on July 11, 1995.

Thomas E. McSweeny,

Director, Aircraft Certification Service.

[FR Doc. 95–17392 Filed 7–17–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Register

Tuesday
July 18, 1995

Part VI

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

July 1, 1995.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344). Section 1014(e) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the month, a special message had been transmitted to Congress.

This report gives the status, as of July 1, 1995, of 28 rescission proposals and seven deferrals contained in five special messages for FY 1995. These messages were transmitted to Congress on October 18, and December 13, 1994; and on February 6, February 22, and May 2, 1995.

Rescissions (Attachments A and C)

As of July 1, 1995, 28 rescission proposals totaling $1,199.8 million had been transmitted to the Congress. Congress approved three of the Administration's rescission proposals in P.L. 104–6. A total of $86.6 million of the rescissions proposed by the President was rescinded by that measure. Attachment C shows the status of the FY 1995 rescission proposals.

Deferrals (Attachments B and D)

As of July 1, 1995, $1,067.3 million in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 1995.

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 Register** cited below:

59 FR 54066, Thursday, October 27, 1994
59 FR 67108, Wednesday, December 28, 1994
60 FR 8842, Wednesday, February 15, 1995
60 FR 12636, Tuesday, March 7, 1995
60 FR 24692, Tuesday, May 9, 1995

Alice M. Rivlin,

Director.

BILLING CODE 3110–01–M

ATTACHMENT A

STATUS OF FY 1995 RESCISSIONS
(in millions of dollars)

	Budgetary Resources
Rescissions proposed by the President.....	1,199.8
Rejected by the Congress.....	---
Amounts rescinded by P.L. 104-6, the FY 1995 Emergency Supplemental Appropriations Act.....	-86.6
Currently before the Congress.....	1,113.2

ATTACHMENT B

STATUS OF FY 1995 DEFERRALS
(in millions of dollars)

	Budgetary Resources
Deferrals proposed by the President.....	4,699.1
Routine Executive releases through July 1, 1995 (OMB/Agency releases of $3,634.3 million, partially offset by cumulative positive adjustment of $2.5 million).....	-3,631.8
Overturned by the Congress.....	---
Currently before the Congress.....	1,067.3

ATTACHMENT C
Status of FY 1995 Rescission Proposals - As of July 1, 1995
(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
DEPARTMENT OF AGRICULTURE								
Foreign Agricultural Service								
Public Law 480 program account	R95-1		43,865	2-6-95	43,865	3-28-95		
Public Law 480 grants, title I (OFD), II, and III			98,635	2-6-95	98,635	3-28-95		
Food and Nutrition Service								
Food stamp program	R95-2		2,900	2-6-95	2,900	3-28-95		
DEPARTMENT OF COMMERCE								
National Telecommunications and Information Administration								
Public broadcasting facilities, planning and construction	R95-3		18,000	2-6-95	18,000	3-31-95		
DEPARTMENT OF EDUCATION								
Office of Elementary and Secondary Education								
School improvement programs	R95-4		138,084	2-6-95	35,000	3-15-95		
	R95-4A		-35,000	2-22-95	103,084	3-30-95	65,000	P.L. 104-6
Office of Vocational and Adult Education								
Vocational and adult education	R95-5		43,888	2-6-95	43,888	3-30-95		
Office of Postsecondary Education								
Higher education	R95-6		26,903	2-6-95	26,903	3-30-95		
College housing and academic facilities program	R95-7		168	2-6-95	168	3-30-95		
Office of Educational Research and Improvement								
Education research, statistics, and improvement	R95-8		750	2-6-95	750	3-30-95		
Libraries	R95-9		12,942	2-6-95	12,942	3-31-95		
DEPARTMENT OF HEALTH AND HUMAN SERVICES								
Health Resources and Services Administration								
Health resources and services	R95-10		29,147	2-6-95	29,147	3-28-95		

ATTACHMENT C
Status of FY 1995 Rescission Proposals - As of July 1, 1995
(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
DEPARTMENT OF HEALTH AND HUMAN SERVICES								
Centers for Disease Control and Prevention								
Disease control, research, and training	R95-11		1,300	2-6-95	1,300	3-28-95		
National Institutes of Health								
National Center for Research Resources	R95-12		1,000	2-6-95	1,000	3-28-95		
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Housing Programs								
Annual contributions for assisted housing	R95-13		439,200	2-6-95	439,200	3-28-95		
Congregate services	R95-14		37,000	2-6-95	37,000	3-28-95		
DEPARTMENT OF JUSTICE								
Federal Prison System								
Salaries and expenses	R95-26		28,037	5-2-95	*			
DEPARTMENT OF LABOR								
Bureau of Labor Statistics								
Salaries and expenses	R95-15		1,100	2-6-95	1,100	3-29-95		
DEPARTMENT OF TRANSPORTATION								
Federal Railroad Administration								
Local rail freight assistance	R95-16		13,216	2-6-95	13,216	3-31-95	6,563	P.L. 104-6
Office of the Secretary								
Payments to air carriers (Airport and airway trust fund)	R95-17		7,680	2-6-95	*			
Federal Aviation Administration								
Grants-in-aid for airports (Airport and airway trust fund)	R95-27		94,000	5-2-95	*			

* Funds were never withheld from obligation.

ATTACHMENT C
Status of FY 1995 Rescission Proposals - As of July 1, 1995
(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
ENVIRONMENTAL PROTECTION AGENCY								
Abatement, control, and compliance	R95-18		11,642	2-6-95	6,835	2-6-95		
	R95-18A		-6,835	2-6-95	4,807	3-28-95		
Water infrastructure financing	R95-18B		3,200	2-6-95	3,200	3-28-95		
Research and development	R95-18C		3,635	2-6-95	3,635	3-28-95		
	R95-18C-1		Language	2-22-95				
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION								
Mission support	R95-19		1,000	2-6-95	1,000	3-28-95		
Construction of facilities	R95-20		27,000	2-6-95	27,000	3-28-95		
Space flight, control, and data communications	R95-28		10,000	5-2-95	10,000	6-26-95		
SMALL BUSINESS ADMINISTRATION								
Salaries and expenses	R95-21		15,000	2-6-95	15,000	4-6-95	15,000	P.L. 104-6
OTHER INDEPENDENT AGENCIES								
Chemical Safety and Hazard Investigation Board								
Salaries and expenses	R95-22		500	2-6-95	500	3-28-95		
National Science Foundation								
Academic research infrastructure	R95-23		131,867	2-6-95	131,867	3-27-95		
TOTAL RESCISSIONS		**0**	**1,199,824**		**1,111,942**		**86,563**	

[FR Doc. 95–17569 Filed 7–17–95; 8:45 am]
BILLING CODE 3110–01–C

ATTACHMENT D
Status of FY 1995 Deferrals - As of July 1, 1995
(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 7-1-95
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund	D95-1	53,300		10-18-94					
	D95-1A		1,173,948	12-13-94	894,978			2,525	334,796
Foreign military financing grants	D95-2	3,139,279		10-18-94	2,520,398				618,881
Foreign military financing program account	D95-3	47,917		10-18-94	42,774				5,143
Military-to-military contact program	D95-4	2,000		10-18-94	2,000				0
Agency for International Development									
International disaster assistance, executive	D95-5	169,998		10-18-94	129,301				40,697
SOCIAL SECURITY ADMINISTRATION									
Limitation on administrative expenses	D95-6	7,319		10-18-94					
	D95-6A		2	2-22-95					7,321
DEPARTMENT OF STATE									
Other									
United States emergency refugee and migration assistance fund	D95-7	105,300		10-18-94	44,814				60,486
TOTAL, DEFERRALS		**3,525,113**	**1,173,950**		**3,634,266**			**2,525**	**1,067,323**

Federal Register

Tuesday
July 18, 1995

Part VII

The President

Executive Order 12966—Foreign Disaster Assistance

Federal Register
Vol. 60, No. 137
Tuesday, July 18, 1995

Presidential Documents

Title 3—

The President

Executive Order 12966 of July 14, 1995

Foreign Disaster Assistance

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Defense Authorization Act for Fiscal Year 1995, Public Law 103–337 (the ''Act'') and section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. This order governs the implementation of section 404 of title 10, United States Code, as added by amendment set forth in section 1412(a) of the Act. Pursuant to 10 U.S.C. 404(a), the Secretary of Defense is hereby directed to provide disaster assistance outside the United States to respond to manmade or natural disasters when the Secretary of Defense determines that such assistance is necessary to prevent loss of lives. The Secretary of Defense shall exercise the notification functions required of the President by 10 U.S.C. 404(c).

Sec. 2. The Secretary of Defense shall provide disaster assistance only:
(a) at the direction of the President; or

(b) with the concurrence of the Secretary of State; or

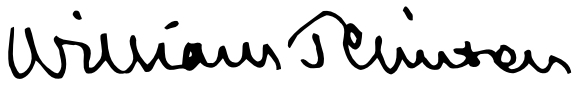
(c) in emergency situations in order to save human lives, where there is not sufficient time to seek the prior initial concurrence of the Secretary of State, in which case the Secretary of Defense shall advise, and seek the concurrence of, the Secretary of State as soon as practicable thereafter.

For the purpose of section 2(b) of this order, only the Secretary of State, or the Deputy Secretary of State, or persons acting in those capacities, shall have the authority to withhold concurrence. Concurrence of the Secretary of State is not required for the execution of military operations undertaken pursuant to, and consistent with, assistance provided in accordance with parts (b) and (c) of this section, or with respect to matters relating to the internal financial processes of the Department of Defense.

Sec. 3. In providing assistance covered by this order, the Secretary of Defense shall consult with the Administrator of the Agency for International Development, in the Administrator's capacity as the President's Special Coordinator for International Disaster Assistance.

Sec. 4. This order does not affect any activity or program authorized under any other provision of law, except that referred to in section 1 of this order.

Sec. 5. This order is effective at 12:01 a.m., e.d.t. on July 15, 1995.



THE WHITE HOUSE,
July 14, 1995.

[FR Doc. 95–17828
Filed 7–17–95; 11:19 am]
Billing code 3195–01–P

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